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Superior Court Of California
County Of Los Angeles

SEP 15 2015

Sherri A. Carter, Executive Officer/Clerk
By Kristina Varga Deputy

1 ERIC J. ROSENBERG, ESQ.
2 (OH Bar #0069958; *Pro Hac Vice Pending*)
3 TRACY L. TURNER, ESQ.
4 (OH Bar #0069927; *Pro Hac Vice Pending*)
5 ROSENBERG & BALL CO. LPA
6 395 North Pearl Street
7 Granville, Ohio 43023
8 Telephone: 740.644.1027
9 Facsimile: 866.498.0811
10 Email: ericrosenb@gmail.com

11 MARK M. HATHAWAY, ESQ.
12 (CA Bar #151332; NY Bar # 2431682;
13 Washington DC Bar # 437335)
14 WERKSMAN JACKSON
15 HATHAWAY & QUINN LLP
16 888 West Sixth Street, Fourth Floor
17 Los Angeles, California 90017
18 Telephone: (213) 688-0460
19 Facsimile: (213) 624-1942
20 E-Mail: mhathaway@werksmanjackson.com

21 Attorneys for Plaintiff JOHN DOE

D-40 Michelle R. Rosenblatt

22 SUPERIOR COURT OF THE STATE OF CALIFORNIA
23 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT
24 BC 594472

25 JOHN DOE, *an individual*
26 Plaintiff,
27 v.
28 OCCIDENTAL COLLEGE
29 Defendant.

Case No.
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

- 1. Title IX - Hostile Environment
- 2. Title IX - Deliberate Indifference
- 3. Title IX - Erroneous Outcome
- 4. Breach of Contract
- 5. False Promise
- 6. Negligence
- 7. Injunctive Relief

VOLUME I OF II

CIT/CASE #: BCS94472
LEA/DEF#: _____
RECEIPT #: CCH517486025
DATE PAID: 09/15/15 02:50 PM
PAYMENT: \$435.00
RECEIVED: 310
\$435.00
\$0.00
\$0.00
\$0.00

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1 NATURE OF THE ACTION

2 1. John Doe seeks damages and injunctive relief to remedy emotional,
3 mental, and physical harm suffered in part because of Occidental's discrimination
4 against him on the basis of his sex. John Doe files this lawsuit to preserve his rights
5 and assert his claims within the applicable statute of limitations of Title IX of the
6 Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, but requests the action
7 be consolidated with John Doe's Petition for Writ of Administrative Mandate filed
8 against Occidental in the Superior Court of the State of California for the County of
9 Los Angeles, Central District, Case No. BS147275.¹

10 2. As set forth in detail below, Occidental's unlawful conduct involves its
11 discipline of John Doe for his interactions with Jane Doe on or about September 8,
12 2013 while both were students at Occidental. This discipline was unlawful in part
13 because it involved Jane Doe's decision to initiate physical contact with John Doe
14 when Jane Doe: (a) was not incapacitated by alcohol; and (b) knew or should have
15 known John Doe lacked the capacity to consent because he was incapacitated by
16 alcohol.

17 3. The relevant events of September 8, 2013 include, but are not limited
18 to, the following actions or admissions by Jane Doe:

- 19 (a.) After a night of drinking, Jane Doe sought out John Doe in his
20 dormitory room. When Jane Doe arrived, John Doe was visibly
21 intoxicated and/or incapacitated due to alcohol consumed at a hazing
22 ritual for the Occidental sports team of which he was a member;
- 23 (b.) While in his dormitory room, Jane Doe flirted with John Doe by sitting
24 in his lap, kissing him, and taking off her shirt;
- 25 (c.) Jane Doe told John Doe verbally that she wanted to have sex with him
26 on September 8, 2013;

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28 ¹ See generally, *John Doe's Motion to Consolidate* (containing the basis for John Doe's request to consolidate this action with his Petition for Writ of Administrative Mandate).

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- (d.) After witnessing Jane Doe's flirtatious conduct, Jane Doe's friend ("Friend#1") suggested Jane Doe and Friend#1 head back to Jane Doe's dormitory room;
- (e.) Upon leaving, Jane Doe then exchanged text messages with John Doe making plans to return to his dorm room to have sex as soon as Jane Doe could get away from Friend#1;
- (f.) After getting away from Friend#1, and before proceeding back to John Doe's room, Jane Doe sent a text message to John Doe to confirm he had a condom so that they could have protected sex;
- (g.) Jane Doe also sent a text message to her best friend from high school to let her friend know "I'mgoingtohave sex now[sic]."
- (h.) When Jane Doe arrived at John Doe's room, she voluntarily performed oral sex on John Doe who was still visibly intoxicated and/or incapacitated;
- (i.) After performing oral sex on John Doe, a friend of Jane Doe ("Friend#2") entered John Doe's dormitory room to see how Jane Doe was doing. Jane Doe told Friend#2 that she was fine and asked him to leave.
- (j.) John Doe then went to the bathroom while Jane Doe remained in his room. At this time, Friend#2 returned, knocked on the door two to three times, and asked Jane Doe if she was okay. Each time Friend#2 asked, Jane Doe stated she was fine and/or that she wanted to stay in John Doe's room.
- (k.) After John Doe returned to the room, Jane Doe initiated sexual intercourse with John Doe. While having sex, John Doe's roommate entered the room, witnessed the two engaged in sex, and thereby caused John Doe and Jane Doe to become embarrassed. As a result, Jane Doe put her clothes on, hugged John Doe, and left the room.
- (l.) After leaving John Doe's room, Jane Doe returned to her dormitory for a short time and in reference to her sexual activity sent text messages to her friends with smiley faces, then went to another dormitory on campus where she was witnessed flirting and sitting on the lap of a male friend.

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(m.) The next day, realizing that many of her dorm mates and new college friends knew Jane Doe got drunk and hooked up with John Doe, Jane Doe became embarrassed and sought out people to talk to, who convinced her to file knowingly false sexual assault allegations against John Doe.

4. Even though Jane Doe initiated sexual activity with John Doe, Occidental ultimately and unlawfully expelled John Doe from Occidental. In doing so, Occidental engaged in the unlawful conduct detailed below which includes violating John Doe’s rights under Title IX which prohibits discrimination in education on the basis of gender.

5. Occidental’s unlawful conduct towards John Doe: (a) occurred in part to curry the favor of (i) federal officials such as the United States Department of Education (“DOE”), (ii) internal forces at Occidental, and/or (iii) external forces that were pressuring Occidental to find more male students “responsible” for engaging in sexual misconduct; (b) was motivated by gender bias evidenced in part by Occidental’s decision to expel John Doe while taking no disciplinary action against Jane Doe who engaged in the same allegedly wrongful conduct that John Doe engaged in; (c) occurred within the context of a gender biased hostile environment for male students like John Doe who were falsely accused of sexual misconduct at Occidental; and/or (d) subjected John Doe to an arbitrary and capricious disciplinary process.

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1 PARTIES, JURISDICTION, VENUE.

2 6. John Doe² is an individual residing in California.

3 7. Occidental College is a California corporation operating as a private,
4 co-educational liberal arts college at 1600 Campus Boulevard, Los Angeles,
5 California 90041 with its principal place of business in Los Angeles, County,
6 California.

7 8. This Court and the United States District Court for the Central District
8 of California have concurrent jurisdiction over John Doe's Title IX claims. *See*
9 *e.g., Thein v. Feather River Community College*, 2008 U.S. Dist. LEXIS 108357,
10 2008 WL 2783172 *6 (E.D.Cal.2008)(discussing concurrent state and federal court
11 jurisdiction over Title IX claims); *Fortune ex rel. Fortune v. City of Detroit Public*
12 *Schools*, 2004 Mich. App. LEXIS 2660, 2004 WL 2291333 (Mich.App.2004)
13 jurisdiction over Title IX claims); *Morrison v. Northern Essex Community College*,
14 56 Mass. App. Ct. 784, 780 N.E.2d 132, 136 n.9 (Mass.App.2002)(discussing
15 concurrent state and federal court jurisdiction over Title IX claims); *H.M. v.*
16 *Jefferson County Bd. of Educ.*, 719 So.2d 793, 796 (Ala.1998)(discussing
17 concurrent state and federal court jurisdiction over Title IX claims); *Mosley v.*
18 *Beaumont Indep. Sch. Dist.*, 997 S.W.2d 934, 938 (Tex.Ct.App.1999)(discussing
19 concurrent state and federal court jurisdiction over Title IX claims).

20 9. This Court and the United States District Court for the Central District
21 of California have personal jurisdiction over Defendant on the grounds that
22

23 ² Plaintiff uses the pseudonyms of "John Doe" and "Jane Doe" in his complaint in order to
24 preserve privacy in a matter of sensitive and highly personal nature, which outweighs the public's
25 interest in knowing the parties' identity. Use of the pseudonyms does not prejudice Defendant
26 because the identities of Plaintiff and Jane Doe are known to Defendant. *See, Starbucks Corp. v.*
27 *Superior Court* (2008) 68 Cal.App.4th 1436 ("The judicial use of 'Doe plaintiffs' to protect
28 legitimate privacy rights has gained wide currency, particularly given the rapidity and ubiquity of
disclosures over the World Wide Web"); see also *Doe v. City of Los Angeles* (2007) 42 Cal.4th
531; *Johnson v. Superior Court* (2000) 80 Cal.App.4th 1050; *Roe v. Wade* (1973) 410 U.S. 113;
Doe v. Bolton (1973) 410 U.S. 179; *Poe v. Ullman* (1961) 367 U.S. 497; *In Does I thru XXIII v.*
Advanced Textile Corp. (9th Cir. 2000) 214 F.3d 1058.

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1 Defendant is conducting business within the State of California.

2 10. Venue for this action properly lies in this Court. In the alternative,
3 venue rests with the United States District Court for the Central District of
4 California district pursuant to 28 U.S.C. §1391 because a substantial part of the
5 events or omissions giving rise to the claims occurred in its judicial district.

6 11. If this Court determines it lacks jurisdiction over the Counts advanced
7 in John Doe’s Complaint, John Doe requests this case be transferred and/or
8 removed to the United States District Court for the Central District of California
9 pursuant to 28 U.S.C. §1441.

10 **FACTS**

11 **Occidental’s Discipline of John Doe Occurred In Part Because of**
12 **Gender Bias Caused By Internal and External Forces**
13 **Demanding Occidental Find More Male Students Responsible**
14 **For Sexually Assaulting Female Students**

15 12. This case arises amidst a growing national controversy stemming from
16 the DOE’s Office of Civil Rights’ (“OCR”) threats to withhold federal education
17 dollars in order to compel colleges and universities to address so-called “sexual
18 violence” on their campuses. During the 2013-2014 academic year, the DOE
19 distributed \$134.95 billion dollars (\$134,950,035,518.10) to public and private
20 colleges and universities for students attending their schools. Of that amount, \$13.5
21 million (\$13,432,849.00) was distributed for students attending Occidental. (*See*
22 Exhibit 1, <https://studentaid.ed.gov/sa/about/data-center/student/title-iv>).

23 13. OCR’s threatened withholding of federal funds puts great pressure on
24 Occidental to treat male students accused of sexual misconduct with a presumption
25 of guilt and to simply punish the accused male student in order to avoid
26 jeopardizing the flow of taxpayer dollars, under the guise of making Occidental safe
27 for female students.

28 14. As detailed below, during all relevant times, Occidental was under
federal scrutiny from the DOE for alleged indifference to sexual violence on

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1 campus in violation of Title IX, and for violations of the Clery Act, which requires
2 colleges to keep and disclose information about crime on and near their respective
3 campuses. Title IX compliance is monitored in part by the DOE which can impose
4 civil penalties and can suspend institutions from participating in federal student
5 financial aid programs.

6 15. Upon information and belief, Occidental's violations of John Doe's
7 rights occurred in part because of threats by the federal government that Occidental
8 could lose federal funding or face other adverse consequences if Occidental,
9 President Barak Obama's first college, did not find male students like John Doe
10 responsible for sexually assaulting female students. Evidence of this pressure
11 includes, but is not limited to, Exhibit 2 which contains The White House's April
12 2014 report entitled "Not Alone" which includes: (a) references to Vice President
13 Biden's "new Public Service Announcement" which encourages schools to combat
14 the sexual assault of women on campuses; and (b) warnings that if colleges like
15 Occidental do not adhere to Title IX they "risk[] losing federal funds" and/or face
16 potential and/or face potential lawsuits filed by DOJ. (*Id.*)

17 16. In response to pressure from the DOE, the DOJ, and/or the White
18 House, educational institutions like Occidental are being counseled to severely limit
19 procedural protections afforded male students like John Doe in sexual misconduct
20 cases. For example, Exhibit 3 contains atIXa's "2014 Whitepaper" entitled *Equity Is*
21 *Such A Lonely Word*, which is included in training materials presented to college
22 Title IX departments and states: "victims have historically been accorded 3/5 of the
23 rights of an accused individual (or less), and ***victims are typically women***, equity
24 may require institutions to recalibrate the pendulum to right the historical
25 imbalance. An equitable process on many campuses will force a victim focus, but
26 only as a casualty of history." (Emphasis added).

27 17. atIXa's Whitepaper also details OCR's demands that colleges limit the
28 due process rights of males accused of sexual misconduct by stating: (a) "[a]

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1 hearing became a panel . . . [t]he panel afforded presumptions of innocence, rights
2 to attorneys, rights to remain silent. Rights, rights, rights. But, we forgot about
3 victims along the way.”); and (b) OCR’s 2011 Dear Colleague Letter “indicated that
4 we must deconstruct part of the due process castle by more equitably employing
5 remedies. Remedies are, by their nature, intended to restore the complainant to
6 their pre-discrimination status . . . Equity requires fairness under the circumstances,
7 which can and often should lead institutions to create skewed remedies that place
8 more restrictions and requirements on respondents. Equity demands that
9 complainants should be inconvenienced only as far as absolutely required to remedy
10 the discrimination.” *Id.*, pages 5, 13-14.

11 18. In addition to pressure from DOE, internal forces demanded
12 Occidental find more male students responsible for sexually assaulting female
13 students. For example, in February 2012, Occidental Associate Professor of
14 Politics Caroline Heldman and Assistant Professor of Sociology Danielle Dirks
15 founded the Occidental Sexual Assault Coalition (“OSAC”).

16 19. OSAC, a sanctioned Occidental campus advocacy group, lobbied
17 Occidental to address what OSAC calls the “rape culture” on campus. (Exhibit 4,
18 <http://oxysexualassaultcoalition.wordpress.com/>) OSAC also stated its “mission is
19 to raise awareness of the sexual assault epidemic.” *Id.*

20 20. In addition to their leadership roles in OSAC, Professor Dirks and
21 Professor Heldman contributed to a hostile environment for male students at
22 Occidental by writing, blogging, and speaking to the media about sexual assault at
23 Occidental and on campuses throughout the country.

24 21. As demonstrated by the articles attached as Exhibit 5, Professor Dirks
25 and Professor Heldman consider themselves leaders in the feminist effort to remedy
26 the alleged “rape culture” via gender-biased views about males.

27 22. The actions of OSAC, Professor Dirks and/or Professor Heldman
28 created a divide on campus and falsely portrayed Occidental as a place where male

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1 students sexually assault with impunity. For example, Professor Heldman was
2 quoted as saying,

3
4 Serial rape is the norm on college campuses, including at
5 Occidental, according to Caroline Heldman, associate professor of
6 politics at Occidental.

7 “We have numerous cases with three or four women coming
8 forward and alleging that the same man has raped or sexually assaulted them

9 (Exhibit 6, Oct. 28, 2013, AlJazeera America,
10 [http://america.aljazeera.com/watch/shows/america-tonight/america-](http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2013/10/28/serial-rapists-commit9of10campussexualassaultsresearchfinds.html)
11 [tonight-blog/2013/10/28/serial-rapists-](http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2013/10/28/serial-rapists-commit9of10campussexualassaultsresearchfinds.html)
12 [commit9of10campussexualassaultsresearchfinds.html](http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2013/10/28/serial-rapists-commit9of10campussexualassaultsresearchfinds.html)

13 23. In addition, Professor Heldman published blog posts such as: “[t]he
14 reality is that campus rapists’ principal weapon is alcohol and they are able to hide
15 in plain sight within a male-dominated party culture where men provide the venues,
16 parties, and drinks to women, often with the explicit purpose of hooking up.”

17 (Exhibit 7, November 7, 2013, Coffee at Midnight by Caroline Heldman,
18 [http://carolineheldman.me/2013/11/07/emily-yoffe-is-helping-campus-rapists-hide-](http://carolineheldman.me/2013/11/07/emily-yoffe-is-helping-campus-rapists-hide-in-plain-sight/)
19 [in-plain-sight/](http://carolineheldman.me/2013/11/07/emily-yoffe-is-helping-campus-rapists-hide-in-plain-sight/)).

20 24. Similarly, Professor Dirks stated that she believes all but a small
21 percentage of college guys are calculated predators. In New York Magazine,
22 reporter Vanessa Grigoriadis wrote:

23 “There are people out there who want to say that survivors today
24 are feminism gone wild, railroading men for power,” says Dirks,
25 the Occidental sociologist. “And they can rely on talking about
26 kids and alcohol, saying what happened was just drunk sex—and,
27 you know, we’ve all had great drunk sex!” Research, she says,
28 shows that only a small percentage of college guys truly don’t
know where the line is—“and, for them, if you tell them to get
verbal consent, they don’t push so hard.” She pauses. “But the rest
of them—and I know it’s hard to think of our brothers, our sons,

1 like this—are calculated predators. They seem like nice guys, but
2 they’re not nice guys.

3 (Exhibit 8, [http://nymag.com/thecut/2014/09/emma-sulkowicz-](http://nymag.com/thecut/2014/09/emma-sulkowicz-campus-sexual-assault-activism.html#)
4 [campus-sexual-assault-activism.html#](http://nymag.com/thecut/2014/09/emma-sulkowicz-campus-sexual-assault-activism.html#)).

5 25. Professor Dirks encouraged the filing of Title IX complaints by female
6 college students similar to the one filed by the Occidental female students. For
7 example, she told a reporter that: “[e]very school in America should have a [Title
8 IX or Clery] complaint filed against it right now.” (Exhibit 9, June 25, 2014, Marie
9 Claire, The Fight Against Sexual Violence on College Campuses: End Rape on
10 Campus).

11 26. In her blog, however, Professor Heldman criticized males who filed
12 Title IX lawsuits stating: “[t]hese lawsuits are an incredible display of entitlement,
13 the same entitlement that drove them to rape. These are students who were found
14 responsible after an extensive adjudication proceeding that is heavily biased in
15 favor of alleged perpetrators. We don’t have a problem with false rape reporting, we
16 have a problem with rapes not being reported, a problem with adjudications that
17 favor perpetrators when they are reported and a problem with light sanctions when a
18 student has been found responsible for assault/rape.” (Exhibit 10).

19 27. In response to the negative publicity and campus strife created by
20 Professor Dirks, Professor Heldman, OSAC and others, Occidental hired two
21 former sex crime prosecutors in late March 2013. Specifically, Occidental hired
22 Ms. Lisa M. Gomez and Ms. Gina Maisto-Smith who were ex-prosecutors working
23 at the Philadelphia law firm of Pepper Hamilton LLP where they focused on Title
24 IX. (Exhibit 11).

25 28. Exhibit 12 details how Occidental’s Project S.A.F.E. (for a Sexual
26 Assault Free Campus) trains Occidental students on sexual violence, including the
27 assertion that 1 in 5 college women are sexually assaulted.

28 29. Emily Yoffe’s article in *Slate* – contained in Exhibit 12 – discusses
President Obama’s similar assertion that one in five women are sexually assaulted

1 during their college years. Ms. Yoffe interviewed the lead author of the study often
2 quoted as the source of the one and five statistic. Specifically, Ms. Yoffe asked the
3 author - Christopher Krebs - whether the study represented the experience of the
4 approximately 12 million female students in America. *Id.*, p.14. Mr. Krebs stated
5 those involved in the study, “don’t think one in five is a nationally representative
6 statistic.” *Id.* This was because Mr. Krebs stated his team’s sampling of only two
7 schools “[i]n no way . . . make[s] our results nationally representative.” *Id.* Ms.
8 Yoffe noted that if the “one-fifth to one-quarter assertion [regarding sexual assaults
9 on college campuses were accurate that] would mean that young American college
10 women are raped at a rate similar to women in Congo, where rape has been used as
11 a weapon of war.” *Id.*

12 30. Occidental’s pervasive sexual assault training for students violated its
13 own policies and claimed that all drunken sex was rape. It led to additional
14 influence on Jane Doe from other students. She relayed to investigators, her
15 roommate “pushed her to realize that she had been sexually assaulted”. (Exhibit 13,
16 Occidental Investigation Report, p. 40).

17 31. Nevertheless, in April 2013, Professor Heldman, Professor Dirks and
18 others were busy ratcheting up the pressure on Occidental to find more male
19 students responsible for sexually assaulting female students. This pressure took the
20 form of a highly-publicized 250-page complaint that 36 alleged victims of rape or
21 sexual assault filed against Occidental with the OCR. In addition, some of the
22 females involved in this complaint threatened to file lawsuits in court alleging
23 Occidental maintains a hostile environment for female sexual assault victims and
24 their advocates which violated Title IX and the Clery Act. (Exhibit 14, Occidental
25 College Sexual Assault Response Subject of Federal Complaints,
26 www.huffingtonpost.com 04/19/2013, Updated: 12/03/2013, Tyler Kingkade; *see*
27 *also*, Exhibit 15, USC, Occidental Underreported Sexual Assaults, *Los Angeles*
28 *Times*).

1 32. In September 2013, Occidental settled with at least ten of the
2 complainants addressed in the preceding paragraph under an agreement negotiated
3 by their counsel, attorney Gloria Allred. The ten female complainants received cash
4 payments from Occidental and agreed not to participate in OSAC. Professor Dirks
5 publically criticized attorney Allred's negotiated settlement stating that requiring
6 "the women to remain silent and not to participate in campus activism could have a
7 chilling effect at Occidental"³ and that the settlement, "effectively erases all of the
8 sexual assaults and the college's wrongdoing." (Exhibit 16, Occidental College
9 Settles in Sexual Assault Cases, *LA Times*, Jason Felch and Jason Song, September
10 18, 2013).

11 33. Despite the settlement of the aforementioned claims, pressure
12 continued to mount at Occidental to more aggressively discipline male students
13 accused of sexual misconduct. For instance, on May 6, 2013, based in part on the
14 work of the OSAC and the complaints of female students made in federal court and
15 with the OCR, Occidental's faculty issued a no confidence vote for the Dean of
16 Students Barbara Avery and Occidental General Counsel Carl Botterud, who
17 Occidental terminated. (Exhibit 17).

18 34. Then, on May 8, 2013, Occidental encountered additional pressure to
19 aggressively discipline male students because OCR launched an investigation into
20 Occidental's handling of sexual assault claims. (Exhibit 18).

21 35. In response to this increasing scrutiny and pressure, Occidental
22 implemented a new Sexual Misconduct Policy in August 2013. (Exhibit 19,
23 Occidental College Sexual Misconduct Policy, p. 1). Upon information and belief,
24 Occidental intended this new policy to allow covert discrimination against male
25 students so as to avoid federal penalties and to succumb to internal and external
26 pressure to find more male students responsible for sexually assaulting female
27

28 ³ (Exhibit 21, Rape Settlement at Occidental College: Victims Barred from Campus
Activism, *The Nation*, Jon Weiner, Sept. 19, 2013).

1 students.

2 36. Even though Occidental implemented a new Sexual Misconduct
3 Policy, the pressure to aggressively discipline male students continued because on
4 September 10, 2013, the DOE launched a second investigation under the Clery Act
5 to determine if Occidental was underreporting the number of sexual assaults on
6 campus. (Exhibit 20).

7 37. Then, in October 2013, L.A. Times reporters Jason Felch and Jason
8 Song published the first of several articles about Occidental's alleged mishandling
9 of sexual assault complaints filed by female students. (Exhibit 22). Felch's articles
10 led to an onslaught of media coverage and public debate between Occidental and
11 the LA Times. And, on January 20, 2014, Occidental hired a crisis communications
12 firm headed by LA Times editor Glenn Bunting to assist with the handling of the
13 negative publicity relating to its Title IX policies and enforcement. (Ex 23).

14 38. A few months later, in March or April of 2014, Felch's employment
15 with the LA Times was terminated upon discovery that he was having a sexual
16 affair with a source providing information on the Occidental sexual assault stories.
17 (Exhibit 24). Following his termination, information surfaced indicating that
18 Felch's relationship was with an Occidental professor who was a victim's right
19 advocate. (Exhibit 25).

20 39. Around this same time period, Occidental worked to prove to its
21 internal and external critics that it would more aggressively prosecute male students
22 alleged to have engaged in sexual misconduct. For example, on October 22, 2014,
23 Pepper Hamilton issued its "Occidental College Report of External Audit and
24 Assessment of Title IX Policies, Procedure and Practices." (Exhibit 26). The report
25 detailed the internal and external pressure on Occidental to more aggressively
26 prosecute male students for sexual misconduct. For example, page iv of the report
27 states:

28 Concerns expressed to us by students, staff and faculty include

1 fears of speaking freely, concerns that the campus dynamic is
2 detrimental to the conversation, worries about lack of trust between
3 different members of the community and fears that the campus has
4 become so divided on this issue that the College community may
5 not be able to work together to rebuild. A March 26, 2014 Letter
6 of Faculty Concern echoed these concerns, describing an
7 “unsustainable, adversarial deadlock” and a “failure to let go of
8 hostility” that “becomes more damaging every day.”

9 We believe that the College is at a pivotal moment, but one that has
10 the potential for hope and optimism. The key to achieving success
11 at Occidental is directly tied to the community’s ability to rebuild
12 damaged and frayed relationships and find a way to share common
13 goals—preventing sexual and gender-based harassment and
14 violence and improving institutional responses that prioritize
15 individual welfare and safety—but to do so in a way that is
16 collaborative and respectful. While we fully applaud and support
17 achieving culture change through activism, we worry that the very
18 tactics used to gain attention to the issues will stand in the way of
19 candid and collaborative communication between activists and
20 administrators. We encourage the administration, faculty, staff,
21 students, and all members of the College community to create safe
22 spaces for conversation that focus on inclusivity, diversity and
23 respect for civil discourse. This will require listening openly to
24 fellow community members, seeking to understand their
25 perspective and searching for an inference of good will, rather than
26 presuming a negative inference. (See Exhibit 26, p. iv).

27 The Pepper Hamilton Report provides more detail on page 2-3, which states:

28 While the concerns themselves [reporting and handling of sexual
assault claims on campus] were neither unique nor unexpected,
other factors at Occidental were. First, we encountered intense and
polarized campus dynamics and great distrust of the administration.
This distrust was so significant that for some, the very fact that the
College engaged us meant that we could not be viewed as
objective. Second, perhaps in direct response to the polarization,
some members of the community attacked our efforts and
encouraged individuals to decline to participate in our review or in
any other effort by the College. At the outset of our engagement,
during our first meeting with OSAC [Occidental Sexual Assault

1 Coalition], we voiced our interest in meeting with students who
2 could share their perspectives of the process and the College's
3 responses. OSAC faculty advisors told us that they would not
4 permit us to meet with student survivors. Over the course of the
5 next eighteen months, we continued to seek the engagement of
6 students who were willing to participate. Those efforts to engage
community members are outlined in Appendix I. (See Exhibit 26,
p. 2; *see also*, pp. 21-23).

7 40. The Pepper Hamilton Report also recognized the pressure being
8 applied on Occidental by the federal government by stating:

9
10 In addition to the strained campus dynamics, since 2011, the
11 federal government's enforcement strategies have become more
12 aggressive and have shifted in tone, focus and application during
13 the course of our engagement. For Occidental, as for colleges and
14 universities across the country, the seismic plates have been
15 shifting below the institutional foundations, leaving many
16 institutions, administrators and students struggling to find stable
footing. Given these dynamics, in many respects, our task was akin
to navigating the straits between Scylla and Charybdis with little
hope for successful resolution. . . .
(See Exhibit 26, p. 3).

17
18 41. The Pepper Hamilton report appears to have done little to calm the
19 internal demands for higher conviction rates of male students accused of sexual
20 misconduct. For example, on November 11, 2014, Occidental professors and
21 students openly criticized the Pepper Hamilton report and continued to demand
22 more aggressive prosecution of male students accused of sexual misconduct.
23 (Exhibit 27).

24 42. In sum, Occidental has been in crisis mode since late 2012 as a result
25 of the extreme activism from female forces such as OSAC and because of the
26 increased scrutiny from the federal government and potential loss of federal
27 funding. (See, Exhibit 28, Feb. 10, 2015, *The Trouble with Oxy*, Los Angeles
28 Magazine). As detailed in this Complaint, Occidental dealt with this crisis by

1 unlawfully discriminating against male students like John Doe on the basis of their
2 gender in part because of internal and external pressure to aggressively discipline
3 males accused of sexual misconduct.

4 43. Although Occidental's policies relating to sexual misconduct by
5 students appear gender-neutral, these policies are evidence of a pretext for gender
6 bias in part because the policies are being applied almost exclusively against male
7 students and not female students. Evidence of this fact is found in the Pepper
8 Hamilton report which noted male students were the alleged assailants in all 17 of
9 the formal complaints for non-consensual sexual intercourse and non-consensual
10 sexual contact between 2011-12 and 2012-13. (Exhibit 26, Pepper Hamilton Report,
11 p. 40).

12 **Occidental's Gender-Biased Prosecution of John Doe.**

13 44. John Doe is from California where he worked diligently at a magnet
14 public high school focused on international studies. John Doe graduated from high
15 school with a strong academic record.

16 45. Setting his sights on a college education from a top ranked college,
17 John Doe was excited to accept an offer to attend Occidental because of its strong
18 reputation in international relations and history and because it is the alma mater of
19 his grandparents. John Doe was accepted into Occidental College and began his
20 studies in the fall of 2013 as a freshman. While at Occidental during this, his first
21 and only semester, and despite the ongoing allegations against him, John Doe
22 continued his diligent studies while being a college athlete and was placed on the
23 Dean's list for his academic achievement.

24 46. Jane Doe is from Tennessee and also began her studies at Occidental in
25 the fall of 2013 as a freshman. Upon information and belief, Jane Doe is currently a
26 student at Occidental.

27 47. During the 2013-14 academic year, classes began at Occidental
28 College on August 28, 2013. John and Jane Doe met in a class that they were both

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1 taking.

2 48. It should be noted, Jane Doe initially denied John Doe had engaged in
3 sexual misconduct and did not have an interest in filing a complaint against John
4 Doe. (Exhibit 13, pages 46, 52-3). But, upon information and belief, Professor
5 Dirks convinced Jane Doe to falsely accuse John Doe of sexual misconduct.
6 Evidence supporting this belief includes, but is not limited to, Professor Dirks'
7 allegation that 90% of rapes are done by repeat offenders (and) that "[John Doe] fits
8 the profile of other rapists on campus in that he had a high GPA in high school, was
9 his class valedictorian, was on [a sports] team, and was 'from a good family.'"
10 (Exhibit 13, page 41.)

11 49. During the time between when Jane Doe initiated physical contact with
12 John Doe and when Jane Doe filed a complaint against John Doe, Jane Doe
13 engaged in extensive discussions with Professor Dirks and Occidental faculty
14 member Movindri Reddy. Professor Reddy was a co-signer of An Open Letter to
15 Occidental Faculty (Exhibit 29) raising concerns about Occidental's alleged failure
16 to aggressively discipline male students accused of sexual assault and Jane Doe's
17 advisor for the hearing process. (Exhibit 30, p. 1).⁴

18 50. According to Occidental's Investigation Report, "Professor Reddy put
19 [Jane Doe] in touch with Professor Dirks . . . [and Jane Doe] met with Professor
20 Dirks for three hours, and told her the entire story.... During this period, Jane Doe
21 stated, she went to see Professor Reddy every day to talk about what had happened,
22 and how she was dealing with it." (Exhibit 13, p. 40).

23 51. According to Occidental's Investigation Report, Jane Doe struggled for
24 some time over whether to file a complaint against John Doe stating: "I have spent a
25 lot of sleepless nights on whether I should pursue this or not." (Exhibit 13, p. 40).

27 ⁴ The hearing transcript is confidential, pursuant to a court order in the pending
28 Petition for Writ of Administrative Mandate. Therefore, Exhibit 30 is not filed with the
Complaint, but will be filed separately under seal.

1 Jane Doe admitted her decision to file the complaint against John Doe was
2 influenced by Professor Dirks' allegation that 90 percent of rapes are done by repeat
3 offenders and that if she did not file a complaint against John Doe that he might
4 sexually assault other women. *Id.*

5 52. Jane Doe admitted her decision to file the complaint against John Doe
6 was influenced by Professor Dirks' allegation that there was a pattern at Occidental
7 of male students engaging in the inappropriate practice of having sex with highly
8 intoxicated women. *Id.*, p.41.

9 53. Jane Doe admitted her decision to file the complaint against John Doe
10 was influenced by Professor Dirks' allegation that Jane Doe's reluctance to allege
11 she was sexually assaulted likely occurred because she suffered from Post-
12 Traumatic Stress Disorder (PTSD). *Id.*, p. 53. Professor Dirks provided this
13 diagnosis and counselling even though she is not a licensed psychologist.

14 54. Jane Doe admitted her decision to file the complaint against John Doe
15 was influenced by Professor Dirks' allegation that Jane Doe appeared to be "in a
16 strong state of denial" and that her reluctance to call what had happened "rape" was
17 consistent with other victims of sexual assault whom Dirks has talked to on campus.
18 *Id.*, pp. 40-41, 53.

19 55. Jane Doe admitted her decision to file the complaint against John Doe
20 was influenced by Professor Dirks' allegation that John Doe was "acting in the
21 same way all these other young men [involved in sexual assaults] have acted." *Id.*,
22 pp. 40-41, 54.

23 56. Similarly, Jane Doe's rationale for reporting John Doe echoed
24 Professor Dirk's anger at allegedly exploitive and/or unrepentant male students.
25 Specifically, Jane Doe stated she decided to report John Doe in part because he
26 attended his classes without difficulty, and she "saw that he wasn't fazed by what
27 had happened at all." (*Id.*, page 40.)

28 57. Therefore, after prodding by Professor Dirks, Jane Doe falsely accused

1 John Doe of violating Occidental's Sexual Misconduct Policy on September 16,
2 2013. (Exhibit 19, Occidental Sexual Misconduct Policy & Exhibit 31).

3 58. Jane Doe filed her complaint against John Doe on September 16, 2013
4 – just four days after Professor Dirks dialed up the pressure on Occidental to
5 convict male students like John Doe by giving another interview to the LA Times.
6 Specifically, the LA Times quoted Professor Dirks as stating: "I've heard from three
7 students since the beginning of the school year who say they were raped. None of
8 them has been handled appropriately." (Exhibit 32, Occidental College Chief Asks
9 for Reconciliation after Accusations, *Los Angeles Times*, September 20, 2013, Jason
10 Felch and Jason Song).

11 59. Jane Doe's complaint was also filed within a week of the DOE's
12 second investigation into Occidental under the Clery Act. (Exhibit 20).

13 60. Moreover, as discussed above, Jane Doe's complaint overlapped with
14 Occidental's public relations initiative to protect its federal funding and prove to
15 internal and external critics that Occidental would find more male students
16 responsible for sexual misconduct. (Exhibits 11 & 14-21)

17 61. Evidence that John Doe was adversely impacted by the aforementioned
18 internal and external pressure includes, but is not limited to, a November 13, 2013
19 e-mail from Occidental's Interim Title IX Coordinator, Lauren C. Carella (an
20 attorney and former prosecutor in the sex crimes unit of the York County District
21 Attorney's Office in Pennsylvania) to John Doe which admitted that "the current
22 campus climate" was impacting his disciplinary procedure. (Exhibit 32).

23 62. With the assistance of Professors Reddy and Dirks, Jane Doe filed a
24 sexual assault report with the Los Angeles Police Department on or about
25 September 16, 2013. (Exhibit 13, pp 41 & 53). Los Angeles Police Department
26 Detective Michelle Gomez was in charge of the LAPD investigation and
27 interviewed Jane Doe and other student witnesses at Occidental.

28 63. On November 5, 2013, the Los Angeles District Attorney's Office,

1 Sexual Crimes Unit declined to prosecute John Doe for lack of evidence. Deputy
2 District Attorney Alison Meyers concluded, after meeting with Jane Doe and
3 conducting a number of witness interviews, that both parties were drunk and "they
4 were both willing participants exercising bad judgment" and "[s]pecifically the
5 facts show the victim was capable of resisting based on her actions." Deputy
6 Meyers also stated that "it would be reasonable for [John Doe] to conclude based on
7 their communications and her actions that, even though she was intoxicated, she
8 could still exercise reasonable judgment." (Exhibit 34, Charge Evaluation
9 Worksheet). In an interview for Esquire Magazine, Deputy District Attorney
10 Meyers stated:

11The investigating officer ... remembered the case clearly: "We
12 had these really bad text messages that supported a consensual
13 encounter," she says. "Even though everything pointed to her being
14 intoxicated, she still had enough frame of mind to send these text
15 messages saying, 'I'm on the way. I'm coming. I'm coming. Do you
16 have a condom?' So his state of mind is, she's saying yes.... How
17 was he supposed to know that she did not want to give consent?
18 And if he's intoxicated, then that kind of falls under the same
19 category: Was *he* able to give consent? There's a whole bunch of
20 different factors that went into this.

21 "Based on the evidence," she adds, "I don't think he committed a
22 crime."

23 (Exhibit 35)

24 64. In deciding not to prosecute the case, the district attorney effectively
25 concluded that the alleged sexual assault did not meet the minimum standard of
26 "reasonable suspicion." The test in California for the government to hold a citizen
27 to answer for a crime is "a strong suspicion," which is less than the "preponderance
28 of the evidence" standard applied by Occidental's Policy. The LAPD District
Attorney was unable to prosecute John Doe because the case did not even meet the
lower standard of a strong suspicion that a crime had occurred. In an attempt to
justify Occidental's improper Findings under a higher standard of proof,
Occidental's Finding misstates the prosecutor's finding that there is no "strong

1 suspicion" that a sexual assault occurred. The school refused to allow presentation
2 of the highly relevant result of the LAPD investigation (Exhibit 30, p. 62), and
3 refused to acknowledge that law enforcement found insufficient evidence of a
4 crime, even at the lower standard of proof. The college rejected the presentation of
5 this relevant information, and misrepresented the standard of proof, in order to find
6 the accused male responsible.

7 65. In spite of the aforementioned evidence, Occidental elected to forgo
8 any attempt to informally resolve Jane Doe's complaint as contemplated by
9 Occidental's policies and proceeded with a "formal resolution" which required a
10 hearing and investigation.

11 66. Information gathered during Occidental's investigation substantiated
12 the determinations of the aforementioned police officers and prosecutors. For
13 instance, Jane Doe told Occidental how - on or about the early morning hours of
14 September 8, 2013 - she performed oral sex on John Doe. (Exhibit 13, pp. 19, 36).
15 Moreover, despite her rape allegations, Jane Doe initially stated she could not
16 specifically recall having intercourse with John Doe. (See Exhibit 31, Notice of
17 Charges Letter.)

18 67. The investigation of Jane Doe's complaint was conducted by the
19 outside firm of Public Interest Investigations, Inc. Cathleen Watkins and Keith
20 Rohman were the investigators who prepared the report attached as Exhibit 13. This
21 report included the following facts:

- 22 (a.) Jane Doe voluntarily went to John Doe's dorm room.
- 23 (b.) John Doe did not serve Jane Doe alcohol;
- 24
- 25 (c.) While dancing, and in the presence of John Doe and her friends, Jane
26 Doe took off her shirt. Jane Doe was grabbing John Doe and trying to
27 kiss him while John Doe was "somewhat responsive" to Jane Doe but
28 "also seemed pretty indifferent to [Jane Doe's] advances." (Exhibit 13,
page 73). During this time Jane Doe was "getting really physical" in
John Doe's bed, riding on top of him and grinding her hips. Jane Doe's

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1 friends tried to shepherd her back to her dorm, but before she left John
2 Doe's room, she gave him her cell phone number so that they could
3 coordinate her return for sex, which Jane Doe had verbally agreed to.
4 When she arrived at her own dorm room, John Doe texted her, "The
5 second that you away from them, come back." Jane Doe responded,
6 "Okay." John Doe wrote back, "Just get back here." Jane Doe
7 responded, "Okay do you have a condom." John Doe replied, "Yes."
8 Jane Doe texted back, "Good, give me two minutes." (Exhibit 36;
9 Exhibit 13, pp. 16-17 & Exhibits 3-6 thereto);

10 (d.) Before leaving her dorm room, Jane Doe texted a friend from back
11 home: "I'mgoingtohave sex now[sic]." (*Id.*);

12 (e.) Jane Doe walked down a flight of stairs to John Doe's room at
13 approximately 1 a.m., knocked on his door, went in, took off her
14 earrings, performed oral sex, and had sexual intercourse with him.
15 Jane Doe never claimed that she was forced, intimidated, physically
16 harmed, nor resisted in any way. When an acquaintance knocked on
17 John Doe's door to check up on her, Jane Doe called out: "Yeah, I'm
18 fine." The acquaintance asked twice more and Jane Doe gave the same
19 reply. During these questions John Doe had stepped out of his room
20 and gone down the hall to use the restroom. He was not present during
21 this exchange to exert any influence upon her affirmations and Jane
22 Doe decided to remain in the room to continue her sexual encounter
23 with John Doe. Shortly before 2 a.m., Jane Doe dressed herself and
24 returned to her room. (Exhibit 13, pp. 18-21);

25 (f.) After having sex, Jane Doe texted her friends smiley faces (Exhibit 35
26 hereto; Exhibit 13 & Exhibit 5 thereto). She then left her dormitory,
27 walked to a different dorm where she sat on the lap of another male
28 student whom she had met the night before, talking and joking. The
next day she texted John Doe asking if she had left her earrings and
belt in his room and asked to come by to pick them up. (Exhibit 13 &
Exhibit 5 thereto); and

(g.) Later that day, Jane Doe learned that others around the dorm knew that
she and John Doe had sex the night before. Jane Doe was embarrassed
of her actions. (Exhibit 13, pp. 83, 95).

68. In the midst of this investigation, Occidental continued to experience
internal and external pressure to discipline male students like John Doe. For

1 instance, on same day as John Doe’s hearing, Felch - the LA Times reporter
2 detailed above – authored another article in the LA Times alleging Occidental was
3 not properly handling or reporting sexual assault claims. (Exhibit 37)

4 69. It was under this infamous cloud of publicity and pressure that
5 Occidental conducted John Doe’s hearing on Saturday December 7, 2013.

6 70. On Monday, December 9, 2013, merely two days after the hearing -
7 Ms. Mirkovich issued her thirteen (13) page, single-spaced decision finding that
8 John Doe had violated Occidental’s Sexual Misconduct Policy and had engaged in
9 two forms of prohibited conduct—sexual assault and non-consensual contact.
10 (Exhibit 38, December 9, 2013, External Adjudicator’s Decision).

11 71. The Adjudicator improperly relied on witness testimony to achieve the
12 gender-biased objective of finding incapacitation. The Adjudicator disregarded the
13 undisputed facts of the actions performed by Jane Doe and the witness testimony
14 showing that Jane Doe may have been intoxicated, but was not incapacitated. As
15 referenced by the Adjudicator’s report:

16 [Friend#1] stated that, although she and Friend#3 did not carry the
17 Complainant to her room, the Complainant was walking like an
18 intoxicated person, thus, to escort the Complainant to her room,
19 Friend#1 and Friend #3 each linked arms with the Complainant and
20 supported her when they were returning the Complainant to her
21 room. (Exhibit 38, December 9, 2013, External Adjudicator’s
22 Decision, p. 9).

23 Two paragraphs later, the Adjudicator finds that Jane Doe was *incapacitated*,
24 despite the prior ‘other evidence’ testimony which stated her *intoxication*:

25 The external adjudicator recognizes that the fact that Complainant
26 successfully navigated herself, under her own power to the
27 Respondent’s room, indicates both that, at the time, she had an
28 awareness of where she was and that her motor skills were
sufficiently intact to enable her to walk unassisted. Those factors,
however, must be considered not in isolation but along with all of
the other evidence regarding the Complainant’s condition during
the relevant period. (Exhibit 38, December 9, 2013, External

1 Adjudicator's Decision, p. 10).

2 72. Upon information and belief, the Adjudicator deliberately places the
3 testimony of her friends above the fact of her self-mobility in a deliberately
4 prejudicial manner in order to justify her desire to find John Doe responsible.

5 73. In another instance, the Adjudicator believes the testimony of Jane Doe
6 in the December 9 hearing, stating that she was incapacitated based on her lack of
7 memory, despite the extensive evidence of Jane Doe's detailed memories made in
8 earlier testimony to the Investigator. Her testimony in the weeks following the
9 incident include many points that were clear to the Investigator, but were later
10 denied in the December 9 hearing. In one instance, regarding the memory of oral
11 sex, Jane Doe's memories are very vague (Exhibit 30, Hearing transcript pp. 47-48).
12 The Adjudicator questions the Investigator to understand these changing memories:

13 Adjudicator: Did she communicate to you in any way that she was
14 telling you what she had heard from others as opposed to
15 what she independently recalled?

16 Investigator: That's not my recollection.... Particularly I remember
17 asking her -- I remember her saying that they had oral sex.
18 And I remember specifically asking her was that you
19 performing it with him or him performing it on you, and
20 she had a very straight answer. "No. It was me giving him
oral sex." ... So that struck me as strictly her recollection.
(*Id.*, pp. 208-09)

21 Based on this line of questioning, the Adjudicator appears to understand that
22 the 'blackout' was conveniently selective, but then chose to ignore the factual
23 statement by the investigator, instead choosing to believe the victim's inconsistent
24 testimony.

25 74. Six days later, on Friday, December 13, 2013, Occidental notified John
26 Doe that he had been found responsible for Sexual Assault and Non-Consensual
27 Sexual Contact, even though Jane Doe engaged in the same alleged misconduct that
28 John Doe was accused of committing. (Exhibit 39, December 13, 2013 letter from

1 Occidental to John Doe).

2 75. On December 20, 2013, Occidental issued the sanction of "Permanent
3 Separation from the College." (Exhibit 40).

4 76. On January 6, 2014, John Doe filed his timely appeal to Occidental.
5 (Exhibit 41). On January 8, 2014, Occidental initially designated its employee,
6 Devon MacIver, Assistant Dean of Admissions, as the administrative appeal officer.
7 Jane Doe submitted her response to John Doe's appeal on January 22, 2014 (Exhibit
8 42).

9 77. On January 31, 2014, Occidental notified John Doe that Mr. MacIver
10 was no longer the appeals officer due to his workload. Instead, Occidental
11 appointed a female employee - Maria Hinton, Asst. Director for Housing services -
12 to serve as the administrative appeals officer for John Doe's appeal. As a result,
13 John and Jane Doe then submitted their positions to Ms. Hinton. (Exhibits 43 & 44)

14 78. Occidental's Sexual Misconduct Policy contains the following grounds
15 for appeal:

16 The Complainant and/or Respondent may appeal on the parts of
17 final outcome directly relating to him/her. Dissatisfaction with the
18 outcome of the hearing is not grounds for appeal. The only grounds
19 for appeal are:

20 A procedural or substantive error occurred that significantly
21 affected the outcome of the hearing (e.g. substantiated bias,
22 material deviation from established procedures, etc.).

23 New evidence, unavailable during the original hearing or
24 investigation, that could substantially impact the original finding
25 or sanction (a summary of this new evidence and its potential
26 impact must be included).

27 (Exhibit 19, Occidental Sexual Misconduct Policy, p. 45.)

28 79. John Doe's appeal should have been granted because he presented
evidence of a procedural or substantive error that occurred that significantly
affected the outcome of the hearing. (Exhibits 19 & 41) For example, John Doe

1 presented evidence of gender bias by pointing out: (a) how Jane Doe engaged in the
2 same conduct that John Doe engaged in but was not disciplined (b) how Jane Doe's
3 contradictory testimony precluded a finding that John Doe engaged in misconduct;
4 and/or (c) how the evidence proved Jane Doe initiated physical contact with John
5 Doe when Jane Doe was not incapacitated (*Id.*)

6 80. Nevertheless, on February 12, 2014, in a report purportedly prepared
7 by Ms. Hinton, Occidental rejected John Doe's appeal and affirmed the earlier
8 findings and sanctions. (Exhibit 45). Upon information and belief, Ms. Hinton did
9 not prepare the appeal or follow Occidental's policy. Evidence supporting this
10 belief includes, but is not limited to: (a) the fact that Ms. Hinton did not sign the
11 report, (b) Ms. Hilton's failure to review the hearing transcript or the audio; and/or
12 (c) the report's failure to consider the discrepancies between the investigation and
13 the hearing testimony. (Id.)

14 81. If Occidental applied its policies and procedures in a gender neutral
15 manner, both Jane Doe and John Doe should have received the same discipline (or)
16 neither should have been disciplined. Therefore, Occidental's discipline of John
17 Doe evidences gender-bias in part because Occidental never disciplined Jane Doe
18 while expelling John Doe.

19 82. At all times relevant to this Complaint, John Doe and Jane Doe were
20 similarly situated in part because they were both students at Occidental who
21 consumed alcohol prior to engaging in physical contact with another student who
22 consumed alcohol.

23 83. Occidental's Sexual Misconduct Policy – which is contained at Exhibit
24 19 - mandates allegations of sexual assault be addressed through “fair and equitable
25 procedures for determining when this policy has been violated.” But, as detailed in
26 the Complaint, Occidental's unlawful discipline of John Doe was corrupted by
27 gender based bias which resulted in his being denied “fair and equitable”
28 disciplinary proceedings at Occidental.

1
2 **Occidental engaged in deliberate indifference in refusing to implement**
3 **corrective measures to address John Doe’s unlawful discipline detailed above.**

4 84. On February 13, 2014, John Doe filed a Petition for Writ of
5 Administrative Mandate in the Superior Court of the State of California for the
6 County of Los Angeles, Central District, Case No. BS147275, pursuant to Code of
7 Civ. Proc. §§ 1085 and 1094.5. A copy of the Petition is attached as Exhibit 46.

8 85. On October 20, 2014, John Doe also filed a Complaint with OCR
9 alleging that Occidental violated Title IX and discriminated against him because of
10 his gender (Exhibit 47). The OCR Complaint was administratively dismissed due to
11 the Petition for Writ of Mandate pending in state court. (Exhibit 48) John Doe was
12 invited to refile once the court case is concluded.

13
14 **Occidental Violated John Doe’s Rights By Prejudicing His Ability**
15 **To Defend Himself During the Investigation and Hearing**

16 86. Occidental denied John Doe certain rights with intent to discriminate
17 against him on the basis of his gender. For example, Occidental’s 46-page Sexual
18 Misconduct Policy denies accused male students like John Doe the basic due
19 process rights recognized by UN Universal Declaration of Human Rights, the U.S.
20 Constitution, and the California Constitution. These rights include the assistance
21 of counsel, the right to remain silent in the face of criminal accusations, and the
22 presumption of innocence. (Exhibit 19).

23 87. John Doe was denied a fair hearing in part because Occidental’s
24 Sexual Misconduct Policy specifically states that it “prohibits outside attorneys, or
25 family members acting as attorneys from participating in proceedings under this
26 policy” and that, if a party obtains the advice and assistance of an attorney, “the
27 attorney may not participate in investigatory interviews, informal resolution
28 proceedings, or formal resolution via administrative hearing or Hearing Panel.”

1 (Exhibit 19, Occidental Sexual Misconduct Policy, p. 36).

2 88. Moreover, while Occidental denied John Doe the right to an attorney,
3 Occidental routinely provided allegedly assaulted female students access to
4 attorneys, advisors, and/or advocates through Occidental's Sexual Assault Coalition
5 and/or the National Women's Law Center. (Exhibit 49, p. 10) For example,
6 Occidental has assisted female students in obtaining counsel from the National
7 Women's Law Center and requests that the female students be provided attorneys
8 who are strong feminists. (*Id.*).

9 89. According to Occidental's Policy, all parties in the Title IX hearing
10 have the opportunity to ask questions of witnesses through the Hearing Panel
11 (Exhibit 19, p. 38) and are encouraged to prepare a list of written questions in
12 advance. (Exhibit p, page 41).

13 90. But, John Doe was irreparably prejudiced because Occidental refused
14 to ask the vast majority of the written questions John Doe prepared prior to the
15 hearing and presented to Occidental. For example, of the 38 questions John Doe
16 submitted to Occidental to be asked of Jane Doe, the adjudicator only asked 9.
17 Some of the questions Occidental refused to ask Jane Doe were:

- 18 (1.) On September 7th at about midnight were you in John and [his
19 roommate's] dorm room dancing with John, lying down on his
20 bed, grabbing John, and trying to kiss him?
- 21 (2.) Were you excited and happy?
- 22 (3.) Were your friends trying to get you to leave John's room and go
23 to bed?
- 24 (4.) Before you left John, did you agree to come back to his room
25 and have sex with him?
- 26 (5.) You went up to your room and waited and John then texted you
27 to come back like you had planned, is that correct?
- 28 (6.) Were you excited when you were able to sneak out past them

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[her friend and her RA]?

- (7.) Did you text to John, "Okay do you have a condom."?
- (8.) And did John text back "Yes,"?
- (9.) And did you reply, "Good give me two minutes?"
- (10.) The next day, Sunday, did you tell people that you had a difficult time remembering what happened that night?
- (11.) The next morning, [Friend#1] came over to your room and to help you piece together the events of the previous night, is that right?
- (12.) Did you tell [your roommate] that you and [Friend#1] had accounted for all of your activities the previous night, except for the hour when you went back to John's room to have sex?
- (13.) You remember details of that night that happened before and after you went back to John's room, but aren't sure you remember what happened during that hour, is that right?
- (14.) But in your statement, you told the investigators about a number of things that you do remember happening about that time, correct?
- (15.) You remembered John telling you to come back down so you can have sex, right?
- (16.) You remember giving John your cell phone number so he could text you when to come back, yes?
- (17.) You remember being excited to sneak out of your room to get back to John's room like you had planned, true?
- (18.) You remembered that when you got downstairs to John's room that he gave you a piece of gum? Is that right?
- (19.) You remembered that John left you alone in his room at one point, correct?

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- (20.) You remembered responding three times that you were fine (to the person who knocked on the door while John was out of the room), correct?
- (21.) And you also remember that John said that his roommate [] had just came in the room, correct?
- (22.) And [John Doe's roommate] came in the room right when you were having sex, correct?
- (23.) [John Doe's roommate] told the investigators that right when he came in the room he saw you and John having sex without any covers on, didn't he?
- (24.) And [John Doe's roommate] saw that you were conscious because he saw you moving, true?
- (25.) And you were conscious and aware because you heard John say that [his roommate] just came in, and you remember that, correct?
- (26.) You remember John telling you about [his roommate] right when you were having sex, but are not able to remember that you were having sex at that very same time, is that right?
- (27.) So even if you don't remember now, or have blocked it out, at the time you and John had sex in his room, you were conscious and aware, isn't that right?
- (28.) Isn't it true that you agreed to have sex, went back to his room to have sex, and you were aware that sexual activity was occurring when you were in John's room?

(Exhibit 50).

91. In addition to avoiding these tough questions, neither the hearing transcript nor Occidental's investigators showed any interest in exploring Jane Doe's lack of credibility. For instance, Jane Doe alleged she did not remember what occurred during the hour that she was in John Doe's room. (Exhibit 30, p.

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1 40). This allegation completely lacks merit because when Jane Doe testified to the
2 investigators in the weeks after the event, she remembered the following significant
3 events from the "missing hour":

- 4 (a.) Jane Doe remembered agreeing to come back down to John Doe's room
5 to have sex;
- 6 (b.) Jane Doe recalled giving John Doe her cell phone number so he could
7 text her when to come back;
- 8 (c.) Jane Doe remembered texting her friend back home
9 "I'mgoingtohavesexnow;"
- 10 (d.) Jane Doe recalled being excited to sneak out of her room to get back to
11 John Doe's room;
- 12 (e.) Jane Doe remembered asking John Doe if he had a condom because
13 she had not used any birth control;
- 14 (f.) Jane Doe recalled watching out of her keyhole for her friend and RA
15 with the spiky hair to leave before sneaking out of her room to meet
16 John Doe.
- 17 (g.) Jane Doe remembered that while John Doe was out of the room
18 someone knocked on the door and asked if she was ok and remembered
19 responding three times to her friend that she was fine;
- 20 (h.) Jane Doe recalled performing oral sex on John Doe; and
- 21 (i.) Jane Doe remembered John Doe saying that his roommate had just
22 come in the room while they were having sexual intercourse. (Exhibit
23 13, pp. 33-36, 78).

24 92. In addition, Occidental failed to consider Jane Doe's actions which
25 disproved the allegation that Jane Doe was incapacitated when she initiated
26 physical contact with John Doe. For instance, Occidental ignored:

- 27 (a.) Jane Doe remembered going back to her own room after initiating
28 physical contact with John Doe;

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- (b.) Jane Doe recalled leaving her dormitory after having sex with John Doe to meet her friends;
- (c.) Jane Doe remembered having her phone taken away;
- (d.) Jane Doe recalled going to bed;
- (e.) Jane Doe remembered that as soon as her roommate left her alone, she got out of bed again because, she "didn't feel like going to sleep;"
- (f.) Jane Doe recalled finding her phone and her key card, and putting on her shoes, walking down the stairs and across the grassy area known as "Stewie Beach" to Stewart-Cleland Hall;
- (g.) Jane Doe remembered going to the common room, seeing a male student whom she met the night before, and remembered sitting on his lap, talking and joking about a NASCAR program on the television; and
- (h.) Jane Doe remembered the next day that she had left her belt and earrings in John Doe's room.

(Exhibit 13, p. 37.)

93. Instead of asking John Doe's prepared questions and assessing Jane Doe's credibility, the external adjudicator - Marilou Mirkovich – asked questions during the hearing evidencing gender bias. For example, Ms. Mirkovich asked leading questions of Jane Doe that were designed to get her to say she did not normally take off her shirt and engage in the types of behavior she was observed engaging in on the night she initiated sexual contact with John Doe. But, even with the leading questions, the best Jane Doe could do was agree that she didn't think she had ever done anything like this before. (Exhibit 30, p. 42).

94. Conversely, Ms. Mirkovich asked no questions exploring whether John Doe knew or should have known Jane Doe did not normally take off her shirt and engage in the types of behavior she was observed engaging in on the night she initiated sexual contact with John Doe. *Id.*

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1 95. Ms. Mirkovich's conduct demonstrates the gender biased application
2 of Occidental's Sexual Misconduct Policy. For instance, under this policy, the
3 accused—the male student—cannot present evidence concerning the prior sexual
4 history of the complainant.

5 *Prior Sexual History of a Complainant:* In general, a
6 Complainant's prior sexual history is not relevant and will not be
7 admitted as evidence at a hearing. Where there is a current or
8 ongoing relationship between the Complainant and the
9 Respondent, and the Respondent alleges consent, the prior sexual
10 history between the parties may be relevant to assess the manner
11 and nature of communications between the parties. As noted in other sections of this
12 policy, however, the mere fact of a current or previous dating relationship, by itself,
13 is not sufficient to constitute consent. Any prior sexual history of the Complainant with
14 other individuals is typically not relevant and will not be permitted.

15 (Exhibit 19, Occidental Sexual Misconduct Policy, Section D,
16 paragraph 8, p. 38).

17 96. However, Occidental allowed Jane Doe the female student—to rely on
18 alleged prior chaste behavior to indicate future chaste behavior, which Occidental
19 in turn relies on to find incapacitation and a lack of consent. For example, in this
20 case, Occidental relied in part on evidence presented that Jane Doe had (as far as
21 she could remember) not taken her shirt off in front of a boy while dancing in the
22 past, was a virgin, was a hopeless romantic, and was not perceived by her friends to
23 be the type of person who gets drunk and has sex to conclude that Jane Doe was
24 incapacitated and could not consent to sex. (Exhibit 13, pp. 20, 25 & Exhibit 30, pp.
25 39, 42).

26 97. Occidental engaged in a gender-biased application of the Policy in part
27 because Occidental's erroneous allegation that Jane Doe was incapacitated: (a)
28 inappropriately relied on evidence of Jane Doe's alleged prior chaste behavior as a
basis for claiming Jane Doe only initiated sexual contact with John Doe because she
consumed too much alcohol to know what she was doing; and (b) conflicted with
the evidence that proved Jane Doe was in full control of her actions when she

1 initiated sexual contact with John Doe. Evidence that Jane Doe was in full control
2 of her actions when she initiated sexual contact with John Doe include, but are not
3 limited to, Jane Doe's texts with John Doe, Jane Doe's consent to have sex, Jane
4 Doe's arranging to have safe sex, Jane Doe's ability to sneak out of her room to
5 return to John Doe's room to carry out the plan to have sex, and Jane Doe's
6 decision to turn down opportunities to leave the room with a trusted companion
7 while John was not present. (Exhibit 38, p. 12; *see also paragraph 67, supra*).

8 98. Occidental's decision to ignore Jane Doe's lack of credibility and/or
9 prevent John Doe from asking questions proving his innocence evidences gender
10 bias caused in part by Occidental's desire to increase the number of male students
11 found responsible for engaging in sexual misconduct in order to appease internal
12 and external forces demanding these findings.

13 99. Upon information and belief, Occidental allowed John Doe to be
14 irreparably tainted by gender bias by silencing male voices that might contradict the
15 internal and/or external pressure to find more male students responsible for sexually
16 assaulting female students. Evidence supporting this belief includes, but is not
17 limited to: (a) the Pepper Hamilton report, discussed above and attached as Exhibit
18 26, which stated professors were hesitant to become involved in disciplinary
19 proceedings involving sexual misconduct because of the efforts of the OSAC; (b)
20 the decision by John Doe's first choice of advisor - a male faculty member - to
21 refuse to assist John Doe thereby forcing John Doe to select a female advisor;
22 and/or (c) the fact that the hearing process was conducted and administered entirely
23 by women and the favorable treatment of Jane Doe during the process.

24 100. Occidental violated John Doe's rights and/or Title IX in part because
25 the procedural protections Occidental afforded male students like John Doe are
26 unfair, inadequate, and/or designed to limit a male student's ability to obtain a fair
27 and equitable result.

28 101. Occidental violated John Doe's rights and/or Title IX in part because

1 Occidental knew or should have known their actions would have an adverse impact
2 on male students alleged to have engaged in sexual misconduct with a female
3 student (and) were deliberately indifferent to this impact.

4
5 **Occidental Violated John Doe's Rights by Allowing Irrelevant, False, and/or**
6 **Prejudicial Gender Biased Allegations to Prejudice John Doe.**

7 102. Occidental irreparably prejudiced John Doe by allowing Professor
8 Dirks to interject her false, irrelevant, and/or prejudicial gender biased views into
9 John Doe's disciplinary procedure. For example, the Investigation Report was
10 riddled with highly inflammatory statements by Professor Dirks such as:

- 11 (a.) "[John Doe] fits the profile of other rapists on campus in that he had a
12 high GPA in high school, was his class valedictorian, was on [a sports]
13 team, and was 'from a good family.'" (Exhibit 13, p. 41).
- 14 (b.) "[Jane Doe]'s symptoms are like "the dozens of other survivors [of
15 sexual assault] I have met with on campus." (Exhibit 13, p. 53).
- 16 (c.) "[Jane Doe]'s reluctance to call what had happened to her "rape" was
17 consistent with other victims of sexual assault... on campus." (Exhibit
18 13, p. 53).
- 19 (d.) "[John Doe] was "acting in the same way all these other young men
20 [involved in sexual assaults] have acted" by checking in on [Jane Doe]
21 after the incident, and seeking to manage [Jane] by being nice in a
22 manner... described as "disingenuous." (Exhibit 13, p. 54).

23 103. Occidental's admission and reliance on Professor Dirks' gender-
24 biased, unsupported, and inaccurate statements describing John Doe as a "rapist,"
25 are highly prejudicial. Occidental's allowance of such statements into evidence
26 while at the same time excluding relevant evidence favorable to John Doe is
27 gender-biased, contrary to its own policies, and discriminatory. By allowing
28 Professor Dirks to interject her false, irrelevant, and/or prejudicial gender biased
views into John Doe's disciplinary procedure, Occidental violated Title IX and/or

1 provisions of Occidental's Policy which caution against the introduction of: (a)
2 "personal opinion[s]"; (b) "irrelevant" or "immaterial" allegations; and/or (c)
3 information that is "more prejudicial than probative" (See, Exhibit 13, p. 38).
4 Occidental also violated this mandate by redacting information favorable to John
5 Doe from its Investigation Report. Upon information and belief, the redacted
6 information contains exculpatory evidence. (Exhibit 13).

7
8 **Occidental Violated John Doe's Rights by Improperly Finding**
9 **Jane Doe Was Incapacitated By Alcohol**

10 104. Occidental violated John Doe's rights in disciplining him after alleging
11 Jane Doe could not be held responsible for her actions because she was
12 incapacitated by alcohol. (Exhibit 38, p. 11). The Adjudicator's Finding agrees that
13 consent was present: "The external adjudicator... finds that the Complaint's text
14 messages, ... coupled with her actions in returning to the Respondent's room after
15 that exchange of text messages are conduct and statements that would indicate that
16 she consented to sexual intercourse with the Respondent. Accordingly, the external
17 adjudicator finds that it is more likely than not that the Complainant engaged in
18 conduct and made statements that would indicate she consented to sexual
19 intercourse with the Respondent." (Exhibit 38, p. 8) Judge James Chalfant agreed,
20 stating in court at the Ex Parte request for an Order of Stay: "[John's] got a pretty
21 strong position... . I would think an eighteen-year-old boy who gets these texts
22 would think she's fully capable of consenting." (Exhibit 51). However, the
23 Adjudicator then rejects her consent on the basis of alleged incapacitation of Jane
24 Doe.

25 105. Upon information and belief, Occidental's unlawful allegation that
26 Jane Doe was incapacitated by alcohol occurred because of gender bias and/or in
27 response to internal and/or external pressure to find more male students responsible
28 for sexually assaulting female students. Evidence supporting this belief includes,

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1 but is not limited to, the fact that if Jane Doe were truly incapacitated by alcohol,
2 she would have been unable to engage in actions which included: (a) sending a text
3 message to John Doe asking if he had a condom; (b) actively manipulating her
4 friends and her RA in order to return to John Doe's room to have sex with John
5 Doe; (c) sending a text to a friend announcing her intent to have sex with John Doe;
6 (d) voluntarily performing oral sex on John Doe; (e) telling friends she was "fine"
7 while engaging in physical contact with John Doe; and/or (f) sending smiley faces
8 to friends right after having sex with John Doe. (Exhibits 13 & 30).

9 106. Similarly, Occidental's incapacitation finding is unlawful because Jane
10 Doe's actions did not fall within Occidental's definition of incapacitation which
11 was defined as follows:

12 "Incapacitation: Incapacitation is a state where an individual
13 cannot make an informed and rational decision to engage in sexual
14 activity because s/he lacks conscious knowledge of the nature of
15 the act (e.g., to understand the who, what, when, where, why or
16 how of the sexual interaction) and/or is physically helpless. **An
17 individual is incapacitated, and therefore unable to give
18 consent, if s/he is asleep, unconscious, or otherwise unaware
19 that sexual activity is occurring.**

18 Incapacitation may result from the use of alcohol and/or drugs.
19 Consumption of alcohol or other drugs alone is insufficient to
20 establish incapacitation. The impact of alcohol or other drugs
21 varies from person to person, and evaluating incapacitation
22 requires an assessment of how the consumption of alcohol and/or
23 drugs impacts an individual's

- 23 • decision-making ability;
- 24 • awareness of consequences;
- 25 • ability to make informed judgments; or
- 26 • capacity to appreciate the nature and the quality of the act.

27 Evaluating incapacitation also **requires an assessment of whether**
28

1 **a Respondent knew or should have known that the**
2 **Complainant was incapacitated"** (Exhibit 19, p. 13) (emphasis
3 added).

4 107. The Adjudicators' finding equates amnesia with incapacitation: The
5 blackouts were not her ONLY justification but were a primary one:

6 '...the Complainant has very little memory of what occurred
7 between the period beginning approximately 11 :00 p.m. on
8 September 7, 2013 until she woke up on September 8, 2013. In that
9 regard, the Complainant does not recall creating or sending the text
10 messages contained in the investigators' report during that time
11 period and other events during that period, including having sexual
12 intercourse -with the Respondent. Thus, during that period the
13 Complainant's level of intoxication by alcohol was so significant
14 that she experienced "blackouts."

15 In addition to the blackouts, multiple witnesses observed that the
16 Complainant was slurring her speech, stumbling, and not making
17 sense during the relevant time period. Further, the fact that the
18 Complainant removed her shirt while dancing with the Respondent
19 and credibly testified that she would not normally do so when
20 intoxicated caused the external adjudicator to find that by this point
21 in the evening the Complainant's decision-making ability was
22 significantly impaired. The external adjudicator finds that at the
23 time the Complainant and the Respondent had sexual intercourse,
24 the Complainant was not aware of the consequences of her action
25 and she did not have the capacity to appreciate the nature and
26 quality of the act. Accordingly, the external adjudicator finds that
27 the Complainant was incapacitated at the time she engaged in the
28 conduct or statements that indicated she consented to sexual
 intercourse with the Respondent.'

 (Exhibit 38, p. 11)

108. The problem with Jane Doe's statements about the blackouts is that the
facts show otherwise, and any reasonable hearing process would have obtained the
discrepancies between the testimony at the hearing and the statements to the
investigator regarding those facts. It shows that the adjudicator never considered the

1 substantial evidence that Jane Doe consented to sex with John Doe with full
2 capacity and understanding of her actions. Occidental's allegation that Jane Doe
3 was incapacitated was also unlawful because it ran afoul of guidance issued by the
4 Association of Title IX Administrators ("atIXa"), who trained Occidental on how
5 implement Title IX. (Exhibit 52) (detailing atIXa's Title IX training of Occidental
6 employees).

7 109. For example, atIXa issued a "Tip of the Week" explaining how five
8 colleges "got it completely wrong" in finding male students responsible for "hook-
9 ups" when alcohol was involved. *Id.* In explaining these concerns, atIXa's "Tip of
10 the Week" states colleges are exposing themselves to Title IX lawsuits by
11 inappropriately evaluating the impact of alcohol consumption on a student's ability
12 to consent to physical activities. (Exhibit 53) Specifically, atIXa's described the
13 factors that must be present before a male student can be found responsible for
14 taking advantage of a female student who consumed alcohol as follows:

15 "The taking advantage comes because the respondent knows the
16 victim is weak, unable to make reasonable decisions and cannot
17 have knowledge of the act. **This cannot be proved by the victim's**
18 **assertion of her own incapacity, blackout or lack of memory.**
19 This is shown by the totality of evidence composed of some or all
20 of the following factors that the respondent knew or should have
21 known: The respondent knew that the complainant was drinking
22 or using drugs and may know how much/what kind; The victim
23 was stumbling or otherwise exhibited loss of equilibrium; Slurred
24 speech or word confusion; Bloodshot, glassy unfocused eyes; Any
25 of the signs of alcohol poisoning, vomiting, especially repeatedly;
26 Being disoriented, or confused as to time, place, etc.; and/or loss
27 of consciousness." *Id.* (emphasis added).

28 110. ATIXA went on to express concerns that these colleges are making
"Title IX Plaintiffs" of students by wrongly equating intoxication with
incapacitation. Specifically, ATIXA noted:

A common policy problem comes from failing to distinguish
between intoxicated and incapacitated. Yet, the most serious issue

1 comes from failing to implement a mens rea, if you will, within the
2 definition. Certainly, criminal concepts like mens rea are not
3 strictly applicable to the campus conduct process, but if we agree
4 as I stated above that having sex with a willing, yet intoxicated
5 person is not an offense, there must be something that the
6 respondent does, beyond having sex, that makes a lawful act (sex)
7 into a policy violation . . . there has to be something more than
8 an intent to have sex to make this an offense. Otherwise, men are
9 simply being punished for having sex, which is gender
10 discrimination under Title IX, because their partners are having
11 sex too and are not being subject to the code of conduct for doing
12 so. Without a knowledge standard, a respondent will suffer an
13 arbitrary and capricious application of the college's rules.” *Id.*
14 (emphasis added).

11 111. Occidental violated these atIXa recommendations because it relied
12 solely on contradictory and self-serving testimony of Jane Doe that her intoxication
13 qualified as incapacitation.

14 112. Additional evidence that Occidental wrongly equated intoxication with
15 incapacitation is located in an April 10, 2014 letter the Foundation for Individual
16 Rights in Education (FIRE) sent to Occidental which stated in part:

17 The [text] messages demonstrate that Doe's accuser understood
18 what she was planning to do (she told a friend she was going to
19 have sex), with whom she was going to have sex (she asked Doe
20 if he had a condom), when she would do it (she told a friend that
21 she was going to have sex "now"), and where it would take place
22 (her texts with Doe discussed how she would sneak out of her
23 room to a specific, known place—Doe's room). While her texts did
24 not discuss exactly why or how she would choose to have sex with
25 Doe, the investigative report goes into some detail on pages 13–15
26 about the accuser's sexual advances towards [John] Doe. The text
27 messages and the accuser's concerted and deliberate effort to sneak
28 out of her room for the purpose of having sex, described in text
messages sent over 24 minutes, eliminate any possibility that she
was physically helpless, asleep, unconscious, or unaware that
sexual activity would occur. . . . [t]he possibility that one's
judgment might be impaired or one's memories might fail while
intoxicated does not strip students of the ability or right to make

1 judgments about their activities while intoxicated, nor does it
2 extinguish their ability to reason or make decisions. Occidental's
3 written policy reflects that reality by recognizing that
4 "[c]onsumption of alcohol or other drugs alone is insufficient to
5 establish incapacitation" . . . The fact that the applied definition of
6 incapacitation would make both parties guilty of sexually
7 assaulting one another brings into stark relief the gender-based
8 discrimination in violation of Title IX and the fundamental
9 unfairness and lack of equity present in Occidental's actions
10 against [Mr.] Doe." (Exhibit 54, pp. 4-7)

11 113. Upon information and belief, Occidental knew that if it applied its
12 policies in a gender neutral fashion, Occidental would have been required to either:
13 (a) similarly discipline John Doe and Jane Doe; or (b) find neither John Doe nor
14 Jane Doe should have been disciplined. Evidence supporting this belief includes,
15 but is not limited to, the following three admissions by Occidental that Jane Doe
16 and John Doe Exhibited substantially similar alcohol induced conditions: (1) pages
17 13–15 of the investigative report which detail how both Jane Doe and John Doe
18 were intoxicated; (2) page 10 of Ms. Mirkovich's report which states Jane Doe
19 "subsequently recalled giving [John Doe] oral sex; however, [John Doe] does not
20 recall this act;" and (3) Ms. Mirkovich's note that both John Doe and Jane Doe
21 experienced alcohol induced "blackout[s]." *Id.* Additional evidence support this
22 belief is the interview summary of Friend#1 from the Investigation which stated:

23 In retrospect, Friend#1 Said, [Jane Doe] was "pretty drunk, but
24 pretty persistent" about going to [John Doe]'s room. According to
25 Friend#1, [Jane Doe's] demeanor did not appear as if she knew
26 what was going on, but her text messages and her physically going
27 to [John Doe]'s room seem to indicate that [Jane Doe] had some
28 idea of where she was, of what was taking place, and of what
29 would happen if she went to [John Doe's] room. . . .
30 Friend#1 stated, "I think [Jane Doe] was just as much a part of this
31 as [John Doe]. I wouldn't say that it is was just [John Doe] coming
32 on to her, or forcing her. She could have said, 'No,' or she could
33 have just not responded to his texts, or just not gone back down to
34 his room." (*Id.*)

1
2 **The Arbitrary Dismissal of John Doe's Counter Complaint of Sexual**
3 **Misconduct by Jane Doe Further Demonstrates Gender Bias**

4 114. Upon information and belief, Occidental's rejection of John Doe's
5 request that Jane Doe be disciplined for sexually assaulting him occurred because of
6 gender bias and/or in response to internal and/or external pressure to treat female
7 students more favorably than male students. Evidence supporting this belief
8 includes, but is not limited to, the fashion in which Occidental arbitrarily dismissed
9 John Doe's complaint regarding Jane Doe.

10 115. As detailed above, John Doe's internal appeal of Occidental's findings
11 and sanctions identified Occidental's gender bias in disciplining John Doe for
12 allegedly violating the same policies that Jane Doe violated. But, in subsequent
13 court filings, Occidental suggested it took no action against Jane Doe because John
14 Doe did not lodge a formal complaint. (Exhibit 55). As a result, on March 7,
15 2014, John Doe filed a formal complaint of sexual misconduct against Jane Doe.

16 116. Occidental retained legal counsel to evaluate John Doe's complaint
17 regarding Jane Doe's sexual misconduct. Occidental gave this attorney over a
18 hundred pages of documents from Occidental's earlier disciplinary proceeding
19 against John Doe which fully addressed the factual allegations in John Doe's
20 subsequent complaint against Jane Doe. (Exhibit 56).

21 117. In violation of VAWA, Occidental told John Doe that he needed to
22 subject himself to an interview by Occidental's attorney without being allowed to
23 have an attorney present.

24 118. Since John Doe and Occidental were engaged in litigation, John Doe's
25 attorney informed Occidental that John Doe could not be interrogated without legal
26 representation (and) attempted to negotiate a compromise. (Exhibit 57). But, John
27 Doe's attorney was prohibited from contacting the attorneys Occidental hired to do
28 the initial investigation into John Doe's complaint. (Exhibit 58).

1 119. Occidental's Title IX Coordinator then rejected John Doe's complaint
2 stating: "[b]ased on your inconsistent assertions, the timing of your complaint, and
3 your failure to cooperate in the initial assessment process, I have concluded that
4 your complaint against [Jane Doe] does not state a violation of the College's Sexual
5 Misconduct Policy and for that reason the College will not process your complaint."
6 (Exhibit 59).

7 120. Occidental's aforementioned rationale for rejecting John Doe's
8 complaint regarding Jane Doe's sexual misconduct is a pretext for unlawful gender
9 bias and/or made in response to internal and/or external pressure to treat female
10 students more favorably than male students.

11
12 **Occidental's Prosecution of John Doe Is Part of a Pattern and Practice**
13 **of Discriminating Against Male Students and/or**
14 **A Response to Internal and/or External Pressure to Find More Male students**
15 **Responsible for Sexually Assaulting Female Students.**

16 121. Upon information and belief, Occidental engaged in a pattern and
17 practice of discriminating against male students like John Doe because of gender
18 bias and/or in response to internal and/or external pressure to find more male
19 students responsible of sexually assaulting female students. Evidence supporting
20 this belief includes, but is not limited to the three lawsuits detailed below which
21 were filed by male students who maintain they were unlawfully disciplined during
22 Occidental's gender biased investigations of sexual assault allegations.

23 122. The first such case is *John Doe v. Occidental College, Superior Court*
24 *of the State of California for the County of Los Angeles, Central District, Case No.*
25 *BS150532*. The Complaint in this case details how Occidental unlawfully expelled
26 a male student who had multiple consensual intimate encounters with a female
27 student who - five months after these encounters ended - alleged one of the
28 encounters was non-consensual. A copy of the Petition in Case No. *BS150532*

1 (Exhibit 60).

2 123. The second case is *John Doe v. Occidental College, Superior Court of*
3 *the State of California for the County of Los Angeles, Central District, Case No.*
4 *BS155004*. The Complaint in this case details how Occidental unlawfully expelled
5 a male student for alleged non-consensual heavy petting of a former girlfriend at an
6 off-campus private house party in San Diego, California. A copy of the Petition in
7 Case No. BS155004 (Exhibit 49).

8 124. The third case is *John Doe v. Occidental College, Superior Court for*
9 *the County of Los Angeles, Central District, Case No. BS156253*. The Complaint in
10 this case details how Occidental unlawfully expelled a male student engaging in a
11 sexual encounter with the female student who evidenced consent via non-verbal
12 cues such as repositioning the male's head while he was giving her oral sex. A copy
13 of the Petition in *Case No. BS156253* is attached as Exhibit 61.

14 125. Similarly, upon information and belief, Occidental subjects males like
15 John Doe to a hostile environment by inflating the statistics of sexual assaults on
16 campus. Evidence supporting this belief includes, but is not limited to, Occidental
17 reporting 60 forceable sexual offenses for the 2013-2014 school year, a sexual
18 misconduct rate which is **15 times higher** than the rate of the next ten California
19 schools combined. (<http://ope.ed.gov/security>). Exhibit 62.

20 126. In engaging in the conduct detailed above, Occidental established an
21 unlawfully hostile and/or abusive environment for male students who include, but
22 are not limited to, John Doe. *See e.g., Jennings v. Univ. of N.C.*, 482 F.3d 686, 695
23 (4th Cir. 2007), *en banc*. (establishing the following four elements of a Title IX
24 hostile environment/sexual harassment claim: (1) plaintiff was a student at an
25 educational institution receiving federal funds, (2) he/she was subjected to
26 harassment based on his/her sex, (3) the harassment was sufficiently severe or
27 pervasive to create a hostile (or abusive) environment in an educational program or
28 activity, and (4) there is a basis for imputing liability to the institution.); *Yusuf v.*

1 *Vassar College*, 35 F.3d 709 (2nd Cir. 1994)(rejecting a motion to dismiss Title IX
2 claim filed by a male student alleging he was falsely accused of sexual assault in
3 part because “. . . statements by pertinent university officials, or patterns of
4 decision-making that . . . tend to show the influence of gender.”); *Zamora v. Jane*
5 *Doe v. Erskine Coll.*, 2006 U.S. Dist. LEXIS 35780, *32-38 (Greenwood Div., N.C.
6 May 25, 2006)(rejecting a motion for summary judgment in a Title IX claim where
7 “a jury issue” was created with regards to “whether [the college] was deliberately
8 indifferent” to Title IX discrimination); *Doe v. Bd. of Educ.*, 982 F. Supp. 2d 641,
9 652 (D. Md. 2012)(stating “severe or pervasive” harm can occur when Title IX
10 plaintiff suffers “humiliat[ion] . . . serious anxiety, fear, or discomfort . . .
11 .”)(citations omitted); *Wells v. Xavier Univ.*, 7 F. Supp. 3d 746 (S.D. Ohio
12 2014)(rejecting a motion to dismiss Title IX claim filed by a male student alleging
13 he was falsely accused of sexual assault).

14 127. Occidental created an unlawfully hostile and/or abusive environment
15 for male Occidental students like John Doe in part because this conduct is similar to
16 that addressed by legal scholars documenting bias against male college students
17 accused of sexual misconduct. *See e.g.*, Barclay Sutton Hendrix, *A Feather On One*
18 *Side, A Brick On The Other: Tilting The Scale Against Males Accused of Sexual*
19 *Assault In Campus Disciplinary Proceedings*, 47 *Ga. L. Rev.* 591, 594-599 (2013);
20 Stephen Henrick, *A Hostile Environment for Student Defendants: Title IX and*
21 *Sexual Assault on College Campuses*, 40 *N. Ky. L. Rev.* 49, 50-52 (2013).

22 23 COUNT 1

24 **(Violation of Title IX –Sex Discrimination and/or Hostile Environment)**

25 128. John Doe realleges and incorporates all the allegations contained in
26 preceding paragraphs of this Complaint as though fully rewritten herein.

27 129. Pursuant to 20 U.S.C. § 1681, Title IX is a federal statute designed to
28 prevent sexual discrimination and/or harassment in educational institutions

1 receiving federal funding.

2 130. Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-
3 1688, applies to all public and private educational institutions that receive federal
4 funds, including colleges and universities. The statute prohibits discrimination on
5 the basis of sex in a school's "education program or activity," which includes all of
6 the school's operations. Title IX provides in pertinent part: "[n]o person in the
7 United States shall, on the basis of sex, be excluded from participation in, be denied
8 the benefits of, or be subjected to discrimination under any education program or
9 activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). The United
10 States Supreme Court has held that Title IX authorizes private suits for damages in
11 certain circumstances.

12 131. Occidental receives federal financial assistance and is thus subject to
13 Title IX.

14 132. Title IX includes an implied private right of action, without any
15 requirement that administrative remedies, if any, be exhausted. An aggrieved
16 plaintiff may seek money damages and other relief.

17 133. Both the DOE and the Department of Justice have promulgated
18 regulations under Title IX that require a school to "adopt and publish grievance
19 procedures providing for the prompt and equitable resolution of student...
20 complaints alleging any action which would be prohibited by" Title IX or its
21 regulations. 34 C.F.R. § 106.8(b) (Department of Education); 28 C.F.R. § 54.135(b)
22 (Department of Justice).

23 134. Title IX mandates Occidental afford equitable procedures and due
24 process to John Doe which include, but are not limited to: (a) having proper
25 jurisdictional authority to conduct an investigation; (b) providing adequate, reliable,
26 and impartial investigation of complaints, including the opportunity to present
27 witnesses and other evidence, and/or (c) that Occidental employees involved in the
28 conduct of the procedures have adequate training.

COMPLAINT

1 135. Occidental knew, or in the exercise of due care should have known,
2 that Occidental lacked jurisdiction under Occidental policies to investigate and/or
3 discipline John Doe for a physical encounter Jane Doe initiated with John Doe
4 when he was incapacitated by alcohol.

5 136. Occidental knew, or in the exercise of due care should have known,
6 Occidental employees held unlawful bias which motivated their decisions regarding
7 John Doe.

8 137. Occidental's policies fail to meet the standards required by Title IX
9 regarding how institutions of higher education conduct disciplinary proceedings.

10 138. Occidental has a pattern and practice of discriminating against male
11 students like John Doe on the basis of gender.

12 139. Occidental created an environment in which male students accused of
13 sexual assault, such as John Doe, are fundamentally denied their rights under Title
14 IX as to be virtually assured of a finding of guilt. Such a biased and one-sided
15 process deprives male Occidental students like John Doe of educational
16 opportunities on the basis of sex.

17 140. Occidental has actual or constructive knowledge that Occidental's
18 investigation and/or discipline of John Doe posed a persuasive and unreasonable
19 risk of gender discrimination with regard to John Doe.

20 141. Occidental's actions and inactions detailed above and below set in
21 motion a series of events that Occidental knew, or reasonably should have known,
22 would cause male Occidental students, such as John Doe, to suffer unlawful gender
23 discrimination.

24 142. Occidental's investigation and/or discipline of John Doe is
25 discriminatory and based upon or motivated by John Doe's male gender.

26 143. The male gender discrimination by Occidental against John Doe
27 includes, but is not limited to, providing preferential treatment to Jane Doe. This
28 preferential treatment includes, but is not limited, Occidental's refusal to discipline

1 Jane Doe pursuant to Occidental's policies detailed above and dismissal of John
2 Doe's sexual assault complaint against John Doe.

3 144. Occidental unlawfully failed to exercise the authority to institute
4 corrective measures to remedy: (a) Occidental's violations of John Doe's rights
5 under Occidental policies, Title IX, VAWA, and/or guidance promulgated by OCR;
6 and/or (b) Occidental's unlawful determination that John Doe violated Occidental
7 policies which Occidental adopted pursuant to federal laws and regulations related
8 to Title IX.

9 145. Occidental Exhibited deliberate indifference by refusing to remedy: (a)
10 Occidental's violations of John Doe's rights under Occidental policies, Title IX,
11 VAWA, and/or guidance promulgated by OCR; and/or (b) Occidental's erroneous
12 determination that John Doe violated Occidental policies which Occidental adopted
13 pursuant to federal laws and regulations related to Title IX.

14 146. Occidental's deliberate indifference caused John Doe to suffer sexual
15 harassment and/or discrimination so severe, pervasive or objectively offensive that
16 it deprived John Doe of access to educational opportunities or benefits (and) caused
17 other harms detailed above.

18 147. Upon information and belief, Occidental possesses additional
19 documentation and/or information evidencing Occidental's unlawful pattern of
20 gender biased decision making which favors female students alleging sexual assault
21 over male students like John Doe who are falsely accused of sexual assault.

22 148. Occidental's hostile environment, sexual harassment, and/or
23 discrimination caused John Doe to be damaged in an amount to be determined at
24 trial. Moreover, as a direct and foreseeable result of Occidental's hostile
25 environment, sexual harassment, and/or discrimination, John Doe has sustained,
26 and will continue to sustain, substantial injury, damage, and loss, including, but not
27 limited to: mental anguish; severe emotional distress; injury to reputation; past and
28 future economic loss; deprivations of due process; loss of educational

1 opportunities; and loss of future career prospects.

2
3 **COUNT 2**

4 **(Violation of Title IX – Deliberate Indifference)**

5 149. John Doe realleges and incorporates all the allegations contained in
6 preceding paragraphs of this Complaint as though fully rewritten herein.

7 150. Occidental acted with deliberate indifference towards John Doe
8 because of his male gender.

9 151. Occidental unlawfully failed to exercise the authority to institute
10 corrective measures to remedy: (a) Occidental's violations of John Doe's rights
11 under Occidental's policies, Title IX, VAWA, and/or guidance promulgated by
12 OCR; and/or (b) Occidental's erroneous determination that John Doe violated
13 Occidental's policies which Occidental adopted pursuant to federal laws and
14 regulations related to Title IX.

15 152. Occidental Exhibited deliberate indifference by refusing to remedy: (a)
16 Occidental's violations of John Doe's rights under Occidental policies, Title IX,
17 VAWA, and/or guidance promulgated by OCR; and/or (b) Occidental's erroneous
18 determination that John Doe violated Occidental policies which Occidental adopted
19 pursuant to federal laws and regulations related to Title IX.

20 153. Upon information and belief, Occidental possesses communications
21 evidencing its employees' and/or agents manifest gender based deliberate
22 indifference towards John Doe and/or other similarly situated male students.

23 154. Occidental's deliberate indifference caused John Doe to be damaged in
24 an amount to be determined at trial. Moreover, as a direct and foreseeable result of
25 Occidental's deliberate indifference, John Doe has sustained, and will continue to
26 sustain, substantial injury, damage, and loss, including, but not limited to: mental
27 anguish; severe emotional distress; injury to reputation; past and future economic
28 loss; deprivations of due process; loss of educational opportunities; and loss of

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1 future career prospects.

2
3 **COUNT 3**

4 **(Violation of Title IX – Erroneous Outcome)**

5 155. John Doe realleges and incorporates all the allegations contained in
6 preceding paragraphs of this Complaint as though fully rewritten herein.

7 156. Occidental unlawfully disciplined John Doe because of his male
8 gender.

9 157. By erroneously disciplining John Doe, Occidental violated Occidental
10 policies, Title IX, VAWA, and/or guidance promulgated by OCR.

11 158. Occidental unlawfully failed to exercise the authority to institute
12 corrective measures to remedy: (a) Occidental's violations of John Doe's rights
13 under Occidental policies, Title IX, VAWA, and/or guidance promulgated by OCR;
14 and/or (b) Occidental's erroneous determination that John Doe violated Occidental
15 policies which Occidental adopted pursuant to federal laws and regulations related
16 to Title IX.

17 159. Occidental employees Exhibited deliberate indifference by refusing to
18 remedy: (a) Occidental's violations of John Doe's rights under Occidental policies,
19 Title IX, VAWA, and/or guidance promulgated by OCR; and/or (b) Occidental's
20 erroneous determination that John Doe violated Occidental policies which
21 Occidental adopted pursuant to federal laws and regulations related to Title IX.

22 160. Occidental's conduct detailed above involved arbitrary and capricious
23 violations of John Doe's rights.

24 161. Upon information and belief, Occidental possesses communications
25 evidencing Occidental's deliberate indifference in imposing unlawful discipline on
26 John Doe on the basis of his gender.

27 162. Occidental's wrongful discipline of John Doe caused John Doe to be
28 damaged in an amount to be determined at trial. Moreover, as a direct and

1 foreseeable result of Occidental's wrongful discipline, John Doe has sustained, and
2 will continue to sustain, substantial injury, damage, and loss, including, but not
3 limited to: mental anguish; severe emotional distress; injury to reputation; past and
4 future economic loss; deprivations of due process; loss of educational
5 opportunities; and loss of future career prospects.

6
7 **COUNT 4**

8 **(Breach of Contract — Disciplinary Proceeding)**

9 163. John Doe realleges and incorporates all the allegations contained in
10 preceding paragraphs of this Complaint as though fully rewritten herein.

11 164. John Doe applied to and enrolled at Occidental and, with the assistance
12 of his parents, paid tuition and other fees and expenses. John Doe did so in reliance
13 on the understanding, and with the reasonable expectations, among others, that: (a)
14 Occidental would implement and enforce the provisions and policies set forth in its
15 of cial publications, including, but not limited to, Occidental's 2013-2014 Code of
16 Conduct, its Sexual Assault Policies and Procedures, and other relevant policies,
17 including those not mentioned in this complaint (collectively referred to as
18 "Occidental Policies"); and (b) those provisions and policies would comply with the
19 requirements of applicable law, including Title IX.

20 165. Occidental Policies create an express contract or, alternatively, a
21 contract implied in law or in fact between Occidental and John.

22 166. Occidental Policies contained an implied covenant of good faith and
23 fair dealing. Occidental Policies also contained the following provisions that
24 guaranteed certain rights to John Doe which included, but were not limited to: (1)
25 "[t]he investigation is designed to provide a fair and reliable gathering of the facts;"
26 (2) "the investigation will be thorough, impartial and fair;" (3) "[t]he hearing is
27 intended to provide a fair and ample opportunity for each side to present his/her
28 account of the incident;" (4) "[i]t is the responsibility of the hearing panel to assure

1 that the information necessary to make an informed decision is presented;” and (5)
2 to have an appeal “conducted in an impartial manner by an impartial decision-
3 maker.” (Exhibit 19, pp. 29, 40 & 45). As set forth herein, Occidental repeatedly
4 and materially breached these guarantees of due process and fundamental fairness
5 as well as the implied covenant of good faith and fair dealing and other contractual
6 provisions, as detailed in the allegations herein.

7 167. As set forth in this Complaint, Occidental repeatedly and materially
8 breached Occidental Policies of due process and fundamental fairness as well as the
9 implied covenant of good faith and fair dealing and other contractual provisions, as
10 detailed in the allegations above.

11 168. During all times relevant to this Complaint, John Doe did all, or
12 substantially all, of the significant things that Occidental Policies required he do.

13 169. All of the foregoing breaches of contract were wrongful, without
14 lawful justification or excuse, prejudicial, and were part of an effort to achieve a
15 predetermined result in John Doe’s case: a finding that he had committed sexual
16 assault or a related offense. As a direct and foreseeable result of these breaches of
17 contract, John Doe has sustained, and will continue to sustain, substantial injury,
18 damage, and loss, including, but not limited to: mental anguish; severe emotional
19 distress; injury to reputation; past and future economic loss; deprivations of due
20 process; loss of educational opportunities; and loss of future career prospects.

21
22 **COUNT 5**

23 **(False Promise — Disciplinary Proceeding)**

24 170. John Doe realleges and incorporates all the allegations contained in
25 preceding paragraphs of this Complaint as though fully rewritten herein.

26 171. Occidental’s employees and/or agents made various promises to John
27 Doe regarding how Occidental would adjudicate allegations of sexual misconduct
28 against John Doe. These promises – collectively referred to as Student’s Rights

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1 Promises – include, but are not limited to promises contained in Occidental
2 Policies.

3 172. When Occidental’s employees and/or agents made their Student’s
4 Rights Promises to John Doe, Occidental’s employees and/or agents did not intend
5 to perform these promises because John Doe was alleged to have engaged in sexual
6 misconduct related to Jane Doe.

7 173. John Doe reasonably relied on Student’s Rights Promises in accepting
8 Occidental’s offer of admission and incurring the cost of tuition and related
9 expenses to attending Occidental.

10 174. As detailed above, John Doe relied to his detriment on the Student’s
11 Rights Promises (and) this reliance was a substantial factor in allowing Occidental’s
12 unlawful discipline of John Doe to occur.

13 175. Injustice can only be avoided by enforcement of the Student’s Rights
14 Promises made to John Doe.

15 176. As a direct and foreseeable result of the breach of the Student’s Rights
16 Promises, John Doe sustained, and will continue to sustain, substantial injury,
17 damage, and loss, including, but not limited to: mental anguish; severe emotional
18 distress; injury to reputation; past and future economic loss; deprivations of due
19 process; loss of educational opportunities; and loss of future career prospects.

20
21 **COUNT 6**

22 **(Negligence — Disciplinary Proceeding)**

23 177. John Doe realleges and incorporates all the allegations contained in
24 preceding paragraphs of this Complaint as though fully rewritten herein.

25 178. Having put in place a student disciplinary process based on Occidental
26 Policies, Occidental owed a duty of care to John Doe to conduct that process in a
27 non-negligent manner and with due care.

28 179. The Occidental officials and/or agents who directed and implemented

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1 Occidental Policies owed John the same duty of care.

2 180. Occidental's conduct, as described above, fell below the applicable
3 standard of care and amounted to breaches of the duty of due care.

4 181. These breaches of the duty of due care caused John Doe, in fact and
5 proximately, to sustain substantial injury, damage, and loss, including, but not
6 limited to: mental anguish; severe emotional distress; injury to reputation; past and
7 future economic loss; deprivations of due process; loss of educational
8 opportunities; and loss of future career prospects.

9
10 **COUNT 7**

11 **(Injunctive Relief)**

12 182. John Doe realleges and incorporates all the allegations contained in
13 preceding paragraphs of this Complaint as though fully rewritten herein.

14 183. Based on the facts articulated above and below, John Doe is entitled to
15 injunctive relief because Occidental's discipline of John Doe is unlawful and
16 violates John Doe's rights under Occidental's policies, federal and/or state laws.

17 184. Occidental's unlawful discipline of John Doe will cause irreparable
18 harm which is certain, great, actual and not theoretical.

19 185. Occidental's unlawful discipline of John Doe cannot be remedied by
20 an award of monetary damages because of difficulty or uncertainty in proof or
21 calculation.

22 186. Based on the facts articulated above, John Doe is entitled to injunctive
23 relief which includes, but is not limited to an Order requiring Occidental to expunge
24 John Doe's official Occidental files of all information related to his interactions
25 with Jane Doe.

26 187. The granting of injunctive relief will cause no harm to Occidental
27 because these defendants have no cognizable interest in the unlawful discipline of
28 John Doe.

1 188. The granting of an injunctive relief will advance a significant and
2 appreciable public interest by protecting members of the public – like John Doe
3 –from having their fundamental rights threatened by unlawful government action.
4

5
6 WHEREFORE, regarding Counts 1-6, John Doe demands judgment and
7 relief against Occidental as follows:

8 1. Damages in an amount in excess of the jurisdiction of federal and state
9 court to compensate John Doe’ past and future pecuniary and/or non-pecuniary
10 damages caused by Defendants’ conduct;

11 2. Order(s) requiring Occidental expunge John Doe’s official Occidental
12 files of all information related to his interactions with Jane Doe;

13 3. Judgment for attorneys’ fees, pursuant any applicable statute;

14 4. Judgment for all other reasonable and customary costs and expenses
15 that were incurred in pursuit of this action;

16 5. Pre-judgment interest and post judgment interest as may be permitted
17 by law and statute; and/or

18 6. Such other and further relief as this court may deem just, proper,
19 equitable, and appropriate.
20

21 WHEREFORE, regarding Count 7 John Doe demands judgment and relief
22 against Occidental as follows:

23 1. Order(s) requiring Occidental to expunge John Doe’s official
24 Occidental files of all information related to his interactions with Jane Doe;

25 2. Judgment for attorneys’ fees, pursuant any applicable statute;

26 3. Judgment for all other reasonable and customary costs and expenses
27 that were incurred in pursuit of this action;

28 4. Pre-judgment interest as may be permitted by law and statute; and/or

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JURY DEMAND

John Doe hereby demands a trial by a jury in this matter.



Mark M. Hathaway
Attorney for Plaintiff

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2013-2014 Grant and Loan Volume by School Type*

	Disbursements	Percentage
Public	\$ 67,126,080,211	51.0%
Proprietary	\$ 24,241,888,986	18.4%
Private	\$ 39,212,108,690	29.8%
Foreign	\$ 1,151,971,823	0.9%
Total	\$ 131,732,049,710	

Campus-Based	<u>\$3,217,985,808.00</u>
Total	\$ 134,950,035,518.10

*Data Not Final. Data was calculated using the FSA Data Center loan and grant files (run July 2015) and excludes Campus-Based Programs (Federal Supplemental Educational Opportunity Grants, Perkins Loans, and Federal Work-Study).

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NOT ALONE

The First Report of the White House Task Force to
Protect Students From Sexual Assault

April 2014



09/15/20

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President Barack Obama signs the Presidential Memorandum establishing the White House Task Force to Protect Students From Sexual Assault on January 22, 2014. (Official White House Photo by Lawrence Jackson)

Sexual violence is more than just a crime against individuals. It threatens our families, it threatens our communities; ultimately, it threatens the entire country. It tears apart the fabric of our communities. And that's why we're here today -- because we have the power to do something about it as a government, as a nation. We have the capacity to stop sexual assault, support those who have survived it, and bring perpetrators to justice.

President Barack Obama, January 22, 2014

Freedom from sexual assault is a basic human right... a nation's decency is in large part measured by how it responds to violence against women... our daughters, our sisters, our wives, our mothers, our grandmothers have every single right to expect to be free from violence and sexual abuse.

Vice President Joe Biden, January 22, 2014

This report was prepared by the White House Task Force to Protect Students From Sexual Assault.

The Task Force is Co-Chaired by the Office of the Vice President and the White House Council on Women and Girls.

09/15/2015

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09 / 15 / 2015

Executive Summary

Why We Need to Act

One in five women is sexually assaulted in college. Most often, it's by someone she knows – and also most often, she does not report what happened. Many survivors are left feeling isolated, ashamed or to blame. Although it happens less often, men, too, are victims of these crimes.

The President created the Task Force to Protect Students From Sexual Assault to turn this tide. As the name of our new website – NotAlone.gov – indicates, we are here to tell sexual assault survivors that they are not alone. And we're also here to help schools live up to their obligation to protect students from sexual violence.

Over the last three months, we have had a national conversation with thousands of people who care about this issue. Today, we offer our first set of action steps and recommendations.

1. Identifying the Problem: Campus Climate Surveys

The first step in solving a problem is to name it and know the extent of it – and a campus climate survey is the best way to do that. We are providing schools with a toolkit to conduct a survey – and we urge schools to show they're serious about the problem by conducting the survey next year. The Justice Department, too, will partner with Rutgers University's Center on Violence Against Women and Children to pilot, evaluate and further refine the survey – and at the end of this trial period, we will explore legislative or administrative options to require schools to conduct a survey in 2016.

2. Preventing Sexual Assault – and Engaging Men

Prevention programs can change attitudes, behavior – and the culture. In addition to identifying a number of promising prevention strategies that schools can undertake now, we are also researching new ideas and solutions. But one thing we know for sure: we need to engage men as allies in this cause. Most men are not perpetrators – and when we empower men to step in when someone's in trouble, they become an important part of the solution.

As the President and Vice President's new Public Service Announcement puts it: if she doesn't consent – or can't consent – it's a crime. And if you see it happening, help her, don't blame her, speak up. We are also providing schools with links and information about how they can implement their own bystander intervention programs on campus.

3. Effectively Responding When a Student Is Sexually Assaulted

When one of its students is sexually assaulted, a school needs to have all the pieces of a plan in place. And that should include:

Someone a survivor can talk to in confidence

While many victims of sexual assault are ready to file a formal (or even public) complaint against an alleged offender right away – many others want time and privacy to sort through their next steps. For some, having a confidential place to go can mean the difference between getting help and staying silent.

Today, we are providing schools with a model reporting and confidentiality protocol – which, at its heart, aims to give survivors more control over the process. Victims who want their school to fully investigate an incident must be taken seriously – and know where to report. But for those who aren't quite ready, they need to have – and know about – places to go for confidential advice and support.

That means a school should make it clear, up front, who on campus can maintain a victim's confidence and who can't – so a victim can make an informed decision about where best to turn. A school's policy should also explain when it may need to override a confidentiality request (and pursue an alleged perpetrator) in order to help provide a safe campus for everyone. Our sample policy provides recommendations for how a school can strike that often difficult balance, while also being ever mindful of a survivor's well-being.

New guidance from the Department of Education also makes clear that on-campus counselors and advocates – like those who work or volunteer in sexual assault centers, victim advocacy offices, women's and health centers, as well as licensed and pastoral counselors – can talk to a survivor in confidence. In recent years, some schools have indicated that some of these counselors and advocates cannot maintain confidentiality. This new guidance clarifies that they can.

A comprehensive sexual misconduct policy

We are also providing a checklist for schools to use in drafting (or reevaluating) their own sexual misconduct policies. Although every school will need to tailor a policy to its own needs and circumstances, all schools should be sure to bring the key stakeholders – including students – to the table. Among other things, this checklist includes ideas a school could consider in deciding what is – or is not – consent to sexual activity. As we heard from many students, this can often be the essence of the matter – and a school community should work together to come up with a careful and considered understanding.

Trauma-informed training for school officials

Sexual assault is a unique crime: unlike other crimes, victims often blame themselves; the associated trauma can leave their memories fragmented; and insensitive or judgmental questions can compound a victim's distress. Starting this year, the Justice Department, through both its Center for Campus Public Safety and its Office on Violence Against Women, will develop trauma-informed training programs for school officials and campus and local law enforcement. The Department of Education's National Center on Safe and Supportive Learning Environments will do the same for campus health centers. This kind of training has multiple benefits: when survivors are treated with care and wisdom, they start trusting the system, and the strength of their accounts can better hold offenders accountable.

Better school disciplinary systems

Many sexual assault survivors are wary of their school's adjudication process – which can sometimes subject them to harsh and hurtful questioning (like about their prior sexual history) by students or staff unschooled in the dynamics of these crimes. Some schools are experimenting with new models – like having a single, trained investigator do the lion's share of the fact-finding – with very positive results. We need to learn more about these promising new ideas. And so starting this year, the Justice Department will begin assessing different models for

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investigating and adjudicating campus sexual assault cases with an eye toward identifying best practices.

The Department of Education's new guidance also urges some important improvements to many schools' current disciplinary processes: questions about the survivor's sexual history with anyone other than the alleged perpetrator should not be permitted; adjudicators should know that the mere fact of a previous consensual sexual relationship does not itself imply consent or preclude a finding of sexual violence; and the parties should not be allowed to personally cross-examine each other.

Partnerships with the community

Because students can be sexually assaulted at all hours of the day or night, emergency services should be available 24 hours a day, too. Other types of support can also be crucial – like longer-term therapies and advocates who can accompany survivors to medical and legal appointments. Many schools cannot themselves provide all these services, but in partnership with a local rape crisis center, they can. So, too, when both the college and the local police are simultaneously investigating a case (a criminal investigation does not relieve a school of its duty to itself investigate and respond), coordination can be crucial. So we are providing schools with a sample agreement they can use to partner with their local rape crisis center – and by June, we will provide a similar sample for forging a partnership with local law enforcement.

4. Increasing Transparency and Improving Enforcement

More transparency and information

The government is committed to making our enforcement efforts more transparent – and getting students and schools more resources to help bring an end to this violence. As part of this effort, we will post enforcement data on our new website – NotAlone.gov – and give students a roadmap for filing a complaint if they think their school has not lived up to its obligations.

Among many other things on the website, sexual assault survivors can also locate an array of services by typing in their zip codes, learn about their legal rights, see which colleges have had enforcement actions taken against them, get “plain English” definitions of some complicated legal terms and concepts; and find their states' privacy laws. Schools and advocates can access federal guidance, learn about relevant legislation, and review the best available evidence and research. We invite everyone to take a look.

Improved Enforcement

Today, the Department of Education's Office for Civil Rights (OCR) is releasing a 52-point guidance document that answers many frequently asked questions about a student's rights, and a school's obligations, under Title IX. Among many other topics, the new guidance clarifies that Title IX protects all students, regardless of their sexual orientation or gender identity, immigration status, or whether they have a disability. It also makes clear that students who report sexual violence have a right to expect their school to take steps to protect and support them, including while a school investigation is pending. The guidance also clarifies that recent amendments to the Clery Act do not alter a school's responsibility under Title IX to respond to and prevent sexual violence.

OCR is also strengthening its enforcement procedures in a number of ways – by, for example, instituting time limits on negotiating voluntary resolution agreements and making clear that schools should provide survivors with interim relief (like changing housing or class schedules) pending the outcome of an OCR investigation. And OCR will be more visible on campus during its investigations, so students can help give OCR a fuller picture about what’s happening and how a school is responding.

The Departments of Education and Justice, which both enforce Title IX, have entered into an agreement to better coordinate their efforts – as have the two offices within the Department of Education charged with enforcing Title IX and the Clery Act.

Next Steps

This report is the first step in the Task Force’s work. We will continue to work toward solutions, clarity, and better coordination. We will also review the various laws and regulations that address sexual violence for possible regulatory or statutory improvements, and seek new resources to enhance enforcement. Also, campus law enforcement officials have special expertise to offer – and they should be tapped to play a more central role. We will also consider how our recommendations apply to public elementary and secondary schools – and what more we can do to help there.

* * *

The Task Force thanks everyone who has offered their wisdom, stories, expertise, and experiences over the past 90 days. Although the problem is daunting and much of what we heard was heartbreaking, we are more committed than ever to helping bring an end to this violence.

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Introduction

For too many of our nation's young people, college doesn't turn out the way it's supposed to.

One in five women is sexually assaulted while in college.¹ Most often, it happens her freshman or sophomore year.² In the great majority of cases (75-80%), she knows her attacker, whether as an acquaintance, classmate, friend or (ex)boyfriend.³ Many are survivors of what's called "incapacitated assault": they are sexually abused while drugged, drunk, passed out, or otherwise incapacitated.⁴ And although fewer and harder to gauge, college men, too, are victimized.⁵

The Administration is committed to turning this tide. The White House Task Force to Protect Students From Sexual Assault was established on January 22, 2014, with a mandate to strengthen federal enforcement efforts and provide schools with additional tools to help combat sexual assault on their campuses. Today, we are taking a series of initial steps to:

- 1. Identify the scope of the problem on college campuses;**
- 2. Help prevent campus sexual assault;**
- 3. Help schools respond effectively when a student is assaulted; and**
- 4. Improve, and make more transparent, the federal government's enforcement efforts.**

As the Task Force recognized at the outset, campus sexual assault is a complicated, multi-dimensional problem with no easy or quick solutions. These initial recommendations do not purport to find or even identify all of them. Our work is not over.⁶

¹ Krebs, C.P., Lindquist, C.H., Warner, T.D., Fisher, B.S., & Martin, S.L. (2007). *The Campus Sexual Assault (CSA) Study*. Washington, DC: National Institute of Justice, U.S. Department of Justice.; Krebs, C.P., Lindquist, C.H., Warner, T.D., Fisher, B.S., & Martin, S.L. (2009). College Women's Experiences with Physically Forced, Alcohol- or Other Drug-Enabled, and Drug-Facilitated Sexual Assault Before and Since Entering College. *Journal of American College Health*, 57(6), 639-647.

² Krebs et al., *The Campus Sexual Assault (CSA) Study*.

³ *Ibid.*

⁴ *Ibid.*; see also Kilpatrick, D.G., Resnick, H.S., Ruggiero, K.J., Conoscenti, L.M., & McCauley, J. (2007). *Drug Facilitated, Incapacitated, and Forcible Rape: A National Study*. Charleston, SC: Medical University of South Carolina, National Crime Victims Research & Treatment Center.

⁵ The *CSA Study* found that 6.1% of college males were victims of either attempted or completed sexual assault. Although many advocates prefer to use the term "survivor" to describe an individual who has been sexually assaulted, the term "victim" is also widely used. This document uses the terms interchangeably and always with respect for those who have been subjected to these crimes.

⁶ This first Task Force report focuses on sexual assault at postsecondary institutions – such as colleges, universities, community colleges, graduate and professional schools, and trade schools – that receive federal financial assistance. Thus, our use of the term "schools" refers to these postsecondary institutions.

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Our First Task: Listening

Many people are committed to solving this problem. To hear as many of their views as possible, the Task Force held 27 listening sessions (12 webinars and 15 in-person meetings) with stakeholders from across the country: we heard from survivors; student activists; faculty, staff and administrators from schools of all types; parents; alumni; national survivors' rights and education associations; local and campus-based service providers and advocates; law enforcement; civil rights activists; school general counsels; men's and women's groups; Greek organizations; athletes; and researchers and academics in the field. Thousands of people joined the conversation.

Not surprisingly, no one idea carried the day. But certain common themes did emerge. Many schools are making important strides and are searching in earnest for solutions. A new generation of student activists is effectively pressing for change, asking hard questions, and coming up with innovative ways to make our campuses safer.

Even so, many problems loom large. Prevention and education programs vary widely, with many doing neither well. And in all too many instances, survivors of sexual violence are not at the heart of an institution's response: they often do not have a safe, confidential place to turn after an assault, they haven't been told how the system works, and they often believe it is working against them. We heard from many who reached out for help or action, but were told they should just put the matter behind them.

Schools, for their part, are looking for guidance on their legal obligations and best practices to keep students safe. Many participants called on the federal government to improve and better coordinate our enforcement efforts, and to be more transparent. And there was another constant refrain: get men involved. Most men are not perpetrators – and when we empower men to speak up and intervene when someone's in trouble, they become an important part of the solution.

I. How Best to Identify the Problem: Campus Climate Surveys

When then-Senator Joe Biden wrote the Violence Against Women Act 20 years ago, he recognized a basic truth: no problem can be solved unless we name it and know the extent of it. That is especially true when it comes to campus sexual assault, which is chronically underreported: only 2% of incapacitated sexual assault survivors, and 13% of forcible rape survivors, report the crime to campus or local law enforcement.⁷

The reasons for non-reporting (whether to a school or to law enforcement) vary. Many survivors of acquaintance rape don't call what happened to them rape and often blame themselves. One report found that 40% of college survivors feared reprisal by the perpetrator.⁸ Survivors also cite

⁷ Krebs et al., *The Campus Sexual Assault (CSA) Study*.

⁸ Sampson, Rana (2002). *Acquaintance Rape of College Students*; Washington, DC: Office of Community Oriented Policing Services, U.S. Department of Justice.

fear of treatment by authorities, not knowing how to report, lack of independent proof, and not wanting families or other students to find out what happened.⁹ Still others don't report because they don't want to participate in a formal college adjudication process.¹⁰

For colleges and universities, breaking the cycle of violence poses a unique challenge. When a school tries to tackle the problem – by acknowledging it, drawing attention to it, and encouraging survivors to report – it can start to look like a dangerous place. On the flip side, when a school ignores the problem or discourages reporting (either actively or by treating survivors without care), it can look safer. Add to this the competition for top students or a coveted spot on a college rankings list – and a school might think it can outshine its neighbor by keeping its problem in the shadows.

We have to change that dynamic.

Schools have to get credit for being honest – and for finding out what's really happening on campus. Reports to authorities, as we know, don't provide a fair measure of the problem. But a campus climate survey can. When done right, these surveys can gauge the prevalence of sexual assault on campus, test students' attitudes and awareness about the issue, and provide schools with an invaluable tool for crafting solutions. And so:

- **We are providing schools with a new toolkit for developing and conducting a climate survey.** This guide explains the methods for conducting an effective survey – and contains a set of evidence-based sample questions to get at the answers.
- **We call on colleges and universities to voluntarily conduct the survey next year.** Again, a school that is willing to get an accurate assessment of sexual assault on its campus is one that's taking the problem – and the solution – seriously. Researchers recommend that schools conduct the survey in the winter or spring semesters, rather than when students first arrive on campus in the fall.

Rutgers University, with its leading research institute on violence against women,¹¹ will pilot and evaluate the survey. Also, the Justice Department's Office on Violence Against Women will work with its campus grantees to conduct the survey and evaluate it. And the Bureau of Justice Statistics will further refine the survey methodology.

What we learn from these pilots, evaluations, and schools' experiences will chart the path forward for everyone – and will culminate in a survey for all to use.

- **We will explore legislative or administrative options to require colleges and universities to conduct an evidence-based survey in 2016.** A mandate for schools to periodically conduct a climate survey will change the national dynamic: with a better picture of what's really happening on campus, schools will be able to more effectively tackle the problem and measure the success of their efforts.

⁹ Krebs et al., *The Campus Sexual Assault (CSA) Study*.

¹⁰ *Ibid*.

¹¹ The Center on Violence Against Women & Children at the School of Social Work.

much less likely to step in and help. Programs like *Bringing in the Bystander*¹⁵ work to change those perspectives – and teach men (and women) to speak out against rape myths (e.g., women who drink at parties are “asking for it”) and to intervene if someone is at risk of being assaulted.

- **To help enlist men as allies, we are releasing a Public Service Announcement featuring President Obama, Vice President Biden, and celebrity actors**. The message of the PSA is simple: if she doesn’t consent – or can’t consent – it’s a crime. And if you see it happening, help her, don’t blame her, speak up. We particularly urge men’s groups, Greek organizations, coaches, alumni associations, school officials and other leaders to use the PSA to start campus conversations about sexual assault.
- **To help keep these conversations going, we are providing a basic factsheet on bystander intervention**. In addition to the CDC summary, this document identifies the messages and skills that effective programs impart, describes the various ways to get the word out (in-person workshops, social marketing campaigns, online training, interactive theater) and provides links to some of the more promising programs out there.
- **Developing new prevention strategies.** More research is needed to develop and evaluate evidence-based programming to prevent sexual violence on campus. And so:
 - In Fall 2014, the CDC, in collaboration with the Justice Department’s Office on Violence Against Women and the Department of Education, will convene a panel of experts to identify emerging, promising practices to prevent sexual assault on campus. CDC will then convene pilot teams to put the consensus recommendations into practice.
 - The Justice Department’s Office on Violence Against Women (OVW) is developing a multi-year initiative on campus sexual assault which, among other things, will test and evaluate prevention programs used by its campus grantees. Grantees will work with OVW and technical assistance experts to meet core standards and evaluate the results. The next group of campus grantees will be selected by October 2014.
 - In 2015, the CDC will solicit proposals to identify, and fill, gaps in the research on sexual violence prevention.

¹⁵ Banyard, V. L., Moynihan, M. M., & Plante, E. G. (2007). Sexual violence prevention through bystander education: An experimental evaluation. *Journal of Community Psychology*, 35, 463-481

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III. Responding Effectively When a Student is Sexually Assaulted

Sexual assault is a crime – and while some survivors turn to the criminal justice system, others look to their schools for help or recourse. Under federal law, when a school knows or reasonably should know that one of its students has been sexually assaulted, it is obligated to act. These two systems serve different (though often overlapping) goals. The principal aim of the criminal system is to adjudicate a defendant’s guilt and serve justice. A school’s responsibility is broader: it is charged with providing a safe learning environment for all its students – and to give survivors the help they need to reclaim their educations. And that can mean a number of things – from giving a victim a confidential place to turn for advice and support, to effectively investigating and finding out what happened, to sanctioning the perpetrator, to doing everything we can to help a survivor recover. The Task Force is taking the following steps:

Giving Survivors More Control: Reporting and Confidentially Disclosing What Happened

Sexual assault survivors respond in different ways. Some are ready to make a formal complaint right away, and want their school to move swiftly to hold the perpetrator accountable.

Others, however, aren’t so sure. Sexual assault can leave victims feeling powerless – and they need support from the beginning to regain a sense of control. Some, at least at first, don’t want their assailant (or the assailant’s friends, classmates, teammates or club members) to know they’ve reported what happened. But they do want someone on campus to talk to – and many want to talk in confidence, so they can sort through their options at their own pace. If victims don’t have a confidential place to go, or think a school will launch a full-scale investigation against their wishes, many will stay silent.

In recent years, some schools have directed nearly all their employees (including those who typically offer confidential services, like rape crisis and women’s centers) to report all the details of an incident to school officials – which can mean that a survivor quickly loses control over what happens next. That practice, however well-intentioned, leaves survivors with fewer places to turn.

This is, by far, the problem we heard most about in our listening sessions. To help solve it:

- **Schools should identify trained, confidential victim advocates who can provide emergency and ongoing support.** This is a key “best practice.” The person a victim talks to first is often the most important. This person should understand the dynamics of sexual assault and the unique toll it can take on self-blaming or traumatized victims. The advocate should also be able to help get a victim needed resources and accommodations, explain how the school’s grievance and disciplinary system works, and help navigate the process. As many advocates have learned over the years, after survivors receive initial, confidential support, they often decide to proceed with a formal complaint or cooperate in an investigation.

Title IX coordinator (recognizing that there may be various appropriate models for different schools); and the proper immediate, interim and long-term measures a school should take on behalf of survivors, whether or not they seek a full investigation.

Training for School Officials

Sexual assault can be hard to understand. Some common victim responses (like not physically resisting or yelling for help) may seem counter-intuitive to those unfamiliar with sexual victimization. New research has also found that the trauma associated with rape or sexual assault can interfere with parts of the brain that control memory – and, as a result, a victim may have impaired verbal skills, short term memory loss, memory fragmentation, and delayed recall.¹⁶ This can make understanding what happened challenging.

Personal biases also come into play. Insensitive or judgmental comments – or questions that focus on a victim's behavior (e.g., what she was wearing, her prior sexual history) rather than on the alleged perpetrator's – can compound a victim's distress.

Specialized training, thus, is crucial. School officials and investigators need to understand how sexual assault occurs, how it's perpetrated, and how victims might naturally respond both during and after an assault. To help:

- **By September 2014, the Justice Department's Center for Campus Public Safety will develop a training program for campus officials involved in investigating and adjudicating sexual assault cases.** The Clery Act requires these officials to receive annual training on sexual assault (and also on domestic violence, dating violence and stalking). The Center will develop a trauma-informed training program consistent with the new requirements.
- **By June 2014, the Justice Department's Office on Violence Against Women will launch a comprehensive online technical assistance project for campus officials.** Key topics will include victim services, coordinated community responses, alcohol and drug-facilitated sexual assaults, and Clery Act compliance. Webinars and materials will include the latest research, promising practices, training opportunities, policy updates, prevention programming, and recent publications. The project will feature strategies and training materials for campus and local law enforcement.
- **By December 2014, the Department of Education, through the National Center on Safe and Supportive Learning Environments, will develop trauma-informed training materials for campus health center staff.** Often, campus health centers are the first responders for victims of sexual assault. Services will vary according to the

¹⁶ Bremner, J.D., Elzinga, B., Schmah, C., & Vermetten, E. (2008). Structural and functional plasticity of the human brain in posttraumatic stress disorder. *Progress in Brain Research*, 167(1), 171-186; Nixon, R. D., Nishith, P., & Resick, P. A. (2004). The Accumulative Effect of Trauma Exposure on Short-Term and Delayed Verbal Memory in a Treatment-Seeking Sample of Female Rape Victims. *Journal of Traumatic Stress*, 17(1), 31-35.

school's resources, but all staff should be trained on trauma-informed care – and these materials will help.

New Investigative and Adjudicative Protocols: Better Holding Offenders Accountable

Separate and apart from training, we also need to know more about what investigative and adjudicative *systems* work best on campus: that is, who should gather the evidence; who should make the determination whether a sexual assault occurred; who should decide the sanction; and what an appeals process, if the school has one, should look like.

Schools are experimenting with new ideas. Some are adopting different variations on the “single investigator” model, where a trained investigator or investigators interview the complainant and alleged perpetrator, gather any physical evidence, interview available witnesses – and then either render a finding, present a recommendation, or even work out an acceptance-of-responsibility agreement with the offender. These models stand in contrast to the more traditional system, where a college hearing or judicial board hears a case (sometimes tracking the adversarial, evidence-gathering criminal justice model), makes a finding, and decides the sanction.

Preliminary reports from the field suggest that these innovative models, in which college judicial boards play a much more limited role, encourage reporting and bolster trust in the process, while at the same time safeguarding an alleged perpetrator's right to notice and to be heard. To evaluate these ideas:

- **By October 2014, the Justice Department's Office on Violence Against Women and National Institute of Justice will begin assessing models for investigating and adjudicating campus sexual assault cases, and identify promising practices.** OVW will also further test and evaluate these models through its campus grantees – which will be selected by October 2014.
- **On April 29, 2014, the Justice Department's SMART Office will release a solicitation for a pilot sex offender treatment program targeting college perpetrators.** Research suggests that treatment can be effective in reducing recidivism among offenders, yet no programs currently exist for the college population. Regardless of campus-imposed sanctions, we need to help reduce the risk that young perpetrators will offend again. This first-of-its kind pilot project holds out new hope for reducing sexual violence on campuses.

Providing Comprehensive Support: Partnering with the Community

Rape Crisis Centers. Sexual assault survivors often need a variety of services, both immediate and long-term, to help them regain a sense of control and safety. While some schools may be able to provide comprehensive trauma-informed services on campus, others may need to partner with community-based organizations.

Regardless of where they are provided, certain key elements should be part of a comprehensive victim-services plan. Because students can be assaulted at all hours of the day or night, crisis intervention services should be available 24 hours a day, too. Survivors also need advocates who can accompany them to medical and legal appointments. And because, for some survivors, the road to recovery is neither short nor easy, longer-term clinical therapies can be crucial.

Rape crisis centers can help schools better serve their students. These centers often provide crisis intervention, 24-hour services, longer-term therapy, support groups, accompaniment to appointments, and community education. Rape crisis centers can also help schools train students and employees and assist in developing prevention programs. And so:

- **To help schools build these partnerships, we are providing a sample Memorandum of Understanding (MOU) with a local rape crisis center.** Schools can adapt this MOU depending on their specific needs and the capacity of a local center.
- **To help schools develop or strengthen on-campus programs, we are also providing a summary of promising practices in victim services.** This guide reviews the existing research on sexual assault services and outlines the elements of an effective victim services program.
- **To assist Tribal Colleges and Universities (TCUs) with victim services, the Justice Department's Office on Violence Against Women will continue to prioritize TCUs in its campus grant program solicitations.** OVW is working to raise awareness of funding opportunities by engaging with leading tribal organizations and partnering with the White House Initiative on American Indian and Alaska Native Education. OVW will also work with tribal domestic violence and sexual assault coalitions to provide TCUs with technical assistance on victim services.

Local Law Enforcement. At first blush, many may ask why all cases of sexual assault are not referred to the local prosecutor for criminal prosecution. Some, of course, are – but for many survivors, the criminal process simply does not provide the services and assistance they need to get on with their lives or to get their educations back on track. There are times, however, when the local police and a school may be simultaneously pursuing a case. A criminal investigation does not relieve a school of its independent obligation to conduct its own investigation – nor may a school wait for a criminal case to conclude to proceed. Cooperation in these situations, thus, is critical. So:

- **By June 2014, we will provide schools with a sample Memorandum of Understanding (MOU) with local law enforcement.** An MOU can help open lines of communication and increase coordination among campus security, local law enforcement and other community groups that provide victim services. An MOU can also improve security on and around campus, make investigations and prosecutions more efficient, and increase officers' understanding of the unique needs of sexual assault victims.

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Developing a Research Collaborative: Enlisting School Researchers to Find New Solutions

Many schools have research institutes that can measurably improve our thinking about sexual assault. Schools are uniquely suited to identify gaps in the research and develop methods to address them. To lead by example, three universities have committed to developing research projects that will better inform their response to the problem and contribute to the national body of work on campus sexual assault:

- The Johns Hopkins University School of Nursing will study sexual assault among student intimate partners, including LGBTQ relationships.
- The University of Texas at Austin School of Social Work will develop and evaluate training for campus law enforcement and examine the effectiveness of Sexual Assault Response Teams.
- The University of New Hampshire Prevention Innovations Center will design and evaluate a training program for incoming students on sexual assault policies and expectations for student conduct.

We invite others to join this collaborative – and to add their own research brains and resources toward finding solutions.

IV. Improving the Federal Government's Enforcement Efforts, and Making Them More Transparent

The federal government plays an important role in combatting sexual violence. And as we outlined in our recent report, "[Rape and Sexual Assault: A Renewed Call to Action](#)," this Administration has taken aggressive action on many fronts.

We need to build on these efforts. To better address sexual assault at our nation's schools, we need to both strengthen our enforcement efforts and increase coordination among responsible federal agencies. Also, and importantly, we need to improve our communication with students, parents, school administrators, faculty, and the public, by making our efforts more transparent.

Some Background on the Laws

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, requires schools that receive federal financial assistance to take necessary steps to prevent sexual assault on their campuses, and to respond promptly and effectively when an assault is reported. Title IV of the 1964 Civil Rights Act, 42 U.S.C. § 2000c *et seq.*, also requires public schools to respond to sexual assaults committed against their students. The Clery Act requires colleges and

universities that participate in federal financial aid programs to report annual statistics on crime, including sexual assault and rape, on or near their campuses, and to develop and disseminate prevention policies.¹⁷

The Department of Education's Office for Civil Rights (OCR) is charged with administrative enforcement of Title IX in schools receiving financial assistance from the Department. OCR may initiate an investigation either proactively or in response to a formal complaint. If OCR finds a Title IX violation, the school risks losing federal funds. In these cases, OCR must first seek to voluntarily resolve the non-compliance before terminating funds. Through this voluntary resolution process, OCR has entered into agreements that require schools to take a number of comprehensive steps to remedy the problem on their campuses.

The Department of Education's Federal Student Aid (FSA) office is responsible for enforcing the Clery Act, and conducts on-site reviews to ensure compliance. If a school is found to have violated Clery, FSA directs it to take steps to comply and can impose fines for violations.

The Justice Department (DOJ) is responsible for coordinating enforcement of Title IX across all federal agencies. DOJ shares authority with OCR for enforcing Title IX, and may initiate an investigation or compliance review of schools receiving DOJ financial assistance. If schools are found to violate Title IX and a voluntary resolution cannot be reached, DOJ can initiate litigation, including upon referral from other federal agencies, or seek to terminate DOJ funds. DOJ is also responsible for enforcing Title IV. DOJ can use its authority under Title IV, Title IX, and other federal civil rights statutes to bring all facets of a school, including its campus police, and local police departments into compliance with the law. DOJ can also intervene, file amicus briefs, and/or file statements of interest in court cases involving these statutes.

Improving Transparency and Information-sharing

The Administration is committed to making our enforcement efforts more transparent, and getting schools and students more resources. And so:

- **The Task Force is launching a dedicated website – NotAlone.gov – to make enforcement data public and to make other resources accessible to students and schools.** Although many tools and resources exist, students and schools often haven't been able to access them – either because the materials haven't been widely available or because they are too hard to find. Today, we are changing that.

Our new website will give students a clear explanation of their rights under Title IX and Title IV, along with a simple description of how to file a complaint with OCR and DOJ and what they should expect throughout the process. It will help students wade through often complicated legal definitions and concepts, and point them toward people who can give them confidential advice – and those who can't.

¹⁷ Other laws also authorize the Justice Department to investigate campus sexual assaults and help campus police as well as local, tribal and state law enforcement adopt comprehensive policies and practices to address the problem. These include the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141; and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d.

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The website will also put in one central place OCR resolution letters and agreements (except those that raise individual privacy concerns), and all DOJ federal court filings, including complaints, motions, and briefs, consent decrees, and out-of-court agreements (which are also available on DOJ's website). These documents will be posted as a matter of course, so students, school officials, and other stakeholders can easily access the most current agreements.

The website will also contain the relevant guidance on a school's federal obligations, best available evidence and research on prevention programs, and sample policies and model agreements.

Finally, the website will have trustworthy resources from outside the government – like hotline numbers and mental health services locatable by simply typing in a zip code. It will also have a list of resources broken down by issue – like advocacy/survivor services, student groups, or LGBTQ resources – so someone can find more issue-specific information.

- **The Task Force will continue to work with developers and advocates to find ways that tech innovations can help end the violence.** On April 11, more than 60 innovators, technologists, students, policy experts, and survivors of sexual assault gathered at the White House for a “Data Jam” to brainstorm new ways to use technology to shed light on campus sexual assault and better support survivors.
- **Federal agencies are making datasets relevant to sexual assault readily available.** In keeping with the Administration's open data pledge, federal agencies, including the Departments of Education, Justice, Interior, and Health & Human Services have made public more than 100 datasets related to sexual assault and higher education. These datasets include survey results related to sexual violence, program evaluations, and guidance documents. This data is posted on data.gov.
- **The Department of Education is taking additional steps to make its activities more transparent.** As noted, OCR is posting nearly all recent resolution letters and agreements with schools on its website. OCR will also make public the schools that are under OCR investigation, including those that involve Title IX sexual violence allegations. This information will be made available by contacting the Department of Education.
- **The Department of Education will collect and disseminate a list of Title IX coordinators by next year.** Every school must designate at least one employee to coordinate its efforts to carry out its Title IX responsibilities. Although schools must notify students of the name and contact information of the Title IX coordinator, there is no central, national repository of coordinator contact information. The Department of Education's Office of Postsecondary Education and OCR will collect and disseminate the list of higher education Title IX coordinators annually so anyone can easily locate a coordinator. This information will also encourage coordinators to talk to each other and share positive practices to Title IX compliance.

Improving Our Enforcement Efforts

The Administration is also committed to improving, and better coordinating, our enforcement efforts. And so:

- **The Department of Education is providing more clarity on schools' obligations under Title IX.** In April 2011, OCR issued groundbreaking guidance to schools on their obligations to prevent and respond to sexual violence under Title IX. Since then, schools and students have asked for further guidance and clarity – and, today, OCR is issuing its answers to these frequently asked questions.

Among many other topics, this new guidance clarifies that:

- Title IX protects all students, regardless of their sexual orientation or gender identity, immigration status, or whether they have a disability;
- non-professional on-campus counselors and advocates – like those who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women's centers and health centers – can generally talk to a survivor in confidence;
- questioning or evidence about the survivor's sexual history with anyone other than the alleged perpetrator should not be permitted during a judicial hearing;
- adjudicators should know that the mere fact of a previous consensual dating or sexual relationship does not itself imply consent or preclude a finding of sexual violence; and
- the parties should not be allowed to personally cross-examine each other.

The Q&A also discusses (again, among many other topics) college employees' reporting obligations; the role of the Title IX coordinator; how a school should conduct investigations; and Title IX training, education and prevention.

- **The Department of Education is strengthening its enforcement procedures.** OCR has made changes to its enforcement procedures.¹⁸

Among other things, OCR is instituting time limits for negotiating voluntary resolution agreements. By law, OCR is required to pursue a voluntary resolution with a school before initiating an enforcement action. Although this process is usually much faster than litigation, it can also take time and, as a result, be frustrating for survivors who typically remain on campus or enrolled in school for a limited time. To help guard against the risk that a school may extend negotiations to delay enforcement, OCR is placing a 90-day limit on voluntary resolution agreement negotiations where it has found a school in violation of Title IX.

OCR's procedures also now make explicit that schools should provide survivors with interim relief – such as changing housing or class schedules, issuing no-contact orders, or providing counseling – pending the outcome of an OCR investigation. OCR will also be

¹⁸ See <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

more visible on campus and reach out to more students and school officials during its investigations, in order to get a fuller picture as to whether or not there is a problem on campus.

- **The Department of Education is also clarifying how key federal laws intersect.** In addition to Title IX and the Clery Act, the Family Educational Rights and Privacy Act (FERPA),¹⁹ which protects the privacy of student education records, can also come into play in campus sexual violence investigations. In response to requests for guidance, the Department of Education has created a chart outlining a school's reporting obligations under Title IX and the Clery Act, and how each intersects with FERPA. The chart shows that although the requirements of Title IX and the Clery Act may differ in some ways, they don't conflict.
- **The Departments of Education and Justice have entered into an agreement clarifying each agency's role vis-à-vis Title IX.** OCR and the Justice Department's Civil Rights Division (CRT) both enforce Title IX. To increase coordination and strengthen enforcement, the agencies have entered into a formal memorandum of understanding.²⁰
- **The Department of Education offices responsible for Title IX and Clery Act enforcement have also entered into an agreement clarifying their respective roles.** As noted, the Federal Student Aid (FSA) office is responsible for Clery Act compliance, whereas OCR enforces Title IX. Sometimes, their efforts overlap. To clarify their roles and increase efficiency, FSA and OCR have formalized an agreement to ensure more efficient and effective handling of complaints and to facilitate information sharing.

Next Steps

The action steps and recommendations highlighted in this report are the initial phase of an ongoing plan. The Task Force is mindful, for instance, of the continuing challenges schools face in meeting Title IX and Clery Act requirements. We will continue to work toward solutions, clarity, and better coordination. We will also review the various laws and regulations that address sexual violence for possible regulatory or statutory improvements, and seek new resources to enhance enforcement. Also, campus law enforcement officials have special expertise – and they should be tapped to play a more central role. We will also consider how our recommendations apply to public elementary and secondary schools – and what more we can do to help there.

Our work continues.

¹⁹ 20 U.S.C. § 1232g; 34 C.F.R. Part 99.

²⁰ See http://www.justice.gov/crt/about/cor/ED_DOJ_MOU_TitleIX-04-29-2014.pdf.

09/15/2015

***EQUITY IS SUCH
A LONELY WORD***

**THE 2014 WHITEPAPER
Co-Published By
The NCHERM Group, LLC
and ATIXA**

Written by:

**W. Scott Lewis, J.D.
Saundra K. Schuster, J.D.
Brett A. Sokolow, J.D.
Daniel C. Swinton, J.D., Ed.D.**

www.ncherms.org

www.atixa.org

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09/15/2015

ABOUT The NCHERM Group, LLC & ATIXA

- The NCHERM Group, LLC is a law and consulting firm dedicated to systems-level solutions for safer schools and campuses. The NCHERM Group, LLC represents 50 colleges and universities as outside counsel and deploys twenty-four consultants to higher education on a wide range of risk management topics.
- ATIXA, the Association of Title IX Administrators, is a membership association and leading source of expertise and professional development on Title IX for school and college officials with over 1,300 active members. ATIXA has certified more than 3,000 school and campus Title IX Coordinators and Investigators through its comprehensive training programs.

THE FOURTEENTH NCHERM WHITEPAPER

Every year since The NCHERM Group, LLC was founded, we have published an annual Whitepaper on a topic of special relevance to college administrators and attorneys.

- In 2001, NCHERM published *Sexual Assault, Sexual Harassment and Title IX: Managing the Risk on Campus*.
- In 2002, NCHERM published *Complying With the Clery Act: The Advanced Course*.
- In 2003, the Whitepaper was titled *It's Not That We Don't Know How to Think—It's That We Lack Dialectical Skills*.
- For 2004, the Whitepaper focused on *Crafting a Code of Conduct for the 21st Century College*.
- Our 2005 topic was *The Typology of Campus Sexual Misconduct Complaints*.
- In 2006, the Whitepaper was entitled *Our Duty OF Care is a Duty TO Care*.
- The 2007 Whitepaper was entitled, *Some Kind of Hearing*.
- In 2008, NCHERM published *Risk Mitigation Through the NCHERM Behavioral Intervention and Threat Assessment (CUBIT) Model*.
- For 2009, NCHERM published *The NCHERM/NaBITA Threat Assessment Tool*.
- In 2010, our 10th Anniversary Whitepaper was entitled *Gamechangers: Reshaping Campus Sexual Misconduct Through Litigation*.
- In 2011, NCHERM published *Deliberately Indifferent: Crafting Equitable and Effective Remedial Processes to Address Campus Sexual Violence*.
- For 2012, the topic of the NCHERM Whitepaper was *Suicidal Students, BITs and the Direct Threat Standard*.
- For 2013, we offered a top ten list, *The Top Ten Things We Need to Know About Title IX... That the DCL Didn't Tell Us*.

For 2014, the topic we have chosen is, *"Equity is Such a Lonely Word."*

Equity Is Such a Lonely Word

If you've figured out that the title of this year's Whitepaper is a riff on the Billy Joel song, "Honesty," you're officially old. Meaning, you have the wisdom of the ages, of course. And, that's a good thing, because navigating Title IX compliance has come to require the wisdom of Solomon. On our campuses, equity is the lonely word because it is so commonly misunderstood and misapplied. Think of the chorus to the song, adapted to suit our title:

Equity is such a lonely word
Everyone is so untrue
Equity is hardly ever heard
And mostly what I need from you¹

If your campus is untrue in its treatment of equity, this Whitepaper will be a practical guide to realizing full equity. We may give lip service on our campuses to being communities of inclusion, diversity and social justice, but without real equity, we don't walk our talk. If your campus is not equitable it may be because:

- You think equality is the same as equity
- You've built your investigation and resolution mechanisms into castles of due process
- Institutional policies and procedures are constituency-based, thereby privileging certain constituencies (faculty, staff, students) more than others
- Procedures to remedy different forms of discrimination are widely disparate from each other
- Your resolution processes are equitable, but your remedies are not
- Your remedies are equitable, but your resolution procedures are not
- Victims' rights are an afterthought
- You impose contact restrictions on victims that are too broad or punitive
- You think equity should only apply to issues of sexual violence
- On your campus, only the respondent is entitled to participate in an appeal, grievance, tenure revocation hearing or arbitration of a disciplinary action
- Your inability to revoke tenure within 60 days perpetuates discriminatory conduct
- Your resolution procedures don't recognize patterns and prior misconduct as evidence of present misconduct
- State laws or education codes inhibit Title IX compliance, and haven't been updated since the April 2011 DCL

Equity Defined

Equity should not be confused with equality or being equal, though we often see the two confused. Most often, we see the concept of equity applied in our society to Courts of Equity,

¹ "Honesty" by Billy Joel: "Honesty is such a lonely word, Everyone is so untrue, Honesty is hardly ever heard, And mostly what I need from you."

whose mission is fairness. Courts of Equity look to make someone whole again when they have faced a deprivation of some kind. Equity encompasses fairness, justice and most precisely, fairness under the circumstances. Fairness under the circumstances is intended to make someone whole, in this context when sex or gender is the basis for some form of deprivation or discrimination. Equality is defined as "the quality or state of being equal,"² or "the quality or state of being [the same for each person]."³ Certainly equality is one potential path to equity, but not the only one. You can also be equally inequitable. For our purposes, equity can mean access, it can mean equal opportunity, it can mean advantage, and it can mean reparation. An example can illustrate the larger concept of equity.

When the Founding Fathers crafted the Constitution, they decided to count each Black person as 3/5 of a person.⁴ Slavery and the 3/5ths compromise institutionalized inequity and inequality as the law of the land. When slavery ended, and emancipation came, Black people acquired greater freedoms, but not equity. Maybe 4/5ths? It was not until various civil rights acts were enacted and enforced that Black people acquired "equal" - 5/5ths status - legally. But, equity was still not achieved with 5/5ths (equality was). A Black American was legally equal to a White American, but history had created two Americas. Equity required not equality, but advantage, to attempt to right historically-derived oppression. Thus, racial preferences and Affirmative Action gave some African Americans the opportunity of 6/5ths (legally, though we know the result did not fully achieve the legal goal) as a way to achieve wholeness through equity, when equality was not enough.

Under Title IX, the mandate for institutions is for gender/sex equity, not equality. This Whitepaper will examine and propose means for achieving the requisite equity in institutional policies, procedures and practices. For those steeped in the due process-based adversarial model - that focused almost exclusively on the rights of the accused - shifting to or creating an equitable process may sound or feel victim-centered, but that is because the process on many campuses for so many years considered only (or primarily) the rights and situation of the accused. Thus, equity ends up feeling like a shift to victim's rights, even though it is not. Ultimately, the pendulum should shift to the middle, rather than to either party, but because victims have been historically been accorded 3/5 of the rights of an accused individual (or less), and victims are typically women, equity may require institutions to recalibrate the pendulum to right the historical imbalance. An equitable process on many campuses will force a victim focus, but only as a casualty of history. Let us explain.

² <http://www.merriam-webster.com/dictionary/equality>

³ See *Id.* and <http://www.merriam-webster.com/dictionary/equal>

⁴ This compromise, widely cited today as an institutionalization of inequity, was in its historical context not what it may seem. Free states did not want to count black slaves at all for the purposes of population. Slave states wanted full counting of slaves to get greater representation in the House of Representatives and Electoral College. 3/5 was the compromise, but counting a slave as a full human would actually have helped the slave-state cause and would have continued to perpetuate the institution of slavery. Special thanks to colleague Charles Schnur for the edifying history lesson on this point.

Creating (and De-constructing) Castles of Due Process

In February 1960, six African American students at Alabama State College were expelled after a sit-in at a public lunch counter in the basement of the Montgomery County Courthouse. The students were arrested for civil disobedience and Alabama State summarily expelled them from school. Their offense was to join the civil rights movement and to participate in peaceful non-violent protests against segregation. The students received no notice of the charges and no opportunity to present their story or provide Alabama State with evidence or witnesses of any kind. The expelled students filed a federal lawsuit against Alabama State, arguing a breach of basic due process – fairness. In Dixon v. Alabama State Board of Education⁵, the Fifth Circuit Federal Court of Appeals found in favor of the expelled students, holding that public institutions must provide students facing expulsion with at least notice of the charges and an opportunity to be heard. Stated differently, the Dixon court laid the foundation for what have become castles of due process on our campuses, built to protect accused students, by creating the minimum legal standards applicable to a public institution wishing to expel its students.

The Dixon decision also gave birth to the field of campus judicial affairs (now typically known as student conduct administration), which became tasked with upholding the now-legally required banner of due process. Indeed, Dixon ushered in what we call the “due process era for campus discipline.” Dixon exemplified arbitrary campus action against accused students, ultimately giving directionality to the focus of the due process era. For the next four decades, the focus for the courts as well as institutions became the rights of the accused and the need to protect the accused from arbitrary campus action. Subsequent court decisions added to and embellished the rights conferred by Dixon.

In reaction, colleges and universities began constructing castles of due process, often looking to criminal courts as analogous processes for what due process was supposed to look like. Judicial affairs policies and procedures expanded rampart-style around the due process castle to “protect” the accused. It didn’t take long for due process to morph from the minimal protections of Dixon to a sentiment from administrators that “we should” provide protections beyond what the courts required. Then began the voluntary expansion, as we added a moat, a drawbridge, keeps, and even crenellations to our castles. Legalisms came to rule the day. An opportunity to be heard became a hearing. A hearing became a panel. A panel acquired a chair. The panel afforded presumptions of innocence, rights to attorneys, rights to remain silent. Rights, rights, rights. But, we forgot about victims along the way. This is ironic, given that the students in Dixon were victims, and it is only the procedural posturing of Dixon that resulted in a recognition of their rights as accused students, rather than as victims.

The due process castle therefore protected only some students, leaving many of the most vulnerable unprotected. As we noted three years ago, “The casualty of history here is that while the student conduct field was birthed from the civil rights movement, the evolution of the case

⁵ 294 F. 2d 150 (5th Cir. 1961).

law that sprang from Dixon has allowed us to be myopic.”⁶ Ironically, Dixon - a case that began with a handful of students seeking equity on the basis of race - set in motion a castle construction project that today hinders and inhibits our ability to provide for equity by and through the conduct process.⁷ If most of us started our careers in judicial affairs during the era of due process, we’ll retire from our positions in student conduct during the equity era.

Major Construction – The Judicial Board

One of the primary components of our castles of due process is the Judicial Board.⁸ Indeed, to combat the oft-arbitrary decision-making of a single campus administrator as seen in Dixon, colleges and universities constructed jury-like “Judicial Boards” comprised of some combination of students, faculty and/or staff, with a Judicial Board Chair acting in a role similar to that of a judge in a jury trial. The Judicial Board renders findings of guilt on the basis of evidence presented at a hearing; often Judicial Affairs personnel, who in some cases serve in a quasi-prosecutorial role, present the evidence.

The Judicial Board gained traction following Dixon and really picked up steam following the U.S. Supreme Court’s declaration in Goss v. Lopez⁹ that students accused of violating institutional policies should be “given some kind of notice and afforded some kind of hearing.”¹⁰ While the structure, form and nature of this hearing have been largely left up to institutions, most have gravitated toward creation of some form of Judicial Board. Over time, the use of a Judicial Board became synonymous with fulfilling the Dixon and Goss requirements.

Judicial Boards had and have their place, but acquired a thoughtless inertia that is problematic today. Had there been a hearing in the Dixon case or the Goss case, it would likely have been one in which the institution and the accused students were the only parties. Adversarialism requires a two-party system, and these early cases were one-party cases. Alcohol violations, vandalism, arson, and other one-party cases work well with Judicial Boards, but then Judicial Affairs started to take on cases of hazing, fighting, sexual violence and other forms of interpersonal conflict. We applied the model we had. After all, we had built a castle out of it. We began to apply the Judicial Board to resolution of interpersonal disputes, and that is when the due process model took on the adversarialism it is known for today. In a two-party system, the complainant and the respondent make their cases, with the Judicial Board as referee. No

⁶ NCHERM 2011 Whitepaper, “Deliberately Indifferent”. Available at:

<http://ncherm.org/documents/2011NCHERMWHITEPAPERDELIBERATELYINDIFFERENTFINAL.pdf>

⁷ For example, the U.S. Department of Education and the U.S. Department of Justice recently criticized the University of Montana’s student conduct process as focusing only “one the perpetrator, his or her due process rights, and resolving possible violations of the SCC” such that the process “does not adequately address the Title IX rights of the victim.” See U.S. Department of Education: Office for Civil Rights & U.S. Department of Justice: Civil Rights Division (May 9, 2013). *Investigation Report: University of Montana, Missoula*. Submitted to President Royce Engstrom and Lucy France. p. 13.

⁸ Though more often referred to now in less criminalistics terms such as “Hearing Boards” or “Hearing Panels,” their function and construction remain fairly unchanged.

⁹ 419 U.S. 565 (1975).

¹⁰ *Id.* at p. 579.

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one stopped to ask the question whether two-party cases should be handled the same as single-party cases. Had we been more thoughtful about it then, many of us would acknowledge it was an error, and that a better model was possible. No one asked whether Dixon and Goss should apply to two-party cases, we just kept building the castle.

While some defend Judicial Boards as the most impartial means of complaint resolution, Judicial Boards are not, by their nature, equitable. As a field, student affairs has placed window dressing on many quasi-judicial processes, referring to judicial affairs officers with a much improved term, "student conduct administrators." We have substituted the term "Hearing Panel" or "Hearing Board" in place of "Judicial Board" and render findings of "responsibility" rather than "guilty," but the core functioning of such boards remains largely unchanged.¹¹ Much like calling dorms "residence halls," changing the label improves and better reflects the nature and function of the facility, but it ultimately remains a dorm. Why, then, are we using an inequitable form of resolution to address violations whose very nature demands an equitable process?

We have assisted hundreds of colleges and universities with hundreds of sexual violence cases. One of the problems we have seen repeatedly is that victims of sexual violence either do not report or do not want to pursue their allegation because they do not want to go through a Judicial Board hearing. They feel, appropriately so, that such a process is skewed towards the accused. Further, the last thing they want to do is tell a panel of students, faculty or staff about one of the most horrific experiences of their life. Also, victims do not want to sit in a room and answer questions posed directly or even indirectly by their attacker. These results are shown consistently, in climate surveys, over and over again across campuses.

Unfortunately, many campuses exacerbate the inequitable nature of hearing boards through poor or limited training, reliance on the judicial board as investigators rather than simply as finders of fact, allowing an accused to directly question the accuser and relegating the victim to the position of being a witness, rather than a complainant.

Recognizing these inherent and other inequities in conduct processes, institutions are making accommodations to give the victim some empowerment – such as using privacy screens, allowing a victim to testify remotely, and refusing to allow direct cross-examination by the accused. Such approaches make the campus judicial process slightly less onerous and intimidating, but accommodations cannot create equity out of an inherently adversarial process. Why should we continue to make elaborate accommodations to an inherently flawed process when we can reach fair, impartial and equitable resolutions through a more appropriate, civil rights model designed for equity? An analogy we commonly make in training is that we can make a car float if we need to, but if there's a boat around, isn't that the preferred tool for the task? We've been retrofitting cars, hoping they will float our boat.

¹¹ It should be noted that all of the authors are big supporters of the student conduct profession and the dedicated professionals who fill these roles.

Indeed, sexual violence, sexual harassment and sex/gender discrimination resolution processes should reflect the civil-rights based nature of these actions. By definition, a conduct process is not designed to make a victim whole again. It is designed to impose discipline via due process of law. We encourage institutions to supplant inherently inequitable existing castles with a civil rights investigation and resolution model. Who really needs a castle anymore when everyone is downsizing these days?

The Civil Rights Investigation Model

Institutions need not go far to find such a process, as many already use a form of this model for employee discrimination complaints, particularly for issues involving Title VII.¹² A typical civil rights investigation model consists of an investigator or investigators performing a prompt, thorough and impartial investigation once the institution receives actual or constructive notice of an alleged violation. The investigator interviews the complainant and the respondent as well as all witnesses and, once the investigator feels they have gathered all available evidence, compiles an investigation report summarizing their investigation as well as the evidence provided by the parties and witnesses. The investigator then reviews relevant portions of their summary with all witnesses including the parties, to ensure the report constitutes a full and accurate report. The investigator then finalizes the report and forwards it to the relevant department for a finding, responsive actions and remedies.

In a pure civil rights investigation model, the investigator also renders a finding, meaning they make a determination of responsibility pertaining to each of the alleged violations. The referring department typically determines sanctioning in a "pure" model (e.g.: Human Resources, Student Affairs, Academic Dean or Department Chair). Variations occur in a number of a hybrid approaches:

1. The investigator's report serves only as a summary of all available evidence and is forwarded to an administrator or a hearing panel for a determination of responsibility and sanctioning; or
2. The investigator and responsible administrator collaborate to reach a finding; or
3. The investigator recommends a finding and/or sanction to the responsible administrator or panel.

For human resources professionals, the civil rights investigation model is very familiar, but Title VII does not dictate the application of equity in the same way as Title IX. Thus, there is still a learning curve for human resources professionals who need to employ equitable resolution via a civil rights investigation. The model is far more foreign to other campus constituencies because the castles of due process have spawned separate disciplinary processes for students, faculty and staff. These distinct policies and procedures serve as complicating factors to adopting and implementing a civil rights investigation and resolution model. In fact, the

¹² See NCHERM 2007 Whitepaper, "...Some Kind of Hearing...". Available at: <http://ncher.org/pdfs/2007-whitepaper.pdf>

disparities across these constituent-based due process models create inherent equity issues on almost every campus, and speak to the benefit of unifying policy and procedure.

Scattered Policies and Procedures

Institutions have come by their scattered policies and procedures in organic, often reactionary fashion – creating new policies and procedures for specific constituencies based on lawsuits and court decisions, new or amended laws, regulations, and administrative guidance, as well as through collective bargaining. Such influences and requirements have, at varying times, focused only on a specific constituency (e.g.: tenured faculty, students, unions) creating a patchwork of policies and procedures across the institution. Additionally, the policies and processes for each constituency have matured at different times and relied on different laws and court cases, leaving institutions with kaleidoscopic policies and procedures. For many institutions and their constituents, this array of policies and procedures creates not just confusion and overlap but inequity for the parties involved.

In the most simplified sense, colleges and universities are comprised of two main constituencies: Employees and Students. In reality, institutions have dozens of constituencies, all of which are sub-categories of these two main groupings, many of which have differing policies and procedures pertaining to civil rights-based violations. Institutions are currently littered with constituency-based policies and procedures, many of which give little thought to equity between complainant and respondent, having developed primarily with protections solely for the accused in mind. Further, in the current structuring of many college and university processes addressing matters such as sexual harassment and sexual violence, a victim's rights in the process are dependent upon the identity of their attacker. This only further disempowers victims and sends the overt message that the accused's rights trump those of the accuser, creating a situation that is fundamentally inequitable.

A related wrinkle exposing deep-seeded strands of inequity arises with cross-constituency complaints, where the complainant and the respondent belong to different constituencies, as in the case of an employee-on-student complaint, or a student-on-faculty complaint. In such situations, the complainant is again beholden to the policies and procedures in place for the respondent's constituency group, which have not been intentionally designed to accommodate cross-constituency complaints, and for which specific training is rarely provided. As we noted in our 2013 Whitepaper:

Under student conduct policies revised in accordance with the [Dear Colleague Letter], a faculty accuser of a student has rights as a complainant in the student conduct process that they likely lack when accusing another faculty member of the very same misconduct. Compare your processes and ask why a faculty member should be more protected as an accused person in the faculty process than if they were a complainant in

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the student conduct process accusing a student? Such inequity defies logic and any reasonable justification.¹³

The April 2011 OCR Dear Colleague Letter¹⁴ (DCL) indicated that institutions should aim for a 60-day resolution from the time of receipt of notice through the completion of the investigation of the complaint. "Investigate" in OCR-language encompasses everything from notice through conclusion of the appeal, and they use that terminology because they see an investigation-based resolution as the best path to an equitable outcome. At many institutions, a tenured faculty member accused of sexual violence is subject to an accused-centric investigative and resolution process that that is likely to be complex, multi-layered, steeped in court-like due process rights and which confers multiple levels of appeal. The likelihood that it is resolved within 60 days is almost zero, leaving the complainant without resolution and full remedy for a period of time so excessive as to run afoul of the bounds of equity.

Title IX does not have a tenured faculty exception or exemption; institutions are under the obligation to investigate and resolve Title IX complaints within +/-60 days regardless of the identity of the complainant and the respondent. Simply allowing a complaint against a faculty member, by definition, to take longer to resolve than an identical complaint against a student is inequitable. Similarly, campuses that permit grievance processes face the same challenge. Those processes allow employees to grieve discipline by the institution. They are a form of appeal. They are inequitable as constructed, because they remove the complainant from any involvement in this "appeal" process. They are also inequitable if the complainant cannot also file a grievance, and inequitable if only employees can file grievances, and students cannot. Further, campuses where collective bargaining agreements permit employees to submit discipline decisions to binding arbitration foster yet another layer of appeal that fails to be equitable for all of the same reasons as cited with respect to grievance processes.

Failing to adjust and amend policies and procedures accordingly is therefore inequitable. The clearest and indeed the only equitable path for institutions, is to shift to a unified set of policies and procedures utilizing a civil rights investigation model.

¹³ NCHERM 2013 Whitepaper, "The Top Ten Things We Need to Know About Title IX ... That the DCL Didn't Tell Us", p.5. Available at: <http://www.ncher.org/wordpress/wp-content/uploads/2012/01/2013-NCHERM-Whitepaper-FINAL-1.18.13.pdf>

¹⁴ United States Department of Education, Office for Civil Rights. (2011). *April 4, 2011 "Dear Colleague Letter"*. Assistant Secretary for Education, Russlyn Ali, Washington, DC.

The Case for Unified Policies and Procedures¹⁵

In determining how and whether a campus incorporates the principles of equity into its policies, procedures and practices, campuses really have three potential avenues to explore.

The first is to maintain the legacy processes for students, faculty, and staff (collective bargaining units, etc.). As described above, this disparate kaleidoscope is historically accused-centric and riddled with inequities, unnecessary and inefficient duplications, disparate protections, and does nothing to solve the problems of cross-constituency complaints. Absent major and comprehensive adjustments, this avenue runs the risk of continued non-compliance with Title IX as well as the violating the principles of equity. Piecemeal adjustments of sufficient magnitude and scope to achieve equity are, in reality, unlikely because of the adversarial underpinnings of the resolution structures.

The second avenue is to take all of the resolution processes a campus utilizes and, while keeping them separate, move them to mostly align with each other and reflect similar rights, privileges, benefits and opportunities. This is a better approach than the first, but retains some of the inequity problems for matters such as cross-constituency complaints and effective oversight by the Title IX Coordinator. This avenue also maintains potentially disparate protections that can undermine equity based on vested interests (e.g., the faculty won't approve the change, and we can't change their processes unless they agree to the changes). This approach leaves institutions with three or more parallel processes to manage and oversee – processes distinguished only by the constituency of those involved – and only solves some of the problems raised by cross-constituency complaints.

The third avenue is to pursue a unified policy and process that governs all sex or gender discrimination complaints for all faculty, students and staff. In fact, the model we innovated¹⁶ allows resolution of all forms of discrimination using this approach, not just sex and gender. Frankly, equity applies to all discrimination, so using this approach only for sex and gender discrimination is a DCL-reactive decision. This unified approach supports the notion that the definitions of and procedures governing the violation of discrimination policies should not differ between constituent groups, rendering cross-constituency concerns inert. A unified policy addressing sexual misconduct and other forms of discrimination covers everyone with the same kind and degree of protection of their rights. Unification simplifies the investigation function and avoids duplicative training when there are multiple bodies all resolving the same kinds of

¹⁵ This section borrows directly and heavily from our 2013 Whitepaper, "The Top Ten Things We Need to Know About Title IX (That the DCL Didn't Tell Us)." We repeat much of this information because we feel it is central to achieving equity and we believe the field is more ready this year to accept the principles and reasoning behind unified policy and process to address all forms of civil rights based complaints. We have not cited directly to each segment pulled from the 2013 Whitepaper, as we found that the multitude of quotation marks and footnotes detracted from the flow of the paper. The 2013 Whitepaper can be accessed at:

<http://www.ncherp.org/wordpress/wp-content/uploads/2012/01/2013-NCHERM-Whitepaper-FINAL-1.18.13.pdf>

¹⁶ Contact Marianne Price at ATIXA for details on the "One Policy, One Process Model" (1P1P).

Marianne@atixa.org.

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complaints across the campus. Unification allows consistent sanctions and responsive actions for the same types of misconduct, whether a student, faculty or staff member commits the violation. Unification fosters collaboration across the departments that are stakeholders, including HR, student conduct, and academic affairs while retaining their needed voice in the resolution process. Critically, a unified process can also be essential to the detection and tracking of patterns of misconduct, to limit the frequency of repeat offenses that vex campuses. Each of these benefits supports what we are seeing as the expansion and empowerment of the Title IX Coordinator in the form of institutional equity officer.

The shift to unify policies and procedures across the institution is greatly supported by the central and crucial role played by the Title IX Coordinator. The role and function of the Title IX Coordinator at institutions requires a level of oversight pertaining to all Title IX-related policies and procedures. OCR's guidance has been quite clear: "The coordinator's responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints."¹⁷

Also making the case for a unified set of policies and procedures is the varied nature of Title IX related violations. The April 4, 2011 DCL commanded us to make processes related to sexual violence equitable, but that commandment applies to all behaviors covered by Title IX, not just sexual violence. It applies to sexual harassment, sex/gender-based stalking, relationship violence/Interpersonal violence, sex/gender-based bullying etc., when those behaviors have a discriminatory effect on the basis of sex/gender. Developing policies and procedures that apply equitable standards to resolve sex/gender-based hazing, but not other forms of hazing defies logic.

In its May 2013 Investigation Report pertaining to its Title IX and Title IV investigation of the University of Montana, the Department of Education's Office for Civil Rights (OCR) in conjunction with the Department of Justice (DOJ) expressed significant concern about the multitude of divergent, conflicting and duplicative Title IX-related policies and procedures.¹⁸ The Report noted that "the University has eight policies and procedures that explicitly or implicitly cover sexual harassment and sexual assault" and that "their sheer number and the lack of clear cross references among them leaves unclear which should be used to report sexual harassment or sexual assault and when circumstances support using one policy or procedure over another."¹⁹ OCR and DOJ noted that the multiple policies and procedures have "inconsistent and inadequate definitions of 'sexual harassment'"²⁰ that also lead to both "confusion about when and to whom to report sexual harassment"²¹ and "wide variation in who investigated and resolved complaints in sexual assault and harassment."²² As a solution,

¹⁷ April 4, 2011 DCL, p. 7.

¹⁸ Investigation Report: University of Montana, Missoula (May 9, 2013).

¹⁹ *Id.* at p. 7.

²⁰ *Id.* at p. 8.

²¹ *Id.*

²² *Id.* at p. 10.

OCR and DOJ called for clearer, more uniform policies and procedures that encourage reporting and focus on the hallmarks of Title IX compliance: prompt and equitable.

Addressing sex/gender-based violations through a different process is also complicated by the fact that often the sex/gender-based elements of a violation are not apparent at the time of the complaint. Accordingly, institutions find themselves halfway through an investigative process that is not Title IX compliant only to find that they have to backtrack and attempt to duct tape equity onto what has already been done. It is much better to have a unified, equitable set of policies and procedures from the start and then allow the investigation to unfold through a uniform process. In fact, the Developmental Model Code of Student Conduct²³ published by The NCHERM Group in 2013 moves so far toward equitable resolution that the model contemplates the use of the civil rights approach for all conduct violations, not just those that are discriminatory.

Remedies and Equity

One of the primary concepts in an equitable process is the provision of remedies. Remedies are primary instruments by which someone is made whole. An institution can have equitable policies and procedures, yet fall short of providing equitable remedies. The converse is also true: an institution can deploy equitable remedies, yet have policies and procedures that are not equitable. Procedural equity and outcome equity are both required.

Remedies take a number of forms and include interim measures, permanent measures, sanctions and directives. Informed by their castles of due process, institutions have historically implemented remedies inequitably. When approached by a complainant many institutions have, by default, inconvenienced the complainant, rather than the respondent. The due process logic is that one should not inconvenience the respondent or alter their schedule because there has not been any finding of misconduct. The agonizingly slow resolution of complaints has helped support this approach; if a complaint takes two months to resolve, institutions have felt they cannot inconvenience someone against whom an accusation has been made for so long. These approaches are antithetical to making someone whole again.

Often complainants are recipients of unnecessarily broad (and therefore potentially retaliatory) remedies such as a no contact directive. Certainly no contact directives are a valuable and oft-employed remedy, but this is one area where equity and equality are often improperly conflated, such that complainants and respondents are given identical directives and instructions. The DCL indicated that we must deconstruct part of the due process castle by more equitably employing remedies. Remedies are, by their nature, intended to restore the complainant to their pre-discrimination status. Yet directives and actions that unnecessarily restrict or amend the complainant's behavior, schedule, movement etc., fail to achieve this requisite intent.

²³ A Developmental Framework for a Code of Student Conduct: The NCHERM Group Model Code Project (2013). Available for free at www.modelcode.wikia.com

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Equity requires fairness under the circumstances, which can and often should lead institutions to create skewed remedies that place more restrictions and requirements on respondents. Equity demands that complainants should be inconvenienced only as far as absolutely required to remedy the discrimination. The U.S. Supreme Court basically said as much in Davis v. Monroe County Board of Education.²⁴ Our default should no longer be to automatically inconvenience the complainant; we should instead examine of the totality of the circumstances and find the most equitable remedies available.

Conclusion

Achieving sex and gender equity in education is more than an ephemeral goal; it is a mandate under Title IX. Unfortunately, the principles of equity are often missing in current campus complaint, investigation and resolution procedures as institutions have spent decades constructing accused-centric and constituency-based castles of due process. The result is a fractured kaleidoscope of policies and procedures addressing issues of discrimination and harassment. These scattered policies and procedures leave equity beyond the castle walls. There is a better way. It is time to rethink, recalibrate and restructure using the principles of equity – fairness under the circumstances – as a backdrop, and work towards one policy and one process to address all forms of discrimination in education. As we noted at the beginning, “Equity is hardly ever heard. And mostly what I need from you.”

²⁴ 526 U.S. 629 (1999).

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ABOUT THE AUTHORS

W. Scott Lewis, J.D. is a partner with The NCHERM Group, LLC and formerly served as the Assistant Vice Provost at the University of South Carolina. He is serving currently as the 2013-2014 president of NaBITA, the National Behavioral Intervention Team Association, an organization he co-founded. He also serves as an advisory board member and co-founder of ATIXA. Scott brings over twenty years of experience as a student affairs administrator, faculty member, and consultant in higher education. He is a frequent keynote and plenary speaker, nationally recognized for his work on behavioral intervention for students in crisis and distress, and has trained thousands of faculty and staff in these areas. He is noted as well for his work in the area of classroom management and dealing with disruptive students. He presents regularly throughout the country, assisting colleges and universities with legal, judicial, and risk management issues, as well as policy development and implementation. He serves as an author and editor in a number of areas including legal issues in higher education, campus safety and student development, campus conduct board training, and other higher education issues. He is a member of NASPA, ACPA, and served as a past President of ASCA. He did his undergraduate work in Psychology and his graduate work in Higher Education Administration at Texas A&M University and received his Law degree and mediation training from the University of Houston.

Saundra K. Schuster, J.D. is a partner with The NCHERM Group, LLC. She was formerly General Counsel for Sinclair Community College in Dayton, Ohio, and Senior Assistant Attorney General for the State of Ohio in the Higher Education Section. Saunie is a recognized expert in preventive law for education, notably in the fields of Sexual Misconduct, First Amendment, ADA, Risk Management, Student Discipline, Campus Conduct, Intellectual Property and Employment Issues. Prior to practicing law, Saunie served as the Associate Dean of Students at The Ohio State University. Saunie has more than thirty years of experience in college administration and teaching. She served as the 2011-2012 president of the National Behavioral Intervention Team Association (www.nabita.org), and was the President of ASCA. She currently serves on the Foundation Board for ASCA, and on the Board of Directors for NaBITA and SCOPE. She is a frequent presenter on legal, employment and student affairs issues for higher education and has authored books, articles and journals. Saunie holds Masters degrees in counseling and higher education administration from Miami University, completed her coursework for her Ph.D. at Ohio State University, and was awarded her juris doctorate degree from the Moritz College of Law, The Ohio State University.

Brett A. Sokolow, J.D. is a higher education attorney who specializes in high-risk campus health and safety issues. He is recognized as a national leader on campus sexual violence prevention, response and remediation. He is the president and CEO of The NCHERM Group, LLC, which serves as legal counsel to fifty colleges and universities. He is also the Executive Director of ATIXA (www.atixa.org). He frequently serves as an expert witness on sexual assault and harassment cases, and he has authored twelve books and more than 50 articles on campus safety and sexual assault. The NCHERM Group, LLC has provided services to than 3,000 college and university clients. Sokolow has provided strategic prevention programs to students at more

than 2,000 college and university campuses on sexual misconduct and alcohol. He has authored the conduct codes of more than eighty colleges and universities. The ATIXA Model Sexual Misconduct policy serves as the basis for policies at hundreds of colleges and universities across the country. NCHERM has trained the members of more than 700 conduct hearing boards at colleges and universities in North America. He serves as the Executive Director of NaBITA, the National Behavioral Intervention Team Association (www.nabita.org), and is a Directorate Body member of the ACPA Commission on Student Conduct and Legal Issues. He is a graduate of the College of William & Mary and the Villanova University School of Law. He is a member of the advisory boards of the National Hazing Prevention Collaborative, the NASPA Enough Is Enough Campaign and SCOPE, the School and College Organization for Prevention Educators (www.wearescope.org).

Daniel Swinton, J.D., Ed.D. serves as Senior Executive Vice President of The NCHERM Group, LLC. Prior to that, he served as Assistant Dean and Director of Student Conduct and Academic Integrity at Vanderbilt University. He received his Bachelor's degree from Brigham Young University, his law degree from the J. Reuben Clark Law School at BYU, and a doctorate in higher education leadership and policy from Vanderbilt University's Peabody College. He is a member of the Tennessee State Bar. He has presented nationally on issues such as sexual misconduct on college campuses, legal issues in student affairs and higher education, student conduct policies and procedures, mediation and behavioral intervention teams. Daniel has also served as president of the Association for Student Conduct Administration (ASCA) in 2010-2011, and now also serves as Associate Executive Director of ATIXA, the Association of Title IX Administrators (www.atixa.org).

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OSAC's mission is to raise awareness of the sexual assault epidemic, and to advocate for best policies and practices that provide for a safe and equitable student experience at Occidental College.

OSAC Dozen, or the 12 Demands

NOVEMBER 6, 2012

tags: Nonviolent action, OSAC, Oxy, sexual assault

by osacoalition

These are the 12 demands we are asking the administration to fulfill. On November 13th we will find out whether or not they agree to them. If not, we will be meeting at the fountain to march to AGC together and begin the sit-in.

1. Remove the automatic appeals language from the policy.

An automatic appeal was included in the policy in the fall of 2012 without proper student input, and students were not informed of this change. An automatic appeal from respondents who think their sanction is unfair negates the formal sexual assault hearing process.

2. Reinstate consent as verbal consent in the sexual assault policy.

Defining consent as verbal or physical consent opens an unnecessarily gray area in determining whether a sexual assault has occurred. This is confusing for students who are trying to engage in consensual sex.

3. Establish a permanent Sexual Assault Advisory Committee.

This committee will be comprised of six members – two administrators, two faculty members (selected by OSAC), and two students (one from Project SAFE and one selected by OSAC). This committee will conduct an annual review of policies and practices using data on reporting and outcomes from the Dean of Student's office, and make recommendations for changes to the President and Vice Presidents by the end of the regular school year.

4. Return the Title IX Coordinator position to the faculty.

This position was moved from being a faculty position to the Dean of Students office in 2011 without proper consultation with the faculty. It should be reinstated as a faculty position to insulate the sexual assault process from litigious concerns.

5. Inform the campus of all changes to the sexual misconduct policy.

Major changes were made to the sexual assault policy in the last year that did not involve adequate student input or notification. The campus should be informed of all changes, regardless of the size of the change, through campus email as soon as they are made.

6. Double the size of Project SAFE and give PAs more decision-making authority.

Project SAFE is a student-founded group of trained advocates who should be more independent. This can be achieved by doubling the staff (from 2 to 4) and writing job descriptions that allow for more decisions to come from the PAs.

7. Use Oxy's Crime Alert System to Inform Campus of Reported Sexual Assaults

Oxy should inform the campus of incidences of sexual assault, similar to college reporting of other crimes, through emails. These should inform us of on-campus assaults and off-campus assaults, including assaults by students. Currently, emails sent out only inform us of Oxy students assaulted by strangers on the street.

8. Distribute a Detailed Annual Sexual Misconduct Report

This report must include statistics on the number of complaints (formal and informal), where complaints were initially brought (Residential Education, the Dean of Students, Campus Safety, faculty members, etc.), how many respondents are found responsible, what sanctions are given, and how sanctions are altered in appeals.

9. Establish a 24-hour Sexual Assault Hotline

This hotline would be staffed by students who have completed Peace Over Violence (POV) training, or partner with the LA rape crisis hotline to have Oxy-specific information.

10. Provide annual POV training to all staff involved in the sexual assault process.

Sexual assault is a commonly misunderstood crime, and anyone involved in the process needs training to avoid basing decisions on common rape myths, using harmful language, or triggering survivors in other ways.

11. Provide annual POV training to all student leaders.

Sexual assault is a commonly misunderstood crime, and student leaders are in the unique position to shift campus culture and understanding away from widespread rape myths.

12. Bring POV for Orientation for the next five years.

Sexual assault education at Orientation has been an abysmal failure for years. The college needs to bring trained professionals to campus that use best practices in reaching potential perpetrators and bystanders.

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NEWS

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A VOICE FOR "ENDING RAPE ON CAMPUS"

"College is a risk factor for rape." The words lingered on the screen in front of a full house in STEPS 101 as Danielle Dirks, assistant professor of sociology at Occidental College, explained the evolution of the End Rape on Campus movement.

Dirks' lecture on March 24 was co-sponsored by the Africana Studies program, the Women, Gender and Sexuality Studies program, and the Women's Center, and was part of Women's Empowerment Week at Lehigh.

An academic becomes an activist

A sociologist focusing on criminology, Dirks teaches a course on sexual violence. She was troubled that her students didn't know the basic FBI definition of sexual assault. When students who were survivors started visiting her during office hours, Dirks' academic work become much more tangible.

"I was hearing the kinds of things students had gone through not only as survivors of sexual assault, but then also encountering what is called institutional betrayal," Dirks said. "That's when an institution that you think is supposed to support you and help you turns its back on you, compounding the trauma."

Dirks grew concerned that students on campuses everywhere were in danger if they didn't have the tools to communicate about what was happening and if they didn't understand their rights.

"If you don't know what to do when something is happening, you don't feel empowered to intervene," she said.

In her research and writing, Dirks has become a voice in a growing national conversation on campus sexual assault. She has also become involved in a movement to improve Occidental's response to sexual assault. Now, she is traveling to other campuses to share what she has learned with a wider audience.

Dispelling myths

Despite recent high profile stories of falsely reported sexual assault, said Dirks, rape happens on college campuses across the United States. According to Dirks, one in five college women and six percent of college men will experience sexual assault. Only 12 percent of assaults are reported; of those reported, the percentage of false reports is in the single digits.

Dirks told the audience that much of the rape-avoidance education that college students receive is founded on myths. For instance, while women are told to stick with people they know at parties, nine out of ten sexual assault victims knew their rapists.

Perhaps the biggest myth of campus sexual assault is that it often stems from miscommunication fueled by alcohol. Research indicates that a tiny fraction of men—4 to 6 percent—is perpetrating about 91 percent of campus rapes.

Regardless of what a survivor wore or drank, or whom they were with, Dirks said, "100 percent of rape is caused by rapists."

Allison Howard '15, who works in the Women's Center, found Dirks' presentation surprising.

"She really focused on the idea that there are people who make the conscious decision to be rapists," said Howard. "You hear about alcohol being a big factor, so you don't really think about active rapists trying to get away with it. It sounds more predatory."

A national movement

Dirks' prior research focused on the complicated intersection of race and the justice system. She traced today's movement to end sexual violence back to the nineteenth century.

"Historically in the United States, we had laws that only made it illegal to rape white women. Black men were being lynched for any allegation of sexual impropriety toward white women. But at the same time, black women were being raped by white men with virtual impunity."

This hypocrisy fueled a feminist movement led by African-American activists, Dirks said. In the more recent past, citing the Clery Act, she noted Lehigh's own role in exposing the need for federally mandated reporting of campus crime.

Using social media tools from Twitter to YouTube, the campus-based movement to end campus rape is connecting with and educating students about their rights and about the protections they have under Title IX as survivors of sexual assault on their campuses.

Transparency and consent

Dirks now advocates for greater transparency on the part of institutions through an annual nationwide campus climate survey. She also favors clearly defined affirmative verbal consent to eliminate gray areas in interpretation.

Although the topic is, as she admitted, "a bummer," Dirks is optimistic that change can happen.

"There are a lot of campuses that care about this issue," she said. "I think the White House Task Force guidelines that have come out have really had schools rethink their approach to sexual violence. And I think the number of schools under federal investigation is forcing schools to pay attention to this issue in ways they may previously not have."

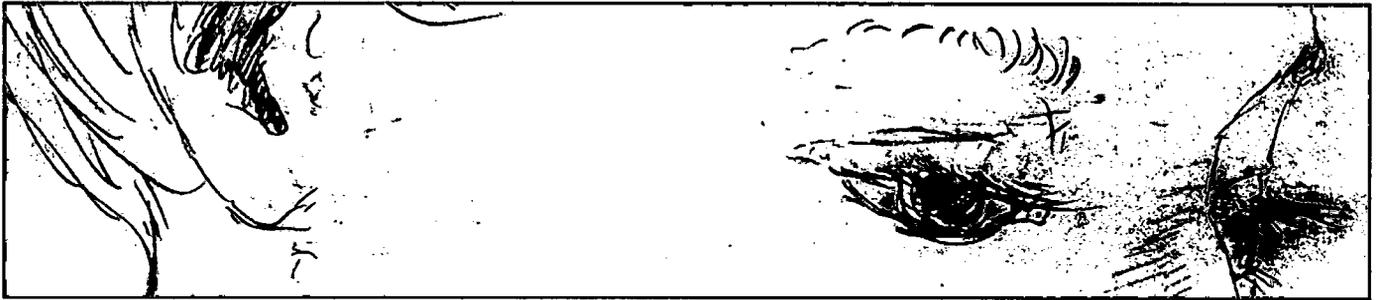
Story by Hillary Kwiatek (mailto:hik210@lehigh.edu)

By: Kurt Pfitzer (/news/author/kap4)
Posted on: Tuesday, April 07, 2015

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Danielle Dirks, a sociologist at Occidental College, told a Lehigh audience recently that she grew



Coffee At Midnight



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Campus Rape: Why Colleges Won't (Really) Address Rape Culture

by Caroline Heldman / October 8, 2014

Rape/ Sexual Assault

campus rape, Campus sexual assault, consent, rape culture, yes means yes

By Caroline Heldman and Bailee Brown, crossposted at [Ms. Blog](#).

One in five women and 6 percent of men will face sexual assault/rape during their time in college. But no college in the U.S. has come up with a plan to effectively shift rape culture on their campus. It's not an impossible task, but it *is* fraught with competing political and economic pressures. Below, we share ways to effectively shift rape culture on college campuses, and expose how schools benefit from not shifting this culture.

Rape culture describes a society in which rape is common and normalized by societal attitudes and practices. In the U.S., rape is tacitly condoned through denial of the rape epidemic, denial of the harms of rape, not considering rape a "real" crime, victim-blaming, trivializing rape, and the normalization of female sexual objectification and rape eroticization in pop culture.

While the cultural knowledge, agreement and coordination it would require to shift rape culture will not materialize anytime soon, campuses can shift away from rape culture and better protect students by doing four things:

1) Establish a clear definition of consent.

Many schools have moved away from a verbal consent standard in favor of a verbal *or* physical consent standard, but physical consent is based on non-verbal cues that are often misread, the reading of which is particularly impaired by alcohol, and that some students on the autism spectrum cannot send or receive in an accurate way. If campus administrators cannot provide a clear definition and examples of "non-verbal consent," then students cannot be asked to use this as the basis for determining whether sexual activities are consensual.

Another way consent has been clarified is by moving from a "no means no" standard to a "yes means yes" standard. California recently passed a "yes means yes" law requiring that parties give affirmative consent prior to engaging in sexual activities. According to this new law, "Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time." This law effectively shifts the burden from survivors—who previously had to prove that they did not consent—to both parties proving they *did*

consent, a clearer basis for determining whether a rape has occurred.

2) Educate students about sexual violence laws.

Rape culture involves a spectrum of violence, ranging from sexual harassment and sexual battery to sexual assault and rape. A key step in shifting campus rape culture is to educate students about what constitutes each form of sexual violence under state and federal law.

3) Send a clear message that sexual violence of any kind will not be tolerated on campus.

When students come to campus, most of them bring nearly two decades of attitudinal baggage that sexual violence is normal and is not really that bad. These beliefs are reinforced at campus functions that are rife with condoned sexual violence: "surprise" grinding at dances; non-consensual grabbing and fondling at parties; pledging and party rituals that include sexual battery and assault, etc. Survivor and federal complainant Rebecca Cooper notes that sexual violence is so commonplace that it is "widely regarded as a right of passage from high school to college." To shift rape culture, officials have to send the clear message that no form of sexual violence will be tolerated on campus, or at campus-related or student events.

4) Establish, publish and enforce strong sanctions for sexual violence on campus.

All schools have a sanctioning scheme for sexual violence based on the type of offense and the perpetrator's previous offenses. However, almost no schools publish specific sanctions for different types of sexual violence, and many schools apply sanctions on a case-by-case basis. Instead, most schools publish a range for punishments (e.g., from probation to expulsion), but this is analogous to expecting an armed robber to be deterred by knowing they will receive anywhere from probation to 10 years in prison. Ranges that include a slap on the wrist are not effective deterrents.

It seems like common sense that schools would have clear sanctions and publish them, like they do for plagiarism, theft and other violations of the student code of conduct. But officials are reluctant to develop standard sanctions and advertise them because they would lose the ability to apply sanctions in an individualized way that takes other factors into account, such as how much money the perpetrator's family might contribute to the institution or the likelihood that the perpetrator will sue the institution.

That's one reason so many schools reluctant to draw that line and enforce it. But here's another ugly truth: schools benefit from not challenging rape culture.

Keeping rape culture under wraps means reported-rape numbers remain low. If more survivors spoke

out, schools would have to provide more staff resources to handle the complaints and, at the same time, the allegations would threaten the school's reputation and bottom line.

Schools also benefit from hazy definitions of consent and ad hoc sanctions because, as noted above, this creates unnecessary ambiguity that gives administrators the power to consider other factors when determining responsibility and sanctions. Title IX complaints filed with the Department of Education include claims of administrators conducting biased investigations and adjudication processes that resulted in light sanctions for athletes, student leaders, perpetrators with donor parents and perpetrators who threatened to sue the college.

To sum up, colleges cannot effectively shift broader rape culture because this would require multiple societal institutions working together to address deep-seated sexist beliefs upheld by men and women. But colleges *can* address the manifestations of rape culture on their campuses by establishing clear definitions of consent, sexual battery, sexual assault and rape, conveying these definitions to students, and establishing and enforcing universal sanctions for different forms of sexual violence. It's time for schools to step up.

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END RAPE ON CAMPUS

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Kristin Brown is a 2008 graduate of Occidental College who assisted with filing the national Title IX and Clerk complaints against the College. She holds a B.S. in Policy from Occidental and an M.A. in International Law and Global Security from Georgetown University. Her research interests include human rights, abuses, cyber crime, and nationalism and nation building in the former Yugoslavia.



Annie Clark is a third complainant in the Title IX and Clerk complaints against the University of North Carolina at Chapel Hill, where she completed a B.A. in Political Science. She is a former administrator at the University of Oregon and is a contributor to Huffington Post and YES2012. In 2013, she co-founded the national network in addition to assisting students at dozens of institutions considering their federal filing options.



Dr. Danielle Dirks is a lead complainant in the Title IX and Clerk complaints against Occidental College, where she is an Assistant Professor of Sociology. Trained both as a sociologist and criminologist, her research and teaching focuses on the aftermath of violent victimization, terrorism, and punishment. Her latest book is *Constructing a Rape Case*, which was the winner of the *Journal of Interpersonal Violence* award.



Mia Ferguson is a lead complainant against San Diego State University, where she is an Engineering and Sociology/Anthropology major. Born in England, she is currently a United States citizen. Her work most recently has been with APL Labs, where she focuses on human interaction and smart glass technology.



Sofia Karasek is a lead complainant against the University of California at Berkeley, where she studies Political Economy and Public Policy. She began her political activism as a 16-year-old fundraiser for a recycling campaign in her hometown and now is the President of Cal Berkeley Democrats and a blogger for the *Southwest Post*.



Andrea Pino is a lead complainant against the University of North Carolina at Chapel Hill, where she studies Political Science and English. She is a contributor to Huffington Post and has assisted students at dozens of institutions as a co-founder of the *IT Network*.



Danielle Dirks

A little over a year ago, I co-founded End Rape on Campus (EROC) to support survivors seeking justice at their colleges across the US. It's been my honor serving such truly awe-inspiring individuals and I'm proud of what our organization has accomplished as a team. It's with sadness that I announce my departure from EROC this month, but I'm excited to continue working toward a world free from all forms of violence and for all survivors going forward. All my best to EROC and to everyone envisioning this world too! Onward! — with Mia Ferguson, Kristin Brown, Annie E. Clark, Sofia Karasek, Danielle Dirks and Andrea L. Pino-Silva.

September 12, 2014

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Sine Anahita Ya'll did so much in such a short time! Good work all around.

September 12, 2014 at 10:46pm



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September 25, 2014 at 7:35pm

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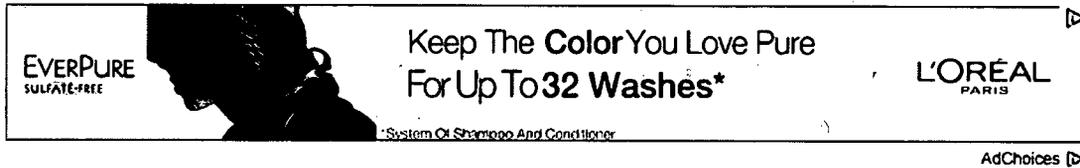
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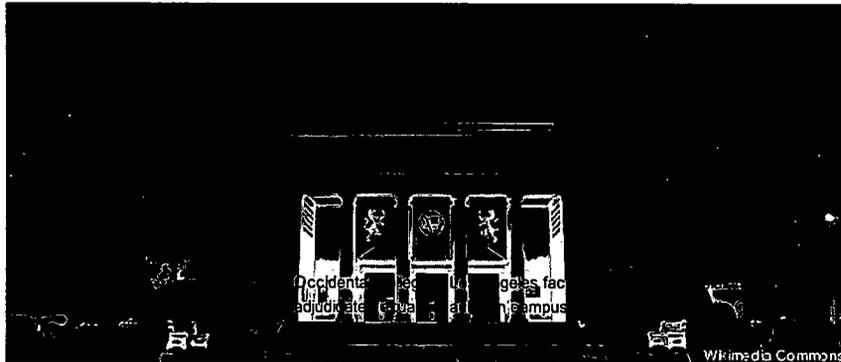
Addressing Sexual Assault on Campus



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Occidental College Sexual Assault Response Subject Of Federal Complaints

Posted: 04/19/2013 9:11 pm EDT | Updated: 01/23/2014 6:58 pm EST



to adequately report and
 Port Authority) | Wikimedia

Female Occidental College students, faculty and alumni say in a federal complaint that the Los Angeles school failed to take campus sex crimes seriously by improperly reporting and adjudicating sexual assaults and covering up rapes.

The 250-page complaint filed by a group of 37 Thursday with the U.S. Department of Education's Office of Civil Rights says the school maintained a hostile environment for sexual assault victims and their advocates, and violated federal Title IX laws against sexual discrimination.

Even when the school's investigations have found wrongdoing, punishment has been light, the complaint says. One student found responsible for raping a woman was given the punishment of writing a five-page book report, according to the complaint.

"I've seen some of the outputs of these so-called 'educational sanctions' like book reports and apology letters and they're abysmal," said Danielle Dirks, a sociology professor who specializes in crime and punishment and one of the women who filed the complaint. "The fact that Occidental has invited rapists back to campus and even told survivors not to worry because 'he's reformed now' after these types of inadequate sanctions is an abomination."

Six of the women who signed on to the complaint also retained attorney Gloria Allred. Allred's office did not return emails from The Huffington Post.

The filing follows an April 1 complaint against Occidental under the Clery Act by some of the same women, alleging the school underreports campus sexual assaults, discourages victims from reporting attacks and fails to issue timely crime reports. The college was criticized in February by women who said the campus wasn't notified in a timely manner about sexual assaults.

"Sexual assault on college campuses is a nationwide problem, from which Occidental College (Oxy) regrettably is not exempt," said Jim Tranquada, the college director of communications. "We take this issue very seriously, and will not tolerate sexual misconduct.

"We readily acknowledge that Oxy has more work to do, and are vigilantly ensuring our continual progress," Tranquada said.

The women who filed the complaint have been pushing the college for six years to improve sexual assault policies. Lately, the women have been working in a group called the Occidental's Sexual Assault Coalition trying to spark a movement and posting anonymous rape survivor stories on a website.

Caroline Heldman, who helped write the complaint and chairs the college politics department, said the complaint describes reports from multiple students who say an administrator disparaged the sexual assault coalition to male athletes, saying, "Fuck 'em."

Dirks said that kind of attitude was common. She said when she became vocal about Oxy's sexual violence policies, administrators accused her of "actively seeking to embarrass the college."

Heldman said she's seen more engagement from the administration in addressing the problems "in one hour since filing these complaints than we had in the past six years."

The college has hired Gina M. Smith and Leslie Gomez of Philadelphia-based Pepper Hamilton to conduct a review of the college's sexual violence policies. Smith recently worked with Amherst College and the University of North Carolina-Chapel Hill, institutions that faced similar allegations of mishandling sexual misconduct complaints.

MORE: [Occidental College Sexual Assaults](#) [Occidental](#) [Occidental Sexual Assault](#) [Breaking the Silence](#) [Breaking the Silence](#) [Occidental Sex Crimes](#) [Occidental Sexual Assaults](#) [Breaking the Silence](#) [Breaking the Silence](#) [Occidental](#) [Occidental Sex Assault](#)

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WIN MCNAMEE / GETTY IMAGES

White House releases proposals on campus sexual assault

Government calls for better sexual-violence prevention and education programs; creates NotAlone.gov website

April 28, 2014 10:25PM ET | Updated April 29, 2014 4:24PM ET

by **Marisa Taylor (/profiles/t/marisa-taylor.html)** - @marisahtaylor (<http://www.twitter.com/marisahtaylor>)

The White House task force dedicated to addressing the problem of sexual violence on college campuses released its recommendations on Tuesday, as college students across the U.S. continue to file increasing numbers of federal complaints alleging that their sexual assault cases were mishandled.

College students who have been sexually assaulted have often been forced to deal with an inadequate system that “assaults them again,” Vice President Joe Biden, who chairs the task force, said in a speech following the report's release.

In addition to the task force recommendations, the federal government also launched a website, NotAlone.gov, where students can find resources related to sexual assault, including how to file federal complaints with the Department of Education and search for statistics about sexual violence at their particular schools, senior Obama administration officials told reporters Monday.

Among the task force's recommendations are guidelines on improved tools for reporting sexual violence on college campuses as well as better prevention and education programs, including what's known as bystander intervention, in which students are taught to speak up and get involved if they witness sexual violence.

In addition, the report asks colleges to voluntarily administer anonymous “climate” surveys to students about their attitudes and experiences with on-campus sexual violence in order to gauge each school's needs, before making the surveys mandatory in 2016, senior administration officials said.

The report said that colleges would be provided with a checklist to use in drafting proper sexual misconduct policies. Among other things, the checklist includes ideas a school might consider in deciding what constitutes consent to sexual activity.

Biden addressed the issue of consent in his speech, saying that a lack of verbal consent constitutes rape or sexual assault. He said sexual assault is when students aren't able to give verbal consent, for instance if they're incapacitated due to alcohol or drugs.

"Until we as a society acknowledge that and men begin to step up to their responsibility, this will not be solved," Biden said.

The task force was launched on Jan. 22

(<http://america.aljazeera.com/articles/2014/1/22/obama-targets-campussexualassault.html>) in response to an increasing number of high profile complaints regarding sexual assaults on college campuses. The White House Council on Women and Girls reported

(http://iaclea.org/visitors/about/documents/WhiteHouseCouncil_sexual_assault_report_1-21-14.pdf) (PDF) the staggering fact that nearly 1 in 5 college women is sexually assaulted

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by the time she graduates, with just 12 percent of them reporting the assaults — a much lower rate than the estimated 40 percent of assaults that are reported by the general population, according to the Department of Justice (<http://www.victimsofcrime.org/library/crime-information-and-statistics/sexual-violence#ftn5>).

In addition, students from a number of colleges and universities — including Dartmouth College, Columbia University, Harvard College, Occidental College, Swarthmore College, the University of California at Berkeley (<http://america.aljazeera.com/articles/2014/2/26/berkeley-studentsallegeuniversitymishandlessexualassaultcases.html>) and the University of Southern California — have filed complaints in the last year that their schools violated the Clery Act and Title IX of the Civil Rights Act (<http://articles.latimes.com/2013/may/22/local/la-me-0523-college-rape-20130523>) by mishandling their sexual assault cases.

A need for transparency

A consistent grievance from college students who said their schools mishandled their sexual assault cases is that they were discouraged from formally reporting the assaults (<http://america.aljazeera.com/articles/2014/3/9/uc-berkeley-sexualassaultproblem.html>).

Colleges and universities that receive federal funding are required by law to report statistics about crime on their campuses each year under the Jeanne Clery Act (<http://clerycenter.org/summary-jeanne-clery-act>), named after a Lehigh University student who was raped and killed in 1986. But a 2009 investigation by the Center for Public Integrity (<http://www.publicintegrity.org/2009/12/02/9045/campus-sexual-assault-statistics-don-t-add>) found that some colleges were underreporting their sexual assault statistics by using certain loopholes, such as leaving out reports from counselors covered by confidentiality protections. The investigation also found that some schools' confusion about the definition of sexual assault kept them from reporting some incidents.

In addition, Title IX, a federal civil rights law passed in 1972 that prohibits sex discrimination in any school or school activity that receives federal funds, may be applied to sexual assault in certain cases. The Department of Education in 2011 sent a guidance

letter to all institutions (<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>), instructing them that “sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX.”

But the Department of Education has never punished a school by withdrawing federal funds in connection to sexual assault. The number of Title IX complaints filed in relation to sexual violence at the college level rose to 30 in the 2012–13 academic year, up from 11 complaints during the 2008–09 academic year, the department told Al Jazeera in an email.

Sexual assault prevention activists have lauded the White House task force for paying attention to sexual violence on campuses — hopefully, they said, compelling the schools to improve transparency and their violence protection programs.

“The value of this report is in its ability to drive concrete change and action within the higher education community,” Meredith Ritchie, communications manager at the Rape, Abuse and Incest National Network, an anti-sexual-violence advocacy organization (<http://www.rainn.org/>), told Al Jazeera in an emailed statement before the report was released. “Colleges and universities are now aware that the White House and Department of Education are paying close attention. It is up to them to respond and act.”

But some worry that the government’s new website, NotAlone.gov, with its trove of statistics about sexual assaults from each school, as well as the call for colleges to conduct anonymous surveys on sexual violence, might actually punish the schools that comply with the recommendations.

“I worry that people will misinterpret the higher numbers [of reported sexual assaults] and think that the school is worse off than other schools that are not participating in surveying their students on the true nature of rape and sexual assault,” Danielle Dirks, a sociology professor at Occidental College (<http://www.oxy.edu/faculty/danielle-dirks>), told Al Jazeera.

Dirks, who also advises campus leaders about how to file such complaints against their schools as a member of the advocacy group End Rape on Campus (<http://endrapeoncampus.org/>), said that transparency about which schools are being investigated by the Department of Education for violating Title IX (the department doesn’t publicly release that information) will be an important first step.

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Earlier in April, a group of senators, including Sen. Kirsten Gillibrand, D-N.Y., and Sen. Claire McCaskill, D-Mo., called for more funding for the Department of Education to make sure colleges are in compliance with the law.

McCaskill has begun a congressional survey of 350 colleges (<http://www.hsgac.senate.gov/subcommittees/fco/media/campus-sexual-assaultmccaskill-surveying-colleges-universities>) to find out how effectively colleges enforce the Clery Act and Title IX as it relates to sexual assault.

Dirks told Al Jazeera, "Every school in America has a problem" with sexual assault. "It's not about just bringing them to compliance but actually having supportive institutions where safety and well-being is truly at the forefront of their mission," she said.

"We're actually hoping [the Department of Education] will have resources available to complete these recommendations and have the tools and resources to really make schools do these reforms that are so desperately needed."

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Serial rapists commit 9 of 10 campus sexual assaults, research finds

by **Dave Gustafson (/profiles/g/dave-gustafson0.html)**

- **@DaveGustafson (http://www.twitter.com/DaveGustafson)**

09/15/2015



Attorney Gloria Allred speaks at an April news conference, surrounded by students and alumni of Occidental College who alleged that administrators violated federal standards for dealing with their rape, sexual assault or retaliation claims. Nick U/AP

This is the second report in America Tonight's "Sex Crimes on Campus (<http://america.aljazeera.com/watch/shows/america-tonight/multimedia/2013/10/campus-sexual-assaulttownhall.html>)" series.

Occidental College, a private and pricey school in Los Angeles, is known for its commitment to social justice. With that in mind, it's striking that this campus is riven by reports of rape and sexual assault, much of it allegedly committed by repeat offenders.

Two female Oxy students, who wished to remain anonymous, told America Tonight's Chris Bury that they were raped by fellow students.

"I ended up walking back to his place with him," said one student who's now a junior.

"Once we were there, he -- he raped me."

This woman says she was raped in her first year and was outraged to learn the college had already disciplined her attacker for a similar offense.

"Months before he raped me he had already been sanctioned by the college for a sexual assault," she said. "Clearly the sanctions were not serious enough that he was removed from campus."

What was the attacker's previous punishment?

"I think it involved writing a paper of some kind-- some kind of like, research, reflection."

He wasn't suspended or expelled.

The problem at Occidental

Serial rape is the norm on college campuses, including at Occidental, according to Caroline Heldman, associate professor of politics at Occidental.

"We have numerous cases with three or four women coming forward and alleging that the same man has raped or sexually assaulted them," she said.

Heldman has been teaching at Occidental for seven years. She and fellow faculty member Danielle Dirks have become activists for sexual assault victims, who began coming to them and pouring their hearts out.

"I've been here at Oxy since 2011. Over that time I've talk with, I would say, dozens of young men and women who have been raped, sexually assaulted, sexually harassed, sexually battered ... intimidated, stalked, harassed, cyber-bullied. All of these things," Dirks said.

Last April, Heldman and Dirks filed a federal complaint with the Department of Education in which 42 Oxy students allege they were raped or sexually assaulted since 2009.

That same day, high-profile lawyer Gloria Allred threatened a separate civil suit against Occidental. Students came forward, with new accusations that the college had treated assailants far too lightly.

"The person who raped me had been found responsible for raping three women, yet he will be allowed to come back to Oxy in the fall," student Carly Mee said in a news conference led by Allred.

Another Occidental junior told us she was raped last year by a repeat offender after a campus dance. There was drinking involved.

"I ended up being taken home by someone, that I actually don't remember being taken home by," she said. "And ended up having sexual relations with him without my knowing. I didn't remember it in the morning."

She didn't report the attack until two months later. The man had been found guilty of sexually assaulting another woman.

"I think what's most troubling about this woman's rape is that had he been expelled and kicked off of campus the first time he was found responsible for sexual assault, her rape simply would not have happened," Dirks said.

The problem of serial rapists

Troubling stories of sexual predators committing multiple assaults are actually not all that unusual. In fact, researchers say the overwhelming majority of rapes on college campuses are committed by repeat offenders.

Clinical psychologist David Lisak trains prosecutors and police about sex offenders. His pioneering research revealed a remarkable fact.

"The vast majority of sexual assaults on campuses, in fact over 90 percent, are being perpetrated by serial offenders," Lisak said.

In a study published in 2002

(<http://www.wcsap.org/sites/www.wcsap.org/files/uploads/webinars/SV%20on%20Campus/Rep>) Lisak asked nearly 2,000 male students at a Massachusetts college about their sex lives. Six percent of them described sexual encounters in a way that met the legal definition of rape, meaning they had sexual intercourse without the consent of the woman, often using either force or alcohol. Of that group, a majority had assaulted multiple women.

"Those serial offenders were prolific," Lisak said. "The average number of rapes for each one of those serial offenders was six."

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He also found that cold and calculating serial rapists admitted to deliberately taking advantage of vulnerable women.

"They've perfected ways of identifying who on campus, for example, are most vulnerable," he said.

Interview with a rapist

Lisak showed Bury a video based on an interview he conducted at Duke University in which an actor speaks the exact words of a student describing how he invited a freshman girl to a fraternity party.

"The minute she walked into the door of the party, I was on her. And she was really good lookin' too. You know, we started drinking together and I could tell she was nervous. I could tell she was nervous because, you know, she was drinking that stuff so fast."

She was drinking some punch prepared by the fraternity.

Lisak said that this exchange show that freshmen are being targeted and groomed by inviting them to a special, invitation-only party.

While giving someone a drink is not necessarily a precursor to rape, this behavior shows how a rapist sets up the groundwork for making a victim incapacitated.

"When you give somebody a drink and they get very intoxicated, and then you go bring another drink over, and give them that drink and they get even more intoxicated. And then you say, 'Hey, listen, why don't we go upstairs?' and now they're so intoxicated they can barely stand up," Lisak said. "And so you support them as you walk them up the stairs."

The video re-enactment of an interview with a rapist continued.

"Well, she was really woozy by this time. So I brought up another drink, you know, and sat her down on one of the beds," the rapist said. "I didn't expect her to get into it right away. I don't know, maybe that's why she kept pushing on me. But, you know, I just kept leaning on her, pulling off her clothes. And then at some point, she stopped squirming. Maybe she passed out. Her eyes were closed."

The interviewer asked him what happened next.

"I f---ed her," the rapist said.

Such calculating ways are a common refrain among the students at Occidental who say they were assaulted.

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"I think he probably scanned the room, saw someone who was clearly intoxicated and, you know, started to strike up conversation with them and continued to provide me with drinks," one alleged rape victim told Chris Bury.

College at a crossroads

Occidental College's president declined America Tonight's repeated requests for an on-camera interview. But college officials highlight recent policy changes, including a 24-hour sexual assault hotline and a professional advocate to help students who report rapes and other sex crimes.

Five months after Allred's explosive news conference with Occidental students, the college quietly settled with 10 of them, but the financial details were kept confidential. However, the professors who filed the federal complaint say the college still has not established a clear bright line involving sex between students.

"I think the clearest definition of consent would be verbal consent," Heldman said. "It would be affirmative, willing, active, enthusiastic 'yes,'" she said. "I think 'Yes means yes'... should be the campaign slogan for consent on college campuses."

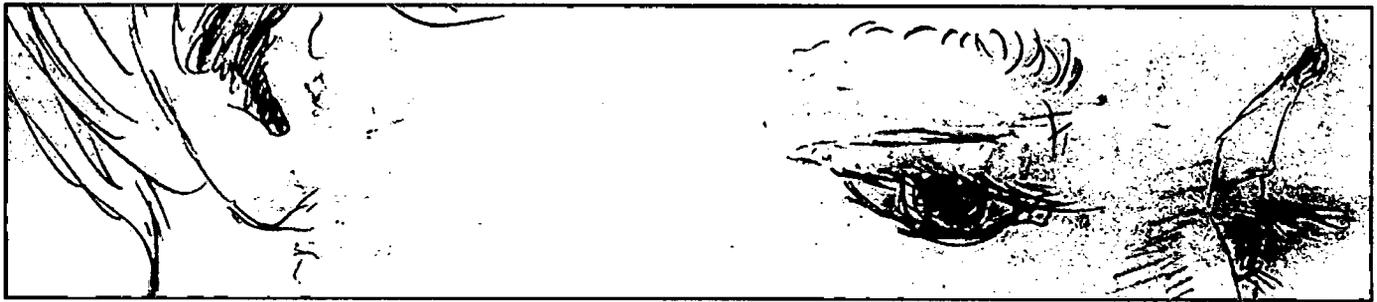
And researcher Lisak believes colleges like Occidental are at a critical crossroads when it comes to sexual assault.

"Which way are they going to go? Are they going to go the route of the Catholic Church?" he said. "Or are they going to do better? Are they going to show that they can respond to this with honesty and with a commitment to do the right thing?"

A former top Occidental official told America Tonight that colleges don't have the expertise to investigate sex crimes that very often confound police and prosecutors. But students and faculty at Occidental suggest that, far too often, sexual predators get away with their crimes. And, just as troubling, research suggests they do it again and again.

As part of America Tonight's special Sex Crimes on Campus series and live town hall (<http://america.aljazeera.com/watch/shows/america-tonight/multimedia/2013/10/campus-sexual-assaulttownhall.html>), we have compiled resources (<http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2013/10/28/help-and-resourcesforvictimsofsexualassault.html>) for where to turn for help if you, or someone you know, has suffered sexual assault.

09/15/2015



Coffee At Midnight



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Emily Yoffe is Helping Campus Rapists Hide in Plain Sight

by Caroline Heldman / November 7, 2013

Uncategorized

campus rape, Caroline Kitchens, David Lisak, Emily Yoffe, Hanna Rosin, Kirby Wiley, rape, Sexual Assault, victim blaming

By [Caroline Heldman](#) & [Danielle Dirks](#)

On October 15, Slate [Dear Prudence](#) advice columnist [Emily Yoffe](#) wrote a piece titled, "[The Best Rape Prevention: Tell College Women to Stop Getting Drunk.](#)" A crowd of critics harpooned Yoffe for her victim blaming approach ([Jezebel](#), [Feministing](#), [Huffington Post](#), [The Atlantic](#), [Salon](#), and even Slate's own [Amanda Hess](#)). On October 18, Yoffe [responded](#) to the backlash by digging in her heels, citing

data on the correlation between survivor intoxication and rape and admonishing her critics for silencing those who want to give "practical advice" to young women. Just last week, Southern Methodist University student Kirby Wiley penned a similar piece in the school newspaper encouraging women to drink less, writing that, "of course the perpetrators are the one's responsible for the crimes, but to solve the problem they can't be the only ones taking blame."

Beyond the implied victim blaming in Yoffe's pieces and the blatant victim blaming in Wiley's piece (rape is the only crime where the victim is put on trial), both of these authors are terribly misguided in thinking that they are offering practical advice. **The fact is, rape reduction tips for potential victims are just not effective.** (Only perpetrator and bystander interventions have shown some effectiveness.) The idea that sexual assault survivors could have controlled the criminal actions of others reflects a *profound* misunderstanding of how perpetrators operate.



Campus Activism Calling Out Victim Blaming

The reality is that campus rapists' principal weapon is alcohol and they are able to hide in plain sight within a male-dominated party culture where men provide the venues, parties, and drinks to women, often with the explicit purpose of hooking up.



Activists Exposing Victim Blaming

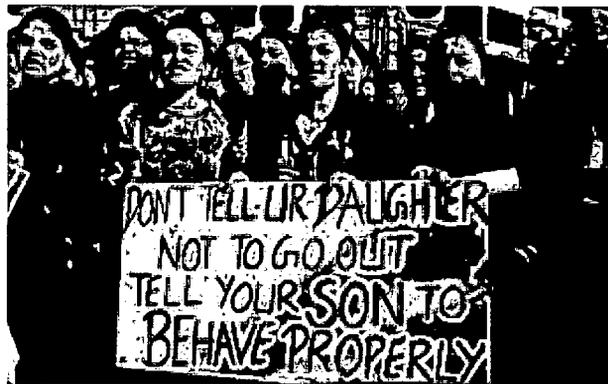
While the vast majority of rapists are men, the vast majority of men are not rapists and cannot identify with rapists' mindsets. Research shows that rapists exhibit high levels of hypermasculinity and anger toward women, they need to dominate women, and lack empathy, including sex offenders on campus. Dr. David Lisak's research on undetected rapists finds that just 4% of young men on campus are the serial rapists who commit nine out of ten rapes on college campuses, with an average of six rapes over the course of their college career. According to Lisak, undetected college rapists:

- are extremely adept at identifying "likely" victims, and testing prospective victims' boundaries;
- plan and premeditate their attacks, using sophisticated strategies to groom their victims for attack, and

to isolate them physically;

- use 'instrumental' not gratuitous violence; they exhibit strong impulse control and use only as much violence as is needed to terrify and coerce their victims into submission;
- use psychological weapons – power, control, manipulation, and threats – backed up by physical force, and almost never resort to weapons such as knives or guns;
- use alcohol deliberately to render victims more vulnerable to attack, or completely unconscious.

Virtually all rapes on campus are perpetrated by these calculating criminals, but despite this evidence, many people continue to blame alcohol for rape rather than rapists. These same people likely have a difficult time imagining the profile of a white, well-heeled, and college-educated sex offender who is not only cold, but calculating in seeking out his victims. Lastly, these individuals tend to ignore the overwhelming data that rapists rape sober women too.



Activists in India Taking a Stand Against Victim Blaming

When people like Yoffe and Wiley blame alcohol rather than rapists, they make it easier for rapists to hide (and continue) their crimes by perpetuating the idea that rape on college campuses is simply an alcohol-fueled miscommunication.

In fact, Yoffe and Wiley are mirroring the same bogus "blame it on the alcohol" rationales that two-thirds of college rapists use themselves to excuse their acts of forced sex! Perpetuating a national discourse that blames alcohol for rape simply emboldens college rapists to continue to use their weapon of choice – alcohol – with full license and with impunity.

Such misguided voices also serve to intensify women's self-blame and nearly guarantee women's

silence in the aftermath of rape. This intense self-blame makes women less likely to:

- confide in friends or loved ones;
- seek much-needed professional assistance; and
- report their rapes to law enforcement or their schools – perhaps the most effective way to expose and prevent the 4% of mostly undetected college rapists from raping again.

In short, messages to women that blame them for their rape rather than the criminal perpetrators function as a silencing machine that enables rape to remain a mostly hidden national epidemic.

Beyond the damage inflicted by Yoffe and Wiley's victim blaming, their argument is also logically flawed. As any student in an introductory statistics course can recite, "correlation does not equal causation," so a correlation between intoxication and rape does not mean intoxication causes rape. In fact, nearly all college students consume alcohol, just under 40% are heavy drinkers, and male students drink more often and more heavily than female students. Logically, then, if victim intoxication were a primary cause of rape, then men would be raped more often than women, but they are not. So untangling Yoffe and Wiley's "logic," drinking isn't the problem: being female and drinking is the problem. The implication is that women should not be allowed to participate in campus party culture (or their everyday lives) without paying the penalty of rape.

So why, in 2013, are writers for prominent publications still engaging in barefaced victim blaming when it comes to rape? We believe that the lion's share of blame lies with editors. When news sources publish a piece on Syria of the growth of job in the high tech industry, editors call upon experts, typically with advanced degrees, who have been thinking and writing about their subject for years. But when it comes to incredibly complex gender issues like sexualized violence, editors too often engage in outdated identity politics and assign stories to the nearest available woman. This is how we get mainstream "news" stories about gender issues from veritable laypeople, like Yoffe or Hanna Rosin or Caroline Kitchens, who have not spent a sustained period of time reading, researching, and writing about gender, and don't bother to use the work of those who have. Having collectively spent three decades doing just that, we have learned that gender is a remarkably intricate system of power that takes decades to gain even a slim grasp on how it functions and operates. Our society will remain in the Neanderthal cave in our common "knowledge" about rape as long as uninformed public figures continue to recycle inaccurate, sexist myths packaged as "helpful" advice.



Alcohol Used to Excuse Stubenville Rape in Social Media

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09 / 15 / 2015

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September 21, 2014 9:00 p.m.

Meet the College Women Who Are Starting a Revolution Against Campus Sexual Assault

By Vanessa Grigoriadis



“Want to meet at my dorm? Less carrying for me.”

Emma Sulkowicz, a.k.a. the **international sensation “mattress girl,”**

(<http://nymag.com/daily/intelligencer/2014/09/columbia-student-art-project-protests-her-rapist.html>) is emailing from her phone in her Columbia University dorm high up over Morningside Heights, where she lives in a single room within a six-person suite. “My friends and I got the first place in the housing lottery for seniors last year,” she says nonchalantly, leading the way through a concrete-block hallway, in purple flip-flops the same color as her painted toes, as well as a light-blue cropped tee featuring a moose with sunglasses over the words FEARLESS LEADER, commemorating a river-rafting trip for freshmen. As you may already know, given how viral Sulkowicz’s image has gone in the past few weeks, that’s the outdoor-orientation program that preceded Sulkowicz’s alleged rape by another orientation leader, which was followed by a Columbia-adjudicated hearing during which the university found her assailant not guilty—a verdict she began protesting, this September, by carrying a mattress around campus until Columbia expels her assailant.

A few years ago, an Ivy League student going public about her rape, telling the world her real name—let alone trying to attract attention by lugging around a mattress—would have been a rare bird. In America, after all, we still assume rape survivors want, and need, their identities protected by the press. But shattering silence, in 2014, means not just coming out with an atrocity tale about your assault but offering what Danielle Dirks, a sociologist at Occidental, calls “an atrocity tale about how poorly you were treated by the people you pay \$62,500 a year to protect you.” By owning those accusations, and pointing a finger not only at assailants but also the American university, the ivory tower of privilege, these survivors have built the most effective, organized anti-rape movement since the late '70s. Rape activists now don't talk much about women's self-care and protection like they did in the '90s with Take Back the Night marches, self-defense classes, and cans of Mace. Today, the militant cry is aimed at the university: Kick the bastards out.

Taking a seat in a wood-and-wool chair of the blend shared by dorms and doctors' waiting rooms, Sulkowicz starts to tell her tale. At 21, in barely detectable Invisalign braces, she's the type of hipster-nerd who rules the world these days, with the mellow demeanor and direct way of speaking of an Apple genius-bar clerk, except she giggles nervously when worried she's said the wrong thing. The Japanese-Chinese-Jewish daughter of Manhattan psychiatrists, she was a club fencer and an A student at Dalton on the Upper East Side. At Columbia, Sulkowicz thought she'd focus on mechanical physics—she liked the way you could draw a diagram to solve a problem, see the answer—but wound up drawn to visual arts instead. She also joined Alpha Delta Phi, Columbia's co-ed “hipster frat.” As she puts it dryly, “Only the most hipster of the hipster kids can get in.” That's where she met Paul, a film fanatic and rower. “He was a nice person,” she says matter-of-factly, “a cool person who was secretly really crazy.”

Toward the end of freshman year, the two students signed up to help lead the next year's outdoor-orientation program, taking a training trip down the Delaware River. There were an odd number of students on the trip, so everyone sat two to a canoe except Paul, who was in a kayak. “He would paddle way out ahead of everyone so that he didn't have to talk to anyone,” she says. They had sex twice. He went to Europe for the summer.

When he returned, at the beginning of sophomore year, Sulkowicz was a committee head for orientation. “Paul was really needy,” she says. “He asked me to help carry his bags, and I was like, ‘I'm organizing food for 400 freshmen.’” One night there was a party for the orientation leaders. In the ivy-covered courtyard outside Wien Hall, Paul kissed Sulkowicz, who says that she was sober except for a sip of gin-and-Sprite. He was buzzed and carrying a handle of vodka. While they were having consensual sex in her dorm room, she alleges that he suddenly pushed her legs against her chest, choked her, slapped her, and anally penetrated her as she struggled and clearly repeated “No.”



Photo: Sandy Kim

Sulkowicz didn't report the incident at first. But when two classmates told her that Paul had been abusive to them too—one who had been in a long-term relationship with him, the other alleging he groped her—she pressed charges with the administration. Students tend to be uncomfortable going to the cops, who, despite what plots of *Law & Order* suggest, aren't always great with rape. The preference suits the universities, too, which prefer to handle issues quietly in-house. Under Title IX, a gender-parity law from 1972, universities are required to adjudicate sexual-assault claims to ensure gender equality on campus as a civil right. The Obama White House, **taking a strong position on combating campus assault**

(<http://nymag.com/daily/intelligencer/2014/09/white-house-fighting-campus-rape-with-celeb-ads.html>), has reinforced a “preponderance of the evidence” standard in these cases, meaning campus courts need only find it’s 51 percent likely the assault occurred to punish the accused. To students like Sulkowicz—who are, after all, putting their good word on the line as well as risking stigma, humiliation, possible retribution from the guy’s friends, and diminishment of respect from their own friends—that lower standard can feel like a relief.

Sulkowicz, though, claims that Columbia administrators made errors and acted, frankly, idiotically during the hearing process. One took incomplete notes of her story, writing that she was tipsy that night. Adjudicators “kept asking me to explain the position I was in,” she says. “At one point, I was like, ‘Should I just draw you a picture?’ So I drew a stick drawing.” She says one of the three judges even asked whether Paul used lubricant, commenting, “I don’t know how it’s possible to have anal sex without lubrication first.”

Paul denied the charges. If Sulkowicz is a fencer, she alleges he told the panel, her legs are the strongest part of her body, and he was only a lightweight rower—how could he have pinned her legs down? The anal sex was consensual, he said. He went into detail about how he came on Sulkowicz, and then she grabbed a tissue, wiped the ejaculate off, and “threw the tissue away,”

she says. "None of which is true—he never came that night. He just stopped and ran away."

Columbia didn't hear Sulkowicz's charges for six months, then found in favor of Paul. "There's three women accusing the same guy here," she says. "Like, we don't have any other motivation other than he assaulted us." When she appealed, a dean refused to overturn the verdict. By Columbia's bylaws, his decision was final.

Today, Paul is still at Columbia, though he's lying low, even keeping his email out of the campus Facebook. The mattress protest is a way for Sulkowicz to both refuse him that anonymity and turn the situation on its head. She'll take the punishment, it says. This is a heavy mattress—an extra-long twin covered with shiny blue bedbug-proof material, bought from a clearinghouse called Tall Paul's Tall Mall, which stocks the same mattresses Columbia orders for its dorms for growing boys. For now, she's not using any hooks or belt loops to carry it—only her hands, or other students' hands (her friends call those "collective carries"). It's a weight Columbia can lift together. "For the record, the best arrangement is four people carrying the mattress, because they each take a corner," says Sulkowicz, smiling. "Then it's really light."



Camila (art. piece)

(I would like to see this whole thing put
in a museum - it's great.)

Camila Quarta, a junior, has kept the note left by her alleged assailant (right). Photo: Peter Hapak

Sulkowicz's mattress project is powerful, indelible; as Hillary Clinton said last week, "That image should haunt all of us." But it is also maybe a little youthful. This is the ethical purview of college students. Strict attention not only to learning and knowledge but also to morality, to right and wrong, when to stand up and when to stay silent, is a large part of why American colleges exist.

"One cannot help but feel terrible about this," Columbia president Lee Bollinger says about Sulkowicz and her mattress in his first interview on the subject. "This is a person who is one of my students, and I care about all of my students. And when one of them feels that she has been a

victim of mistreatment. "I am affected by that. This is all very painful." Bolger says that he has spent "as much time on this issue"—meaning sexual assault on campus—"as any issue" over the past year, which includes Columbia's largest expansion in nearly a century, a \$6.3 billion, 17-acre satellite campus in West Harlem. In August, he created a new sexual-assault policy, taking a much harder line. Students are now required to have "unambiguous communication and mutual agreement"—that's verbal consent—before sexual acts, or risk consequences. Though an improvement, this hasn't been enough to quell unrest.

Activists of Sulkowicz's generation have long retired the word *victim*, preferring *survivor*. But Sulkowicz calls carrying the mattress "performance art," and we might as well take her at her word. Her daily thoughts, including how the hell she's getting the mattress to class, are about the integrity of her art piece; when this magazine asked to photograph her in a studio in Chelsea, she worried about violating the "rules" for the performance by taking the mattress to a location off-campus.

That she has become the poster girl for the anti-rape movement is an accident of a viral world—she doesn't have a background in activism, and she is not really at the center of this crusade. To find the godmothers, you have to travel to Los Angeles, where Annie Clark, 25, and Andrea Pino, 22, two political-science majors from the University of North Carolina at Chapel Hill, are hard at work in a one-bedroom in Silver Lake, rented off Craigslist, that has become an anti-assault Death Star. Both of them were violently raped as students, and in responding to both cases, UNC seemed to be lax verging on cruel—Clark claims an administrator even said to her, "Rape is like football. If you look back on the game, and you're the quarterback ... is there anything you would have done differently?" Working with a network of activists, they've helped survivors learn about their Title IX rights and file complaints about violations across the country. Today, 78 American colleges, including Harvard, Princeton, Dartmouth, Amherst, Swarthmore, Brandeis, Emerson, and a slew of West Coast schools from UC Berkeley to USC to UCLA, are under investigation by the Department of Education's Office of Civil Rights.

Though they're at the heart of a national movement now, Pino and Clark were on the sidelines when things started to shake out a few years ago. Online—especially on powerful mainstream blogs like Jezebel—young writers were brewing a cauldron of pop-culture coverage and feminist theory, resuscitating feminism from its post-Monica Lewinsky, *Girls Gone Wild*-era doldrums by coaxing horror stories out of dark crannies and crucifying pop-culture villains. Between Woody Allen, Terry Richardson, Chris Brown, Elliot Rodger, the "legitimate rape" dude, Robin Thicke's "Blurred Lines," and Ray Rice knocking his fiancée out cold in the elevator, they haven't needed to look far. Pop culture was "rape culture," they said, borrowing a term from second-wave feminism as a catchall for America's stew of degradation, objectification, and male entitlement. "Rape culture is an attitude toward women in particular, but not even just to women—to treating all people as sexual objects, nothing more than an opportunity for sex," says Anna Bahr, a Columbia graduate and former editor of *Blue and White*, the school magazine.

Slowly, public discussion of rape among college women began to be normalized, and they started to share. Amherst student Angie Epifano published the first major, non-pseudonymous "atrocious tale" in 2012, writing about how her rape allegations were denied by her college's sexual-assault

counselor; how she became suicidal and was locked up in a psychiatric ward after which, she alleged, Amherst tried to deny her readmittance; how, when the school agreed to take her back, her dean prevented her from studying abroad (“Africa is quite traumatizing, what with those horrible Third World conditions: disease ... huts ... lions!”); how they made her feel like a “broken, polluted piece of shit.” She wrote that she did not want to be ashamed anymore. It occurred to her that she had no reason to be ashamed. “Silence has the rusty taste of shame,” she repeated to herself. “I will not be quiet.”

Pino studied policy-framing at school, and she thought about combining Epifano’s narrative with developments at Yale, where students had filed a complaint alleging that the school was mishandling rape accusations amid a female-unfriendly atmosphere where frat pledges felt okay yelling things like “No means yes, yes means anal” and “My name is Jack, I’m a necrophiliac, I fuck dead women and fill them with my semen.” A mix of the personal and the political, Pino thought, can make a movement. Pino and Clark also had a genius rhetorical idea—they’d take a lesson from the military anti-rape movement, which had beaten a drum about kicking serial, violent rapists out of the armed forces. No one should talk the way activists did in the ’90s—no more date rape. Focus on college men as serial predators, and cite a study that claimed that 6 percent commit three or more undetected rapes and attempted rapes each.

On a staggeringly sunny morning in Los Angeles, Pino and Clark are at their apartment, working away. Best friends, they even dress the same: Today, they’re in purple tops, black eyeliner, a surfeit of teeny-tiny diamond-stud earrings, each with a pendant around her neck, plus Clark has slung on her Phi Beta Kappa key—and small ankle tattoos reading ix. This crusade is exciting but not lucrative. Without money to pay rent, they slept in a tent for a little while. Pino became ill and thought she had mono, though Clark didn’t have mono and they spent all their time together. Maybe it was the old hummus she’d eaten? At the ER, with her laptop to keep plugging away on activist issues, the doctors gave her prednisone, a no-no because she has PTSD from her rape. “It gave me violent hallucinations, which made me suicidal,” she says.

In the end, Pino was diagnosed with a staph infection in her blood, though she looks fine today, doing what she does every day—talking to survivors, advising them on Title IX complaints, and polishing media sound bites about necrophiliacs and the taste of silence and every dirty, repulsive thing. “I got a good one today,” says Pino. “My Rapist Was Only Fined \$25.” On a wall, a whiteboard is filled with the names of schools they’re about to target, and a map of the U.S. has tiny colored pins stuck in each state where a college has an investigation. Says Clark, “Like at Penn State, when things aren’t connected, it’s so easy to say, ‘Okay, here are four people doing things wrong. We’ll fire them, and the issue goes away.’ We reframed the debate as, ‘What’s happening at one school is a microcosm of what’s happening everywhere.’”

Taking a seat at a cardboard box, which functions as their desk, they whip out a laptop. “I wouldn’t say we control the media, but we have a good grasp of how the media works,” says Pino, shrugging her shoulders.

Drawing bright lines over gray areas is one of the things college students do best—you pay money to learn, among like-minded souls, the contours of the world and your place in it. Over the

past couple of decades, the college campus has acquired some aspects of a utopia, too, namely, the free-floating myth of itself as a utopia. But different students have different ideas of what this constitutes. It might be a place to go wild, to do the things you won't get to do as a full-fledged adult; it might be a place to search for a political point of view and dedicate yourself to a cause. It's also seen, primarily by boys, as a sexual utopia, where all you have to do is open the door of a frat party to have mind-blowing sex that catapults you into the pantheon of manhood—as opposed to what college sex is often really like, which on its best nights (after emoji flirting, hits off a five-foot bong from a top bunk, and elegant overtures like “Um-want-to-watch-a-movie-in-my-room”) still resembles rutting pubescent chimpanzees.



Emma Sulkowicz, a senior, she says she'll lug her mattress around campus all year in protest. Photo: Peter Hapak

Is there a rampant hook-up culture on campus today? Of course there is. Does the promiscuity that third-wave feminists heralded as empowerment look a little less attractive when practiced by teenagers with little experience and less maturity? You bet. And frustration with hook-up culture is undeniably a part of the anti-rape movement. In some activists' ideal world, there might be no trial, on campus or elsewhere, but instead a simple presumption of guilt.

In all of the allegations, I'm sure there are a few women who are crying wolf, who are vengeful and looking to punish ex-boyfriends—just a few. A percentage may be misunderstandings—confusing signals, something she wanted and then didn't. Drunkenness doesn't clarify these things, even when they should be clear. The way that college girls, for instance, taught from early life to be polite and well behaved, might say “No” during sex with someone they know isn't the same as with a stranger. It's “No, it's not a good idea,” “No, please get off me,” and then, often, a numb acceptance.

Survivor-activists like Pino and Clark don't accept this worldview—to them, efforts to understand the problem are nearly useless because, they insist, only a small number of college sex offenders can be rehabilitated. “There are people out there who want to say that survivors today are feminism gone wild, railroading men for power,” says Dirks, the Occidental sociologist. “And they can rely on talking about kids and alcohol, saying what happened was just drunk sex—and, you know, we've all had great drunk sex!” Research, she says, shows that only a small percentage of college guys truly don't know where the line is—and, for them, if you tell them to get verbal consent, they don't push so hard.” She pauses. “But the rest of them—and I know it's hard to think

of our brothers, our friends, like this—are calculated predators. They seem like nice guys, but they're not nice guys. In society, we don't like sex offenders in any other area, but for some reason, if you're in college, we love you and want to protect your rights."

As compelling as this rallying cry about unrehabilitatable offenders is, it's not an assessment of the problem that everyone shares. In the center of this philosophical, and administrative, debate are the universities, which need to protect students, including innocent boys who may not look innocent, as in the Duke lacrosse case. There are good people here who have dedicated their lives to helping young people, and one of the mysteries of this issue is how they created a system that devastates so many of the students who come to them desperate for help. At some universities, it's administrative bloat, middle-management laziness, a habit of shoving assault cases under the rug so they don't become nuisances. At others, too much attention has perhaps been paid to the letter of Title IX and not its spirit, with a sluggishness about giving rape survivors what they want—the accused student out of their dorms, classes, and their lives.

A progressive, politically aware school in Manhattan but also apart from it, Columbia, to my knowledge, isn't accused of covering up sadistic gang rapes that have been exposed at other schools. Most of the cases that I learned about, though each horrid in its own way, involves a female student, perhaps engaged in a hook-up session, being forced into an act against her will. A freshman was raped by a junior who taught her Consent 101 class. A student's rapist was moved back into her dorm by mistake. In one case, an assistant athletic coach whom a student confided in about her assault told the head coach, unbidden, and he berated her for three hours. Camila Quarta says she woke up in the middle of the night and the male platonic friend she had invited to sleep over was fingering her. He begged her not to report him, leaving a letter and David Foster Wallace's *This Is Water* at her door. "He wanted me to have it because I'd shared so many of my political views on the world with him," and he said Wallace's speech was important to his Weltanschauung, says Quarta, a die-hard leftist. "I didn't read it." (Citing privacy laws, Bollinger won't comment on the accuracy of these allegations—it would not only be illegal, he says, but immoral.)

Columbia doesn't have an overt *Animal House* atmosphere—though excessive drinking, often at city bars, has always been part of its social life. Here, the issue around assault built slowly. In 2013, as national headlines sprang up, the university's College Democrats thought it was worth inquiring into Columbia's sexual-assault statistics. They asked Bollinger for data beyond what was mandated by federal requirements—they wanted aggregated, anonymous data about punishments meted out when the accused were found guilty. Otherwise, how could they know if the system was working? As "Prezbo," as Bollinger is called, seemed to ignore their requests, students became suspicious, circulating a petition that gathered over 1,500 names.

Still, this was a relatively quiet collegiate tussle—but Sulkowicz, whose father consulted with a high-profile attorney who knows how to work the press, began to grant interviews. And then Bahr, the magazine editor, published an **8,000-word** (<http://bwog.com/2014/01/23/accessible-prompt-and-equitable-an-examination-of-sexual-assault-at-columbia/>), **two-part article** (<http://bwog.com/2014/02/06/fallen-through-the-cracks-an-examination-of-sexual-assault-at-columbia-pt-2/>) about the three women who had accused Paul of assault. The Columbia campus

went nuts—was this what had been going on behind closed doors?

Zoe Ridolfi-Starr, a brunette with a fringe of bangs and a clipped way of speaking that resembles Tracy Flick's, took up the question. The daughter of the two female co-founders of the Northern California Innocence Project— "My favorite baby picture is at my first pro-choice rally, wearing a hat with a pin on it that says ABORTION WITHOUT APOLOGY"—she was an Obama organizer in Nevada at 15, president of her class in San Jose, and then a congressional page with plans to run for public office one day.

But after her first year at Columbia, Ridolfi-Starr was at a fraternity party with two men, one of whom was a student and one who wasn't, when they began assaulting her. "It was dirty and confusing and made me feel sick," she said. Then, at the Democratic National Convention, with the "son of a very important person," it happened again. "I was pretty violently assaulted," says Ridolfi-Starr, audibly drawing in a breath. "I was stranded in North Carolina with no one I knew and no way to get home. The scene at the DNC struck me as extremely grimy, extremely exploitative, with people grabbing power sexually, personally, politically—everything. And then the guy lied about what happened and everybody was laughing about it."

Ridolfi-Starr never brought her assaulters to justice. She studied abroad in Argentina, got away for a while. But now she was back at Columbia. And she was ready to channel her fury over her rapes, along with considerable political expertise, into helping students avoid the same fate. If Pino and Clark are national leaders, Ridolfi-Starr is a star organizer of the Columbia branch of the movement. "Columbia is my home, and I deserve to be safe in my home," she says. "I moved across the country to come to my dream school, and then the institution betrays us. It's hideous."

In general, students were outraged by the unethical ways that the guys and Columbia's administration had acted. But some of them thought survivor accounts were difficult to believe: "They're pigeonholing these guys as autistic, predatory rapist dudes who only think about sex," says a sophomore. And, problematically, no one seemed to understand or agree on what rape means or what qualifies. "I had a friend who was like, 'I had sex with this guy and I was really uncomfortable—I wish I'd said something,'" says Trina Bills, a student who graduated last year. "But she didn't, and so he didn't know. When she finally told him, he said, 'You should've told me. It would've been fine—we just wouldn't have done anything.' The communication aspect of this is real. And everyone communicates differently."

Sulkowicz and Ridolfi-Starr shared a hall as freshmen, but the hipster fencer-artist and the earnest political organizer weren't close back then. "I remember Zoe carried around lollipops in her purse, taking them out to suck on like they were accessories," says Sulkowicz. Ridolfi-Starr laughs. "I always have my little thing," she says. "This year, I'm really into headbands."

Now they had a strong bond. At first, they tried to work with Bollinger and the administration. But, Ridolfi-Starr claims, the school refused to put out a place setting for them, choosing instead to work with student-government leaders. "They don't like us. They don't trust us. They don't want to work with this. Their attitude isn't 'Let us address your needs as students.' It's 'How do we mitigate this situation to protect our reputation?'" She sighs. "Going through the experience in

your own life is not a qualification they take seriously.”

It was time for direct, nonhierarchical, gyno-friendly, partially anonymous, fuck-Prezbo-up action. Ridolfi-Starr and others founded a radical group called No Red Tape—the mantra is “Red tape won’t cover up rape”—and put tape over their mouths at a student-activity fair when they were told to stand 20 feet away. (“It’s *our* student center!” says Ridolfi-Starr.) She claims that a dean told another student she was “disruptive” and a “liar”—“Can you imagine, a 50-year-old saying that about a 21-year-old?”—and that on Valentine’s Day this year, the same dean kicked No Red Tape out of his office when the group asked about funding for the rape crisis center. “Emma said, ‘You mean to tell us that as the dean of our school you don’t know how anything is funded?’” says Ridolfi-Starr.

“We were sharing some of the worst experiences of our lives with him, and he was in a suit, smirking at us. Then he said, ‘This meeting is over.’ She shakes her head. “It was so unacceptable.”

The administration may not have wanted to listen—but Pino and Clark did. At the time, Clark was advising Hobart and William Smith Colleges on a Title IX investigation, and the two of them were coaching a survivor on **talking to the Times** (<http://www.nytimes.com/2014/07/13/us/how-one-college-handled-a-sexual-assault-complaint.html>). It wasn’t a long way to New York. Ridolfi-Starr burned the midnight oil, and soon 28 students signed a federal Title IX complaint against Columbia that runs about 400 pages, they estimate. (Columbia has yet to hear whether it will be investigated, and added to that list of 78 schools.)

Now that the Title IX complaint had been filed, media and high-level politicians were ready to give the students a platform. Could Sulkowicz be on the front page of the *Times*? Done. And - Senator Kirsten Gillibrand, stung by disappointment about her military-rape bill, was crafting a strong campus-rape bill, asking for more protection for students and higher penalties for colleges, slated to come to the floor in late 2014 or 2015. For certain violations, she wants fines of up to one percent of the universities’ operating budget, which can run into the billions.

After a press conference at Gillibrand’s office, Ridolfi-Starr talked to her parents. “Right before, I sent them an email like, ‘Heads up, you may see something,’ because they have, um, a Google Alert for my name. How embarrassing.” Her moms were very upset. “You know, they’re smart



Zoe Ridolfi-Starr, a senior and the central voice in the Columbia movement, photographed in the dress she wore the night she says she was raped. Photo: Peter Hapak

people, feminists, and yet one of the first things they said was, "This happened in Argentina, didn't it? You've always been too adventurous." A "mom response," granted, but "so victim-blaming," she says. "Even if I was assaulted in Argentina, it's not my fault for going to Argentina. And also, like, 'No, I was here, doing the same thing I do every weekend—bar, party, apartment; bar, party, dorm.'" She laughs a little bitterly. "Mom, you probably walked by him when you moved me in."

There was still more courage to summon. One day in May, several people crept into the bathrooms of student buildings and **wrote the names of the alleged rapists on the wall** (<http://nymag.com/daily/intelligencer/2014/05/columbia-graffiti-names-rapists-on-campus.html>)—not only Paul but prominent guys like a big campus DJ, an athlete training for the Olympics, and a male student who worked at the Bwog, a campus news blog.* Columbia immediately dispatched janitors to wash the graffiti away. The anonymous offenders did it again, two times, and Columbia finally barricaded the third bathroom.

Other students started to ask questions—what was this? This was not taking the university to task in a responsible way—this was vigilantism. Ridolfi-Starr was upset by the blowback: Students were saying it was possible these guys weren't even rapists. She couldn't believe it—she, the daughter of Innocence Project moms, making false accusations? A new flyer appeared from an unknown source, this time explaining which students on the list were found guilty and calling Paul a "serial rapist." The accused student was forced to resign from the blog.

Though some students thought social ostracism made sense, the survivor-activist group lost a little bit of support over Bathroomgate. You can't just disappear a student. Some of these guys had been disciplined—who was to say the punishment was too lenient? To Quarta, whose assaulter was only given a semester off, it wasn't enough. "His family sent him to Europe, and meanwhile I was here working my ass off," she says.

Over the summer, accused male students around the country began to organize, too. They're aware of the political brilliance of the anti-rape movement, the way activists have liberated themselves from litigating individual he-said-she-said cases and moved the burden to universities to foster a safe campus environment, to insist they live up to their own ideals as liberal utopias, where nobody ever has to debate semantics.

At Columbia, a suspended varsity rower from Florida is suing the school, and several others are considering suits as well, alleging their own civil rights are being violated: They wouldn't be coming under fire if they weren't men. (No accused students agreed to speak with *New York*, and a message left for Paul was not returned.) Andrew Miltenberg, an attorney for the rower, says there aren't big settlements in the offing, but the kid's academic record should be expunged of a sexual offense, so he can go to medical or law school, proceed with his life.

On the survivor side, activist lawyer Gloria Allred and others are settling civil cases with universities—at the University of Connecticut, awards ranged from \$25,000 and \$125,000, though one student received \$900,000—but no one at Columbia has signed up with an attorney yet, says Ridolfi-Starr. If you take money from the university, you generally sign a confidentiality clause, and that isn't great for the movement.

On a recent afternoon, I went to see Suzanne Goldberg, Columbia's new head liaison on sexual assault and a law professor best known as co-counsel on the Supreme Court case reversing Texas's sodomy law. Her office, which is hung with a LAMBDA poster featuring Lady Liberty, faces Wien Hall, where Paul and Sulkowicz were kissing that night. Columbia's new policy, says Goldberg, is a good one—"one of the best in the country, with more resources dedicated to supporting survivors and other students affected by gender-based misconduct than most." She pauses. "It's hard for most people to navigate sexual relationships and particularly challenging for young adults." She clicks on a computer to show me a poster hanging in undergraduate dorms, with red, yellow, and green lights. Red means stop: You're drunk, asleep, or passed out, or one person doesn't want to have sex. Yellow is pause: mixed signals. Green: A mutual decision has been made about how far to go and "all partners are excited and enthusiastic!" She looks pleased. "A traffic light is useful. It gives people a vocabulary for having what can be an awkward conversation in a congenial way."



Sarah Yee, a Columbia junior, wearing the shirt she says she was attacked in. Photo: Peter Hapak

Sitting here, with this distinguished woman in pearls and a black suit, it strikes me how hard it is to talk about sex, rape prevention, any of this, in a way that fixes what's wrong—this is America, after all, where we're supposed to think about sex constantly, but never talk about it. Shifting our standard of consent from "No means no" to "Yes means yes"—a change being considered on many campuses and recently passed for colleges in the California state legislature—could happen in ten years, like seat belts and laws around secondhand smoke. Or it may be much harder in practice than theory, especially if Pino, Clark, and Dirks are right, that the problem has less to do with communication than with serial predators. Memory is fungible, and especially without the guys' perspective, I can't say whether the survivors' accounts are truthful on every point. A woman who doesn't support other women's rape accusations is an ugly thing. And I can definitely report that whatever happened to them was deeply traumatizing. When Sulkowicz ran into Paul earlier this fall, she says, "I turned around and went the other way. Then I started to cry."

Columbia's new policy still leaves appeals in the hands of undergraduate deans, which No Red Tape finds disagreeable. "My view is the deans are ultimately responsible for the protection and caring of our students, and they should be making the decisions," says Bollinger. "But I'm open to talking about that, just like any other question." In mid-September, at a rally on the steps of Low Memorial Library, where President Bollinger's office is located, as they covered Alma Mater's

mouth with red tape and dragged dozens of mattresses onto the steps, this issue was front and center, with students holding signs reading FUCK THE DEANS—plus FUCK RAPE CULTURE, FUCK YOUR COMMITTEE, and FUCK YOUR FAKE CONCERN.

For nearly three hours, survivors—females and males, straight and LGBTQ—talked about their experiences, as observers and a scrum of media bore witness. It started with a Barnard student spitting a poem about howling at the moon, and then calling Columbia out as a place where “future leaders may rape and come back.” There was the student assaulted the first day of her freshman year 22 years ago, and a freshman with a red X over her bellybutton who said she had been assaulted six days ago. There was a beautiful blonde from Barnard who screamed, “Fuck the administration!” and a heavysset student with magenta hair who described campus response to stories of sexual assault as, “When a pretty girl is raped, it’s a tragedy, and when a fat woman is raped, she should be grateful.” She pleaded with the crowd not to forget about her.



Erik Campano, a Columbia student and member of No Red Tape who identifies as a survivor of sexual assault. Photo: Peter Hapak

There were students from Union Theological Seminary, who led the crowd in a civil-rights-era song and talked about Sulkowicz, praising the “courage of a young lady on this campus who cracked shame not only for herself but cracked shame in all of us.” There was the male former Amherst student-body president, in his salmon polo shirt, khaki shorts, and duck shoes, who talked about his best friend who was expelled for rape last year. When the speaker didn’t defend him, he was ostracized and had to move out of his dorm. “I literally lost all of my friends,” he says. “For something about which we’re right and they’re wrong. Rape culture is what’s wrong.”

It went on and on, and the sun was hot. Ridolfi-Starr tried to cut things short but then dialed her suggestion back when she realized that the crowd was still swelling. Some were thoughtful: Erik Campano, in gold horn-rims, called for a “compassionate campus,” where “my guy friends, who are otherwise men of conscience and intelligence, will not come up to me at a party and ask me who at the party might respond to their advances?” And some were out there: “I had a dream last night,” said a Barnard student in black leggings, “that President Bollinger and the deans were in a conference room with naked women on their laps, watching our protest on a screen and laughing at us.”

It was like an old-time teach-in, with the survivors teaching the people who hadn’t been touched

in a nasty, formerly unmentionable way by anyone in their lives what it feels like, but at some point everyone realized something had happened to them that they didn't like, in bed, on a mattress, at least once or twice, and their empathy lifted the survivors' resolve even more. Soon, there wasn't a dry eye. The speeches got angrier, and then they got softer, and the crowd pulled in close, as a third-year student at the engineering school began to speak. "I'm not going to give you the list of assaults, and I'm not going to give you the list of rapes, and I'm not going to give you the names. It's a lot of years." She scanned the group, looking as many people as she could in the eye. "I know what it feels like to be the person in these crowds who doesn't know how to hold this bullhorn yet, and I want to say something for those who are not going to come up here. We believe you. I believe you. So stay." She gripped the bullhorn, demanding their commitment. "Just stay."

**This article appears in the September 22, 2014 issue of New York Magazine.*

**This article has been corrected to show that the campus news blog where one of the alleged rapists worked is not editorially affiliated with Blue and White.*

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0015/2015



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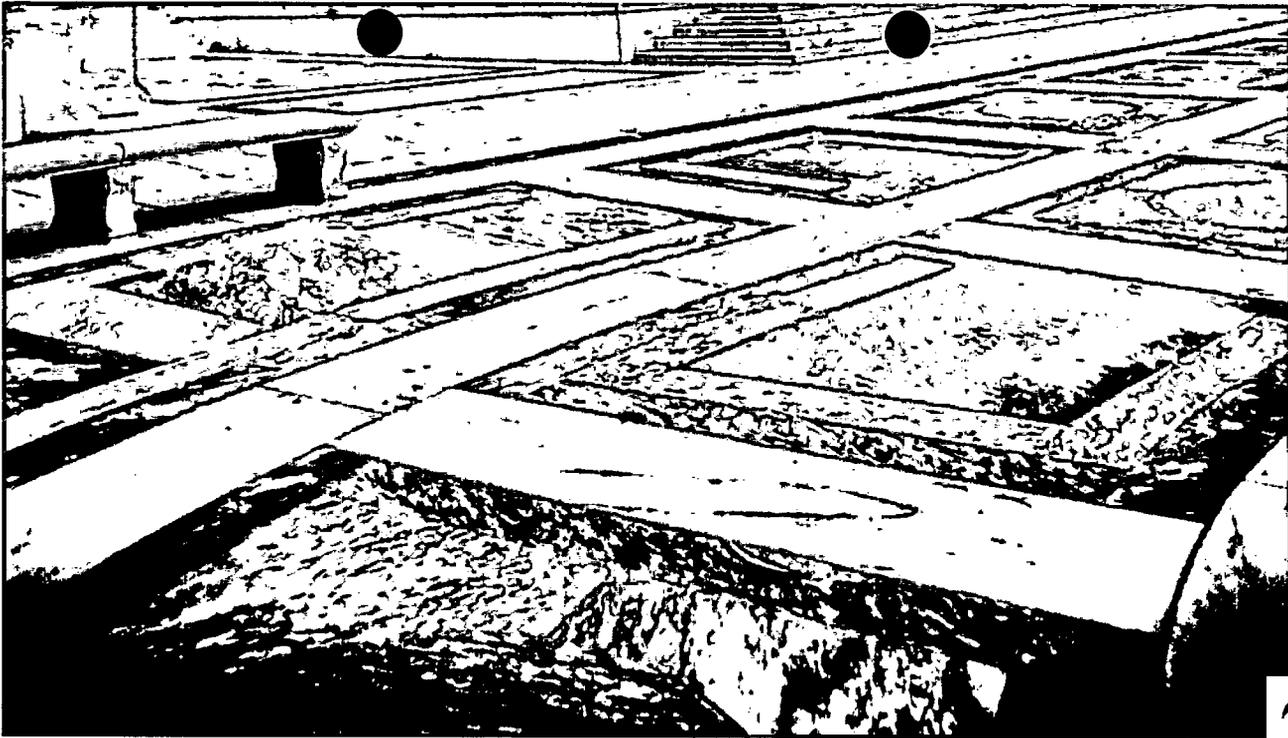
The Fight Against Sexual Violence on College Campuses: End Rape on Campus

The White House established a task force to fight sexual assault on college campuses earlier this year. But many organizations have been fighting for this cause a lot longer. We're taking a look at a variety of groups that are working to educate survivors and students, fight outdated policies, and most of all, end end sexual violence on college campuses. **End Rape on Campus** helps students take action against their universities by filing Title IX and Clery complaints. **Read more:** One Student Only With Consent



by DIANA PEARL Jun 25, 2014 Politics

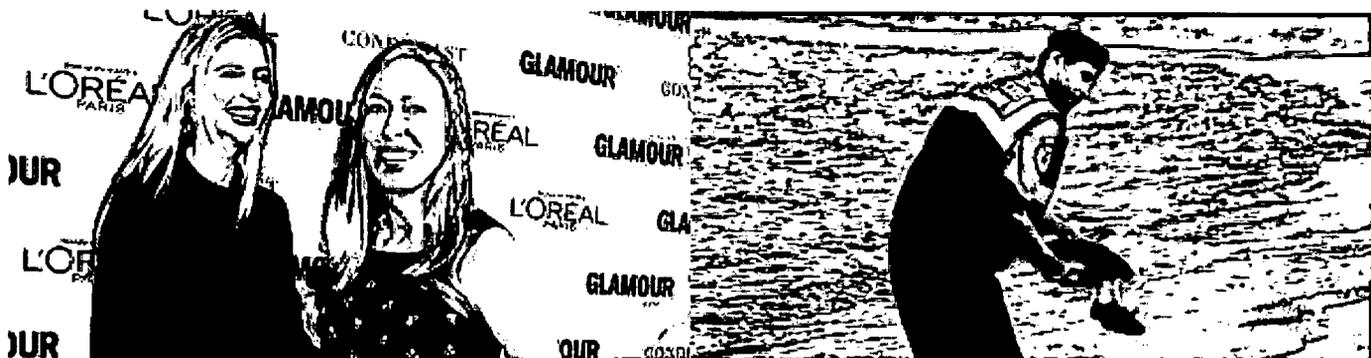




Getty Images

Danielle Dirks, a professor of sociology at Occidental College, noticed a growing trend among students at the school. As a faculty member trusted by her students, she had several students confide in her that they had been raped. Based on that, she felt there was a trend of repeat instances of sexual assault on campus—it was the growing sentiment that the college's response to these incidents was frustrating. Occidental students weren't—and still aren't—alone. The White House has called out 55 colleges and universities for frequently failing to take the actions needed against the perpetrator, or even to help the victim, following an instance on sexual violence on campus.

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"Every school in America should have a [Title IX or Clery] complaint filed against it right now," Dirks, a co-founder of anti-sexual violence group End Rape on Campus says.

But for students who want to fight back against this inaction, diving into the legal matter is a lofty task. Universities oftentimes do not follow the laws that are in place to protect students, which leads to the necessity of title IX and Clery complaints against the institution. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, better known as simply the Clery Act, is a federal law that mandates the disclosure of crime on campus to the university community. Title IX is a civil rights law that prohibits sex discrimination, which includes rape and sexual assault. In simpler terms, Title IX deals with how a school handles cases of sexual assault and rape—covering up these instances, or as Dirks says, when institutions choose to protect the school over the students, is violating the law.

"It's devastating to watch institutions betray their own students," she says.

<http://www.marieclaire.com/politics/news/a9932/sexual-violence-org-end-rape-on-campus/>

While some anti-sexual violence groups provide the materials to be educated about sexual assault, End Rape on Campus provides the education to take action. End Rape on Campus's mission is to ease the burden of unfamiliar legal action by helping students file Title IX and Clery complaints against their schools.

This national organization has a localized approach. The group connects with anti-sexual violence student groups at colleges across the country to work on Title IX issues. But if there isn't the lack of a presence of a student group on a specific campus doesn't stop End Rape on Campus from offering assistance—the group works with individual students as well. Oftentimes, through social media and the web, these campus groups find End Rape on Campus because they want to take further action, but aren't sure how to go about it.

The group was co-founded by Danielle Dirks, a sociology professor at Occidental College, as well as Annie Clark and Andrea Pino, two lead Title IX complainants against their school, UNC Chapel Hill. The three connected after Dirks helped to stage a large protest against the lack of warning to the student body following a student's sexual assault at Occidental. Dirks, Clark, and Pino found common ground in their desire to take legal action. Clark used her experience with Title IX filing to assist Dirks, as well as 37 students and faculty, in filing Title IX and Clery complaints against Occidental. Soon after, they were assisting students at schools such as Dartmouth, Swarthmore, and the University of Southern California to do the same.

"We're on the ground, helping students file, every day," Dirks says.

Dirks, Clark, Pino and the rest of the team have been helping students file complaints for years, but it was just in the summer of 2013 that the End Rape on Campus team was formalized. Today, it is a group of six women, all of whom have experience in filing Title IX and Clery complaints—and use this experience to help others do the same. "We'd all been doing the work for so long, it was really just formalizing the work we'd already been doing," Dirks says.

Combating sexual violence and rape on college campuses has been a national issue for decades, but only recently has it been brought into the spotlight as such. End Rape on Campus saw their work come to fruition with the release of the list of schools under investigation by the White House's Task Force to Protect Students From Sexual Assault. Out of the 55 schools listed on, members of the End Rape on Campus team had assisted students from 12 of the schools listed in filing. "It's heartening to see so many important voices join in this movement," Dirks says. And this publicity is only the beginning. Dirks says that the attention that both the Obama administration as well as the media are paying to the issue of sexual violence on campus has caused many students to react.

The future of End Rape on Campus is to go beyond complaints, and hold schools accountable for following the law in the first place. "Now, we are thinking of different ways to push the conversation forward so that student don't have bring complaints forward, and we can push enforcement of federal law much earlier than the complaint," Dirks says. "Giving the Board of Education the tools to enforce their laws would be a wonderful place to start."

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And the Celebrity Endorsements Roll In: A Breakdown of Which Stars Support Which Candidates

Here we go...

by SAMANTHA LEAL

UT

09/15/2015

As more women become empowered to report assaults, an irrational fear of false reports will likely grow as well. But according to the FBI, only eight percent of rape reports are unfounded. And this is most likely an overestimate of false reports: the FBI counts cases as unfounded when deemed so by law enforcement officials, not when they are proven false through a trial. While a false rape claim is undoubtedly detrimental to the accused, those numbers are miniscule in comparison to the number of women raped each year.

To men genuinely concerned about being accused of sexual assault: Learn the definition of consent. Some movies, television and music will teach you that it is your job to be forceful; to aggressively pursue your "target;" to chase after women who deny you because you "know they want it." They are wrong. Read books and articles about the definition of consent. Talk to women about what sexual consent looks like to them. Most importantly, talk to your sexual partners about what consent means to them. Consent isn't halting the action when your partner begins to cry to ask them if they are OK; consent is getting an enthusiastic, confident "Yes!" before you start having sex in the first place.

To colleges who want to avoid lawsuits from both survivors and alleged perpetrators in the future: Educate your students. Teach them the definition of enthusiastic consent, show them what it looks like in real-world situations, and remind them, over and over, what is expected of them when engaging in sexual activity with other members of their campus community.

Photo of gavel courtesy of Flickr user Brian Turner.



Emily Shugerman is a politics major at Occidental College and an intern at Ms. Follow her on Twitter.

18 Comments

Comments



BllndPelican says:

June 18, 2014 at 2:43 pm

"These lawsuits are an incredible display of entitlement..."

Can't argue there. All citizens are entitled to whatever legal recourse is available. Would Prof. Heldman prefer that the system not be challenged and examined and that people not be allowed to protect themselves from potential abuses by authority? Perhaps, following her logic, we should scrap the appellate system because lower courts have it handled and are always perfect.

"These are students who were found responsible after an extensive adjudication proceeding that is heavily biased in favor of alleged perpetrators."

A preponderance of evidence standard is heavily biased in favor of the defendant? That is really an absurd notion.

Anyone who truly believes campus tribunals are both equipped and capable of handling the intricacies of evidence for such crimes, and that these tribunals actually do anything for public safety is sadly naive.

Even if they succeed in kicking an actual rapist out of school, it doesn't take her or him off of the streets or reduce the threat that they pose.

Reply



Jonathan Herjavec says:

June 18, 2014 at 6:25 pm

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Below you will find previous letters to the campus community from President Veitch.

- August 23, 2013 - Interim Sexual Misconduct Policies and Procedures for 2013-2014 Academic Year**
- August 8, 2013 –August 8 Sexual Assault Update**
- May 1, 2013 - May 1 Sexual Assault Update**
- April 16, 2013 – Sexual Assault Update**
- March 19, 2013 – Occidental Weekly**
- March 5, 2013 – Letter to the campus community**

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Phone: (323) 259-2691

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president@oxy.edu

- **Sexual Assault Resources & Support**

Interim Sexual Misconduct Policies and Procedures for the 2013-2014 Academic Year

As promised on May 1, we are delivering the interim sexual misconduct policies and procedures that will be in effect for the 2013-14 academic year.

The development of the interim policy is an expression of the College's commitment to fostering a climate free from sexual harassment and misconduct through clear and effective policies, a coordinated education and prevention program, easily accessible mechanisms for reporting, and prompt and equitable procedures for resolution of complaints. This interim policy is one of many steps that demonstrate the College's commitment to this issue. Others include the national search for a dedicated Title IX Coordinator, the hiring of a full-time survivor advocate, the creation of the Oxy Assault and Advocacy Response Team, and the continuing public dialogue about these important issues.

Drafted with the assistance of Gina Smith and Leslie Gomez, the outside experts we brought in to assess our existing policies and procedures, this new umbrella policy is consistent with the latest thinking about effective practices on campuses across the country, as well as recent legislation and guidance from the U.S. Department of Education. It is also drawn from the contributions of many Oxy community members, including the Sexual Assault Task Force, Occidental Sexual Assault Coalition (OSAC), Occidental Men Against Rape, ASOC, and many other students, faculty, parents and alumni. The policy has also benefited from the candid input received through the anonymous online suggestion box at https://oxy.qualtrics.com/SE/?SID=SV_8d1V3gEt6szEaix.

Like many colleges and universities, Occidental had previously treated sexual harassment and sexual misconduct in separate policies: a sexual misconduct policy that applied to students and a harassment policy that applied to the entire community, including faculty, students, and staff. Our new interim policy combines these two into a single umbrella policy. This decision was based on a number of factors: the way federal law defines sexual assault as a form of harassment, advice from the Department of Education, and a desire to apply policy consistently to all members of the Oxy community on an issue that affects everyone. We believe a universal policy will be easier for everyone to understand, to access, and to administer.

The interim policy is supplemented by specific procedures for the resolution of a report of sexual harassment or misconduct against students, found in Appendix A. Procedures for resolving complaints against faculty or staff will continue to be handled according to current practices. A focus of our work this fall will be to draft, with community input, specific procedures for resolving complaints against staff and faculty.

A letter to the editor from President Veitch submitted to the *Occidental Weekly*

March 19, 2013

Friends,

The last couple of weeks have been quite tumultuous. And I'm afraid that I may have contributed to that tumult in some unproductive ways through my own email to all of you. I wrote it at a moment when everything seemed to be coming at us at once. A bad idea. Let me try again. I would like to begin by apologizing for a tone that might have alienated those I most wanted to reach--the students and faculty who care most about the issue of sexual assault. And while I am at it, let me also say that I'm sorry if I gave the impression that students or faculty should not be speaking to the media on an issue as important as this one. What I objected to was the implication--reported in the media--that the College is not serious about the issue of sexual assault. We are very serious.

Controversies like this one--particularly for those in the middle of them--can provide a powerful impetus for reflection. Over the past several days I have been engaged in conversation with a number of students, staff and faculty. They have given me some very good advice. I have been surprised by two things: the alarming number of students who have experienced some form of sexual assault at Occidental and beyond; as well as by the range of opinion about how incidents of sexual assault should be addressed by the College. Those conversations point to the necessity of acting promptly and the concomitant need to do so with deliberation--not an easy line to walk. In the course of those conversations, I was reminded of the importance of listening closely and with an open mind.

Already, thanks to my conversations with a thoughtful group of students, I have begun to change my thinking about the need for notification as a visible and persistent reminder of the intolerable incidence of sexual assault on our campus. I see more clearly now that my desire to protect the privacy of the survivor (and perhaps an unconscious and perhaps not entirely blameworthy desire to protect the reputation of the College) could easily lend itself to silence with regard to an issue that must be addressed by all of us. So we will act promptly to address this issue by asking our Office of Campus Safety to send out a campus-wide email reporting incidents of sexual assault. However--and here comes the deliberative part--we will only do so with the permission of the person lodging the report, and we will not provide information that will lead people to identify the specific actors involved. And just to be clear: We cannot use the Oxy Alert system for this purpose because the alert system must be reserved for natural disasters or the presence of a shooter on campus. We will use the campus-wide email system so that everyone will know that an intolerable violation of our commitment to each other has occurred.

Notification, of course, is just the beginning. There are many more issues that need to be addressed; many of them will be more vexing and less subject to compromise. We have a Task Force on Sexual Assault in place, which will issue a report on May 1st. That task force will hold open meetings and publish their minutes on-line. Anyone who wishes to get on the agenda may do so by reaching out to the Co-Chairs, Danielle Dirks and Shelby Radcliffe. The demands made by OSAC will serve as our starting point. Since--as I have said before--I agree in principle with most of them, I expect them to be implemented. Implementation will be subject to the laws of due process and privacy as mandated by our laws, and weighed in conjunction with best practices at other institutions. There will be disagreements, leading to results that will probably look like the policy on notification outlined above. But there will be results. Our goal is to make Occidental nothing short of exemplary in eradicating this scourge on our campus and encouraging the conversation we have on this and other vitally important issues. I invite you to join us.

Jonathan Veitch

A letter to the campus community from President Veitch

March 5, 2013

Friends,

Sexual assault is a serious issue on college and university campuses. It is probably the single-most under-reported issue in higher education. We--and by we, I mean all of us--must do something about it. It is incumbent on Occidental; it is incumbent on each of us.

As nearly everyone knows by now, a report of sexual assault was made a week ago that led to a police investigation and coverage on the local news.

Some students and faculty are upset that the College did not notify them of the incident immediately after it happened. Immediate public notification is not a practice that is either possible or desirable. Here is why: 1) In

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DOUBLEX WHAT WOMEN REALLY THINK ABOUT NEWS, POLITICS, AND CULTURE.

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The College Rape Overcorrection

Sexual assault on campus is a serious problem. But efforts to protect women from a putative epidemic of violence have led to misguided policies that infringe on the civil rights of men.

By Emily Yoffe

I An Accusation

Drew Sterrett couldn't know that when his friend slipped into his bottom bunk late one night in March of his freshman year, she was setting off a series of events that would end his college education. It was 2012, and Sterrett was an engineering student at the University of Michigan. The young woman, CB, lived down the hall. A group of students had been hanging out in the dorm on a Friday evening—there was drinking, but no one was incapacitated—when CB told Sterrett that her roommate had family members staying in their room and she needed a place to spend the night. Sterrett loaned her a shirt to sleep in and assumed she'd crash on the mat he

and his roommate kept for visitors. Instead, CB came and lay down next to him on his bed. The two had made out in the past but had no serious romantic interest in each other.

They talked quietly, started kissing, and then things escalated, as they often do when two teenagers are in bed together. When it became clear they were going to have intercourse, CB asked Sterrett about a condom, and he retrieved one from a drawer. Their sex became so loud and went on for so long that Sterrett's roommate, unable to sleep in the upper bunk, sent Sterrett a Facebook message around 3 a.m.: "Dude, you and [CB] are being abnoxiously [sic] loud and inconsiderate, so expect to pay back in full tomorrow ..."

The two finally finished and went to sleep. The next morning, Sterrett says CB told him that she wanted to keep their interlude private. He thought she was embarrassed that she'd had sex with a friend and agreed not to talk to others about it. They saw each other frequently in the dorm until the school year ended.

Advertisement

Sterrett was home in New York for the summer when he was contacted by a university official, Heather Cowan, program manager of the Office of Student Conflict Resolution, and told to make himself available for a Skype interview with her and another administrator. No reason was given.

As the interview got under way, Sterrett realized that CB must have told Cowan something disturbing about their one-time assignation. Becoming concerned about the tenor of the questions, he asked the administrators if he should consult a lawyer. He says they told him that if he ended the interview in order to seek counsel that fact would be reported to the university and the investigation would continue without his input. He kept talking. He told Cowan that he and CB had had a consensual encounter while his roommate was only a few feet away. As the interview was coming to a close, Sterrett says the administrators told him this matter was confidential—though he'd still not been explicitly told what the matter was—and that he should not talk to anyone about it, especially not fellow students who might be witnesses on his behalf.



The University of Michigan.

Courtesy of Jeffrey Smith/Flickr

Later, Sterrett would consult a lawyer and file a lawsuit against the university alleging he'd been deprived of his constitutional right to due process. This account is drawn from the legal filings in that ongoing case. These include Sterrett's case **against the university**, affidavits from witnesses sworn on Sterrett's behalf, the university's response, and a deposition of CB taken by Sterrett's lawyer. (Through his lawyer, Sterrett declined to speak to me. A Michigan spokesman said the university cannot comment on a pending case. CB has remained anonymous in court filings. I contacted her lawyer, Joshua Sheffer, who sent the following statement: "While we strongly disagree with Plaintiff's description of the night in question, we do not feel that it should be played out in the press." It continued: "This lawsuit is between Plaintiff and the University of Michigan; my client wishes only to put this traumatic event behind her and move forward with her education and life.")

Cowan told Sterrett over Skype that there would be restrictions placed on him when he returned to campus for his sophomore year. Sterrett and CB were part of a special program called the Michigan Research Community, and members lived together in a residence hall. Although Sterrett and CB had continued to live on the same floor until

the end of the school year, and she hadn't complained about his presence, Cowan told Sterrett that he would be removed from the dorm. He was also told that he could not be in the vicinity of CB, which meant he was in effect barred from entering the dorm, cutting him off from most of his friends.

The events that prompted the university to take these actions against Sterrett are detailed in an affidavit sworn on Sterrett's behalf by LC, a friend of CB's and her sophomore year roommate. LC stated that in July she received a call from an "emotionally upset" CB who explained that her mother had found her diary. LC recalled that CB explained that the diary "contained descriptions of romantic and sexual experiences, drug use, and drinking." (CB confirmed the contents of the diary in her own deposition.) During the phone call, CB asked LC if she remembered the night CB had sex with Sterrett. LC didn't, because CB had never mentioned it. Now CB told her, "I said no, no, and then I gave in." Eventually, as described in CB's deposition, CB's mother called the university to report that CB would be making a complaint against Sterrett. CB's mother drove her to campus, and CB met with Heather Cowan.

2 An Overcorrection

We are told that one of the most dangerous places for a young woman in America today is a college campus. As President Obama said at a White House event in September, where he announced a campaign to address campus violence, "An estimated one in five women has been sexually assaulted during her college years—one in five." (At an earlier White House event on the issue, the president declared of sexual violence, "It threatens our families, it threatens our communities; ultimately, it threatens the entire country.") In recent weeks, *Rolling Stone's* lurid account of a premeditated gang rape at the University of Virginia has made the issue of campus sexual violence front-page news. (The reporting and the allegations in the article have since been called into question, and *Rolling Stone* has issued a statement acknowledging that the magazine failed to properly investigate and corroborate the story.)

Sexual assault at colleges and universities is indeed a serious problem. The attention it's receiving today—on campus, at the White House, in the media—is a direct result of the often callous and dismissive treatment of victims. For too long, women who

were assaulted on campus and came forward were doubted or dismissed, and the men responsible were given a mild rebuke or none at all. Those who commit serious sexual crimes on campus must be held to account.

In recent years, young activists, many of them women angry about their treatment after reporting an assault, **have created** new organizations and networks in an effort to reform the way colleges handle sexual violence. They recognized they had a powerful weapon in that fight: **Title IX**, the federal law that protects against discrimination in education. Schools are **legally required** by that law to address sexual harassment and violence on campus, and these activists filed complaints with the federal government about what they describe as lax enforcement by schools. The current administration has taken up the cause—the *Chronicle of Higher Education* describes it as “a marquee issue for the Obama administration”—and praised these young women for spurring political action. “A new generation of student activists is effectively pressing for change,” read a statement this spring announcing new policies to address campus violence. The Department of Education has drafted new rules to address women’s safety, some of which have been enshrined into law by Congress, with more legislation likely on the way.

Unfortunately, under the worthy mandate of protecting victims of sexual assault, procedures are being put in place at colleges that presume the guilt of the accused. Colleges, encouraged by federal officials, are instituting solutions to sexual violence against women that **abrogate** the civil rights of men. Schools that hold hearings to adjudicate claims of sexual misconduct allow the accuser and the accused to be accompanied by legal counsel. But as Judith Shulevitz **noted** in the *New Republic* in October, many schools ban lawyers from speaking to their clients (only notes can be passed). During these proceedings, the two parties are not supposed to question or cross examine each other, a prohibition recommended by the federal government in order to protect the accuser. And by **federal** requirement, students can be found guilty under the lowest standard of proof: preponderance of the evidence, meaning just a 51 percent certainty is all that’s needed for a finding that can permanently alter the life of the accused.

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More than two dozen **Harvard Law School** professors recently wrote a statement protesting the university's new rules for handling sexual assault claims. "Harvard has adopted procedures for deciding cases of alleged sexual misconduct which lack the most basic elements of fairness and due process," they wrote. The professors note that the new rules call for a Title IX compliance officer who will be in charge of "investigation, prosecution, fact-finding, and appellate review." Under the new system, there will be no hearing for the accused, and thus no opportunity to question witnesses and mount a defense. Harvard University, the professors wrote, is "jettisoning balance and fairness in the rush to appease certain federal administrative officials." But to push back against Department of Education edicts means potentially putting a school's federal funding in jeopardy, and no college, not even Harvard, the country's richest, is willing to do that.

Hard-line policies like Harvard's are necessary, government officials say, because undergraduate women are in unique peril. Often-cited studies of sexual violence at colleges describe an epidemic. But each of these studies has serious methodological limitations. In some cases, the studies make sensational assertions that are not supported by the underlying data. In others, the experiences of one or two campuses have been made to stand in for the entirety of America's higher education system.

Sen. Kirsten Gillibrand, D-New York, is a co-sponsor of the bipartisan Campus Accountability and Safety Act, or **CASA**, expected to be voted on next year. The legislation would, among other things, require all colleges provide a confidential adviser to guide victims through the entire process of bringing an accusation while no guidance or assistance is mandated for the accused. Gillibrand **said** in announcing the legislation, "We should never accept the fact that women are at a greater risk of sexual assault as soon as they step onto a college campus. But today they are."

This is one of the frequently made assertions about campus violence, but the evidence to back it up is lacking. Being young does make people more vulnerable to serious violent crime, including sexual assault; according to **government statistics** those aged 18 to 24 have the highest rates of such victimization. But most studies don't compare the victimization rates of students to nonstudents of the same age. One recent paper that does make that comparison, "**Violence Against College Women**" by Callie Marie Rennison and Lynn Addington, compares the crime experienced by

college students and their peers who are not in college, using data from the **National Crime Victimization Survey**. What the researchers found was the opposite of what Gillibrand says about the dangers of campuses: “Non-student females are victims of violence at rates 1.7 times greater than are college females,” the authors wrote, and this greater victimization holds true for sex crimes: “Even if the definition of violence were limited to sexual assaults, these crimes are more pervasive for young adult women who are not in college.”

Rennison, an associate professor at the School of Public Affairs at the University of Colorado Denver, recognized in an interview that her study goes against a lot of received wisdom. “Maybe that’s not a really popular thing to say,” she said, adding, “I hate the notion that people think sending kids off to college is sending them to be victimized.”

Any woman who is raped, on campus or off, deserves a fair and thorough investigation of her claim, and those found guilty should be punished. But the new rules—rules often put in place hastily and in response to the idea of a rape epidemic on campus—have left some young men saying *they* are the ones who have been victimized. They are starting to **push back**. In the past three years, men found responsible for sexual assault on campus have filed more than **three dozen** cases against schools. They argue that their due process rights have been violated and say they have been victims of gender discrimination under Title IX. Their complaints are starting to cost universities. The higher education insurance group **United Educators** did a study of the 262 insurance claims it paid to students between 2006 and 2010 because of campus sexual assault, at a cost to the group of \$36 million. The vast majority of the payouts, 72 percent, went to the accused—young men who protested their treatment by universities.

Assertions of injustice by young men are infuriating to some. Caroline Heldman, an associate professor of politics at Occidental College and co-founder of End Rape on Campus, **said** of the men who are turning to the courts, “These lawsuits are an incredible display of entitlement, the same entitlement that drove them to rape.” Sen. Claire McCaskill, D-Missouri, a co-sponsor of the CASA bill, said to the **Washington Post** of these suits, “I don’t think we are anywhere near a tipping point where the people accused of this are somehow being treated unfairly.”

I've read through the court filings and investigative reports of a number of these cases, and it's clear to me that many of the accused are indeed being treated unfairly. Government officials and campus administrators are attempting to legislate the bedroom behavior of students with rules and requirements that would be comic if their effects weren't frequently so tragic. The legal filings in the cases brought by young men accused of sexual violence often begin like a script for a college sex farce but end with the protagonist finding himself in a Soviet-style show trial. Or, as in the case of Drew Sterrett, punished with no trial at all.

3 The Punishment

At the beginning of his sophomore year, Drew Sterrett was in limbo. He did not know whether he would face further disciplinary action as a result of the accusation against him, and indeed no formal written charge was ever issued. The single, cryptic Skype interrogation—the one that blindsided Sterrett over his summer vacation—was to be his sole hearing with campus administrators. He never met them in person. Sterrett's suit against the university accuses it of violating his constitutional right to due process. But as he waited out the fall, often there didn't seem to be any process.

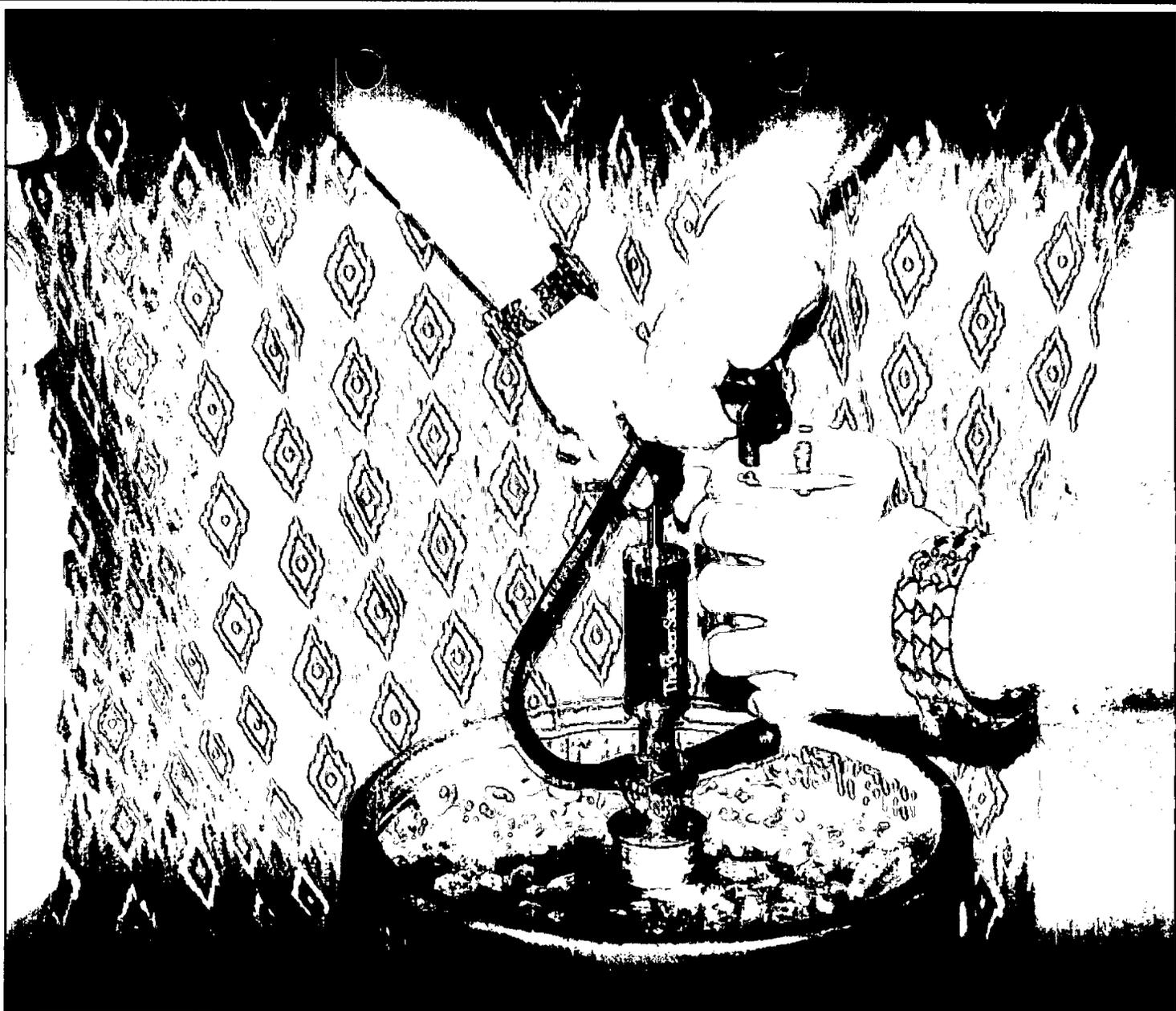
Through September and October, he heard nothing further about the charge. Unbeknownst to him, CB was having second thoughts, as she explained in a deposition taken as a result of Sterrett's case against the university, because she wasn't sure she wanted Sterrett to be able to read her statement against him. The only word he received from school administrators during this period was a warning email from Cowan, in October. One day Sterrett was walking with a friend who was putting his bike away at Sterrett's old dorm. CB saw him near her residence and contacted Cowan, who informed Sterrett that the visit gave an appearance of "retaliatory contact." He replied to Cowan and said it was troubling that his mere presence near a residence hall was considered an act of impropriety and asked that the investigation be finished "as quickly and compassionately as possible for everyone involved."

On Nov. 9, 2012, Sterrett was given a one-page document titled "Summary of Witness Testimony and Review of Other Evidence." It consisted primarily of summaries of statements from anonymous witnesses. For example, it stated: "Two witnesses stated

the Complainant reported to them that she tried to push the Respondent off her.” (CB didn’t know who these two witnesses were. She confirmed in her deposition that in her original statement to Cowan, she never said that she had tried to push Sterrett off her.) It also stated: “[A] witness reported that the Respondent told them that he engaged in penetration with the Complainant and ‘she was saying ‘no,’ and that it was just—it was ‘just like a second,’ and then he stopped, and then the Complainant left.’ ” (In her deposition, CB acknowledged this was not how their sexual encounter transpired, although she maintained that at some point she said “no.”)

The document made clear to Sterrett that CB was claiming that she had said “no” during their encounter. He put together a lengthy rebuttal. Of CB’s claim, he wrote, “I cannot state it more clearly that this is untrue. I asked her if she wanted to have sex; she said ‘yes.’ ” (CB’s assertion was also challenged later by an affidavit sworn on Sterrett’s behalf by his freshman year roommate, the one in the upper bunk. The roommate said that he saw CB get into Sterrett’s bed of her own volition and that his bed and Sterrett’s were so close that he would have heard if she had exclaimed, “no” or “stop.” He stated that he was annoyed that their sex was keeping him awake and that as a friend of both he would have intervened if he felt something untoward was happening.)

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Sterrett's rebuttal also noted that Cowan's document failed to mention the role CB's mother played in bringing the accusation against him after she found her daughter's diary. CB's roommate, LC, in an affidavit sworn on behalf of Sterrett, said that over the summer CB's mother had called her repeatedly warning her not to talk to Sterrett and to take CB's side in all proceedings. LC stated that she never saw any change in CB's behavior from the time of the alleged assault until the end of freshman year. But, she said, CB's personality changed dramatically after her mother found her diary and the fall semester began. In her affidavit, LC said it pained her to speak against her friend, but she stated: "It is my belief, based on my personal observations and conversations

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with CB, that it is possible CB manufactured a story about a sexual assault in response to the conflict CB described occurring between her and her mother in the summer of 2012.”

On Nov. 30, Sterrett received Cowan’s final “Sexual Misconduct Investigation Report.” His lawsuit states that the final report failed to take note of anything he had written in his rebuttal. The final report was longer than Cowan’s previous one, and included further allegations that either CB herself did not corroborate or appeared unsupported by the available evidence. For example, it stated: “The Complainant framed the events in question as a sexual assault to witnesses the day following the event.” In her deposition, CB acknowledged that she didn’t do that, that in fact she’d never used the words “sexual assault” to describe what happened. The report said that Sterrett’s roommate was asleep during the entire sexual encounter. This was contradicted by the time-stamped Facebook message complaining that he was being kept awake.

The report also said that Sterrett had confessed to his roommate that he’d had a nonconsensual encounter with CB. When Cowan interviewed the roommate—who says she never told him the purpose of her investigation—he had mentioned that Sterrett said he regretted the encounter with CB. In Cowan’s report, that statement is described as a confession of sexual violation. But as the roommate clarified in his affidavit, Sterrett was not expressing “that he had done anything morally or legally or ethically wrong.” He was expressing regret for sleeping with someone in their group of friends.

The final report came to this conclusion: “[I]t is determined that the Respondent engaged in sexual intercourse with the Complainant without her consent and that that activity is so severe as to create a hostile environment.” His punishment was that he was suspended from college until July 2016—after CB graduated. In order for the university to consider reinstating him, he would have to agree that he had engaged in sexual misconduct. Whether or not he returned, the finding would stay on his permanent record. Sterrett’s lawsuit says a university official acknowledged to him that these sanctions would “limit his educational, employment and career opportunities.”

With the help of a lawyer, Sterrett filed an appeal to the Office of Student Conflict Resolution. He included affidavits from classmates who said their words had been misconstrued and even falsified, and included the statement by Sterrett's roommate that CB was a willing participant and that the roommate would have heard and intervened if CB had said no. The university's response was to stand by its finding that Sterrett was responsible for sexual misconduct but to change the reason. Now Cowan issued an addendum stating that Sterrett had committed sexual misconduct because CB was too drunk to consent. (In her deposition, CB acknowledged that while she had been drinking, she was not incapacitated.)

Upholding the finding that he committed sexual misconduct required Sterrett to leave the university. But he had already decided not to return to school after winter break of his sophomore year. His lawyer explained in an email that Sterrett felt the restrictions put on his movements in order to avoid running into CB—he could be expelled if she saw him and felt his presence was “retaliatory”—made it impossible for him to be at school. Sterrett filed another appeal, this one to Michigan's university Appeals Board. In July 2013, it upheld the sexual misconduct finding, though it agreed to place Sterrett on disciplinary probation instead of suspension. The probation, however, came with onerous conditions, according to his lawyer: He would now be barred from any university housing and was prohibited from enrolling in any class in which CB was enrolled (and thus prohibited from registering and enrolling in classes until CB had finalized her schedule). He declined to return.

In April of this year, Sterrett filed suit against the university. The suit states that the public university violated his 14th Amendment rights of due process and that Michigan contravened its own procedures for disciplinary hearings, which call for written notice of allegations against a student, sufficient time to prepare for an arbitration or other meeting (Sterrett says there was no arbitration or meeting), knowledge of the names of witnesses, the opportunity to pose questions to the complainant or other witnesses, and more. As a result of these violations, his suit says, he was subjected to a process that was “capricious, reckless, incomplete, [and] lacked fundamental fairness.”

Michigan has asked the United States District Court for the Eastern District of Michigan to dismiss Sterrett's suit. Its motion to dismiss outlines the university's version of events. Michigan asserts Sterrett was given fair notice of the charges

against him, citing the fact that Sterrett's own suit stated that he "gleaned" that he was being accused of sexual assault from his Skype interrogation. The motion states that Sterrett was given several opportunities to file his rebuttals and appeals, concluding, "That's not lack of due process. It's abundant process." It also noted that Sterrett decided to file a lawsuit rather than return to the university under the sanctions and restrictions it offered. The statement issued by CB's lawyer noted, "The University of Michigan thoroughly investigated the matter. Plaintiff and my client each had an opportunity to present evidence. Plaintiff was found responsible; he appealed that decision, and it was upheld."

I spoke to Sterrett's lawyer, **Deborah L. Gordon**. She said that like many similarly accused young men, Sterrett believed that once a responsible investigation was undertaken, everything would be straightened out. "He had no idea he was on his way out no matter what he said or what the facts were," she said. She hopes to get the case to a jury, but she says the university is making every legal effort to delay. Sterrett should be graduating from college next spring, but the sexual misconduct charge against him has made it virtually impossible for him to be accepted as a transfer student elsewhere. He was accepted to one well-regarded university, but the offer was rescinded when the school heard of his disciplinary finding at Michigan. Now 22, he's hoping that if his suit is successful, he will be able to finish his education—some day.

4 The Numbers

One campus rape is one too many. But the severe new policies championed by the White House, the Department of Education, and members of Congress are responding to the idea that colleges are in the grips of an epidemic—and the studies suggesting this epidemic don't hold up to scrutiny. Bad policy is being made on the back of problematic research, and will continue to be unless we bring some healthy **skepticism** to the hard work of putting a number on the prevalence of campus rape.

It is exceedingly difficult to get a numerical handle on a crime that is usually committed in private and the victims of which—all the studies agree—frequently decline to report. A further complication is that because researchers are asking about intimate subjects, there is no consensus on the best way to phrase sensitive questions

in order to get the most accurate answers. A **2008 National Institute of Justice** paper on campus sexual assault explained some of the challenges: “Unfortunately, researchers have been unable to determine the precise incidence of sexual assault on American campuses because the incidence found depends on how the questions are worded and the context of the survey.” Take the **National Crime Victimization Survey**, the nationally representative sample conducted by the federal government to find rates of reported and unreported crime. For the years 1995 to 2011, as the University of Colorado Denver’s Rennison explained to me, it found that an estimated 0.8 percent of noncollege females age 18-24 revealed that they were victims of threatened, attempted, or completed rape/sexual assault. Of the college females that age during that same time period, approximately 0.6 percent reported they experienced such attempted or completed crime.

That finding diverges wildly from the notion that one in five college women will be sexually assaulted by the time they graduate. That’s the number most often used to suggest there is overwhelming sexual violence on America’s college campuses. It comes from a 2007 study funded by the National Institute of Justice, called the **Campus Sexual Assault Study**, or CSA. (I cited it last year in a story on campus drinking and sexual assault.) The study asked 5,466 female college students at two public universities, one in the Midwest and one in the South, to answer an online survey about their experiences with sexual assault. The survey defined sexual assault as everything from nonconsensual sexual intercourse to such unwanted activities as “forced kissing,” “fondling,” and “rubbing up against you in a sexual way, even if it is over your clothes.”

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Courtesy of Maria C.

There are approximately 12 million female **college students** in the U.S. (There are about 9 million males.) I asked the lead author of the study, **Christopher Krebs**, whether the CSA represents the experience of those millions of female students. His answer was unequivocal: "We don't think one in five is a nationally representative statistic." It couldn't be, he said, because his team sampled only two schools. "In no way does that make our results nationally representative," Krebs said. And yet President Obama used this number to make the case for his sweeping changes in national policy.

The Sexual Victimization of College Women, a 2000 study commissioned by the U.S. Department of Justice, is the basis for **another widely cited** statistic, even grimmer than the finding of CSA: that one in four college women will be raped. (An activist organization, **One in Four**, takes its name from the finding.) The study itself,

however, found a completed rape rate among its respondents of 1.7 percent. How does a study that finds less than 2 percent of college women in a given year are raped become a 25 percent likelihood? In addition to the 1.7 percent of victims of completed rape, the survey found that another 1.1 percent experienced attempted rape. As the authors wrote, “[O]ne might conclude that the risk of rape victimization for college women is not high; ‘only’ about 1 in 36 college women (2.8 percent) experience a completed rape or attempted rape in an academic year.”

But the authors go on to make several assumptions that ratchet up the risk. The study was carried out during the spring and asked women to describe any assaults experienced during that academic year. The researchers decided to double the numbers they received from their subjects, in order to extrapolate their findings over an entire calendar year, even as they acknowledged that this was “problematic,” as students rarely attend school for 12 months. That calculation brought the incidence figure to nearly 5 percent. Although college is designed to be a four-year experience, the authors note that it takes students “an average” of five years, so they then multiplied their newly-arrived-at 5 percent of student victims by five years, and thus they conclude: “The percentage of completed or attempted rape victimization among women in higher educational institutions might climb to between one-fifth and one-quarter.”

In a footnote, the authors acknowledge that asserting that one-quarter of college students “might” be raped is not based on actual evidence: “These projections are suggestive. To assess accurately the victimization risk for women throughout a college career, longitudinal research following a cohort of female students across time is needed.” The one-fifth to one-quarter assertion would mean that young American college women are raped at a rate similar to women in **Congo**, where rape has been used as a weapon of war.

No one disputes that only a percentage of sexual assaults get reported, but the studies that have tried to capture the incidence of unreported rape are miles apart. As Christopher Krebs observed, “Some [surveys] I think create high numbers that are difficult to defend. Some create artificially low numbers that are impossible to defend.” We do have hard numbers on actual reports of sexual assault on campus thanks to the **Clery Act**, the federal law that requires colleges to report their crime rates. But even

these figures are controversial. Minuscule sexual assault numbers have long been a consistent feature of Clery Act reporting. Victim advocates say administrators deliberately suppress their numbers in order to make the schools look safer. (Unsurprisingly, schools deny this.) In July, the *Washington Post* published the Clery number for 2012: There were just over 3,900 forcible sexual offenses, with most schools reporting single or low double-digit numbers. (Under the Clery Act a “forcible sexual offense” does not require the use of **actual physical force**, it can simply be an act against someone’s will. Offenses include everything from **rape to fondling**.) Given the approximately 12 million female college students, that’s a reported sexual assault rate of 0.03 percent.

Reported sexual assaults have been rising on campus in recent years, at a time when other campus crime is declining. (The nation as a whole has experienced a **dramatic drop in all violent crime** over the past few decades, **including sexual assault**, which is down **more than 60 percent** since 1995.) The rise of reporting on campus sexual assault is **generally described** by security experts as a function of a greater willingness on the part of women to make complaints, not an increase in incidence. Despite reports of “**soaring**” sexual assault rates on campus, the raw numbers remain low. At the University of Chicago, the jump from 2011 to 2013 was 83 percent: an increase from six reports to 11, which represents 0.4 percent of the university’s undergraduate women. Carnegie Mellon went up 220 percent, from five cases to 16, or 0.6 percent of the university’s undergraduate women. President Obama has asserted that only about 12 percent of sexual assault victims make a report to authorities. If he is correct, and we extrapolate from the Clery numbers, that would suggest there were 32,500 assaults in 2012, reported and not, or a 0.27 percent incidence.

* * *

A widely held belief about a college man accused of sexual assault is that he is likely a serial predator. This is a result of the work of David Lisak, one of the most influential experts on sexual assault in the country. “College presidents don’t like to hear this, but these are sex offenders,” Lisak **said** at an event at Harvard in 2013. “Every report should be viewed and treated as an opportunity to identify a serial rapist.”

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Lisak retired not long ago after more than two decades of teaching psychology at the University of Massachusetts Boston. He remains a **consultant** to universities, the military, and other institutions on sexual assault. His 2002 paper, "**Repeat Rape and Multiple Offending Among Undetected Rapists**," is a foundational study in the movement to curb campus sexual assault. It's cited endlessly, by everyone from President Obama, to college faculty members, to student activists. It's even cited by **critics** of the new campus sexual assault policies.

Lisak told me that he meets understandable resistance when delivering his message to college administrators. "It's hard to think of any of your students as a sex offender," he said. "But the data are pretty clear. They're not a large group. It's a fairly small percentage, but their behavior is really consistent with everything we know about sex offenders."



Courtesy of Ci

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In a 2011 article in *Sexual Assault Report*, Lisak disparaged “the widely-held view that sexual assaults committed on university campuses are typically the result of a basically ‘decent’ young man who, were it not for too much alcohol and too little communication, would never do such a thing.” (He concedes that “some campus sexual assaults do fit this more benign view.”) Instead, he asserts that the vast majority of sexual assaults on campus, more than 90 percent of them, are perpetrated by serial offenders. His work, he says, shows that these offenders are relentless, averaging six rape victims each. “They’ve perfected ways of identifying who on campus, for example, are most vulnerable.” In the 2011 article, he wrote that these “predators” were “serial and multi-faceted offenders” who “plan and premeditate their attacks” and that various prevention education programs are unlikely to be effective because “it is extremely difficult to change the behavior of a serial predator even when you incarcerate him and subject him to an intensive, multi-year treatment program.”

For the 2002 study, Lisak found 120 men, or 6.4 percent of respondents, “met criteria for rape or attempted rape,” with 80 percent of that group admitting that they took advantage of an unwilling partner’s intoxication. Of the 120, about one-third said they’d committed a single rape, and 76 men, or 63 percent, admitted to multiple offenses. Lisak calculated an average of 5.8 rapes each for these repeat offenders.

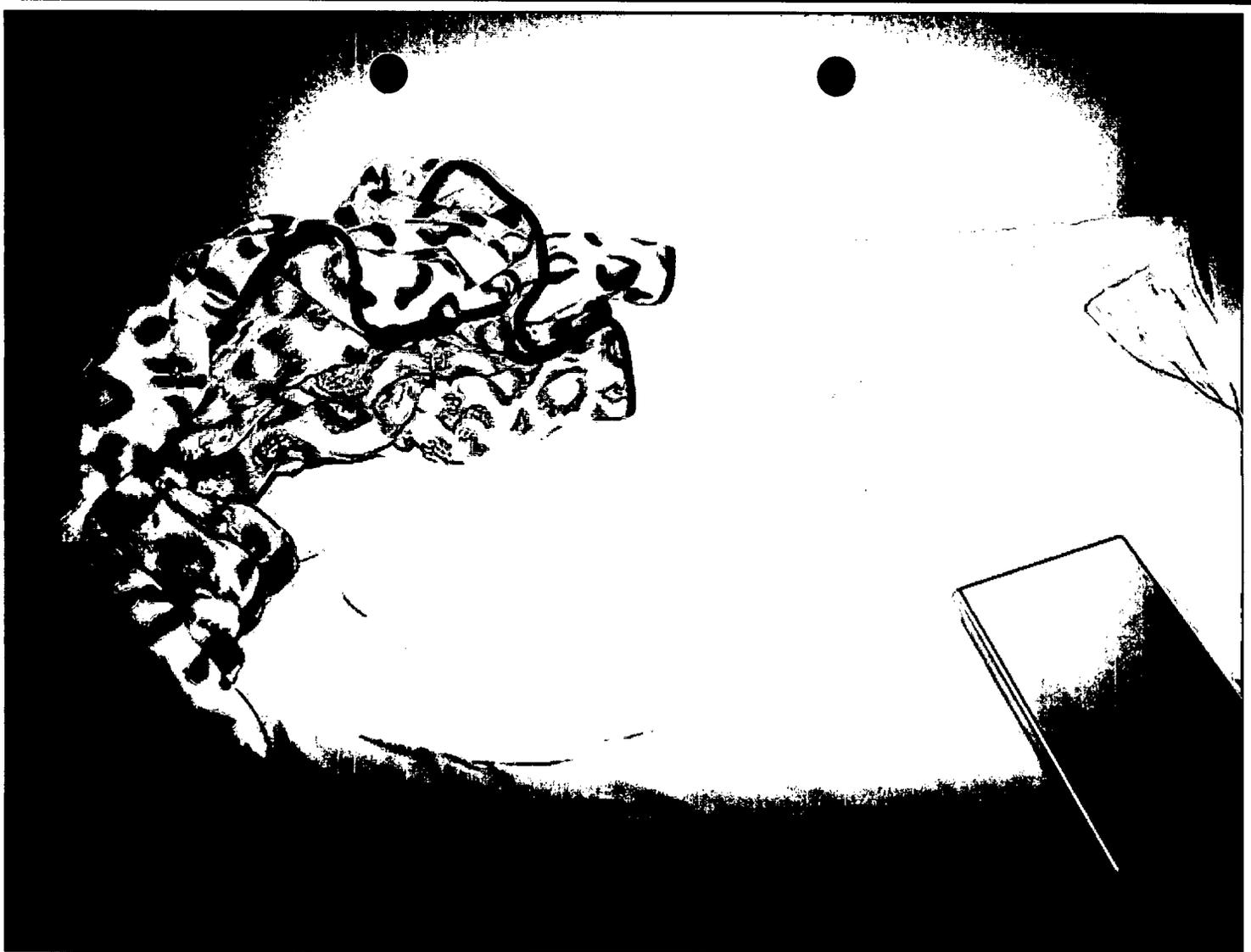
Based on these findings, Lisak says it’s likely that any young man who is accused of sexual misconduct on campus is a serial predator. He told me he arrived at this conclusion by calculating the number of rapes the self-admitted serial attackers said they perpetrated. Those rapes represented 90 percent of the total acknowledged rapes in his study.

The 2002 study is now frequently used to portray college students, some still teenagers, as among society’s most ruthless and sadistic predators. And yet the limitations of the study are such that it cannot fairly be said to describe the behavior of the majority of young men who find themselves accused. To start, though the study was of college men, it was not of *college-age* men (who are traditionally ages **18 to 24**). Lisak’s participants ranged in age from 18 to 71. The average age of his respondents was 26.5, and more than 20 percent were older than 30. How does a study of men in college include so many older men? Lisak recruited people from where he taught, the University of Massachusetts Boston, an urban commuter school with no campus

housing. Many students are older working people returning to or just starting college. Currently, 30 percent of its students attend part time and the school's four-year graduation rate is 15 percent. By comparison, at the state's flagship university in Amherst, seven percent of students are enrolled part time and its four-year graduation rate is 60 percent.

I spoke with James J. Cochran, professor of applied statistics at the University of Alabama. He said that because the population of male students at UMass Boston may differ in important ways from the population of male college students across all universities, we must be careful in generalizing results from the UMass Boston sample to the population of male college students across all universities.* People tend to think that a single study is definitive, Cochran told me. But generally what a single study tells you, he said, is that we have "evidence of something interesting, let's study it more." (The Campus Sexual Assault Study also attempted to identify male perpetrators. Lead author Christopher Krebs said a "shockingly low" number of college-age men in his study acknowledged committing sexual assault. The researchers surveyed 1,375 male students and 34, or 2.5 percent, "reported perpetrating any type of sexual assault," the majority involving incapacitation.)

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Courtesy of Ingram Publi

Lisak conducted the study between 1991 to 1998, at several year intervals, setting up tables on campus, where he offered men \$3 or \$4 to complete a study on “childhood experiences and adult functioning.” In all, Lisak and his co-author recruited 1,882 participants (the school had a total of about 5,800 male students during this period). Lisak and his co-author wrote: “Because of the non-random nature of the sampling procedures, the reported data cannot be interpreted as estimates of the prevalence of sexual and other acts of violence.” I asked Lisak about this caveat in an interview and he said, “That’s a standard disclaimer for any study.” But he also acknowledged that the only way to find out if his population differed from the usual typical student population would be to replicate his study at a more traditional campus.

Lisak deserves credit for identifying a type of stealthy predator who evades law enforcement. Such men exist, are dangerous, and should be prosecuted for their crimes. But describing such people does not mean that they constitute the entire

universe of college men who find themselves accused of sexual misconduct. That, however, is how his work and his public comments are frequently used. Here's Yale Law professor Jed Rubenfeld, writing last month on campus sexual assault in the **New York Times**: "Research suggests that more than 90 percent of campus rapes are committed by a relatively small percentage of college men—possibly as few as 4 percent—who rape repeatedly, averaging six victims each."

Lisak told me he continues to dispute the view, **held by** some college administrators, that the majority of campus sexual assault disputes are the result of drunken miscommunication. I asked Lisak what percentage of reported sexual misconduct is of this less predatory type. "There's no way I can answer," he said. "Not that it never occurs; it does. I think a lot of college administrators think that is the norm. That's what I really dispute."

I asked Lisak whether it was fair to presume any given accused student is a serial predator. He said such a supposition would be "sloppy thinking." He went on: "You have to investigate the assault and who the individual is. Everything hinges on the investigation." He also said that a major problem with adjudicating campus sexual assault is how ill equipped universities are to conduct such investigations.

* * *

The potential for misuse of Lisak's study can be seen in the 2013 case of the Occidental College student "John Doe," who brought a suit against the school after he was expelled for a sexual encounter with "Jane Doe," in September of his freshman year. The **Los Angeles Times** summed up the events: "The college's investigative report, performed by an outside firm, said both parties agreed on the following facts: Both had been drinking, she went to his room, took off her shirt while dancing, made out with him and returned to his room later for sex, asking if he had a condom. When friends stopped by the room to ask if she was OK, she told them yes." Prior to their encounter, the two exchanged texts about their planned assignation, and Jane texted another friend to announce she was going to have sex. Later, when Jane came to see the incident as rape, she reported it to the Los Angeles Police Department. A female LAPD officer investigated, and a female deputy district attorney declined to pursue the case. She wrote, "Witnesses were interviewed and agreed that the victim and suspect

were both drunk, however, that they were both willing participants exercising bad judgment.” Her report further found that Jane was capable of resisting and that John had reasonably concluded that her communications and actions conveyed consent.



Courtesy of An

But Jane ended up being convinced that John fit the pattern of the kind of serial predator Lisak describes. John had the misfortune of being accused of sexual misconduct following the filing, by attorney Gloria Allred, of a Title IX violation complaint **against the school**, charging lax punishment for serial offenders. And Jane ended up being counseled by assistant professor of sociology Danielle Dirks, a prime mover behind the Title IX filing and a nationally prominent activist on campus sexual assault.

Jane lost her virginity that night, and when she sobered up and realized what happened, in distress she went to a faculty adviser who referred her to Dirks. An 82-page **investigative report** prepared for the school by the firm Public Interest Investigations shows it was Dirks, in her first phone conversation with Jane, who introduced Jane to the idea that she had been raped. Jane told the professor, “Oh, I am

not calling it rape yet.” Over many hours of conversation, Dirks helped move Jane from what the professor described as Jane’s “strong state denial” about what happened.

The report notes that Jane “stated that she has learned that 90 percent of rapes are done by repeat offenders.” (John was a freshman, on campus for a few weeks, with no complaints against him.) Jane told Dirks that John had expressed regret that she lost her virginity that way—he hadn’t known she was a virgin—and when she was absent from a class they took together, he texted to make sure she was all right. The professor had a skeptical view of his behavior. All this was “disingenuous,” said Dirks, according to the report: It was typical of rapists who, she said, try to control, dominate, manage, and manipulate. Strikingly, it was Dirks herself who initiated proceedings to get John removed from campus, explaining, “I know how jarring it is for me to see him on campus, so how is it for Jane?” (An Occidental spokesman said he could not comment on a pending lawsuit. Dirks said in an email that the report “contains factual errors regarding my involvement in the case.” However, beyond disputing a statement attributed to her by Jane and not quoted here, she declined to elaborate on what the errors are.)

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Occidental College.

Courtesy of J.

Occidental hired an outside attorney to review the investigative report and make a recommendation about John. Here's the conclusion of the attorney, as reported by the *Los Angeles Times*: "The attorney, Marilou F. Mirkovich, found that the young man did not know that his classmate was too drunk to consent because he, too, was inebriated. But, citing the college's policy that does not allow alcohol or drug consumption to excuse sexual misconduct, Mirkovich found that he should have known and was responsible for the assault." After only a few months as a college student, John was expelled. He told the *Los Angeles Times* the whole experience has been "soul-crushing." John has since been unable to enroll in another college.

Much of what's happening on campuses today regarding the handling of sexual assault is due to the rise of a small, once-obscure arm of the federal government. **The Department of Education's Office for Civil Rights** dictates to colleges the procedures they must follow in regard to campus sexual complaints.* It also examines schools for violations of Title IX, the law that forbids discrimination in education on the basis of sex. In recent years, OCR has used Title IX, best known for tackling imbalances in athletics, as a tool to address sexual violence. When OCR issues findings against a school, if the school declines to admit wrongdoing, the office has the power, as yet unexercised, to essentially shut the school down.

In 2011, OCR released what's come to be known as the "**Dear Colleague**" letter. It called for new procedures to be put in place for handling sexual assault allegations at colleges and universities receiving federal funds (virtually all of them). The federal office had to act, it said, because "the likelihood that [female students] will be assaulted by the time they graduate is significant." It asserted the process should be equitable and impartial. But it laid out procedures that privilege the rights of victims over those of the accused. It recommended schools provide "comprehensive, holistic victim services including medical, counseling and academic support services, such as tutoring" for the accuser, without describing any services that should be available to help the accused navigate a pervasively adversarial process. If a school allowed the accused to appeal a verdict of responsibility for sexual misconduct, then an accuser *also* got to appeal if the accused was found not responsible. This provision meant someone accused of a campus sexual assault could find himself sitting through a second tribunal on the same charge.

Among the most significant changes described by the Dear Colleague letter was the requirement that schools lower the standard by which they judge whether a student is responsible for sexual assault. (There is no uniform definition of sexual assault on campus. Because these are civil, not criminal proceedings, what constitutes sexual misconduct can vary widely from campus to campus.) Colleges were told to adopt a "preponderance of evidence" standard when evaluating whether a student was to be

found responsible for an allegation. This is the lowest evidentiary standard, only requiring a smidge more than 50 percent certainty. Because the punishment for such infractions can be severe—from suspension to expulsion—many schools had previously used the “**clear and convincing evidence**” standard, a significantly higher burden of proof, though still below the “beyond a reasonable doubt” standard used in criminal proceedings. (The University of Michigan, in its legal motion to dismiss Drew Sterrett’s case, specifically noted the findings against Sterrett met the preponderance of evidence standard.)

Legal protections granted students at public and private institutions are somewhat different. A public university, as a government entity, must provide certain due process rights. Students at private schools do not have this protection, but they do have contractual rights, and virtually all students are covered by Title IX. To head off concerns about significantly lowering evidentiary standards, the OCR asserted that because a campus tribunal’s worst punishment is expulsion, not imprisonment, “the same procedural protections and legal standards are not required” as in a criminal case.

“**Not Alone**,” billed as “The First Report of the White House Task Force to Protect Students From Sexual Assault,” was released to great fanfare at the White House in April, and it outlined how OCR would help implement the report’s stated goals. Not Alone encouraged schools to consider adopting a “single-investigator” model—as Harvard has done—in which a sole administrator is tasked with being investigator, prosecutor, judge, and jury in sexual assault cases. Since that person would work at the school’s Title IX office, which is tasked with keeping the school off the list of those being scrutinized by the federal government, impartiality may not be that person’s first imperative.

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Tufts University.

Courtesy of Knar Bedian/Flickr

Being investigated by OCR for a Title IX violation places a college on a growing federal list of shame, now **88 schools** long. Even more disastrous is standing up to OCR. The agency has the power to pull a school's federal funding, essentially putting a school out of business—ask **Tufts University** if they're willing to use it. A female Tufts student had accused a former boyfriend of rape, and after he was cleared (and the female student sanctioned for misleading campus authorities in the course of their investigation), she brought a Title IX complaint against the school. OCR's mandate was to look at Tufts' procedural deficiencies, not the finding in the case, and it criticized Tufts at length. The university agreed to make all the OCR's recommended changes: to improve its protections for accusers and speed up its resolution process, among other things. The school also agreed to give a monetary settlement to the female student. But Tufts balked at signing off on OCR's finding that the school was a Title IX violator. It issued a statement saying the school "could not, in good faith, allow our community to believe that we are not in compliance with such an important law." In response, OCR told Tufts it would pull the university's federal funds, a threat, the **Boston Globe** wrote, that was "so catastrophic that it virtually required Tufts to reach some understanding with the government." It took only a few days for Tufts to cave.

To punish the alleged perpetrators of sexual violence, colleges have put in place systems that are heavy-handed and unfair. Efforts to *prevent* sexual violence from occurring are unfortunately no more enlightened. College students today are increasingly treated as a special sexual caste, who unlike their peers out in the working world can't be relied upon to have sex without convoluted regulations that treat lovemaking as if it were a contract negotiation. Often, they are governed by a regimen called "affirmative consent," an attempt by legislators and administrators to remove all ambiguity from sex.

The federal government has so far not mandated affirmative consent as a national standard, but states have been enthusiastically embracing the idea. Andrew Cuomo, governor of New York, recently **enacted** an affirmative consent standard for all State University of New York schools, calling the statistics on sexual assault "breathtaking." California just became the first state to **write the practice into law** for all public and private colleges. The precise rules vary from place to place, but the point is to systematize the progression of a sexual encounter. Consent can't be presumed—even between members of an established couple. It must be affirmatively given—for each and every sexual encounter and for every sex act.

At Ohio State University, two young people who want to engage in sexual congress might be well advised to first consult with the philosophy department and the law school. The university's **consent guidelines** state, in part: "Consent is a knowing and voluntary verbal or non-verbal agreement between both parties to participate in each and every sexual act." "Effective consent can be given by words or actions so long as the words or actions create a mutual understanding between both parties regarding the conditions of the sexual activity—ask, 'do both of us understand and agree regarding the who, what, where, when, why, and how this sexual activity will take place?'" "Regardless of past experiences with other partners or your current partner, consent must be obtained. Consent can never be assumed, even in the context of a relationship."

The Foundation for Individual Rights in Education is a civil liberties group dedicated to defending constitutional rights on campus, and Joseph Cohn is its legislative and policy director. The group says affirmative consent is both unnecessary and potentially pernicious. "Our laws already make sexual activity without consent illegal," Cohn says. Affirmative consent, he says, makes sexual activity that is lawful off campus a punishable offense on it.

Advocates of affirmative consent argue that these regulations won't lead to frivolous accusations. They say only women who truly haven't given consent will ever bring a charge. But under an affirmative consent regime, a young man can be threatened with expulsion even if his sexual partner doesn't say no.



Yale University.

Courtesy of Ville Oksanen/Flickr

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The *Yale Daily News* recently reported on a sexual assault case that illuminates what can now be considered an offense worthy of punishment and the elaborate investigative and hearing processes now in place to adjudicate who agreed to what. A male and female who were sometime lovers hooked up one night after she had been drinking and they had been sending flirty texts. (She wrote to him, “Don’t let me try to seduce you though. Because that is a distinct possibility.”) She eventually invited him to her room, where she says she capitulated to his desire for sex because in the past when she refused him he would scream and cry, which she found overwhelming. His version was that upon arrival she grabbed him, kissed him, they each took off their clothes, and then had sex twice that evening and once in the morning. Although she was sober by the time of the morning encounter, she later told Yale officials that all of the sex was nonconsensual because she was too drunk during the evening to consent, and in the morning, the *Yale Daily News* reports, “she did not resist because she felt refusal would be too emotionally exhausting.” A full year after the encounter, she brought a sexual assault charge against the young man, hoping to get him expelled. There was an investigation by an “impartial fact-finder,” a written report, then a three-and-a-half hour hearing. The tribunal found that the young man did not violate Yale’s sexual misconduct policy.

It might easily have gone the other way, given the capaciousness of Yale’s consent standard: “Yale’s definition of consent reflects the University’s high expectations and permits discipline for behavior that does not meet a criminal standard,” reads Yale’s Title IX FAQ. Yale “may find that an encounter took place without coercion, force, or threat of force (criteria often associated with the term ‘rape’) but still deem it to have lacked the unambiguous ongoing agreement that constitutes consent under the Yale standard.”

Carol Tavis is a social psychologist and author of the feminist classic, *The Mismeasure of Woman*, and, with Elliot Aronson, *Mistakes Were Made (but Not by Me)*. She says she is troubled by the blurring of distinctions between rape (notably by predatory males), unwanted sex (where one party agrees to sex not out of desire but to please or placate the partner), and the kind of consensual sex where both parties are so drunk they can barely remember what happened—and one of them later regrets it. She says, “Calling all of these kinds of sexual encounters ‘rape’ or ‘sexual

assault' doesn't teach young women how to learn what they want sexually, let alone how to communicate what they want, or don't want. It doesn't teach them to take responsibility for their decisions, for their reluctance to speak up. Sexual communication is really hard—you don't learn how to do it in a few weekends."

Tavris also believes holding only men responsible for their sexual behavior has pernicious effects on women because it supports a victim identity that is already too prevalent in our society. "It's so much easier to be a victim than to admit culpability, admit your own involvement, admit that you made a mistake," she says. "It's much easier to say it's all his fault. Look, sometimes it is all his fault. That's called rape. But ambiguities and unexpected decisions are part of many encounters, especially sexual ones."

7 The Alcohol Taboo

Government officials and campus administrators are paying more attention to what's going on between the sheets in dorm rooms than ever before. Despite all their newfound efforts to curtail sexual violence on campus, however, they're willfully ignoring the most important single factor running through accounts of such violence: alcohol.

It's a surprisingly loaded subject, given the widely acknowledged prevalence of drinking on American campuses. Last year, I wrote about drinking and sexual assault in a *Slate* piece titled, "College Women: Stop Getting Drunk." I said that binge drinking was bad for everyone but that it presented a particular danger for young women because it made them more vulnerable to sexual assault—I described sober predators who specifically targeted intoxicated women. I was widely denounced for "victim-blaming." This year, I was disinvited to speak at a West Coast college after board members of a student organization that had invited me decided my presence would make student victims "feel unsafe."

In the White House report, **Not Alone**, the Obama administration promises to develop new prevention strategies for campus sexual assault. But that's going to be difficult if it continues to refuse to address drinking. Raynard Kington, president of Grinnell College and former director of the National Institute on Alcohol Abuse and

Alcoholism, wrote in *Inside Higher Ed* in response to the report, "As a public health physician, I was surprised and disappointed that the word 'alcohol' literally does not appear anywhere in the chapter on prevention." He said he understood the concern about blaming the victim when discussing alcohol, but in tackling sexual assault at Grinnell he realized "we would never address the problem unless we also addressed the issue of excessive drinking."

A September article in the *Chronicle of Higher Education* noted that for the past 15 years, Department of Justice grants to study campus sexual assault prevention have specifically excluded focusing on alcohol. Why? Because DOJ didn't want any emphasis on "changing victim behavior." The *Chronicle* article quoted a coordinator for Partners in Prevention, a higher-education substance abuse program, who said, "What we steer our campuses away from is anything that says someone experienced gender violence because they had been drinking. Even if a student is sitting in a residence-hall room, gender violence can happen to them."

It is simply misleading to tell young women they have as great a chance of being sexually assaulted while in their dorm studying at 1 p.m. as they do at a drunken frat party at 1 a.m. There are patterns to victimization. The Campus Sexual Assault Study found the majority of victims were freshmen and sophomores, the most common time of year to be assaulted is when school begins in the fall, the most common days were Friday and Saturday, the most common time was after midnight. People who had been previously assaulted were at far greater risk of revictimization. Alcohol was overwhelmingly an element. The United Educators study of insurance payouts for sexual assault found that "Alcohol was a significant factor in nearly all of the claims studied."

And it's not just about conveying to young women the dangers of drinking. It's equally important to tell young men about the jeopardy they face when having an alcohol-fueled sexual encounter at college. While women's consumption is often considered a mitigating factor at campus tribunals, men's consumption generally is not. This disparity is sex discrimination, says Brett Sokolow, president of the **National Center for Higher Education Risk Management**. Sokolow has long fought for harsh penalties for **accused men on campus**. But in an open letter titled "**Sex and Booze**," he writes: "If both are intoxicated they both did the same thing to each other. Why

should only the male be charged if both students behave in ways defined as prohibited by the policy?" He has been called in to consult on cases in which schools have suspended or expelled the young man when both students were equally intoxicated. Schools that are doing so, he says, are creating male "Title IX plaintiffs."



Courts

Sokolow also says schools err when they adhere to an unrealistic standard that consumption of alcohol renders consent moot. Criminal statutes generally require that for sex to be nonconsensual due to alcohol or drugs, the accuser be not just intoxicated, but incapacitated. Having had a few drinks does not mean people, even young people, lack the capacity to make decisions about their actions, however poor those decisions may look in retrospect. Sokolow notes, however, that at some colleges "boards and panels can't tell the difference between drunk sex and a policy violation."

To the extent the Obama administration *has* addressed the role of alcohol in sexual assault, it's done so in a way that suggests it has not thought carefully about this potentially complicated issue. When the president announced in **Not Alone** that his

administration was committed to “putting an end” to sexual violence on campus, the first step he suggested was to have every college student take a survey. (The CASA bill would make this survey-taking mandatory.) The administration released a “**toolkit**,” a sample survey. Creating a national sexual assault census might seem to solve the problem of unrepresentative studies, though it is concerning that the federal government would require students to answer invasive questions about their sexual experiences, even anonymously. (One question asks respondents whether they’ve experienced, against their will, “someone putting their finger or an object like a bottle or candle in your vagina or anus.”)

But some sections of the toolkit seem less interested in gathering data than in promoting a black-and-white view of situations that are notoriously murky. One section, titled “Rape Myth Acceptance,” lists what it describes as myths about drinking and rape. These include, “If both people are drunk, it can’t be rape” and “It shouldn’t be considered rape if a guy is drunk and didn’t realize what he was doing.” It is obviously incorrect to say that if both parties are drunk, it *can’t* be rape or to suggest that being drunk could ever be an *excuse* for rape. But this exercise in supposed myth-busting doesn’t allow for the ambiguity of these often bedeviling situations, and it fails to acknowledge that when both people are drunk, sometimes they both make regrettable decisions and have genuinely divergent views about what happened the next morning.

KC Johnson, of the Manhattan Institute’s Minding the Campus blog, **has compiled a list** of top-ranked institutions, including Columbia, Duke, and Stanford, whose policies could lead to a young man being found responsible for a sexual offense simply if the complainant establishes that she had any degree of intoxication. Johnson notes that at Brown if two people were drinking and later an accusation is made, the disparate treatment is stark. The policy states: “A charged student’s use of any drug, including alcohol, judged to be related to an offense will be considered an exacerbating rather than a mitigating circumstance.”

8 A Matter for Prosecutors, Not Professors

The names **Hannah Graham and Morgan Harrington**, two Virginia college students who were kidnapped, raped, and murdered, are powerful testimony to the need to get campus sexual assault right. **Jesse Matthew**, 32, being held for Graham's murder, has also been linked to Harrington's and will be tried for the rape of a third woman who managed to get away. When he was a **college student**, Matthew was expelled from two consecutive schools, Liberty University and Christopher Newport University, after accusations of rape. Tragically, neither case ended up in the criminal justice system. It is precisely because serial predators of the kind Lisak describes do exist that we should recognize adjudicating rape is not the job of college administrators but of law enforcement. Expelling a predator only sends him out into society to attack again.



The University of Virginia.

Courtesy of

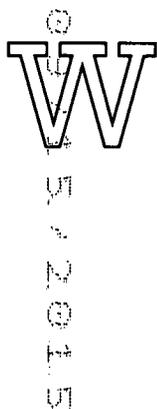
Consider the *Rolling Stone* article about the alleged gang rape at the University of Virginia, which reignited a heated national debate about the treatment of victims on campus. The article is now unraveling, with both Sabrina Rubin Erdely's **journalism** and her source's **account** called into question. But the story did raise legitimate concerns about reporting requirements on campuses. Let's assume that the alleged victim, Jackie, did tell a dean at the university that she had been the victim of a

gruesome attack, as Erdely wrote in her story. How could an allegation of a clearly criminal act not be reported directly to law enforcement? As my colleague Dahlia Lithwick has **explained**, the federal government mandates that schools offer a “noncriminal, survivor-centered, confidential response” to victims. This means not reporting a crime to the police if the victim prefers not to. (Erdely wrote that Jackie had been told by the dean that she *could* make a criminal complaint, but had declined to do so.) Respecting the feelings of victims is important, and crucial to encouraging more women to report violence. But elevating the psychological comfort of victims over society’s need to punish criminals will only let perpetrators go free.

The critiques of how the criminal justice system treats victims are many and justified, but that’s an argument for further reform, and for finding ways to reduce the trauma to victims, not for asking schools to take over the role of law enforcement. (To its credit, the proposed Campus Accountability and Safety Act does recognize the important role the criminal justice system should play in campus sexual assault and calls for standardizing cooperation between colleges and local law enforcement so that more perpetrators are investigated by trained law enforcement professionals.)

FIRE’s Joseph Cohn says the unfortunate but pervasive message students get is that law enforcement is not there to help. “It’s not perfect. But that’s not the argument for seeking justice outside it.” If victims don’t go to the police, he adds, “the conviction rate is zero.” He says when students are getting sexual assault education, administrators must emphasize the importance of procedures to protect evidence and must tell them about going to the hospital to get a timely rape kit—it has to be done within 72 hours. Doing so doesn’t mean a student is committing to a criminal charge. But without such steps, it can be futile to later try to bring one.

9 The Way Forward



What is to be done? How can the government and institutions of higher education address sexual assault, support victims, identify predators, and not unfairly punish innocent students?

A good place to start would be scaling back the powers of the Department of Education's Office for Civil Rights, which has overstepped its bounds in micromanaging university policies and enforcing draconian rules that infringe on the rights of the accused. And before making policy based on alarming statistics, officials should ponder a study's limitations and read all the footnotes.

Rather than creating a separate (and unfair) system of justice, we should ensure the safety of college students the same way we ensure the safety of those who aren't in college. Instead of universities writing expansive and elaborate sexual conduct rules, they should rely on the narrower statutes that govern criminal sexual assault and civil sexual harassment. "Affirmative consent" regulations should be struck. These rules dictate how young adults in college make love, and that's both ridiculous and quixotic. (There's a vast difference between telling people how to conduct their sex lives and having laws that punish those who perpetrate sex crimes.) When universities do take action against a student for sexual misconduct, if the definition of misconduct is narrower, and if there is a return to a standard of "clear and convincing evidence," as there should be, there will be fewer miscarriages of justice.

Any student who feels she has been sexually victimized should be able to turn to campus counselors who are sensitive listeners and not crusaders. Students who have had a distressing sexual experience need supportive people to help them figure out their next steps. Maybe a potential criminal violation took place and the student needs an escort to the hospital, so that whatever her ultimate decision, crucial evidence is collected. Maybe it was simply a distressing encounter and counseling is the best path. The adults who help these young people should be able to recognize the difference between the two and not default to calling for the accused's head.

The prohibition about discussing the connection between alcohol and sexual assault should be lifted. We don't live in a perfect world, and while school administrators should do their best to provide safe environments, it is up to each individual to make wise decisions. Getting incapacitated has no upside for young men or women. Administrators ignore the role of alcohol in sexual assault at their peril, and at the peril of their students, men and women.

We also need to change the culture of discourse around sexual assault on campuses. To stand up for the rights of the accused is not to attack victims or women. Our colleges, like the rest of our society, must be places where you are innocent until proven guilty. The day after graduation, young men and women will be thrown into a world where there is no Gender-Based Misconduct Office. They will have to live by the rules of society at large. Higher education should ready our students for this reality, not shield them from it.

***Update, Dec. 8, 2014:** *This sentence has been updated to clarify Cochran's concern with regards to extrapolating from the UMass Boston study. Cochran was speaking generally to the problem of generalizing from a single study about a single school, which may not be representative of schools nationwide; he was not speaking about the problem of generalizing from Lisak's study in particular. (Return.)*

***Correction, Dec. 8, 2014:** *This article originally misidentified the Department of Education's Office for Civil Rights as the Office of Civil Rights. (Return.)*

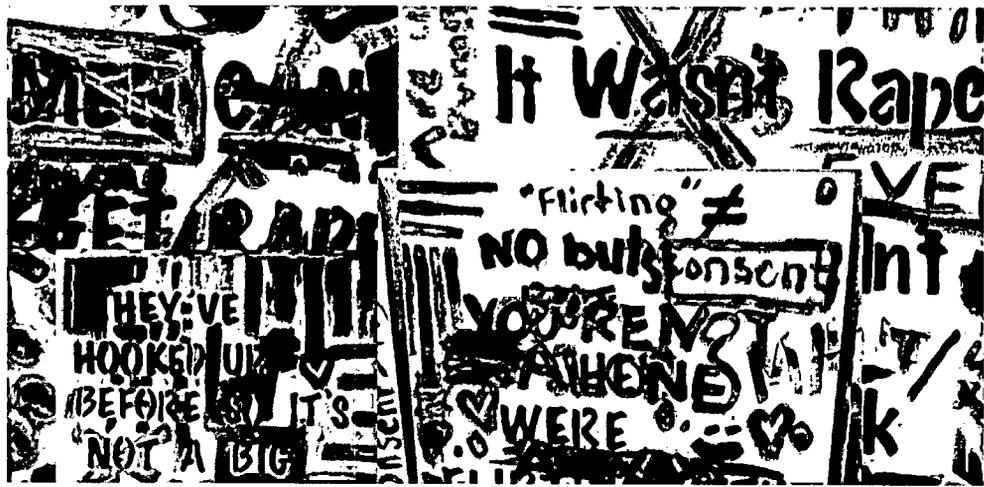
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03/15/2015

Project SAFE

Project SAFE » Prevention Education » Power-Based Violence

Power-Based Violence



Power-based violence is a term used to describe a form of violence in which someone uses power, control, manipulation and or coercion to harm another person.

Power-based violence can take many forms, which includes sexual assault, dating violence, stalking, child sexual abuse and other uses of threat, force or harassment. A friend, acquaintance, partner, people we are intimate with, strangers, family and other people, can perpetrate power-based violence. It can involve the use of drugs and alcohol and can happen anywhere such as in class, residence halls, home, and on and off campus. Power-based violence happens in every community regardless of race, ethnicity, gender, sexual orientation, age and or ability.

Project S.A.F.E. is aware of the intricacies and the intersectionality of experiences that many survivors and differing communities may face. We educate through a strengths-based model of empowerment and lens of social justice. Check out some of the Project S.A.F.E. power-based violence prevention education curriculum below! If you are interested in learning more, stop by the Project S.A.F.E. office or contact Project S.A.F.E. prevention for more information.

Jump to: [Sexual Violence](#) | [Healthy/Unhealthy Relationships](#) | [Stalking](#) | [Empowerment Model of Helping](#)

Sexual Violence (Sexual Assault)

Project SAFE

People

Prevention Education

- Oxy Upstander
- Power-Based Violence
- Safety Strategies

Events

Resources for Survivors

Emergency Help

Join the Movement

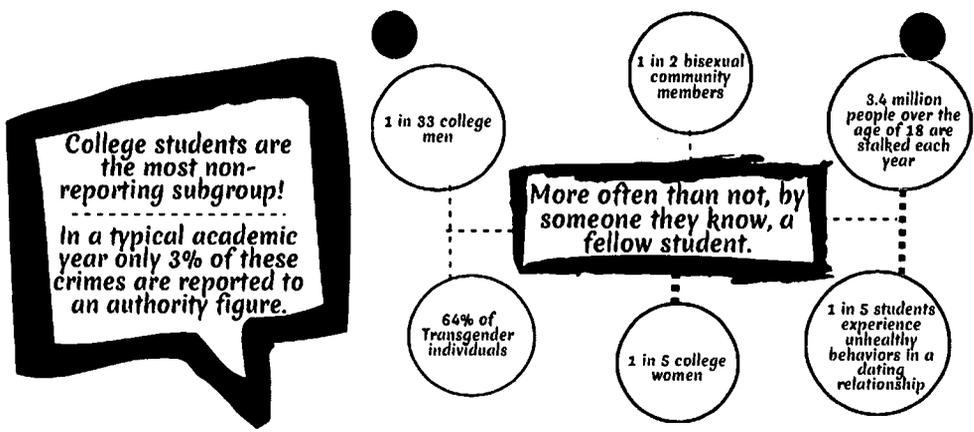
Oxy 24/7 Confidential Hotline: (323) 341-4141

Educate: (323) 341-4750 projectsafe@oxy.edu

Advocate: (323) 259-1359 kaguilar@oxy.edu

Location: **Stewart-Cleland Hall Lower Lounge**

Find us on: **Facebook Instagram Twitter**



Any form of unwanted sexual contact ranging from touching to rape. Any sexual contact without your permission and consent can include rape, groping, oral sex, and unwanted sexual encounters with other people.

- 1 in 5 college women
- 1 in 33 men
- 1 in 2 Bi and transgender students

Sexual violence can be an extremely traumatic and intimate experience. Our curriculum focuses on education about interpersonal and power-based violence, debunking rape myths, interactive exercises on the impact of media and masculinity in the movement, practicing consent and more.

(Office of Violence Against Women, Peace Over Violence)

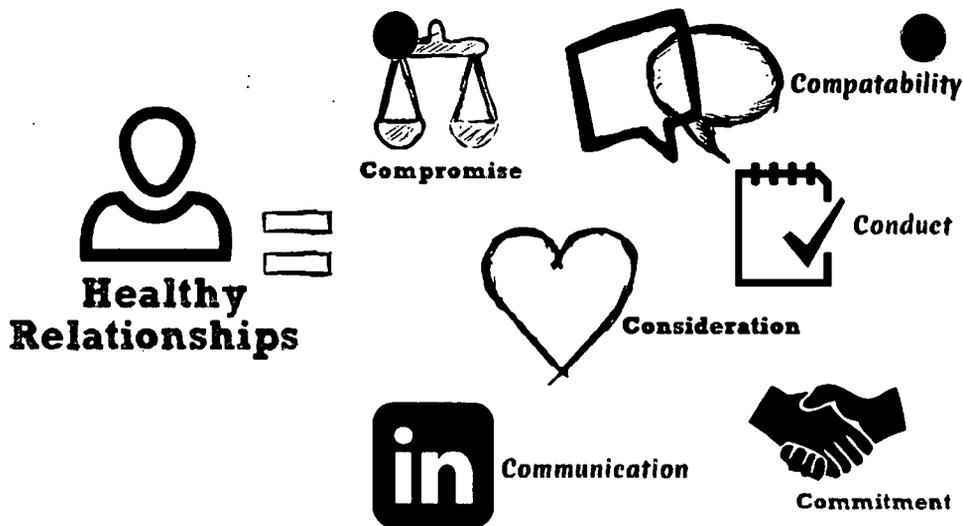
Healthy/Unhealthy Relationships

(Dating Violence)



Any behavior or action used to harm, control and intimidate a partner or previous partner. This can include grabbing, pushing, pinching, yelling, demeaning comments, hitting, strangling, not letting you spend time with friends or family, making you feel guilty for not spending time with your partner. If you or your friend need more information on assessing your safety and theirs, check out the One Love MyPlan App, safety is important.

- 1 in 5 college students have or will experience unhealthy relationships and or behaviors
- The Cycle of Power and Control
- Unhealthy Relationships Myths (i.e. Why don't they just leave!)



Project S.A.F.E. wants you to know that we genuinely want you to have positive and healthy relationships here at Oxy and after you leave. Project S.A.F.E. wants to inspire you to have healthy relationships through the 6 C's of a Healthy Relationship, adapted from a Peace Over Violence Healthy Relationships model. You deserve to live a life free from violence.

Learn to establish Healthy Boundaries or how to have Healthy Conflict Resolution skills!

(Peace Over Violence and RAINN)

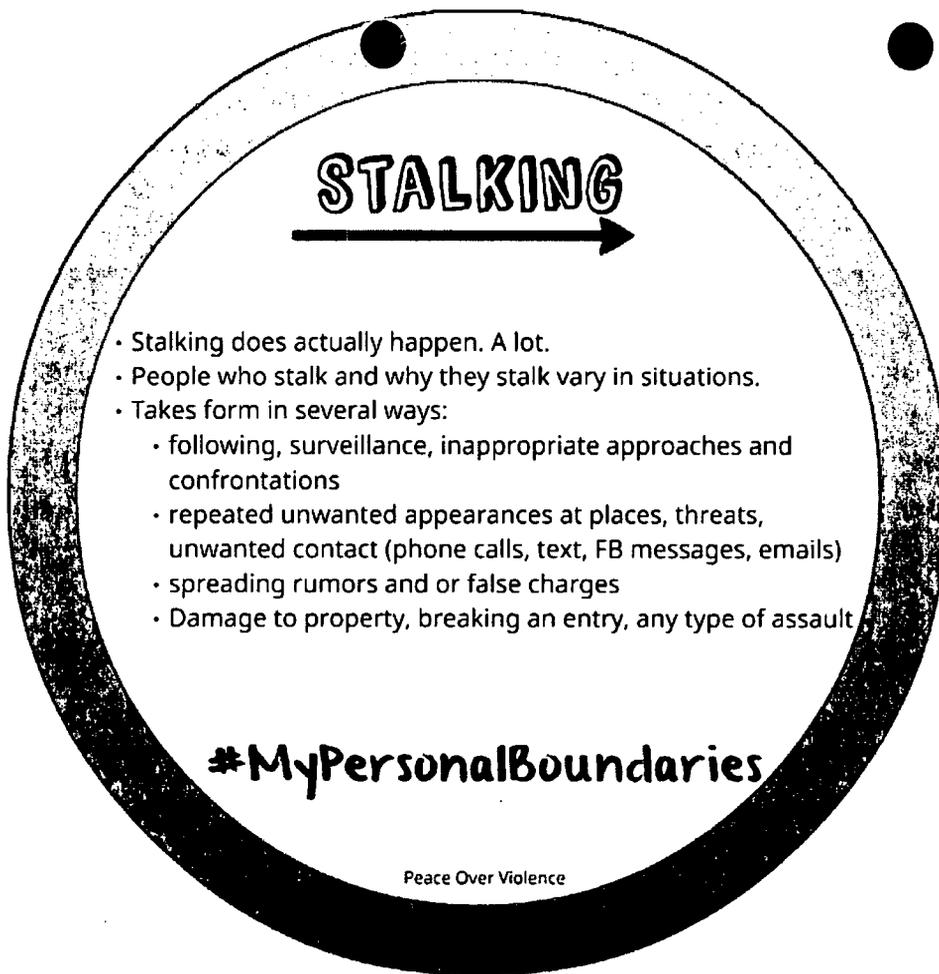
Stalking

Any form of unwanted repeated behavior and actions that causes fear for one's safety and distress. This includes being followed, surveillance, inappropriate confrontations, unwanted emails and phone calls, FB messages, spreading of rumors, or damage to property.

- 3 out of 4 stalking survivors are stalked by someone they know
- Adults between the age of 18-24 experience the highest rate of stalking
- Stalking is illegal and its covered under the law

Stay safe! Project S.A.F.E. can offer you resources and education on ways to empower yourself and others to prevent stalking.

09/15/2015



(Peace Over Violence and Stalking Resource Center)

Empowerment Model of Helping

While our curriculum may be diverse, there is one constant approach to our work, that is, empowerment. All of our programs include the facilitation of our Empowerment Model of Helping. We believe survivors are experts of their own lives, and with an array of resources and options at their hands, they are able to make the decisions that work for them.

EMPOWERMENT MODEL OF HELPING

- Survivor-Centered (We do not make or influence decisions for survivors)
- Sensitivity training/Crisis intervention
- Active Listening, Validation, Affirmation techniques

If you have experienced any form of the power-based violence mentioned above and would like more resources, find out more in Resources for Survivors or contact Naddia Palacios, our campus Survivor Advocate at (323) 259-1359 or npalacios@oxy.edu.

OCCIDENTAL COLLEGE

FOR ALUMNI

FOR PARENTS

EMPLOYMENT

CONTACT US

MAPS & DIRECTIONS

1600 Campus Road Los Angeles, California 90041

09/15/2015

CONFIDENTIAL

November 14, 2013

TO: Lauren Carella
Interim Title IX Coordinator
Occidental College

From: Cathleen Watkins
Keith Rohman
Public Interest Investigations, Inc.

Re: Sexual Misconduct Policy Complaint
Report of Investigation
PII Case Number: 13-4175

I. Introduction

On or about October 1, 2013, Public Interest Investigations, Inc., (PII) was retained by Occidental College ("the College") to investigate a complaint filed under its Sexual Misconduct Policy. The complaint was filed on or about September 15, 2013, by *Jane Doe* a freshman at the College. She identified *John Doe*, also a freshman at Occidental, as the Respondent.

Cathleen Watkins and Keith Rohman, both of PII, conducted the investigation. Watkins is a senior investigator, and Rohman is PII's president. Both have specific training and experience investigating allegations of sexual harassment and sexual misconduct, including sexual assault.

Jane Doe alleged that *John* sexually assaulted her when he had sexual intercourse with her in his room in Braun Hall sometime after midnight on September 8, 2013. *Jane Doe* stated that she was intoxicated during the intercourse due to alcohol consumption. *Jane Doe* stated that her level of intoxication was such that it caused her to be incapacitated.

The College's Sexual Misconduct Policy prohibits such conduct. It defines sexual assault as "Having or attempting to have sexual intercourse with another individual: . . . [w]here that individual is incapacitated." The policy addresses consent and incapacitation, specifically related to use of alcohol.

The Bradbury Building
304 S. Broadway, Suite 598
Los Angeles, CA 90013

Phone (213) 482-1780
License #PT19508
www.pii.com

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The policy states, "Consumption of alcohol . . . alone is insufficient to establish incapacitation. The impact of alcohol . . . varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol . . . impact[s] an individual's:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments, or
- Capacity to appreciate the nature and quality of the act.

According to the College's policy, "Evaluating incapacitation also requires an assessment of whether a Respondent knew, or should have known, that the Complainant was incapacitated."

PII's investigation focused on the facts surrounding *Jane Doe's* complaint as they related to the relevant sections of the College's Sexual Misconduct Policy, as stated above. The report specifically addresses the timeframe of the night of September 7, 2013, leading into the early morning hours of September 8, 2013, and is a synthesis of the information PII collected. We have also attached the summaries of interviews with *Jane Doe* and other witnesses, which provide some additional information on this time period and also refer to events that took place afterwards.

This report does not include the investigators' analyses of, or conclusions regarding, the facts brought forth during investigation. The College's policy states, "The investigator(s) are not charged with reaching a determination as to responsibility, which is a function reserved for the Conduct Conference or Hearing Panel."

II. Investigative Procedures

A. Timeline of Investigation

PII attempted to contact *Jane Doe* on October 3rd, but she was off campus and out of state. PII's investigation began on October 9th, when *Jane Doe* was interviewed by PII on campus. Between October 9th and October 28th, PII conducted fact-finding on campus, interviewing a number of witnesses. Beginning on October 22nd, PII attempted to set up an interview with the Respondent, *John Doe*. *John's* attorney initially informed PII that he would not make *John* available for an interview while there was a pending criminal investigation.

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On October 31, 2013, [REDACTED]

[REDACTED] *John* had agreed to be interviewed once he obtained an Advisor for the Occidental process. Over the ensuing two weeks, we had repeated contacts with *John*'s attorney. We were told by *John*'s attorney that *John* was having difficulty finding an Advisor.

[REDACTED] On November 14th, Hathaway contacted Cathleen Watkins and stated that *John* had succeeded in obtaining an Advisor, but Hathaway was still considering whether to permit *John* to be interviewed. Watkins informed Hathaway that PII's investigation was otherwise completed, and if *John* were going to make himself available, he should contact PII by 2 p.m. on November 14th. Neither *John* nor Hathaway contacted PII prior to this report being finalized.

B. Witness Interviews

PII used a team of two investigators for each interview. All interviews were conducted in-person, and Watkins was present for all witness interviews. PII did not record any interviews for this investigation. Witnesses were informed of this at the outset, and all witnesses were asked not to make their own recording.

Jane Doe was accompanied by her advisor, Professor Movindri Reddy, when she met with PII's team. In addition to *Jane Doe* PII interviewed nine witnesses. This group included eight freshmen and one professor, all of whom are part of the Occidental community. The witnesses were:

- Genevieve Babcock
- Maddie DiMarco
- Professor Danielle Dirks
- Aidan Dougherty
- Liam Driscoll
- Jamison Hayward
- Angela Peckham
- Gavin Rose
- Chloe Welmond

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C. Documents

PII collected and reviewed documents provided by the Complainant and the Respondent. These included screen shots of text messages and hand-written notes memorialized by Professor Dirks when she was talking with *Jane Doe* in the days following the incident. PII's team also reviewed floor plans for Braun Hall and the Campus Safety report for Saturday, September 7, 2013.

D. Other Investigative Procedures

Watkins and Rohman toured the grounds of the campus, including Braun Hall and Stewart-Cleland Hall, to have a visual framework for the events under investigation. In addition, Watkins reviewed the orientation materials distributed to freshmen related to the Sexual Misconduct Policy.

III. Results of Investigation

A. Background

Jane Doe said that she is assigned to Braun 320, and her roommate is Genevieve Babcock. *Jane Doe* is in the Cultural Studies Program. She said that she marked her 18th birthday on October 6, 2013, and that she was 17 years old at the time of the incident.

Jane Doe said that she met *John Doe* on September 2, 2013. *Jane Doe* and *John* were both in the African Revolutions class taught by Professor Movindri Reddy, and both attended a class outing to an African market that day. *Jane Doe* said that she and *John* spoke to one another while at the market.

Jane Doe said that the following Friday, September 6th, she attended a dance party in *John*'s room, Braun 207. She recalled that *John* was "really happy" to see her at the dance party and she thought to herself, "That's weird since [*John*] did not even know me." On September 6th, the College held its September celebration, and *Jane Doe* also went to that dance. *Jane Doe* said she saw *John* at September celebration, but she did not talk with him there.

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B. The Night of September 7, 2013, Leading into September 8, 2013

1. Before and During the Soccer Match

Jane Doe recalled that on September 6th, she drank alcohol, slept until about noon on September 7th, and woke up with a hangover. She said she spent the afternoon studying, working out at the gym, and taking a nap. She recalled having dinner with another student, Harrison Rosenthal, around 7 p.m., and said she ate a turkey burger and fries. After eating, *Jane Doe* said that she went to the men's soccer match on campus. The game began at 7 p.m., and she recalled arriving after half-time at approximately 8 p.m.

Jane Doe said that other students were "pre-gaming" before the soccer game, which meant they were consuming alcohol. *Jane Doe* said that she did not participate in any "pre-gaming" activities.

There was some disagreement in the witness accounts about whether or not *Jane Doe* participated in "pre-gaming." Liam Driscoll, a freshman who lives in Braun 214, recalled that *Jane Doe* was present in his room before the soccer match and was drinking a mixture of vodka and orange juice from a small orange juice bottle. He recalled that Angela Peckham and, possibly, Maddie DiMarco were also among the 10 students who were present in his room before the soccer game.

Angela Peckham's account differed from Driscoll's. Peckham said that she was not with *Jane Doe* or Driscoll before the soccer match. Maddie DiMarco was uncertain of her recollection and said she may have been in Driscoll's room with *Jane Doe* and Peckham on September 7th, but she was not sure of the time.

2. Immediately following the soccer match

Jane Doe recalled that around 9:15 or 9:30 p.m., she went to Liam Driscoll's room where she was with Peckham, DiMarco, Rosenthal, and other three other students. *Jane Doe* recalled that someone took lemon vodka from the freezer, and she drank a shot of the vodka from a shot glass. After this, *Jane Doe* said she went upstairs to her room by herself, and got a small bottle of orange juice which she took back to Driscoll's room.

She recalled mixing vodka into the orange juice bottle to create a mixture of about two-thirds juice to one-third vodka. In addition to drinking her juice mixture, *Jane Doe* stated that she also consumed either one or two more shots of vodka.

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She said that after being in Driscoll's room for a while, she, Peckham, and DiMarco went upstairs to their own rooms to change their outfits. After changing, she recalled returning to Driscoll's room and continuing to drink and play word games. She said, by this point, she had finished her orange juice mixture and was getting tipsy. However, she recalled she could still function well enough to "kick butt" at the games the students were playing. Before leaving Driscoll's room, she recalled holding a red, plastic cup with one to two inches of vodka in it. She said that she drank this in two to three swallows.

As stated above, the witnesses did not recall the events before, or after, the soccer match exactly as *Jane Doe* did. Driscoll stated that after the soccer match, he returned to his room briefly with a few friends, and neither Peckham, nor *Jane Doe*, were present.

Peckham recalled being with *Jane Doe* in a room on the second floor of Braun Hall after the soccer game, and observing *Jane Doe* drink alcohol, but she did not believe this was Driscoll's room.¹ Peckham estimated that ten people were present, and *Jane Doe* drank "more than anyone else." She said that vodka was "going around in straight shots," and she estimated that *Jane Doe* drank five shots. Peckham said, that she, herself, drank "maybe two shots." Peckham also remembered that *Jane Doe* was drinking from a small plastic bottle of orange juice mixed with vodka. Peckham estimated that the juice mixture was 75 percent juice and 25 percent vodka. Peckham's account aligned with *Jane Doe's* in they both said that after drinking in a dorm room on the second floor of Braun Hall, they went upstairs to their own rooms to change their clothes before going out.

DiMarco's recollection was uncertain, however, she recalled that *Jane Doe* and others were "taking shots" of vodka and estimated that *Jane Doe* had two shots. In DiMarco's view, *Jane Doe* was "a little bit drunk, but still in control of herself." DiMarco described *Jane Doe* as "buzzed." DiMarco said that she was in Driscoll's room for about 30 minutes before she left to join members of the women's swim team. DiMarco, who is a member of the swim team, recalled that the events in Driscoll's room occurred on the same night as the water polo team's initiation.

Genevieve Babcock, *Jane Doe's* roommate, was in their room when *Jane Doe* returned to change her clothes. Babcock recalled that the time was around 9:45 to 10:15 p.m., after the soccer game was over. According to Babcock, *Jane Doe* was drinking from a small bottle of orange juice that held 12 to 16 fluid ounces. Babcock said *Jane Doe* appeared "pretty lucid" at that point and was talking and walking

¹ Peckham was not sure whose room this was.

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normally. Babcock recalled Peckham entering their room, and *Jane Doe* and Peckham leaving together.

Neither *Jane Doe* nor any of the witnesses, stated that *John Doe* was with *Jane Doe* during the part of the evening between 7 p.m. and 11p.m. on September 7th.

3. In the Neighborhood

Around 10:15 or 10:30 p.m., *Jane Doe* said that she, Peckham and other students decided to go to a fraternity party in the residential neighborhood around the campus. She said that this was the same night that the College's sports teams were holding initiations and many of the parties were closed to non-team members. By this time, *Jane Doe* said she was "getting more and more drunk." She recalled not being able to walk straight and that she fell while walking down some stairs. According to *Jane Doe* her friends were commenting about how intoxicated she was, and about how she could not walk a straight line and she was "getting loud." She said that Peckham was with her. Others in the group included DiMarco, Rosenthal, James (LNU) and Riley (LNU).

Jane Doe said the group exited the campus on Bird Road and walked down Ridgeview Avenue. She stated that, while in the neighborhood, her group ran into another group of students. She said they were also stopped by campus security, who told them that their group was being too loud and neighbors were complaining.

A Campus Safety report for Saturday, September 7, 2013, included an entry at 10:46 p.m. for 2136 Ridgeview Avenue. The report stated, "Neighbor reports a group of Oxy students making loud noise in front of location. Subjects were gone upon Officer's arrival." Exhibit 2.

Jane Doe said that her roommate, Genevieve Babcock, later told her that she and *Jane Doe* passed each other in the neighborhood and said "hello." *Jane Doe* said she did not recall seeing Babcock at this point.

According to Babcock, she and *Jane Doe* were walking in separate groups looking for parties on the north side of campus on or near Ridgeview Avenue. Babcock recalled that *Jane Doe* was visibly more impaired than she had been in their dorm room earlier. She said *Jane Doe* stumbled as she walked.

Babcock said that *Jane Doe* broke away from her group when she saw Babcock, walked unsteadily towards her and said, "Hi," in a very high pitched voice. Babcock described *Jane Doe's* demeanor at that moment as "out of character,"

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☞

something she attributed to *Jane Doe's* level of intoxication. Babcock estimated the time to be around 11:30 or 11:45 p.m. She said that Peckham was still with *Jane Doe*.

Peckham recalled that the group learned that the party they were looking for had been shut down. Peckham said that *Jane Doe* was "pretty tipsy" while walking in the neighborhood. She described *Jane Doe* as "silly, but [it] seemed like she had a pretty good handle on herself." Peckham said *Jane Doe* was "walking fine" and acted as if she knew where the group was headed and what they were doing.

4. Enroute to Mt. Fiji

Jane Doe said that, after the contact with campus security, the group returned to campus and decided to walk up to Mt. Fiji, which is situated above the soccer fields on the east side of campus. As *Jane Doe* approached the gated entrance to this area of campus, however, she recalled that she could not walk up the steep hill. Her friends encouraged her to keep going, but *Jane Doe* told them she could not.

At this point in the evening, *Jane Doe* recalled that she was with Peckham and Rosenthal. She said that Jamison Hayward had also joined their group.

According to Peckham, after walking the perimeter of campus, she and *Jane Doe* were with a group of about 20 students headed toward Braun Hall. Peckham identified Hayward and Rosenthal as being among this group. Peckham said that she believed Rosenthal was intending to go to Mt. Fiji, but Peckham, herself, was not headed there. When the group reached Braun Hall, Peckham stated that *Jane Doe* said that she could not walk anymore and was too drunk to go further.

Jamison Hayward stated that he joined the group of students that included *Jane Doe*, Peckham and Rosenthal at Gilman Fountain. He estimated that this was sometime before 11 p.m.

Hayward said, "We were all pretty drunk." He described *Jane Doe* as "not falling over drunk. She could still walk, but we were all saying how drunk we were." He said that he did not recall *Jane Doe* falling or tripping; he described her level of intoxication as "not out of the ordinary" with the intoxication of others in their group. As the group walked around campus on September 7th, Hayward said that *Jane Doe* was acting "flirtatious" and walked arm-in-arm with Rosenthal. Hayward did not recall if the group was drinking alcohol as they approached Braun Hall, but said, "We must have had alcohol with us."

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Hayward said that when the group was approximately 50 feet beyond Braun Hall, *Jane Doe* said, "I'm not going. I can't do it," meaning climb to Mt. Fiji. Hayward recalled that Peckham told him they needed "to take care of *Jane*." When interviewed later, Hayward stated that, based on Peckham's concern, "maybe *Jane* was more drunk than I remember it."

5. *Jane Doe* Went to Her Room—First Time

Jane Doe explained that Peckham and Hayward were with her when she decided not to go to Mt. Fiji. However, she said that another friend, Chloe Welmond, walked her back to her room and put her into bed.

According to Peckham, after entering Braun Hall, *Jane Doe* told her and Hayward that she was going to her room to get something, so they waited for her in the Common Room. However, when *Jane Doe* did not return promptly, Peckham began calling *Jane Doe*'s cell phone to find her.

In Hayward's recollection, *Jane Doe* ran ahead of him and Peckham shortly after entering Braun Hall, and they lost track of her. He said that Peckham was "a little worried" about *Jane Doe* because she was so intoxicated.

Chloe Welmond said that she did not put *Jane Doe* into bed, as *Jane Doe* recalled. Welmond stated that she saw *Jane Doe* briefly on the night of September 7th a few hours after the soccer match was over. She said that *Jane Doe* was near Braun Hall enroute to Mt. Fiji with a group of students that included Peckham and Hayward. Welmond observed that *Jane Doe* was not able to walk very well. "It was obvious she had been drinking," Welmond said.

Welmond said that Peckham and Hayward "were conscious and aware" of what was happening with *Jane Doe* and how intoxicated she was. She stated that Peckham and Hayward were less intoxicated than *Jane Doe* was. Welmond said that, upon seeing each other, Welmond and *Jane Doe* separated from their groups and approached each other. Welmond said that she walked *Jane Doe* to the main entrance of Braun Hall, where an R.A. opened the door. Welmond remembered that, upon seeing the R.A., *Jane Doe* said, "I have to act normal."

Welmond recalled asking *Jane Doe*, "Do you want me to walk you to your room?" but *Jane Doe* declined. She said they separated at the entrance to Braun Hall, and *Jane Doe* said, "Thank you." Welmond described herself as sober. She said her interaction with *Jane Doe* lasted less than 10 minutes.

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6. *John* 's Sobriety Around 11 p.m.

On September 7, 2013, Aidan Dougherty, a freshman who lives on the second floor of Braun Hall, recalled being in a friend's room in Braun, playing videogames. At around 11:00 p.m., he said he walked past the room shared by *John Doe* and Gavin Rose. According to Dougherty, *John* and Rose were with two other students, Marin and Riahannon. Dougherty said that he stopped in the doorway to chat, and saw that *John* appeared to be intoxicated.

According to Dougherty, *John* was slurring his words, stumbling over the others when he got up, dancing around and generally moving in a way that indicated that he was inebriated. Dougherty estimated that on a 0-to-10 scale, with 10 being inebriated to the point of not being able to function, *John* was "maybe a 7." The others present told Dougherty that *John* was drunk, although Dougherty did not notice any alcohol in the room and did not see *John* consume any alcohol.

Gavin Rose, *John* 's roommate, stated that around 11 p.m., *John* returned to their room and appeared to be intoxicated. Rose said he did not know exactly where *John* had been, but believed that he was at a party. Rose stated that *John* did not tell him what, or how much, he had drunk, or where he had been. According to Rose, *John* "acted like a drunk person" and stumbled around, slurred his words, and talked loudly.

Rose recalled staying with *John* for about an hour. Rose said he had plans to go out with friends, but he decided to cancel these plans and stay in his room, in order to "keep an eye on" *John*.

Maddie DiMarco also provided some information about *John* 's condition on September 7th. She said that she heard from "a lot of people" that *John* "was pretty far gone" that night after the water polo team's initiation, meaning that he was very intoxicated. Specifically, DiMarco said that Carolyn *John*, a member of the swim team, told her that *John Doe* was "pretty far gone."²

DiMarco said that she was with Carolyn at one point late on that Saturday night or early Sunday morning when Carolyn received a text from *John*. According to DiMarco, *John* sent a text saying that he had "never been this drunk before." DiMarco said that *John* 's text also said that he was not sure what was going on, or words to

² DiMarco did not think that *John Doe* and Carolyn were related. We have used first names for Carolyn and *John Doe* in this section of the report to avoid confusion.

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that effect. DiMarco estimated that Carolyn received this text message around 12 a.m. or 1 a.m.

In text messages provided by *John*'s attorney, *John* texted Gavin Rose in two separate entries dated at 8:37 p.m., "Bro I'm so drink," and "Drunks." *John* texted a woman named Maya at 9:14 p.m., "I'm so drunk. Jesus fucking Christ." He then texted her twice at 9:28 p.m., "I'm about to blak out," and "Black out."

7. *Jane Doe* Went to *John*'s Room – First Time

Jane Doe said that after being back in her room, she found herself "wired with energy." She said she went downstairs to the second floor, because there were usually people there. Once on the second floor, she heard music and saw Gavin Rose, who is in her African Revolutions class. *Jane Doe* recalled asking Rose about the music, and he told her his roommate, *John Doe*, was having a dance party. *Jane Doe* said that Rose let her into the room he shared with *John*, Braun 206.

According to Rose, around midnight, he left *John* in their dorm room and went upstairs to the third floor to tell his friends that he was not going to go out with them. When he went back downstairs, Rose recalled seeing *Jane Doe* in the hallway. He said she was leaning against the wall, and he asked her either how she was doing, or what she was doing.

Rose recalled that *Jane Doe* said she was going to her room. Rose said he observed that *Jane Doe's* words were slurred, and he concluded that she was drunk, or had been drinking. Rose recalled that *Jane Doe* asked him if there was a "kickback" in his room, and she started walking with him down the hall. Rose stated that *Jane Doe* appeared to walk normally and he did not notice her staggering. Rose said he replied, "No. *John* is having a dance party by himself." According to Rose, *Jane Doe* responded, "Oh, *John*'s there?"

Rose said that *Jane Doe* was walking slightly in front of him, as they approached Braun 206. The door was ajar, and *Jane Doe* walked in just before Rose. Rose said that by the time he entered the room, *John* and *Jane Doe* were "in an embrace." He described *John* and *Jane Doe* as hugging and, possibly, kissing. Rose said that he then again changed his plans and decided that he would go out, and left immediately. Rose said he did not see anyone else in the room. Rose said he had not fully entered the dorm room.

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Rose said that during the time he was with *John*, before *Jane Doe* arrived, he did not see *John* consume any alcohol. Rose also noted that he (Rose) had not been drinking while still in Braun Hall on September 7th.

8. Inside *John*'s Room—First Time

a. *Jane Doe*'s account

Jane Doe said the lights were off in *John*'s room and three other women were present when she first entered *John*'s room. *Jane Doe* did not know the names of these women, but believed they were friends of Rose. Upon seeing her, *Jane Doe* recalled that *John* called out "*Jane!*" in an excited manner. A short time later, *Jane Doe* said the three women left the room.

Jane Doe said she and *John* began to dance. Around this time, *Jane Doe* said she received three calls in quick succession from Peckham. She said that she did not remember talking to Peckham on the phone, but learned later that Peckham and Hayward were trying to find her because they were concerned about how intoxicated she was. *Jane Doe* noted that there is a "big hole" in her memory of the evening, particularly during this period.

Jane Doe recalled that by the time Peckham and Hayward arrived in *John*'s room, she was dancing with *John*. She said that Hayward was drinking straight from a bottle of Smirnoff vodka and that she also drank straight from the bottle. She recalled that the alcohol did not burn her throat as it usually would, because she was already so intoxicated.

Jane Doe said she was hot and took off her shirt, thinking that she was wearing a bandeau. She did not have a bandeau on, however, and was wearing just her bra. *Jane Doe* said that she started dancing without her shirt, wearing only her bra on the upper half of her body. According to *Jane Doe* Peckham "flip[ped] out" and told her that she needed to put her shirt back on. As *Jane Doe* reached for it, however, she recalled that *John* grabbed the shirt. *Jane Doe* said that Peckham "got really mad" at *John*. *Jane Doe* recalled that *John* grabbed Peckham's wrist as Peckham tried to get *Jane Doe* to put her shirt back on. *Jane Doe* said she eventually put her shirt back on.

At another point, *Jane Doe* stated, *John* pushed her onto the bed, and they "ma[d]e out for a while." While on the bed with *John*, *Jane Doe* said *John* told her to "get rid" of Peckham and Hayward. According to *Jane Doe* *John* told her to let them

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take *Jane Doe* upstairs to her room and then she should return to his room alone. *John* told *Jane Doe* to give him her cell phone number, so he could text her about coming back to his room. *Jane Doe* said that *John* told her to come back down "so he can fuck me."

b. Peckham's account

Peckham said that she and Hayward were separated from *Jane Doe* for about five minutes before finding her in *John*'s room. Peckham described *John*'s room as dark with loud music playing. When Peckham came into the room, she observed that *Jane Doe* was acting "a lot sillier, a lot more crazy" than she (*Jane Doe*) was when they were walking around campus. Peckham noted that, while *Jane Doe* had seemed intoxicated earlier in the evening, she (*Jane Doe*) had still seemed able to understand what they were doing and what they were planning to do. In *John*'s room, *Jane Doe* could not walk well and did not seem to know where she was or what was going to happen next. She said *Jane Doe* was acting "goofy" and "very flirtatious" with *John*, and wanted to dance with him.

Peckham said, in *John*'s room, *Jane Doe* was drinking straight from a bottle of alcohol, but she did not recall what type of alcohol it was. Peckham recalled repeatedly trying to take the bottle away from *Jane Doe* and *Jane Doe* repeatedly saying she was fine and could drink more.

Peckham described *John* as also "pretty intoxicated." Peckham said that *John* and *Jane Doe* were dancing, kissing and "making out." She recalled this happened when they were both standing up, and lying down on *John*'s bed. According to Peckham, *Jane Doe* was grabbing *John* and trying to kiss him. Peckham said that *John* was "somewhat" responsive to *Jane Doe* but "also seemed pretty indifferent" to *Jane Doe*'s advances. Peckham said that *John* was "not at all going for her. . . not like he was grabbing her and pulling her onto the bed."

In Peckham's recollection, *John* would occasionally turn to her (Peckham) and Hayward and ask, "Why are you guys here? I don't even know you." Peckham said that *John* "would grab my wrists and try to pull me out of the room, [but was] never fully aggressive. I was never really afraid." Peckham said that she was not sure why *John* was trying to pull her out of his room. "I don't really understand it. It might have been because he didn't know us [her and Hayward] at all, which he didn't," said Peckham. "It may not have been because he wanted us to leave so he could have sex with *Jane*."

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Peckham stated that she and Hayward were present in *John*'s room because they were worried about how drunk *Jane Doe* was. "We were trying to make sure she didn't do anything she would regret," Peckham said.

Peckham summarized the events of the 30 minutes that she and Hayward were with *John* and *Jane Doe* as: *Jane Doe* trying to kiss *John* and dance with him; *Jane Doe* trying to drink from the bottle of alcohol and Peckham trying to take it away; and *John* trying to get her and Hayward to leave his room.

Peckham said that she never saw *John* touch *Jane Doe*'s breasts or her genital area. At one point, Peckham said that *Jane Doe* took off her shirt, and Peckham made her put it back on. Peckham stated that *John* did not say or do anything to prevent her (Peckham) from getting *Jane Doe* to put her shirt back on.

c. Hayward's account

Hayward recalled that the lighting in *John*'s room was very low and that loud, techno music was playing. Hayward said that he saw a bottle of vodka in the room, but he could not recall if the bottle was "a handle or a fifth."³ The room did not appear as if a party had taken place there, he said, and *John* and *Jane Doe* were alone in the room. He estimated that the time was around midnight.

According to Hayward, *Jane Doe* and *John* were dancing, and "they were both really drunk." Hayward said that he and Peckham also danced with each other a bit. Hayward recalled *John* talking about the water polo team's initiation, which *John* said he participated in earlier that Saturday. *John* told them, "I have been drinking since 1 p.m." According to Hayward, *John* was telling them how much alcohol he drank that day as if to say, "That is why I'm acting like I'm so crazy."

Hayward described *John* as "loud, obnoxious, kind of pushing everyone, going nuts a little bit." He said that *John* was "very bouncy, very touchy" with him and Peckham. Hayward said that from the way *John* was talking and acting, it was obvious he was drunk.

Hayward recalled that *John* and *Jane Doe* were kissing while they danced and that all four of them were taking swigs of vodka directly from the bottle. According to Hayward, Peckham was "a little worried" because she thought *Jane Doe* was not fully aware of what she was doing, and Peckham said to *Jane Doe* "Hey, let's be going."

³ A "handle" of alcohol is a 1.75 liter bottle, while a "fifth" is 750 milliliters.

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At some point, Hayward recalled that *John* took his shirt off and then *Jane Doe* removed her shirt and was wearing her bra. Hayward said that *John* wanted Hayward to remove his shirt, too. Hayward said that he did remove his shirt for a minute, but then put it back on.

According to Hayward, eventually *John* and *Jane Doe* laid down together on *John*'s bed, with *Jane Doe* on top of *John*. When this happened, Hayward recalled that he and Peckham told *Jane Doe* "*Jane*, It's time to go." He recalled that *Jane Doe* was "a little upset and indignant." He described her as "resisting leaving [*John*'s room] a little bit, while at the same time, she was aware that we were doing the right thing" by directing her back to her dorm room.

Hayward said that while *Jane Doe* was on top of *John* on the bed, the two of them were "getting really physical." Hayward recalled that *Jane Doe* "was kind of riding on top of [*John*]. Her hips were moving." Hayward said, "It looked like something [sexual] was going down." He recalled that *John*'s shirt was off at this point, but he could not recall whether *Jane Doe*'s shirt was off or on.

9. *Jane Doe* Went to Her Room—Second Time

Jane Doe stated that she went back up to her dorm room with Peckham and Hayward. She stated she lay there for about five minutes before she started sending text messages to *John* and to a friend from home. (The text messages are discussed below.)

According to Peckham, around midnight, *John* told the group he had something to do, and left his room. At that point, Peckham and Hayward took *Jane Doe* upstairs to Braun 320 and put her to bed. Peckham said *Jane Doe*'s roommate, Genevieve Babcock, was not there. Peckham and Hayward put the blankets over *Jane Doe* but did not undress her. Peckham said *Jane Doe* did not discuss *John* while being put to bed.

Hayward's recollection differed slightly from Peckham's. Hayward stated that he and Peckham got a hold of *Jane Doe* with one of them on either side of her, and maneuvered her out of *John*'s room. He said, "*Jane* really couldn't walk that straight." As this was occurring, Hayward recalled *John* saying, "No, don't do it," meaning don't remove *Jane Doe* from his room, but *John* did not grab *Jane Doe* or otherwise physically try to prevent her from leaving. According to Hayward, *John* called out to *Jane Doe* that it would "be more fun" if *Jane Doe* stayed with him.

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Hayward said that *John* did not exit his room at this point. Hayward never saw *John* anywhere that night other than inside his own room.

According to Hayward, he and Peckham took *Jane Doe* upstairs to her room on the third floor. He described *Jane Doe* as "super drunk," at this point and "talking, but making no sense." He said that she seemed "incoherent." He did not recall her saying anything about *John*. Hayward said that he and Peckham put *Jane Doe* into bed and closed the door. Hayward estimated that this was about 1 a.m. He recalled that *Jane Doe's* roommate was not there.

Peckham and Hayward both agreed that they left *Jane Doe* alone in her room, and then separated from each other. Peckham said she went back to the second floor of Braun to a friend's room, where she stayed for about 45 minutes. Hayward said that he stayed in front of *Jane Doe's* room briefly after Peckham walked away.

a. Text messages

Jane Doe said that shortly after Peckham and Hayward put her to bed, she sent a text message to her friend, Gentry Whittaker, who lived in Tennessee, saying she was going to have sex.

Both *Jane Doe* and *John*'s attorney provided PII with screen shots of text messages sent early September 8th. Exhibit 3, 4, 5 and 6. *Jane Doe* sent a few text messages to Gentry, in this timeframe. Exhibit 5. They said:

12:20 a.m. "I'm wasted" (*Jane Doe* to Gentry)

12:40 a.m. "The worlds moving" and "I'mgoingtohave sex now" (*Jane Doe* to Gentry)

Jane Doe and *John* were also exchanging texts with each other during this timeframe. The documents provided by *John* showed a time-stamp for each text sent, while *Jane Doe's* set of texts did not record the time of each individual message.

John also sent text messages to Gavin Rose and to a woman named Maya during this time period. Exhibit 6.

Some of the messages exchanged between *Jane Doe* and *John*, Rose and *John*, and Maya and *John* were as follows:

12:31 a.m. "The second that you're away from them, come back" (*John* to *Jane Doe*)

12:31 a.m. "Okay" (*Jane Doe* to *John*)

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- 12:35 a.m. "Get the fuck back here." (John to Jane Doe)
- 12:36 a.m. "They're still with me o" (Jane Doe to John)
- 12:36 a.m. "Make them leave. Tell them you want to sleep. I'dc. Just get back here"
(John to Jane Doe)
- 12:37 a.m. "Okay do you have a condom (Jane Doe to John)
- 12:38 a.m. "Yes." (John to Jane Doe)
- 12:39 a.m. "Good give me two minutes" (Jane Doe to John)
- 12:39 a.m. "Stay the fuck out of our room." (John to Rose)
- 12:40 a.m. (Jane Doe sends the two text messages to Gentry Whittaker, described
above, about the world moving and that she is going to have sex now.)
- 12:41 a.m. "Come here." (John to Jane Doe)
- 12:41 a.m. "Coming." (Jane Doe to John)
- 12:42 a.m. "Good girl." (John to Jane Doe)
- 12:42 a.m. "Knock when you're here" (John to Jane Doe)
- 1:57 a.m. "<3 you. Our room is free, go back any time. I'll be there about 2:30"
(John to Rose)
- 2:10 a.m. "Yeah. I don't even know what happened, I'm so fucking out of this world."
(John to Maya)

b. Leaving her room

Jane Doe recalled that after communicating with John by text, she looked out the peep hole of her door and saw Hayward, in addition to one of her R.A.s. and her neighbor, Anna. Jane Doe said, "I am freaking out because I was really drunk, and I don't want the R.A. to see me."

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Between 12:43 a.m. and 12:55 a.m., *Jane Doe* and *John* exchanged another series of text messages about Hayward and the R.A. being outside her door. In one message, *John* told *Jane Doe* to leave her room and say she was going to the bathroom. Exhibits 3 and 4.

Jane Doe stated that upon seeing Hayward outside her door, she thought to herself, "Jamison? Oh crap, what are you doing here?" However, she stated that when she opened the door, she pretended to be more congenial, saying to him, "Whoa, Jamison, what are you doing here?" in a friendly way. She recalled telling Hayward she needed to go to the bathroom and then walked down to the bathroom. *Jane Doe* stated that she did not enter the bathroom, however, but walked past it and down the stairs to the second floor. *Jane Doe* stated that she felt excited that her ruse to get past Hayward and go downstairs to *John*'s room was working.

Hayward recalled that shortly after Peckham left, *Jane Doe* opened her door and came out of her room. Hayward estimated that *Jane Doe* had only been in her room for about 30 seconds before she opened the door.⁴ He said that the next sequence of events is confused in his recollection, but he recalled that *Jane Doe* kissed him on the neck. He said that he did not kiss her in return but hugged her. He said that he did not recall if she was speaking coherently at this point. Next, he recalled that she went down the hall to the bathroom.

Hayward said that he could not follow *Jane Doe* into the girls' bathroom. While she was gone, he passed out on the floor near her door for a few minutes. He recalled that a student who lived across the hall from *Jane Doe* together with an R.A., woke him up and asked, "Why are you in our hall?" He said that he did not know the name of this student, but recognized her as a girl from the track team. He said that he explained to them that *Jane Doe* was in the bathroom, and they assured him that they would assist her. He said that he felt comfortable that they would look out for *Jane Doe* and he left to go to Stewart-Cleland Hall.

10. Returning to *John*'s Room

Jane Doe said that as she walked down the stairs to go back to *John*'s room, she began to feel "really dizzy" and "really sick." She stated she held onto the stair rail. She also felt very nauseous, and, after she got to the second floor, she said she vomited into a trash can. *Jane Doe* recalled that someone came up behind her as she

⁴ Based on the text messages, *Jane Doe* was in her room for about 25 minutes.

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threw up, and held her hair. She said she learned later that this person was Gavin Rose, who also took her into men's bathroom where she finished throwing up.

Rose stated that he returned to the second floor of Braun Hall to get his friend Nick, who lives one or two doors down the hall from Room 206. Rose stated he saw *Jane Doe* walking towards him from the direction of his and *John*'s room. According to Rose, she appeared to have a hard time walking, and was stumbling. He said she was headed towards a trash can in the hall and then she threw up into it.

Rose said that he went to *Jane Doe* and held her hair back, suggested that she go into the bathroom, and she agreed. Rose said they went into the men's room on the second floor of Braun, where *Jane Doe* threw up some more. When *Jane Doe* indicated that she felt better, she and Rose left the restroom.

According to Rose, *Jane Doe* walked back towards room 206, while he went back the way he came, in the opposite direction. Rose said that he believed that *Jane Doe* would go up the stairs and to her room. Because she had just thrown up, Rose said he believed she was "done" for the evening.

11. Inside *John*'s Room – Second Time

a. *Jane Doe*'s account

Jane Doe stated that after vomiting, she walked to *John*'s room. She said that she has a recollection of *John* pulling her into his room.⁵ She stated, "I think I told him I threw up and I think he gave me a piece of gum." She stated she believes she got to his room around 12:50 a.m., and stayed there until around 2:00 a.m. She stated that she has a series of "non linear recollections" about what happened during that period.

Jane Doe stated that she did not think she took her shirt and bra off while having sex with *John*. She remembered asking *John* if he had a condom, because she had not used any birth control. *Jane Doe* stated several times to PII that she "had sex" with *John*. When questioned about this, she said that she only specifically recalled performing oral sex on him and did not remember having sexual intercourse.

Jane Doe said that *John* left the room at one point and returned very quickly. She remembered another point where there was a knock at the door, and the sound of three voices asking her if she was okay. She believed that one of the voices may have

⁵ *Jane Doe* stated that she did not recall who held her hair while she vomited, but has been told by others that it was Rose, and that Rose walked her down to *John*'s room afterwards.

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been Aidan Dougherty, and another was a woman named Megan. *Jane Doe* said she later learned that the third voice was a student named Mia.⁶ She remembered, at another point, *John* saying his roommate had just come in.

Jane Doe said she did not remember how many times she and *John* had sex that night. She stated she remembered that she didn't move very much. She recalled getting her shorts back on, but not her belt, and said that her belt and earrings were in *John*'s room the next day. She stated she remembered *John* telling her to get on the bed, but did not recall any other conversation with him during this period. She stated, "I don't remember him really talking."

Jane Doe stated she could not recall what she was thinking as she went back down to *John*'s room the second time. She stated, "The thing is I have no clue what I was thinking. I would never have done that if I had been sober. . . . I don't know what was going through my head." She described herself as "a hopeless romantic" who wanted the loss of her virginity to be a more special event.

Jane Doe said that at the time she and *John* had intercourse, *John* did not know that she was a virgin and did not know that she was under age 18.

b. Dougherty's account

Dougherty said around 2:00 a.m. on Sunday, September 8th, he saw Gavin Rose with several friends, including Miya and Megan.⁷ Rose told Dougherty that *John*, *John* and *Jane Doe* were alone in the room he and *John* shared, and that Rose could not return to the room for that reason. Dougherty stated that he had been in his room playing video games that night and was not intoxicated at this time.

Dougherty noted that he was not friends with *Jane Doe* but had seen her around Braun. However, he stated that he had attended the sexual assault prevention training during orientation, had heard the presentation on consent and alcohol consumption, and therefore asked Rose if both *John* and *Jane Doe* were "okay." According to Dougherty, Rose responded that *Jane Doe* was intoxicated and that she had thrown up earlier in the evening. Rose told Dougherty that he (Rose) had held her head while she vomited. Dougherty said Rose indicated that *Jane Doe* was "very drunk."

When Dougherty expressed concern about *Jane Doe's* condition, Rose told him something like "You're free to check" and then gave Dougherty the access code to his

⁶ *Jane Doe* did not provide last names for these students.

⁷ Dougherty provided a spelling of Miya with a "y."

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room and the swipe card to open the door. Dougherty said he went to Room 206, where he found a folded up piece of paper in the area for the swipe card, which he removed. Dougherty said he later learned this was a signal between Rose and John to let one another know not to enter the room. He said that he did not re-position the piece of paper later when he left Room 206. According to Dougherty, he punched in the access code and used the swipe card to open the room door.

Dougherty said the lights were off, but he could see John sitting up in the middle of the bed, naked, holding a pair of shorts over his crotch. Dougherty said he could also see Jane Doe under the covers. According to Dougherty, John said, "Yo, get the fuck out." Dougherty said he was "taken aback," and immediately closed the door. He estimated he had stood in the doorway for about 15 seconds.

After closing the door, Dougherty recalled standing outside of Room 206 for about one or two minutes. He said that John came out of the room wearing shorts and a shirt, and went down the hall to the restroom. At this point, Dougherty said he knocked on the door and said, "Jane?" He heard Jane Doe reply, "Yeah?"

Dougherty said he asked if she was okay, and Jane Doe responded, "Yeah." Dougherty said he asked, "Are you sure?" to which she replied, "Yeah. I'm fine." According to Dougherty, he then asked Jane Doe a third time if she was okay, and she answered that she was. Dougherty explained that he asked Jane Doe three times if she were okay because, from her tone of voice, he was not entirely convinced she was okay. He said that Jane Doe responded to him slowly and in a "down way" that was "kind of sad." However, Dougherty stated that, based on Jane Doe's three statement to him, he left the area. "I took her word for it," he said.

c. Rose's account

Rose's account differed in some aspects from Dougherty's account. Rose stated that on September 7th or 8th, he did not give his key card or the access code to his dorm room to anyone. He said he was not aware of anyone other than himself walking in on Jane Doe and John while they were in bed together.

Rose said that after he left Jane Doe with John, but before she vomited, he returned to his friends and they were "milling around in the hallway." At this point, Rose said he saw Aidan Dougherty. Rose said he told Dougherty that John and Jane Doe were in his dorm room and that both were drunk. According to Rose, Dougherty said, "Maybe that isn't a good idea," and went to check on them. When Dougherty returned, he told Rose that Jane Doe said that she was okay.

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Rose said he then left Braun Hall and met up with his friends, who were on the lower part of the campus. When Rose discovered that he did not have any money or a credit card, however, he ran back to his dorm room. He estimated that at this point, it was about 1:00 a.m. According to Rose, when he opened the door to Room 206, he saw *John* and *Jane Doe* having sex in *John*'s bed.

Rose said that *Jane Doe* was on her back with her legs spread, while *John* was on his knees between her legs. No covers were on either of them. Rose said that *John* was "fully naked." Rose recalled that he could only see *Jane Doe* from the waist down, and the lower half of her body was naked. He said he could not see *Jane Doe*'s face because *John*'s torso blocked his view. According to Rose, *Jane Doe*'s legs were moving. Based on this, he said that he believed she was conscious. Rose said that *John* did not appear to be restraining *Jane Doe*.

Rose estimated that he was in the doorway for "a split second," before he quickly closed the door and left. No one said anything during the time Rose was in the doorway.

According to Rose, he and *John* had worked out a system of putting a piece of colored paper in the key swipe if they needed privacy in the room. Rose said no paper was in place when he returned to the room to get money. Rose said he was not aware of any paper being in the key swipe on September 7th or 8th, and did not think that anyone else knew of his and *John*'s system.

Rose said that at about 2:45 a.m., *John* sent him a text message saying that he could go back to their room.

12. Returning to Her Room – Third Time

Jane Doe stated that she left *John*'s room around 2:00 a.m., and walked up the stairs to third floor. As she got to the top of stairs, Peckham saw her and asked where she had been. *Jane Doe* stated that Peckham walked her to her room. By this time, Genevieve Babcock, *Jane Doe*'s roommate, was present. According to *Jane Doe* Peckham left her with Babcock. *Jane Doe* recalled telling Babcock that she had vomited, and Babcock took her to the bathroom. After this, with the help of their neighbor Maddie DiMarco, Babcock put *Jane Doe* into her sleep shorts and put her into bed. According to *Jane Doe* Babcock attempted to take her cell from her, but she (*Jane Doe* became very angry and Babcock gave it back to her. *Jane Doe* said that after staying with her for a while, Babcock left the room.

Babcock said she returned to her dorm room in the early morning around 2:45 a.m., and found *Jane Doe* and Peckham there. Babcock described *Jane Doe* as "very

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incapacitated" at this point. Babcock stated that *Jane Doe* did not have a lot of control over her motor skills or her speech. Babcock said *Jane Doe* was slurring her words and "just talking drunk." Babcock said she did not recall anything specific that *Jane Doe* said and that *Jane Doe* made random comments. She said that *Jane Doe* did not mention *John Doe* or where she had been that night. Babcock helped *Jane Doe* into bed and gave her some water, but it dribbled out of her mouth.

Babcock said Peckham told her that *Jane Doe* had thrown up earlier. She said that she and Peckham removed *Jane Doe's* shorts and put her into pajamas. After putting *Jane Doe* to bed, Babcock told Peckham that she could leave.

Babcock recalled checking *Jane Doe* for alcohol poisoning because she was concerned about how intoxicated *Jane Doe* appeared. She recalled that *Jane Doe* was conscious and told Babcock that she felt nauseous. Once *Jane Doe* was settled, however, Babcock said she went down the hall to take a 10-minute shower.

Peckham said that around 12:45 a.m., she decided to go to bed and enroute to her room third floor room, she encountered *Jane Doe* coming up the stairs from the second floor. Peckham recalled saying to *Jane Doe* "I put you to bed an hour ago," and *Jane Doe* replying that she was fine and that she was just hanging out. Peckham recalled telling *Jane Doe* "Okay, we are going to tuck you into bed."

Peckham said she walked with *Jane Doe* to Room 320 again and this time, Genevieve Babcock, *Jane Doe's* roommate, was present. She said that she and Babcock changed *Jane Doe* into her pajamas and put her into bed.

13. *Jane Doe* Goes to Stewart-Cleland

Jane Doe stated that, after Babcock left the room, she "didn't feel like going to sleep." *Jane Doe* explained that students usually hung out around Stewart-Cleland Hall, adjacent to Braun Hall. She recalled finding her phone and her key card, and putting on her shoes. She said she walked down the stairs and across the grassy area known as "Stewie Beach" to Stewart-Cleland Hall, walking in the front entrance. Upon entering the common room, she said she saw a student named Danny Stauffer, whom she had met the night before at Septemberween. She recalled that the two of them talked and joked, and *Jane Doe* specifically remembered making fun of NASCAR, which was on a nearby television.

According to *Jane Doe* shortly after arriving at Stewart-Cleland, Babcock called her cell phone. *Jane Doe* said that Babcock ended up talking with Stauffer on *Jane Doe's* phone. *Jane Doe* later learned that Stauffer had joked with Babcock that *Jane Doe* was "going at it with a guy." Soon after this, Babcock appeared at Stewart-

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Cleland and took *Jane Doe* back to Braun Hall. *Jane Doe* recalled that they took a circuitous route to avoid being seen by the R.A.s. Babcock put *Jane Doe* to bed, taking *Jane Doe's* phone from her. *Jane Doe* stated she fell asleep around 3:00 or 3:30 a.m.

Babcock said that when she returned to her room after the shower, *Jane Doe* was gone. Babcock said she called *Jane Doe's* phone and eventually a male student answered. Babcock recalled saying, "Where is *Jane*? Put her on the phone." According to Babcock, the student told her, "She is going at it with some guy." Babcock said the time of the call was 2:45 a.m.

Babcock said she tried talking to *Jane Doe* on the phone, but *Jane Doe* was slurring her speech so badly, Babcock could not understand her. "I was super worried," Babcock said. Babcock eventually ascertained that *Jane Doe* was at Stewart-Cleland, and she went there to retrieve her. Babcock said she found *Jane Doe* in the common room, wearing her pajamas, "sitting on a couch on some guy's lap."

According to Babcock, *Jane Doe* was not able to walk on her own and "buckled under her own weight." Babcock said that a male student, Grayson Burden, stepped in and helped Babcock maneuver *Jane Doe* back to Braun Hall. Babcock described the period around 3 a.m., during the walk back to Braun Hall, as the worst point for *Jane Doe* in terms of mobility, based on the times that Babcock had observed *Jane Doe* that night.

Once back in their room, Babcock recalled that she kept taking *Jane Doe's* cell phone away from her. Babcock said that she waited for *Jane Doe* to fall asleep. Babcock said that she did not see any signs that would indicate alcohol poisoning.

Jamison Hayward also observed *Jane Doe* early Sunday morning at Stewart-Cleland. After leaving Braun Hall, Hayward went to "Stewie Beach" for 15 to 30 minutes before he went inside to the common room. He said that shortly after he went into the common room, *Jane Doe* entered the common room and sat down on the lap of a male student. Hayward described *Jane Doe's* behavior as "Marilyn Monroe-esque" and demonstrated by holding his arms above his head, with his palms facing up. He said that he thought to himself, "Oh, my God." Hayward said that he then saw another girl, who appeared to be with *Jane Doe* the girl was saying, "*Jane*; come back."

According to Hayward, at the point when *Jane Doe* was at Stewart-Cleland in the common room, she was "extremely drunk." He said that she was able to get herself around – to move from point A to point B – but she "was struggling." He described her as "weaving, putting her hands on the couch" for balance.

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Hayward said that *Jane Doe* appeared to be drunker than she was when he had been with her in *John*'s room. Hayward said, "I didn't know it was possible to be more drunk than she was [earlier]."

Maddie DiMarco said she helped Babcock put *Jane Doe* when *Jane Doe* returned from Stewart Cleland.⁸ DiMarco said that she encountered Babcock on the third floor of Braun Hall around 2 or 3 a.m., looking for *Jane Doe*. According to DiMarco, Babcock said that *Jane Doe* was "pretty intoxicated" and was "with a guy." Babcock told DiMarco that she did not know the name of the individual *Jane Doe* was with.

DiMarco recalled that she offered to help look for *Jane Doe* but Babcock said that she could handle it. DiMarco said that she then went into her room. A while later, when she left her room to brush her teeth, DiMarco said she saw *Jane Doe* and Babcock coming back to their room. According to DiMarco, *Jane Doe* was "pretty intoxicated" and Babcock appeared to be "a little upset with *Jane*."

DiMarco said that she helped Babcock get *Jane Doe* into bed. DiMarco recalled that *Jane Doe* was slurring her words and was stumbling. DiMarco said that Babcock told her that *Jane Doe* had vomited earlier.

DiMarco recalled that *Jane Doe* objected to being put into bed and kept trying to get up. After putting *Jane Doe* into bed, DiMarco said she and Babcock walked out of the room. In DiMarco's recollection, Babcock told DiMarco that *Jane Doe* had said that she may have had sex that night. DiMarco said that *Jane Doe* did not tell Babcock who her sexual partner was. DiMarco clarified that she did not recall exactly what was said that night. However, she said that she remembered being surprised because "I just didn't think that [having drunk sex] was something *Jane* did [REDACTED]"

DiMarco characterized Babcock's reaction to what *Jane Doe* told her as "surprised and confused." DiMarco said, "I think that Genevieve was a little annoyed at *Jane* about it." DiMarco recalled Babcock saying, "I can't believe she just did this," in reference to *Jane Doe* getting drunk and possibly having sex.

14. Other Text Messages

Early on September 8, 2013, Chloe Welmond said that she received a text

⁸ *Jane Doe* recalled that DiMarco helped Babcock put her (*Jane Doe*) to bed before she left for Stewart.
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message from *Jane Doe* time-stamped 2:14 a.m.⁹ The text message read as follows:

"thank you. Ypureagoodperson" ☺

Jane Doe and Hayward also sent text messages to each other between approximately 1 a.m. and 2 a.m. on September 8th. They were as follows:

1:04 a.m. "U ok?" (Hayward to *Jane Doe* ¹⁰)

1:46 a.m. "Where are you?" (*Jane Doe* to Hayward)

2:05 a.m. "I'm drunk" (*Jane Doe* to Hayward)

Jane Doe also provided a copy of text messages she exchanged with a student named Matt on September 8th. At 2:15 a.m., she sent a text to Matt that said, "I'm do drunk."¹¹

C. Following Days

In the period following her interactions with *John*, *Jane Doe* spoke with several people about what had occurred and her reactions to the events of September 7th and 8th. In addition to her parents, the LAPD, staff at Emmons Health Center, and Professor Reddy, *Jane Doe* also spoke with several witnesses interviewed for this investigation, including Babcock, Dougherty, Rose, Peckham and Professor Danielle Dirks. She also talked to *John* about what happened and exchanged several text messages with him over a several day period.

Additional information from *Jane Doe* and witnesses about what happened in the days and weeks that followed is included in the summaries of witness interviews.

IV. [REDACTED]

⁹ Welmond still had the text message from *Jane Doe* on her phone when she was interviewed by investigators. She showed the text message to investigators, and it is presented here exactly as it appeared on Welmond's phone.

¹⁰ Hayward said that he believed he sent this message to *Jane Doe* when she did not return to her room from the bathroom.

¹¹ The text messages between *Jane Doe* and Matt also included a text that *Jane Doe* said she did not write. This message said, "Ah bring the thunder to me babe :)." According to *Jane Doe* when she was at Stewart-Cleland around 2:30 a.m., Danny Stauffer had control of her phone for a period of time and he wrote this text message.

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VI. List of Exhibits

1. [REDACTED]
2. Watch Supervisor Observation Report, Saturday, September 7, 2013
3. Text messages between E. Jane Doe¹² and D. John (provided by E. Jane Doe)
4. Text messages between D. John and E. Jane Doe (provided by D. John). 12
5. Text messages between E. Jane Doe and others (provided by E. Jane Doe)
6. Text messages between D. John and G. Rose; Text messages between D. John and Maya (LNU).
7. Floor plans, second and third floors, Braun Hall
8. Hand-written notes prepared by D. Dirks of Jane Doe's recollection of the events.

¹² John spelled Jane Doe's last name phonetically as Akinthaw.

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Witness Statements

09/15/2015

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TO: Lauren Carella
Interim Title IX Coordinator

FROM: Public Interest Investigations, Inc.

DATE: November 13, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of *Jane Doe*

Jane Doe was interviewed on October 9, 2013, at Occidental College by Cathleen Watkins and Keith Rohman.¹ *Jane Doe* was accompanied by her Advisor, Professor Movindri Reddy.

Background Information

Jane Doe a freshman, turned 18 on October 6, 2013. She arrived on campus on August 22, 2013, and resides in Braun with her roommate, Genevieve Babcock. There are two RAs on her floor, Emily Applewhite and Rachel (LNU). Braun Hall is organized single sex floors, with women on the first and third floors and men on the second floor. While access from the exterior requires swipe cards, once students are inside the building, they can access all the floors without any swipe cards.

At the time of the incident, *John Doe* lived on the second floor of Braun, and *Jane Doe* and *John* were both in the Cultural Studies Program (CSP) and in the African Revolutions class taught by Professor Movindri Reddy. *Jane Doe* stated that she did not have much interaction with *John* during the first weeks of school. She recalled sitting one seat away from him in one class, with another student, Matt, sitting between them.

She said that classes started on the August 28th, and, on the following Monday, the class attended an African Market where she and *John* met for the first time. She

¹ Throughout her account *Jane Doe* referred to all of the participants in these events by their first names. In some cases, she did not know their last names. This summary uses the individual's last name, if known. Otherwise, first names are used.

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stated that they were introduced, and had some initial conversation about subjects like where they were from.

On Friday night, September 6th, the school held its annual Septemberween Party, and, at some point that night, *Jane Doe* recalled being in *John*'s room for a dance party. *Jane Doe* said that when *John* saw her that night, he was "really happy to see me, but I thought that was weird since you don't even know me." *Jane Doe* was in *John*'s room with a group of friends who may have included Charles Baxter. She said *John*'s room was very crowded, and the party was quickly shut down by the RAs who said fewer people needed to be there.

Jane Doe said that aside from her conversation with *John* at the African Market, and their brief conversation in his room on September 6th, she did not recall speaking with him any other time that week. She recalled seeing him at the Septemberween Dance, but did not believe she spoke with him. *Jane Doe* said that she was Derrick (LNU) almost all of that night.

Evening of September 7, 2013

Jane Doe stated she was hung over on the morning of September 7th from the Septemberween Party and slept until noon. She recalled going to the gym to work out, and getting some food before going to the library to study. When she got to the library, she realized she was having difficulty focusing on her work, so she returned to her room to take a nap. She stated that she took some Motrin during the day, but took no other medication that day or night, either prescription or non-prescription.

She said a soccer match was scheduled for that evening and many of the freshmen were planning to attend. *Jane Doe* planned to attend as well. She stated that many freshmen were "pre-gaming," which she described as getting drunk before the game. *Jane Doe* said that she was "very determined" to eat some dinner before she starting drinking, however, so she went with her friend Harrison Rosenthal to eat around 7 p.m. She recalled having a turkey burger and fries. She stated that the game started at 7 p.m., and she and Rosenthal arrived after half time. The game ended around 8:45 or 9 p.m.

Drinking at Braun Hall

After the game, *Jane Doe* said she and Rosenthal met up with some friends, including her friend Angela "Angie" Peckham. *Jane Doe* said Liam Driscoll may have been with her group at this point, or she may have run into him later. *Jane Doe* was unsure about this. She noted that, at this point in the evening, her memory of events was less clear.

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Jane Doe said she eventually ended up in Driscoll's room with other friends. She recalled that Peckham, Rosenthal, Maddie DiMarco, James, Reese, and Riley were present, all of whom lived in Braun Hall.² Jane Doe recalled getting to Driscoll's room around 9:15 or 9:30 p.m. Jane Doe said someone pulled out some lemon vodka from the freezer, and she took her first shot from a shot glass.

According to Jane Doe she went up to her room by herself at some point to get some orange juice to mix with the vodka. She said she filled her orange juice bottle with a mixture of two-thirds orange juice and one-third vodka. Jane Doe stated that she could not remember if she also took another shot at that time, but recalled having had either one or two shots of vodka. She went back to Driscoll's room, but eventually left again with Peckham and DiMarco to go to their rooms on the third floor in order to change their clothes before going out again. She stated that, by this time, she had drunk about half of the orange juice-vodka mixture.

Jane Doe recalled that the three women returned to Driscoll's room, and continued to drink and play games. Jane Doe recalled playing an iPhone game in which you have a word stuck on your phone, which you are holding up to your head. She stated that she realized she was getting "tipsy" at that point, and had finished the orange juice mixture. Nonetheless, while she was intoxicated, she could "still kick butt at the game."

Soon after this, Jane Doe recalled having one to two inches of vodka poured into a red plastic cup, which consumed in two or three swallows.

Leaving Braun Hall

Around 10:15 to 10:30 p.m., Jane Doe said the group decided to go into the neighborhood to one of the frat parties in the area. Jane Doe recalled that September 7th was initiation night for most of the sports teams at Occidental.

Jane Doe stated that, by this point, she "was getting more and more drunk." She said that she could not walk straight, and while walking down the steps, she slipped and hurt her knee, even though she did not realize this until she saw the cut on her knee later. She described the sensation of being intoxicated as getting "light around my head" and recalled getting that feeling that night. She said several of the friends in her group commented that Jane Doe could not walk in a straight line, and was getting a little loud.

She said the group included Peckham, DiMarco, Rosenthal, James, and Riley. She thought that Driscoll may have been with them as well. Jane Doe stated that

² No last names were provided for James, Reese, or Riley.

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everyone, except perhaps James, had been drinking. At one point, *Jane Doe* said she got a piggy back ride from Rosenthal because she was having difficulty walking.

She said that the group exited the campus on Bird Road, and walked down Ridgeview Avenue. At some point, she said James and Riley turned back to campus to take care of a friend. According to *Jane Doe* when the group was a couple of houses away from campus, they ran into another group of students. She also recalled their group being approached by Campus Security, who told them that about a neighbor complaint that their group was being too loud.

Jane Doe said that she saw her roommate, Genevieve Babcock, one time that evening while *Jane Doe* was away from Braun Hall. This happened when she and Babcock were both walking around off campus, and *Jane Doe* saw Babcock with another group of students. *Jane Doe* said she did not recall this herself, but was told by Babcock later that *Jane Doe* ran over to Babcock and said, "Hello."

Enroute to Mt. Fiji

After the contact with Campus Security, the group returned to campus and decided to walk up to Mt. Fiji. *Jane Doe* stated Mt. Fiji has a great view, but at the top of a steep hill. *Jane Doe* recalled she got halfway to the gate entrance below Mt. Fiji when she realized she could not make it up the hill. She said told her friends she was having trouble walking and did not want to go up the hill. According to *Jane Doe* her friends encouraged her to keep going and said they would carry her, but *Jane Doe* said she could not continue. *Jane Doe* recalled that Peckham and Jamison Hayward were with her. However, *Jane Doe* recalled that another student, Chloe Welmond, walked her back to her room and helped her get into bed.

Going to John 's room—First time

Jane Doe stated that after being back in her room, she realized that she was bored. She stated, "I [was] wired with energy." She said she went downstairs to the second floor of Braun Hall, because there were usually people there. She said she heard the sound of music from one of the rooms and ran into Gavin Rose, who is in her African Revolutions class. She asked Rose where the music was coming from, and he said his roommate was having a dance party. *Jane Doe* noted that she has always loved dancing, particularly when she is drunk. She said that she was drunk at this point. *Jane Doe* said that Gavin unlocked his room for *Jane Doe* and let her in.

Jane Doe said that when she entered the room, she found the lights off, and three women in the room with *John*. *Jane Doe* said she did not know the women's names. According to *Jane Doe* when *John* saw her, he called out to her excitedly, "*Jane!*" *Jane Doe* stated that in her recollection, she believed that *John* pulled her

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into his room at some point in the evening. She said that she was not sure if this happened at this point, or later.

Jane Doe said that the three women left *John*'s room "very quickly" after she arrived. She stated the women were Rose's friends. Once the women left, *Jane Doe* and *John* began dancing together. While dancing with *John*, *Jane Doe* said she received three calls in quick succession on her cell phone, but she did not recall the conversations. She later learned that the calls were from Peckham and Hayward, who realized she was really intoxicated, and that they should not have left her alone. While she did not recall the conversation, she stated the two soon came looking for her.

Jane Doe noted there was "a big hole" in her memories of the evening, particularly during this period. She remembered dancing with *John* and that Peckham and Hayward were sitting on *John*'s bed. According to *Jane Doe*, Hayward took out a bottle of vodka, which she drank from, and then she danced more. She said she was drinking straight from the bottle, and remembered alcohol spilling on her. She stated that she knew she was drinking Smirnoff and it should have burned her throat going down, but it didn't because she was so intoxicated at the time.

As *Jane Doe* continued to dance with *John*, she recalled feeling hot and took off her shirt. She stated that she thought she had a bandeau on over my bra, but this was not the case. She said that she was dancing wearing only her bra on the upper half of her body. *Jane Doe* stated that when she took off her shirt, "Angie flip[ped] out and [said], "You need to get your shirt on." *Jane Doe* stated she reached to get her shirt off the floor, but as she did this, *John* grabbed the shirt. At this point, *Jane Doe* said, "Angie got really mad" at *John*. She stated that at one point, *John* grabbed Peckham's wrist as Peckham tried to get *Jane Doe* to put her shirt on. *Jane Doe* said she eventually put her shirt back on.

At another point, *Jane Doe* stated, *John* pushed her on to the bed and "we ma[d]e out for a while." She said that the two also talked about what type of music to listen to. *Jane Doe* stated that, looking back on what was happening, she realized that Peckham and Hayward "were getting really worried about me," and were trying to figure out a way to get her out of the room.

While *Jane Doe* and *John* were on the bed "making out," *Jane Doe* recalled, *John* told her to get rid of Peckham and Hayward. He told her to let them take her up to her room and then come back to his room. *Jane Doe* said *John* also told her to give him her number, so he could text her to come back down. She stated that *John* told her to come back down "so he can fuck me."

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Early Morning, September 8, 2013

Returning to her dorm room

Jane Doe stated that after Peckham and Hayward put her to bed, she lay there for about five minutes. She recalled sending a text to best friend in Tennessee, stating, "I'mgoingtohavesexnow," without any spaces between the words.

Meanwhile, *Jane Doe* stated that *John* was texting her asking where she was. *Jane Doe* said she looked out the peek hole in the door and saw Hayward's head. She said she could also see her neighbor, Anna, and was one of the R.A.s. *Jane Doe* said she was very concerned about this. She said, "I am freaking out because I am really drunk and I don't want the RA to see me." She stated that *John* was still texting her, and she texted back that her RA and Hayward were there. *Jane Doe* stated that *John* told her to say she had to go to the bathroom.

Jane Doe stated that when she saw Hayward's head through her peep hole, she thought to herself, "Jamison? Oh crap, what are you doing here?" *Jane Doe* expressed this as if her internal thought was upset and frustrated. However, she stated that when she opened the door, she was more congenial with him and said, "Whoa, Jamison, what are you doing here" in a friendly way. *Jane Doe* said she did not remember what Hayward said in response. (She noted that Hayward has acted "very awkward" with her since that night.)

Jane Doe stated that she told Hayward she had to go to the bathroom. She said she walked down the hall to the bathroom, but did not enter it. She said she walked past the bathroom and down the stairs. She stated she remembered feeling excited that she had succeeded in sneaking past the bathroom. However, as she walked down the stairs, *Jane Doe* said she did not feel well. She stated she was holding onto the rail as she walked down, and was feeling "really dizzy" and "really sick." She also felt very nauseous, and, after she got to the second floor, she threw up in a trash can. She said someone came up behind her as she vomited and held her hair. She stated she was later told this was Gavin Rose, who also took her into the men's bathroom where she finished throwing up.

Inside John's room--Second time

Jane Doe stated she then walked to *John* room, and she believed that this was when *John* pulled her into the room. She stated, "I think I told him I threw up and I think he gave me a piece of gum." She stated she believed she got to his room around 12:50 a.m., and stayed there until around 2:00 a.m. She stated that she has a series of "non linear recollections" about what happened during that period.

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Jane Doe stated that she did not think she took her shirt or her bra off. She remembered asking John if he had a condom as she had not used any birth control. She stated she remembered having sex with John. When questioned about this, however, she said she could not specifically recall having intercourse with him. She stated she did recall performing oral sex on him. She remembered John leaving the room at one point and returning very quickly. She also remembered hearing a knock at the door, and the sound of three voices asking her if she was ok. She believed that one of the voices may have been Aidan Dougherty, and another was a woman named Megan. (In a follow-up conversation with Lauren Carella, Jane Doe said that the third voice was Mia's. Carella forward this information to PII.) Jane Doe said that she also recalled John saying that his roommate just came in.

Jane Doe stated that the next day, Dougherty told her about walking in the room and finding her and John together. Dougherty also said that Rose walked in the room.

Jane Doe stated she did not recall how many times she and John had sex that night. She stated she remembered that she did not move very much. She recalled getting her shorts back on, but not her belt, and said that her belt and earrings were in John's room the next day. She stated she remembered John telling her to get on the bed, but did not recall any other conversation with him during this period. She stated, "I don't remember him really talking."

Jane Doe stated she could not recall what she was thinking as she went back down to John's room the second time. She stated, "The thing is I have no clue what I was thinking. I would never have done that if I had been sober. . . . I don't know what was going through my head." She described herself as "a hopeless romantic" who wanted the loss of her virginity to be a more special event.

Since that evening, Jane Doe stated, others have told her that John was not as drunk as she was that night. She had heard that he had his water polo initiation that night, but she did not know how much he drank that night. She noted that John did not give her alcohol that night.

Returning to her room – Third time

Jane Doe stated that she left John's room around 2:00 a.m., and walked up the stairs to her floor. As she got to the top of stairs, she said Peckham saw her and asked where she had been. She stated that Peckham then walked her to her room, and Babcock was there. She said Peckham then left, and Jane Doe told Babcock that she had thrown up. She said Babcock took her to the bathroom where Jane Doe felt she had to urinate but could not. She said Babcock then walked Jane Doe back to their room, and, with the help of Maddie DiMarco, changed Jane Doe into her sleep shorts and put her to bed. Jane Doe stated that her bed is a "semi-loft," and she needed a

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step stool to get up into her bed. At one point, Babcock took *Jane Doe* cell phone, but *Jane Doe* became very angry and Babcock gave it back to her. After staying with *Jane Doe* for about ten minutes, Babcock left her alone.

Going to Stewart-Cleland Hall

Jane Doe stated that once Babcock left, she got out of bed. She stated, "I didn't feel like going to sleep," and noted that students usually hung out around at Stewart-Cleland Hall. She found her phone and her key card, and put on her shoes. She stated she walked down the stairs and across the area known as "Stewie Beach" to Stewart-Cleland, walking in the front entrance. *Jane Doe* stated that she entered the common room and saw a student named Danny Stauffer, whom she met the night before at Septemberween. She said the two of them were talking and joking, and *Jane Doe* remembered making fun of NASCAR which was on television nearby.

Very soon after *Jane Doe* got to Stewart-Cleland, she said Babcock called her. *Jane Doe* stated that somehow Babcock ended up talking with Stauffer. *Jane Doe* stated that she later heard that Stauffer had joked with Babcock that *Jane Doe* was "going at it" with a guy. *Jane Doe* stated that soon after this, Babcock went to Stewart-Cleland, and walked her back to Braun. She stated that they tried to take a circuitous route to avoid being seen by the R.A.s. *Jane Doe* said Babcock eventually got her back to her room and into bed. *Jane Doe* stated Babcock would not allow her to keep her phone, and would not leave until *Jane Doe* fell asleep. *Jane Doe* stated she fell asleep around 3:00 or 3:30 a.m.

September 8, 2013 -- During the day

Jane Doe stated she woke up the next morning at 9:00 a.m. She stated she still felt drunk with a lightheaded feeling and was dehydrated. Soon after this, she said she looked at her phone, and saw a number of calls and "freaked out voice mails" from her best friend in Tennessee. She stated that at this point she thought something had happened with *John* the previous night. She stated that she saw the text messages, but did not recall having sex with *John* at that point. She stated, "I thought there was a possibility that I had sex with him" because of what she saw in the text messages. Around this time, she said she was communicating with her brother on Skype and realized she was having difficulty typing.

Later, *Jane Doe* said she saw DiMarco in the bathroom and told DiMarco she was still drunk. She said this was around 9:15 to 9:30 a.m. She said DiMarco walked her back to her room and told her to "find something stupid to watch on TV and go back to sleep." However, *Jane Doe* was unable to sleep, and ended up meeting her friend Rayne for some coffee and a croissant. She said she had difficulty eating and felt

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nauseous. She said she then returned to her room, where she met up with Peckham. Jane Doe said she told Peckham that she may have had sex with John .

As the day went on, Jane Doe said, she continued to feel at least slightly intoxicated, including "that little bit of lightness." She decided to try and get some school work done so went to the gym in an attempt to "sweat it out," but her workout lasted only ten minutes. Jane Doe said she eventually went to the library around 5:00 p.m., and tried to study until around 7:00 p.m. when she went to get dinner with Anna, a neighbor on her floor. Around 8:30 or 9:00 p.m. on Sunday, she said that she went back to her dorm room to get her glasses.

Earlier that day, Jane Doe said she had texted John to ask if he had her belt because she realized it was missing. He replied, saying that he found her earrings but not her belt.

Realizing she had sex the night before

While at the library, Jane Doe stated, she had been online and friended Aidan Dougherty on Facebook. He sent Jane Doe a message asking her how she was doing, which struck her as an odd question. She stated that she realized that he may have seen her the night before. She said that in her discussions with Peckham, they accounted for all of Jane Doe activities the previous night, except for one hour.

Dougherty then asked if she was alone and if he could talk with her. At that moment, Babcock walked in, and Jane Doe told her that she was afraid that Dougherty was going to tell her what happened the night before. She said Babcock left the dorm room and Dougherty arrived. Jane Doe stated that Dougherty told her that she and John had sex the night before and he knew this because he and Rose had walked in on them. Jane Doe stated that she had been a virgin, so when she heard this, she was "very in shock," because until then, having sex with John had not been confirmed. She said that, upon hearing this, "I felt in a daze."

Jane Doe said she found Babcock and told her what Dougherty had said. Jane Doe said that Babcock organized Jane Doe with a series of tasks, including going to a nearby drug store to get Plan B. Babcock also told Jane Doe she needed to go into Emmons Health Center the next morning. Jane Doe stated after going to the drug store, she returned to campus around 11:00 or 11:20 p.m. While walking on campus with her friend Anna, Jane Doe said she ran into John for the first time. Anna asked Jane Doe if she was ok, and Jane Doe said she was, and told Anna she would meet her upstairs in the dorm.

Jane Doe said she asked John if they could talk, and they sat down together. She stated, "I asked him bluntly, 'Did we have sex last night?'" He told her that they did,

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but when she asked how he knew, he said he did not remember having sex with her. He said that he concluded they had sex, because he found her belt and earrings, he saw his text messages, and he found a used condom. He said he was piecing together what had happened from that. Jane Doe said she asked John if he used a condom, and he confirmed he had. She then went to his room to retrieve her belt and earrings. During this conversation, she told John that she had gotten Plan B from the drug store. Before Jane Doe left his room, John told her to text him if she wanted to talk about it.

After leaving John's room, Jane Doe stated, "I felt really awful." When she got back to her room, John texted her to say he was available to talk with her again, if she wanted to. Jane Doe stated she went outside the dorm, and the two of them talked again. According to Jane Doe John said he lost his virginity at age 16, when he was drunk.

Jane Doe stated that John's demeanor during her two conversations about the events of that night was apologetic. She stated that he was particularly apologetic about the fact that this was how she lost her virginity.

Sexual Assault Complaint

Jane Doe stated, "Genevieve realized very quickly that what had happened was legally considered rape." Jane Doe said that at first, she "didn't process that." She went to Emmons Health Center on Monday, and made both counseling and medical appointments. She told the counselor, James, what had happened, and he responded, "That sucks a lot." She described James as "awful," in his treatment of her, noting he stated, over and over again, "That sucks," a comment that she found harmful for her to hear. James eventually asked her if she felt safe in Braun, and asked her if she wanted medical attention. Jane Doe said that James told her he had to call her parents to inform them she was in counseling.

According to Jane Doe James told her if she told the doctor in any detail about what happened, the doctor be required to call LAPD because she was under 17. Jane Doe said she did not want to go to LAPD at that point. She said James asked if she wanted to talk to the Survivor Advocate, Nadia. Jane Doe said she then met with Nadia, and told Nadia all the details of what had happened with John. Jane Doe said Nadia told her she should go to Santa Monica and get a rape kit.

While Jane Doe was still at Emmons, she said she received a text from John telling her that when she returned to the African Revolutions class, she would be in his small group. Following this text, Jane Doe went to see Professor Reddy and told her what had happened with John. She said they first had a brief discussion, and then met again at 5:00 p.m. when Jane Doe told her everything that had occurred. She told Professor Reddy that she had sex with John, and didn't remember what happened.

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Jane Doe said she did not have any bruises from Saturday night, but had a scratch on her knee from falling while walking around campus. She also had scratches on her back, which were documented with photographs. Jane Doe said that the shirt she was wearing that night draped open in the back, and the scratch marks were where her shirt fell open. Jane Doe said there was no blood or semen in her clothing, but she had also done laundry before she put her clothing from that night in a plastic bag.

She said that Professor Reddy put her in touch with Professor Danielle Dirks. On Tuesday night, Jane Doe said, she met with Professor Dirks for three hours, and told her the entire story. She said that around this time, screen shots were taken of all relevant texts on her phone.

Jane Doe stated she struggled for some time over the question of whether to report what had happened to her. She said she has put a lot of blame on Rose, noting that as freshmen, they received training on being an active bystander in these situations. She said she was angry at him for initially opening the door to his room for her to join John at the dance party, for holding her hair while she vomited, for walking her down the hall to John's room after she vomited, and for not taking action when he walked in as she was having sex with John. She stated, "I still carry anger about that."

Jane Doe stated that she decided to report what had happened when she realized how much it had affect her emotionally, while seeing no reaction" from John. She noted that he attended his classes without difficulty, and she "saw that he wasn't fazed by what had happened at all." [REDACTED]

During this period, Jane Doe stated, she went to see Professor Reddy every day to talk about what had happened, and how she was dealing with it. Jane Doe stated that Babcock also pushed her to realize that she had been sexually assaulted.

Jane Doe stated that she was not going to report the incident as a rape, but she began to have more and more emotional difficulties. She stated she had difficulty concentrating, and would often "zone out" for five or ten minutes at a time. She said she would periodically flash back to the knocking at John's door, as well as other "random bits and pieces" from her memories of that night. She stated she was having nightmares, and intrusive thoughts. She noted that she tried to go to yoga, something which she was usually able to focus on, but found she could not concentrate. She stated, "It honestly scared me."

Jane Doe stated that during this period, she continued to try to remember the events of that night, stating, "That [missing] hour still freaks me." She said she would see people on campus who looked like John, and her "heart would start racing," and

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she would feel very frightened. When she actually saw *John*, she said she felt nauseous for hours. She stated, since the incident with *John*, navigating around corners with right angles "scare[d] the hell out of me [because] I don't know what is around the corner." She said she went for a week and a half without talking to her parents, which was unusual for her.

One week after the events with *John*, *Jane Doe* said she told her mother what had happened. Her mother asked for her permission to tell her father, and he immediately flew to Los Angeles to see her. *Jane Doe* said her mother wanted her to report the incident to LAPD, and she and Prof. Dirks drove to Northeast Division, where she began to tell the desk officer her account. She said the police officer asked her if *John* forced her into his room, and when she said, "No," the officer stated, "Well then, it's not rape." *Jane Doe* stated she broke down in tears when he said this, and decided she did not want to file a police report. *Jane Doe* was later contacted on campus by administration and told that that LAPD were on campus and they needed to talk to her.

Jane Doe stated, "I have spent a lot of sleepless nights on whether I should pursue this or not." She stated that she has learned that 90 percent of rapes are done by repeat offenders. She stated that another reason she decided to report this incident was because, based on what *Jane Doe* was told by Professor. Dirks, *John* fit the profile of other rapists on campus in that he had a high GPA in high school, was his class valedictorian, was on the water polo team, and was "from a good family." She noted that she was also told that [REDACTED] but *Jane Doe* cannot recall who told her this.

Jane Doe stated that after the incident, *John* texted her that he was not going to drink anymore. [REDACTED] She also heard that *John* was [REDACTED] "going on about how much he hates women."

College's Response

Jane Doe stated that Occidental put in place interim measures, including removing *John* from Braun Hall and her study group. However, she noted that Occidental is a small campus. She said, "I did not want to have to feel scared whenever I turn a corner and don't know who is there." She said that she wanted "to be able to walk around at night." She noted that two weeks before our interview with her, she could not sleep all night, and stayed in bed in a "semi-catatonic" state. After that, she said she decided to travel home for a week because she could not function any more. She stated she was missing classes because she only felt safe in her own room.

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Jane Doe stated she did not wish for John to continue to attend Occidental, noting that, "It scares me that he still goes out and still goes to party. I don't think anyone should have to go through what I have gone through."

In addition to her criticism of James at Emmons, Jane Doe's father was reportedly upset that when James contacted him, he did not give him much information, while at the same time assured him that Jane Doe was in a safe environment.

Jane Doe stated that she assumed that Nadia and James made a report to the campus Title IX office. Jane Doe said she was most afraid of reporting to LAPD and when James or Nadia talked about that as a possibility, she said, "I really didn't want to go there."

Miscellaneous

When asked for the names of witnesses, Jane Doe stated that she had reviewed the potential witnesses with Professor Dirks, and PII should get those names from her.

She noted that she was drunk in the past in high school, but had never drunk as much as she did on September 7 and 8. She stated she had never been so intoxicated that she did not remember what she had done while she drinking. She noted that she is only 5'2" tall, and it did not take much alcohol for her to get drunk. She said that when she drank in high school she was the "baby" of her social group, so others watched over her when she drank and kept her out of trouble.

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MEMORANDUM

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TO: Lauren Carella
Interim Title IX Coordinator

FROM: Public Interest Investigations, Inc.

DATE: November 13, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of Genevieve Babcock

Genevieve Babcock was interviewed on October 21, 2013, at Occidental College by Cathleen Watkins and Keith Rohman. She is an 18-year-old freshman from Corbett, Oregon. She is *Jane Doe's* roommate and is housed in Braun 320.

Background Information

Babcock said she met *Jane Doe* on August 24, 2013, when freshmen orientation took place.

Events of September 7th and 8th

In Braun 320, after the soccer game

Babcock said she saw *Jane Doe* at three different times over the course of Saturday night and early Sunday morning (September 7-8). According to Babcock, the first time she saw *Jane Doe* that night was in their room at around 9:45 p.m. or 10 p.m., before *Jane Doe* and Angie Peckham went out. Babcock said this was after the soccer game had ended.

Babcock recalled that *Jane Doe* was drinking from a bottle of orange juice that

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held between 12 and 16 ounces of fluid. Babcock said that she did not know the quantity of alcohol that was mixed into *Jane Doe's* orange juice container. She recalled that *Jane Doe* was "pretty lucid" and "was talking and walking normally." Babcock said that she, herself, had not consumed any alcohol at this point in the evening. She said that *Jane Doe* did not discuss her plans and she did not know where *Jane Doe* and Peckham were headed or what they were planning to do.

In the Neighborhood

Babcock said that the second time she saw *Jane Doe* on Saturday night was at about 11:30 to 11:45 p.m. She said that *Jane Doe* was walking with a group of students who were looking for a party in the residential neighborhood adjacent to the north side of campus near Ridgeview Avenue. Babcock was also walking in the same area with a different group of students.

According to Babcock, both she and *Jane Doe* broke off from their respective groups when they saw each and talked for a few minutes. Babcock recalled that, at this point, *Jane Doe* was visibly more intoxicated than she was at 10 p.m. when they were in their dorm room. Babcock said *Jane Doe* was stumbling when she walked and greeted Babcock by saying "hi" in a high-pitched voice, which was different from *Jane Doe's* typical demeanor.

Babcock said that she saw Peckham among the people in *Jane Doe's* group, but she did not know anyone else. Babcock estimated that *Jane Doe* was with six to 12 other people.

Babcock said that she returned to Braun Hall around 11:45 p.m. or midnight and went to her neighbor's room, where she hung out. Later that night, Babcock recalled going downstairs to take a photo of some artwork of a dinosaur made of condoms. She said that the photos showed they were taken at 1:38 a.m.

During the evening, Babcock said she consumed about two alcoholic drinks around 11 p.m. She said that she was sober by 1:30 a.m. when she went to see the dinosaur art.

In Braun 320 around 2:45 a.m.

According to Babcock, the third time she saw *Jane Doe* was early Sunday morning about 2:45 a.m. when she returned to her room and found *Jane Doe* and Peckham there. Babcock described *Jane Doe* as "very incapacitated." Babcock stated that *Jane Doe* did not have a lot of control over her motor skills or her speech. Babcock said *Jane Doe* was slurring her words and "just talking drunk." Babcock said she did not recall anything specific that *Jane Doe* said as *Jane Doe* was only making

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"comments." She said that *Jane Doe* did not mention *John Doe* or where she had been that night. Babcock helped *Jane Doe* into bed and gave her some water, but it dribbled out of her mouth.

According to Babcock, Peckham said that *Jane Doe* had thrown up earlier. She said that she and Peckham removed *Jane Doe's* shorts and put her into pajamas. After putting *Jane Doe* to bed, Babcock told Peckham that she could leave.

Babcock was concerned about *Jane Doe's* level of intoxication, and checked *Jane Doe* for alcohol poisoning. She said that she checked *Jane Doe's* breathing and her skin temperature to see if *Jane Doe* was cool or clammy. She said that she made sure *Jane Doe* was lying on her side. Babcock recalled that *Jane Doe* was conscious and told Babcock that she felt nauseous. Once *Jane Doe* was settled, however, Babcock said she went down the hall to take a 10-minute shower.

At Stewart-Cleland Hall

Babcock said that when she returned from her shower, *Jane Doe* was gone. Babcock said she called *Jane Doe's* phone and eventually a male student answered. Babcock recalled saying, "Where is *Jane*? Put her on the phone." According to Babcock, the student told her, "She is going at it with some guy." Babcock said the time of the call was 2:45 a.m.

Babcock said she tried asking *Jane Doe* where she was, but *Jane Doe* was slurring her speech so badly, Babcock could not understand her. "I was super worried," Babcock said. Babcock eventually ascertained that *Jane Doe* was at Stewie and she went there to retrieve her. At Stewie, Babcock said she found *Jane Doe* wearing her pajamas, "sitting on a couch on some guy's lap."

Babcock stated that she tried to help her up, but *Jane Doe* "buckled under her own weight." When this happened, Babcock said that a male student, Grayson Burden, stepped in to help them. According to Babcock, she and Burden each got on one side of *Jane Doe* and, together, they carried her back to Braun Hall. "She was not walking on her own," Babcock said. She described the period around 3 a.m., during the walk from Stewie to Braun, as worst point for *Jane Doe* in terms of mobility, based on the times that Babcock had observed *Jane Doe* that night.

Babcock said that she did not know Grayson Burden and that her only interaction with him, either before or since, was when he helped her transport *Jane Doe* back to Braun Hall around 3 a.m.

Upon getting back to their room, Babcock recalled that *Jane Doe* wanted to keep using her cell phone, and Babcock "kept taking it away from her." Babcock said

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that she waited for *Jane Doe* to fall asleep and then checked that *Jane Doe* was lying on her side. Babcock said that she did not see any signs that would indicate alcohol poisoning.

During the Day and Evening on Sunday

Babcock said she woke up around 10 a.m. She said that *Jane Doe* was already up and had made contact with Angie Peckham. Babcock recalled that Peckham came to their room, and Peckham and *Jane Doe* were trying to piece together the events of the previous night. According to Babcock, *Jane Doe* was confused about what happened and was worried that she did not have a definitive memory of everything.

Babcock described *Jane Doe* as appearing "tired and haggard" on Sunday, with dark circles around her eyes. She said that *Jane Doe* also had scratches on her lower back and explained that the shirt *Jane Doe* wore on Saturday night was open in the back and did not cover the wearer's lower back.

On Sunday evening, Babcock recalled that a student named Aidan [Dougherty], who also lived in Braun Hall, went to their room around 8 p.m. or 9 p.m. Babcock said that she excused herself and left *Jane Doe* and Dougherty alone. According to Babcock, Dougherty told *Jane Doe* that she had had sex with *John Doe* the previous night. Babcock said that, immediately following this conversation with Dougherty, *Jane Doe* sent Babcock a text to meet her in the quad at 9 p.m. Babcock said that when they met in the quad, *Jane Doe* told her what Dougherty had said. *Jane Doe* was upset and crying.

Babcock said that she responded by asking if *Jane Doe* used birth control and suggested they get Plan B. She said that they asked a student in their dorm who had a car to drive them to CVS Pharmacy, which he did.

According to Babcock, *Jane Doe* may have talked with *John Doe* later on Sunday.

Over the Next Few Days

During the next few days, Babcock recalled that *Jane Doe* was "really doing badly." Babcock described *Jane Doe* at that time as "depressed, scared, really confused." She said that *Jane Doe* attended some of her classes, but missed others. Babcock said that *Jane Doe* was not sleeping well during this period, and that neither was Babcock. Babcock said that this time period was also traumatic for her.

According to Babcock, *Jane Doe* did not initially make a formal complaint against *John*, because *Jane Doe* was "in denial and not really realizing what had

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happened." She said that *Jane Doe* did not want to tell her parents, but Babcock said that she encouraged *Jane Doe* to do so. Babcock recalled that *Jane Doe* talked to Professor Reddy about the events between her and *John*, and *Jane Doe* and Professor Reddy, together, explained what had happened to *Jane Doe's* parents.

Babcock stated that *Jane Doe* was correct to pursue a complaint against *John*. According to Babcock, *Jane Doe* had sex that she did not remember and was intoxicated to the point of having impaired speech and not being able to control her motor skills. Babcock said, "The girl I helped that night was not my roommate in any sense." Babcock also noted the emotional toll that *Jane Doe* experienced following the events with *John*. "It seemed pretty obvious to me that it was a rape," Babcock said.

Contact with *John*

Babcock said that she has never spoken to *John Doe* and they have had no interactions. Babcock recalled that *Jane Doe* told her that *John* was also drunk on the night *Jane Doe* and *John* had sex.

Other Witnesses

Babcock said Maddie DiMarco was their neighbor in Braun Hall and must have seen or heard Babcock bringing *Jane Doe* back to their room.

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CONFIDENTIAL REPORT

TO: Lauren Carella
Interim Title IX Coordinator

FROM: Public Interest Investigations, Inc.

DATE: November 13, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of Maddie DiMarco

Maddie DiMarco was interviewed on October 21, 2013, at Occidental College by Cathleen Watkins and Keith Rohman.

Background

She is an 18-year-old freshman from the Seattle area. Her housing assignment is Braun 319, which is next door to *Jane Doe's* room. DiMarco said she first met *Jane Doe* in their "Revolutions in Africa" class, which is the only class they have together.

Events of September 7th and 8th

In Braun 214

On the night of September 7th, DiMarco said she may have been in the dorm room assigned to Liam Driscoll and Ben Scott (Braun 214).¹ DiMarco said that on the night she is thinking of, *Jane Doe* Angie Peckham and another friend were there with Driscoll and Scott. She said that the group was drinking vodka and had some music on.

She said, "I saw *Jane* drinking. I think we were taking shots." DiMarco said that she did not recall *Jane Doe* taking that many shots and estimated that *Jane Doe* may have had two shots of vodka. DiMarco, who is on the swim team, said that she was in Braun 214 for about 30 minutes before she left to hang out with other members of the

¹ DiMarco was never certain that the events she described in Braun 214 took place on September 7th or on another night.

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swim team. In her recollection, the night that she saw *Jane Doe* drinking vodka in Braun 214 was the same night as the water polo team's initiation.²

DiMarco said that when she left *Jane Doe* to join the swimmers, *Jane Doe* was "a little bit drunk, but still in control of herself. She was buzzed." DiMarco said that *John Doe* was not present in Braun 214.

Around 2 a.m.

DiMarco said that she saw Genevieve Babcock, *Jane Doe's* roommate, around 2 a.m. or 3 a.m. on Sunday. She said that Babcock was worried about *Jane Doe* and was looking for her. According to DiMarco, Babcock said that *Jane Doe* was "pretty intoxicated" and was "with a guy." Babcock told DiMarco that she did not know the name of the guy who was with *Jane Doe*.

DiMarco said that her conversation with Babcock took place in the hallway of the third floor of Braun Hall. DiMarco offered to help look for *Jane Doe* but Babcock said that she could handle it. DiMarco said that she then went into her room.

DiMarco said that a while later, when she left her room to brush her teeth, she saw *Jane Doe* and Babcock coming back to their room. According to DiMarco, *Jane Doe* was "pretty intoxicated" and Babcock appeared to be "a little upset with *Jane*."

DiMarco said that she helped Babcock get *Jane Doe* into bed. DiMarco recalled that *Jane Doe* was slurring her words and was stumbling. DiMarco said that Babcock told her that *Jane Doe* had vomited earlier.

DiMarco recalled that *Jane Doe* objected to being put into bed and kept trying to get up. According to DiMarco, *Jane Doe* told them that she wasn't tired and she didn't want to go to bed. DiMarco recalled that *Jane Doe* was dressed in her street clothes. She also recalled something about Babcock wanting to take *Jane Doe's* cell phone.

After putting *Jane Doe* into bed, DiMarco said she and Babcock walked out of the room. In DiMarco's recollection, Babcock told DiMarco that *Jane Doe* had said that she may have had sex that night. *Jane Doe* did not tell Babcock who her sexual partner was. DiMarco clarified that she did not recall exactly what was said that night. However, she said that she remembered being surprised because "I just didn't think that [having drunk sex] was something *Jane* did based on how she appeared."

DiMarco characterized Babcock's reaction to what *Jane Doe* told her as "surprised and confused." DiMarco said, "I think that Genevieve was a little annoyed at

²Other witnesses have stated that the water polo initiation was on September 7.

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Jane about it." DiMarco recalled Babcock saying, "I can't believe she just did this," in reference to *Jane Doe* getting drunk and possibly having sex.

DiMarco said that her conversation with Babcock ended with DiMarco saying if Babcock needed any further help with *Jane Doe* to knock on her door.

DiMarco stated that she did not recall seeing *Jane Doe* at any other time that night. She said that she, herself, was intoxicated that night, although not in any extreme manner.

Water Polo Initiation

DiMarco said that she and *John* have only had a couple of conversations. She described him as a "pretty normal guy" and said that *John* has not talked to her about the events with *Jane Doe*

DiMarco said that she heard about the water polo team's initiation. She said that she heard from "a lot of people" that *John* was very intoxicated that night. Specifically, DiMarco said that Carolyn [redacted], a member of the swim team, told her that *John* described himself as "pretty far gone."³

DiMarco said that she was with Carolyn [redacted] at one point late on that Saturday night or early Sunday morning when Carolyn received a text from *John*. According to DiMarco, *John* sent a text saying that he had never been this drunk before. DiMarco said that *John*'s text also said that he was not sure what was going on, or words to that effect. DiMarco estimated that Carolyn [redacted] received this text message around 12 a.m. or 1 a.m.

DiMarco stated that, at the water polo team's initiation, she heard that a lot of freshmen team members were drunk on beer and hard alcohol.

The Next Few Days

The next day, Sunday, DiMarco said that she talked more to Genevieve Babcock. According to DiMarco, Babcock seemed to have a lot going on emotionally. DiMarco recalled that Babcock shared with her that *Jane Doe* identified *John Doe* as the person she had sex with. DiMarco recalled that Babcock, herself, said that she had stayed in the dorms and had a low-key night.

DiMarco said that word spread among the students about *Jane Doe* and *John*, partly because *Jane Doe* was missing from class. DiMarco said that she has not talked to *Jane Doe* about the events of September 7th and 8th.

³ DiMarco did not think that *John Doe* and Carolyn [redacted] were related. For clarity in this section, the first names of *John* and Carolyn are used.

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Other Witnesses

DiMarco said that Ben Scott may be someone with information about *John*'s intoxication because he is on the water polo team.

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TO: Lauren Carella
Interim Title IX Coordinator

FROM: Public Interest Investigations, Inc.

DATE: November 13, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of Professor Danielle Dirks

Professor Danielle Dirks was interviewed by Cathleen Watkins and Keith Rohman on October 21, 2013, at Occidental College.

Initial Contacts with *Jane Doe*

Dirks stated that she had her first contact with *Jane Doe* on Monday, September 9, 2013, when she exchanged text messages with *Jane Doe*. Dirks called *Jane Doe* that night to talk about *Jane Doe's* options in dealing with the incident, and to make sure that *Jane Doe* "felt safe and secure on campus." Dirks stated that, during that phone conversation, she used the phrase "rape" to describe the incident, and *Jane Doe* responded, "Oh, I am not calling it rape yet." Dirks stated that in her later conversations with *Jane Doe* she was careful only to use language that reflected *Jane Doe's* understanding of the event.

Dirks stated she told *Jane Doe* that there was a pattern at the College of male students who repeatedly engaged in the practice of having sex with highly intoxicated women. *Jane Doe* told Dirks that the student with whom she had sex was a freshman.

Dirks said she met with *Jane Doe* on September 10th from approximately 10:00 a.m. to 1:00 p.m. at Dirks's office. During that meeting, *Jane Doe* told Dirks her account of the incident, and Dirks took notes. Dirks also made copies of screen shots of text messages that were on *Jane Doe's* cell phone.¹

¹ Dirks provided PII with a 44-page PDF file with a scanned copy of those notes. PII reviewed these notes with Dirks in-person.

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Over the next week, Dirks said she continued to stay in touch with *Jane Doe*. At one point, *Jane Doe* contacted Dirks to say she had run into *John Doe* on campus "a couple of times," including on September 11th around 5:00 or 5:30 p.m. *Jane Doe* reportedly said she was "kind of freaking out" about having seen *John*. Dirks said that she was not available to meet with *Jane Doe* so *Jane Doe's* Advisor, Professor Movindri Reddy, met with *Jane Doe*. Dirks stated that she suggested to Reddy that Reddy request an interim suspension of *John*, stating, "I know how jarring it is for me to see him [*John*] on campus, so how it is for *Jane*?" Dirks said she had run into *John* as she came out of another Title IX misconduct hearing.

Dirks said that on Sunday, September 15th, Reddy texted Dirks to say that *Jane Doe's* parents wanted her to go to the police. Dirks was out of town at the time, and Reddy accompanied *Jane Doe* to the Northeast Division of the Los Angeles Police Department. According to Dirks, the police officer who spoke with *Jane Doe* was not sympathetic to her. Dirks said that it was not until several days later that LAPD detectives came to campus to take *Jane Doe's* report and begin a criminal investigation.

Jane Doe's Emotional State

Dirks stated that she has had many conversations with *Jane Doe* since their first meeting during which *Jane Doe* "sounds like she is wreck." Dirks stated that she believed that *Jane Doe* was experiencing Post-Traumatic Stress Disorder (PTSD), noting that neither *Jane Doe* nor *Jane Doe's* roommate, Genevieve Babcock, was sleeping well.² According to Dirks, *Jane Doe* has told her that she was having trouble focusing on her school work, and at one point sat unable to move for 20 minutes on a bench on campus. Dirks said she has had late-night phone conversations with *Jane Doe* and has received emails from *Jane Doe* sent late at night or early in the morning. She observed *Jane Doe* to have a flat affect. Dirks stated that *Jane Doe's* symptoms are like "the dozens of other survivors [of sexual assault] I have met with on campus."

Dirks stated that *Jane Doe* appeared to be "in a strong state of denial" about the events, and told her at one point that she was not yet able to call the incident "rape." The fact that *Jane Doe* learned about the sex from someone else was "really jarring" for *Jane Doe*, said Dirks. Dirks noted that *Jane Doe's* reluctance to call what had happened to her "rape" was consistent with other victims of sexual assault whom Dirks has talked to on campus.

² Dirks stated that she understood that Babcock is "doing a lot of work" caring for *Jane Doe*

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Text Messages

Dirks stated that she reviewed the text messages that *John* and *Jane Doe* exchanged sometime after midnight on September 8th and also following the incident. She stated that *John*, by trying to appear nice, "seemed like he was trying to manage" *Jane Doe* with his text messages. Dirks noted that when *Jane Doe* did not show up for the class she and *John* both attended, *John* texted her. Dirks said she believed *John* was doing this because he was wondering if she was going to report him for rape. [REDACTED]

Dirks stated that, based on her experience [REDACTED] *John* was "acting in the same way all these other young men [involved in sexual assaults] have acted" by checking in on *Jane Doe* after the incident, and seeking to manage her (*Jane Doe* by being nice in a manner that Dirks described as "disingenuous." She noted that she has seen other men involved in sexual assaults on campus attempt to "paint themselves as the victim."

Dirks noted that *John*'s texts on the night of the incident were further evidence to her that *John* was attempting to control *Jane Doe*. She noted there were text messages "commanding her to come to his room." She also noted *John*'s use of the phrase "good girl" and other language in the text messages as further indication that he was in control of *Jane Doe* and seeking to dominate her by manipulating her.

Possible Witnesses

Dirks stated that when she interviewed *Jane Doe* she had a lengthy list of people who may have had contact with *Jane Doe* that evening. However, Dirks identified a list of five witnesses whom she believed were key to an investigation: Genevieve Babcock, Angela Peckham, Gavin Rose, Aidan Dougherty, and Jamison Hayward.

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CONFIDENTIAL REPORT

TO: Lauren Carella
Interim Title IX Coordinator

FROM: Public Interest Investigations, Inc.

DATE: October 28, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of Aidan Dougherty

Aidan Dougherty was interviewed by Cathleen Watkins and Barbara Dalton on October 28, 2013.

Background Information

Dougherty is 18 years old. He is a freshman majoring in Physics. Dougherty lives at Braun 208.

Dougherty stated that prior to September 7, 2013, he was only familiar with *Jane Doe* from seeing her in the common room at Braun. Dougherty said he had met *John Doe* once before school started, at an event in Northern California, but did not really know him.

Evening of September 7, 2013

On the evening of September 7, 2013, Dougherty said he was in a friend's room in Braun, playing videogames. At around 11:00 p.m., Dougherty walked past the room shared by *John Doe* and Gavin Rose. According to Dougherty, *John*, Rose, and two women named Riahannon, and Marin were in the dorm room. Dougherty said he stopped in the doorway to chat, and saw that *John* appeared to be intoxicated. Dougherty described *John*'s level of intoxication as a "shit show."

According to Dougherty, *John* was slurring his words, stumbled over the others when he got up, and danced around and generally moved in a way that indicated that he was inebriated. Dougherty estimated that on a 0 to 10 scale, with 10 being inebriated to the point of not being able to function, *John* was "maybe a 7." The others

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present told Dougherty that *John* was drunk. Dougherty said he did not notice any alcohol in the room and did not see *John* consume any alcohol. Dougherty recalled that the others in the room "seemed to be buzzed" but not to *John*'s level. Dougherty said that he, himself, was sober.

Dougherty estimated that he stood in the doorway for about a minute and a half before returning to his friend's room.

Early Morning of September 8, 2013

Dougherty said he left his friend's room at about 2:00 a.m. on Sunday morning, September 8th, and went to the lobby. Dougherty saw Rose with several friends, including Miya and Megan. Rose indicated to Dougherty that *John* and *Jane Doe* were alone in the dorm room Rose and *John* shared, and Rose could not return to the room for that reason.

Dougherty stated that he had attended the sexual assault prevention training during orientation, had heard the presentation on consent and alcohol consumption, and therefore asked Rose if both *John* and *Jane Doe* were "okay." According to Dougherty, Rose responded that *Jane Doe* was intoxicated. Rose told Dougherty that *Jane Doe* had thrown up earlier in the evening and that he (Rose) had held her hair while she vomited. Dougherty said Rose also stated that when *Jane Doe* had seen *John*, she had become excited, said, "Oh, *John*," and had gone into *John*'s and Rose's room. Rose told Dougherty that he left the dorm room at that point.

Dougherty said Rose indicated that *Jane Doe* was "very drunk." When Dougherty expressed concern about *Jane Doe*'s condition, Rose told Dougherty something like "You're free to check." According to Dougherty, Rose gave him the code to the room and a swipe card to open the room door.

Dougherty said he went to the dorm room and found a folded up piece of paper in the area for the swipe card, which he removed. Dougherty stated that he found out later that this was a signal Rose and *John* had worked out to let one another know not to enter the room. According to Dougherty, he punched in the code and used the swipe card to open the room door.

Dougherty stated that inside the room, the lights were off but he could see *John* sitting up in the middle of the bed, naked, holding a pair of shorts over his crotch. Dougherty said he could also see *Jane Doe* in bed, under the covers. According to Dougherty, *John* said, "Yo, get the fuck out." Dougherty said he was "taken aback,"

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and immediately closed the door. He estimated he had stood in the doorway for about 15 seconds.

Dougherty said he stood outside of the *John*'s room for about one or two minutes. *John* came out of the room wearing shorts and a shirt, and went down the hall to the restroom. Dougherty stated he knocked on the door and said, "*Jane*?" He heard *Jane Doe* reply, "Yeah?" Dougherty said he asked if she was okay. *Jane Doe* responded, "Yeah." Dougherty said he asked, "Are you sure?" *Jane Doe* replied, "Yeah. I'm fine." Dougherty said he asked *Jane Doe* a third time if she was okay, and she answered that she was.

Dougherty stated that he asked *Jane Doe* three times if she was okay because, she had answered "kind of unconvincingly." He said that the tone of her voice was "kind of sad." Dougherty said *Jane Doe* responded to him slowly and in a "down way." However, Dougherty stated that after the third time she said she was okay, "I took her word for it."

Dougherty said that *Miya* and *Megan* were in the general area of *John*'s room when he opened the door to *John*'s room and when he asked *Jane Doe* how she was doing through the closed door a few minutes later. He said that shortly after this, *John* returned to the room, opened the door, and went inside.

Dougherty said he went upstairs and outside to a seating area, where he found *Rose*, *Miya*, and *Megan*. Dougherty stated that the four of them spoke, and he was "trying to process what was happening." During this conversation, Dougherty said *Rose* stated that he had also gone in the room, and had seen *John* on top of *Jane Doe*. Dougherty stated that, during this conversation, *Rose* spoke about him (*Rose*) and *John* using a piece of paper in the key swipe area of the door as a signal not to enter the room. Dougherty said that he must have removed the paper that would have been a signal to *Rose* not to enter.

After about 30 minutes, Dougherty said he went back to the second floor of *Braun*. When Dougherty reached the second floor, he saw *Jane Doe* just going into the stairwell and starting to walk up the stairs. Dougherty had the impression that *Jane Doe* had just left *John*'s and *Rose*'s room, and was going upstairs to her own room. Dougherty said he also saw *John* standing outside of room 206, in front of the door, wearing shorts and no shirt. According to Dougherty, no one said anything.

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Evening of September 8, 2013

Later on September 8th, in the evening, Dougherty sent *Jane Doe* a message, and the two conversed electronically. Dougherty asked *Jane Doe* if she remembered what had happened the night before, and she responded that she did not. Dougherty suggested that they speak in person, and *Jane Doe* agreed, indicating it would be all right for Dougherty to go up to her dorm room.

Dougherty stated he went to *Jane Doe's* dorm room and spoke with her. No one else was present. *Jane Doe* told Dougherty she did not remember much, and was trying to piece together what had happened. Dougherty said he told *Jane Doe* "I think you may have slept with *John* ." According to Dougherty, *Jane Doe* took a deep breath and told him, "Yeah, I figure that might've happened." Dougherty described *Jane Doe's* reaction as "when someone expects the worst, and then [the person] hears that was what happened."

Dougherty said *Jane Doe* told him she did not remember much of anything and was not sure what exactly had happened. According to Dougherty, he and *Jane Doe* did not discuss drinking, the details of *Jane Doe's* condition, or details of her interactions with *John* . He described her as appearing "stunned."

Dougherty said he told *Jane Doe* she may have slept with *John* because he "figured no one else would, and I could . . . I figured I can be the someone to tell her, because someone should tell her." Dougherty stated he believed *Jane Doe* did not know whether she had slept with *John* , because when he asked her if she remembered what had happened the night before, she had answered, "No."

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CONFIDENTIAL REPORT

TO: Lauren Carella
Interim Title IX Coordinator

FROM: Public Interest Investigations, Inc.

DATE: November 13, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of Liam Driscoll

Liam Driscoll was interviewed on October 22, 2013, at Occidental College by Cathleen Watkins and Alan Canterbury.

Background

Driscoll is a freshman at Occidental College and he lives in Braun Hall. Driscoll is most recently from the Bay Area. Driscoll's roommate is Ben Scott, a freshman from Los Angeles who plays on the water polo team.

Driscoll stated he remembered the night of September 7 to September 8, (Saturday night to Sunday morning), because it was the night after "Septemberween," and it was the same day as the water polo team's "Initiation Night" ("I-night").

Driscoll said that prior to our interview with him, he had spoken with *Jane Doe* about the events that led to the investigation.

Pre-Gaming in Driscoll's Room

Driscoll said his first contact with *Jane Doe* that night was during the earlier part of the night when there were several students "pre-partying" in Driscoll's room prior to the men's soccer game. Driscoll said there were up to thirteen people in his room over the course of an hour and a half they were in his room. These included Jamison Hayward, Angie Peckham, and *Jane Doe*. Driscoll said that his roommate, Scott, and another friend of *Jane Doe's* Maddie DiMarco, may have also been there. Driscoll said that *Jane Doe* did not arrive until the second half of the pre-party, sometime around 6:30 p.m. Driscoll said that his roommate, Scott, left for the water polo initiation

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sometime around 8:00 p.m.

Driscoll said that during the "pre-gaming" in his room, people mostly drank beer, and nobody was drinking very heavily. "People were pacing themselves," said Driscoll. However, Driscoll said there were some bottles of hard alcohol there. Driscoll thought *Jane Doe* had a mixed drink of vodka and orange juice. Driscoll saw that *Jane Doe* had a half full orange juice bottle she was carrying around with her, and into which she poured vodka. Driscoll said that was all he saw her drink. Driscoll said there was also another group of girls that took shots occasionally but he was not sure if *Jane Doe* took a shot.

Driscoll said that there were more people in his room than he wanted, and the RA had asked him to move his party elsewhere. According to Driscoll, the RA came back a second time and told everyone to leave, but Driscoll was outside on a phone call at the time.

Party in *John Doe's* Room

Driscoll also recalled seeing *John Doe* that night because there was a party in *John's* room, which Driscoll visited briefly prior to the soccer game. Driscoll was with Reina, Eva, and a few others, in Quentin's room, next door to *John's* room. Driscoll said that *John* came over to Quentin's room to get everyone to join the party in *John's* room, so they all went. Driscoll said there appeared to be a lot of alcohol in *John's* room, the lights were dim, and the music was very loud. Driscoll said he looked into the room "momentarily."

Driscoll said that *John* had a handle of alcohol in his hand (Driscoll thought it might have been vodka), and there were lots of bottles of hard alcohol around the room - on the desk, on the dresser, or in people's hands. Driscoll said there were various types of alcohol; he saw a bottle of a "cheap college vodka," a smaller bottle of Bacardi Rum, and maybe some other bottles. Driscoll recalled seeing a few beer cans in the room, as well. Some people were drinking red Solo cups with mixed drinks inside.

Driscoll said it was dark inside the room; there were Christmas lights on but the main lights were off. Driscoll said the music was very loud inside the room. Driscoll said there were maybe 16 to 18 people in *John's* room when he was there, but three people left soon after with him. Driscoll thought that eventually the RA, Stewart, "busted" the party in *John's* room.

Driscoll said there were no drugs used that night that he was aware of. He said that freshmen do not use a lot of hard drugs, and pot is too obvious to detect so people

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do not usually smoke inside dorms. Driscoll said that he "had a few shots" that night, but that he was good at "pacing" himself and he was also staying more sober because he was looking after his friend, Zane, who was staying with him that night.

However, Driscoll recalled seeing the people in *John*'s room and thinking to himself, "These people are drunk." Driscoll said some people were dancing and looked "wasted." Driscoll described *John* as "exuberant," as if he had been drinking "a good amount." Driscoll said *John* had a handle of some alcohol in his hand and was dancing around the room. Driscoll said *John* had "definitely consumed enough to make him in a more outgoing stage, not sloppy but a shot or two past tipsy."

Driscoll had no other contact with *John* that night.

After the Soccer Game

After he left *John*'s room, Driscoll went to the soccer game. Driscoll placed the time he went to the soccer game around 7:40 p.m. Driscoll estimated this time based on a text message he received that night from Scott, informing him the location of I-night.

Driscoll said that after the soccer game, he and some friends went back to their room and made the "judgment call" of whether to continue drinking and try to find a party. Driscoll said that after the soccer game, the only thing really going on was his roommate, Scott, was participating in the I-night. Driscoll said Scott knew he would be drinking at the I-night, so Scott told Driscoll he would call him later during the night to check in.

Driscoll said he and his friend, Zane, drank some Fireball whisky Driscoll had, and then they decided to try to go out and find a party. Driscoll said it was a "weird night" because there was never a "stationary party" so they spent much of the night walking around looking for a party.

Driscoll said he and his friends went "wandering around the neighborhood" off-campus looking for a party. Driscoll said *Jane Doe* was not with them at this point, but said Peckham might have been. Driscoll thought Riley and DiMarco were with them at this time, also. Driscoll did not see *Jane Doe* during the time he was walking off campus.

Driscoll said everyone was heading towards the girls' water polo house because people had thought I-night was an open party but it was not. Driscoll said they met some people heading back from the girl's water polo house so they joined this new

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group to look for another party. Driscoll said they went by the football house, but it was dark. At that point, Riley and DiMarco suggested they all go back to the Cooler to meet up with Scott.

Driscoll said that at the Cooler, Scott told Driscoll about I-night.¹ According to Driscoll, Scott said that the freshmen water polo players had to finish a lot of beers and a "good amount" of vodka too. Scott told Driscoll that the freshman, a group of only four or five people, had to finish a handle of vodka by themselves. Driscoll said that because of Scott's size, he was able to handle the I-night, and was starting to "come down" when Driscoll met him at the Cooler. Driscoll got the impression that all the players who participated in I-night handled it fine. Driscoll said, "It didn't sound too chaotic or abusive of anyone. Ben didn't make it sound like anyone was really bad or sick or ready to be hospitalized."

Late Night

Driscoll said later that night, he saw Peckham, who came to Driscoll's room with Riley. Peckham told Driscoll that she had just returned to Braun with *Jane Doe* and Hayward who both were "pretty drunk," though Hayward was less drunk than *Jane Doe*. Driscoll asked Peckham whether *Jane Doe* was okay, and Peckham replied that she was. However, Peckham added that she did not enjoy being around people that were so drunk they were "sloppy." Soon after, Driscoll went up to the third floor with some friends for a while and then came back to his room and went to bed.

Aftermath

Driscoll said that a few days later, he heard from Peckham that *Jane Doe* and *John* had sex that night, and that *Jane Doe* did not feel that it was consensual or that she was in the right state of mind.

Driscoll said that prior to that, his roommate, Scott, told him that *John* said he had been "way too drunk" the night of September 7. *John* reportedly told Scott that he was going to "slow down [his drinking]," and "start taking it easier." Driscoll thought *John* had told Scott this before the rumor got out about having sex with *Jane Doe* without her consent. Driscoll also said that prior to the investigation, Peckham told him that *John* said "Hi" to her and *Jane Doe* one day and asked them how they were. Driscoll said Peckham thought it did not seem as if *John* knew he was under investigation.

¹ As a freshman water polo player, *John* participated in I-night, as well.

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[REDACTED]
[REDACTED]
[REDACTED] Driscoll also said that the water polo team and the football team are "singled out" as having a bad reputation, but Driscoll did not think that was fair.

[REDACTED]
[REDACTED]
[REDACTED]. He said he did not know *Jane Doe* very well, but had talked about *Jane Doe's* drinking with Peckham, who is friends with *Jane Doe*

Driscoll said that Peckham told him that on the night of September 7, *Jane Doe* seemed like she was expecting others to watch out for her when she got too drunk, yet she continued to go to *John's* room and continued to drink a lot. Driscoll said Peckham felt annoyed that *Jane Doe* was expecting people to look after her. Based on Peckham's comments to him, Driscoll said he had the sense that *Jane Doe* had drank this heavily before. He thought that in the past, *Jane Doe* probably got herself into these situations and then would expect help from others.

[REDACTED]
[REDACTED]
[REDACTED]

Driscoll suggested we speak with the following other witnesses: Gavin (*John's* roommate), and Ben Scott (Driscoll's roommate).

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CONFIDENTIAL REPORT

TO: Lauren Carella
Interim Title IX Coordinator

FROM: Public Interest Investigations, Inc.

DATE: November 13, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of Jamison Hayward

Jamison Hayward was interviewed on October 21, 2013, at Occidental College by Cathleen Watkins and Keith Rohman.

Background

Hayward is an 18-year-old freshman from Palo Alto, California. His dorm assignment is in Stewart-Cleland Hall, Room 131.¹

Early Evening on September 7

Hayward said he was with *Jane Doe* at different times during the night of September 7th and the early morning hours of September 8th. Hayward stated that he participated in "pre-gaming" at Braun Hall on September 7th in advance of the men's soccer game that evening.² He said that he may have "pre-gamed" in Liam Driscoll's room at Braun Hall, where students drank "a lot of hard alcohol," including shots of vodka. He stated that he did not recall *Jane Doe* being part of the pre-game events in Driscoll's room.

Hayward recalled seeing *Jane Doe* at the soccer game. "I am not sure I talked to her at the game," he said, but he remembered seeing her with a group of about 20 students in the stadium.

According to Hayward, the soccer game ended around 9 p.m., and following this he and a "couple of good friends" were preparing to go to an off-campus party. Hayward described being at the Gilman Fountain at the entrance to campus when his

¹ This dorm is referenced throughout the remainder of this summary by its common name, Stewie.

² Pre-gaming is the term students use for consuming alcohol in advance of a school sporting event.

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group learned "that the party was not going down." He said, "That was when I ran into Angie [Angela Peckham], Harry [Harrison Rosenthal], and [Jane Doe] Hayward stated that he separated from his other friends and joined the three students (Angie, Harry and Jane) to walk to Mt. Fiji.³

Hayward recalled the group walking to Braun Hall, where they ran into four female students, who were sitting in front of Braun. He said one of the girls was named Mia. According to Hayward, the four girls decided to join their group and walk up to Mt. Fiji.

Return to Braun Hall

Hayward estimated that they arrived at Braun around 11 p.m. He said that Jane Doe was "definitely drunk." He said, "We were all pretty drunk." According to Hayward, Jane Doe was "not falling over drunk. She could still walk, but we were all saying how drunk we were. I don't remember her falling or tripping." Hayward said, "I didn't notice anything like she was so drunk that we needed to take her to the hospital." He described Jane Doe as being "part of the group," and he did not view her level of intoxication as "out of the ordinary."

According to Hayward, Jane Doe is "more flirtatious" than her typical demeanor when she has been drinking alcohol. [REDACTED]

[REDACTED] He also recalled Jane Doe being flirtatious as the group walked around campus on September 7th, and her walking arm in arm with Rosenthal.

Hayward said that the group was headed to Mt. Fiji to "smoke pot." He said that he was not sure if the group was drinking as they approached Braun Hall, but we "must have had alcohol with us." According to Hayward, when the group got about 50 feet beyond Braun Hall, however, Jane Doe said that she did not want to walk to Mt. Fiji. Hayward recalled that Jane Doe said, "I'm not going. I can't do it."

Hayward said that Jane Doe wanted to turn back before the group reached the lower soccer field. He recalled that Rosenthal continued on to Mt. Fiji with the other girls and that he and Peckham stayed back to "take care of Jane." Hayward recalled that it was Peckham's idea that they should "take care of" Jane Doe. Hayward stated that, based on Peckham's concern, "maybe Jane was more drunk than I remember it."

³ Mt. Fiji is on the eastern portion of the campus, situated above the upper soccer field.

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At this point, Hayward recalled that he, Peckham and *Jane Doe* went into Braun Hall's main entrance and that *Jane Doe* ran ahead of them. He said that he and Peckham did not know where *Jane Doe* was for a brief period, and they began looking for her, including checking her room on the third floor of Braun. He recalled that Peckham was "a little worried" about *Jane Doe's* condition and wanted to find her. Hayward stated that a short time later, they either ran into *Jane Doe* or she called them to say where she was. He said that they reconnected with *Jane Doe* at *John Doe's* room, Braun 206.

At *John's* Room

Hayward said that the door to *John's* room was open, and *Jane Doe* stepped out into the hall and saw him and Peckham. Hayward recalled that the lighting in *John's* room was very low and that loud, techno music was playing. Hayward said that he saw a bottle of vodka in the room, but he could not recall if the bottle was "a handle or a fifth."⁴ The room did not appear as if a party had taken place there, he said, and *John* and *Jane Doe* were alone in the room. He estimated that the time was around midnight.

According to Hayward, *Jane Doe* and *John* were dancing, and "they were both really drunk." Hayward said that he and Peckham felt "a little uncomfortable" and then they started dancing with each other. Hayward recalled that *John* was talking about the water polo team's initiation, which he participated in earlier that Saturday, and *John* told them he had been drinking since 1 p.m. According to Hayward, *John* was telling them how much alcohol he drank that day as if to say, "That is why I'm acting like I'm so crazy." Hayward described *John* as "loud, obnoxious, kind of pushing everyone, going nuts a little bit." He said that *John* was "very bouncy, very touchy" with him and Peckham. Hayward said that from the way *John* was talking, it was obvious he was drunk.

Hayward recalled that *John* and *Jane Doe* were kissing while they danced and that all four of them were taking swigs of vodka directly from the bottle. According to Hayward, Peckham was "a little worried" because she thought *Jane Doe* was not fully aware of what she was doing, and Peckham said to *Jane Doe* "Hey, let's be going."

At some point, Hayward recalled that *John* took his shirt off and then *Jane Doe* removed her shirt and was wearing her bra. Hayward said that *John* wanted Hayward to remove his shirt, too. Hayward said that he did remove his shirt for a minute, but then put it back on.

⁴ A "handle" of alcohol is a 1.75 liter bottle, while a "fifth" is 750 milliliters.

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According to Hayward, eventually *John* and *Jane Doe* laid down together on *John*'s bed, with *Jane Doe* on top of *John*. When this happened, Hayward recalled that he and Peckham told *Jane Doe* "Emily, it's time to go." He recalled that *Jane Doe* was "a little upset and indignant." He described her as "resisting leaving [*John*'s room] a little bit, while at the same time, she was aware that we were doing the right thing" by directing her back to her dorm room.

Hayward said that while *Jane Doe* was on top of *John* on the bed, the two of them were "getting really physical." Hayward recalled that *Jane Doe* "was kind of riding on top of [*John*]. Her hips were moving." Hayward said, "It looked like something was going down." He recalled that *John*'s shirt was off at this point, but he could not recall whether *Jane Doe*'s shirt was off or on.

Bringing *Jane Doe* to Her Room

Hayward stated that he and Peckham got a hold of *Jane Doe* with one of them on either side of her, and maneuvered her out of *John*'s room. He said, "*Jane* really couldn't walk that straight." As this was occurring, Hayward recalled *John* saying, "No, don't do it," meaning don't remove *Jane Doe* from his room, but *John* did not grab *Jane Doe* or otherwise physically try to prevent her from leaving. According to Hayward, *John* said that it would "be more fun" if *Jane Doe* stayed with him.

Hayward said that *John* did not exit his room at this point, and he never saw *John* anywhere that night other than inside his own room.

According to Hayward, he and Peckham took *Jane Doe* upstairs to her room on the third floor. He recalled that her roommate was not there. He described *Jane Doe* as "super drunk," at this point and "talking but making no sense." He said that she seemed "incoherent." He did not recall her saying anything about *John*. Hayward said that he and Peckham put *Jane Doe* into bed and closed the door. Hayward estimated that this was about 1 a.m.

He said that Peckham wanted to hang out with friends at Braun, and he wanted to go back to Stewie, so they decided to separate at this point. However, before departing, they agreed not to talk to others about how *Jane Doe* had acted that night and to keep the matter between them.

Hayward recalled that Peckham left, but before he, himself, walked away, *Jane Doe* opened her door and came out of her room. Hayward estimated that *Jane Doe* had only been in her room for about 30 seconds before she opened the door. He said that the next sequence of events is confused in his recollection, but he recalls that *Jane Doe* kissed him on the neck. He said that he did not kiss her in return

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but hugged her. He said that he did not recall if she was speaking coherently at this point. Next, he recalled that she went down the hall to the bathroom.

He said that he could not follow *Jane Doe* into the girls' bathroom, so he "passed out" on the floor near her door for a few minutes. He recalled that a student who lives across the hall from *Jane Doe* together with an R.A., woke him up and asked, "Why are you in our hall?" He said that he did not know the name of this student, but recognized her as a girl who was on the track team. He said that he explained to them that *Jane Doe* was in the bathroom, and they assured him that they would assist her. He said that he felt comfortable that they would look out for *Jane Doe* and that he could return to Stewie.

Hayward said that around 1 a.m., he sent a text message to *Jane Doe* ask if she was okay.⁵ In retrospect, he said he probably sent this while she was in the bathroom.

At Stewie

After leaving Braun Hall, Hayward recalled going to "Stewie Beach" and hanging out there for 15 to 30 minutes before going inside to Stewie's common room.⁶ He said that shortly after he entered the common room, he observed *Jane Doe* come into the common room and sit down on the lap of a male student. Hayward described *Jane Doe* as "Marilyn Monroe-esque," and demonstrated by holding his arms above his head, with his palms facing up. He said that he thought to himself, "Oh, my God." Then, he saw another girl who appeared to be with her, saying "*Jane*; come back."

Hayward said that at the point *Jane Doe* was in the Stewie common room, she was "extremely drunk." He said that she was able to get herself around – to move from point a to point b – but she "was struggling." He described her as "weaving, putting her hands on the couch" for balance.

Hayward said that *Jane Doe* appeared to be even more than drunk than when she was in *John*'s room. He said, "I didn't know it was possible to be more drunk than she was [earlier]." He said, "I kind of assumed that she was doing some other drugs, a little more of a stimulant."

Mid-day Sunday and Subsequent Events

Hayward said that he saw *Jane Doe* on Sunday around 11 a.m. He said that she approached him and apologized, saying, "I'm sorry for putting you in that kind of

⁵ According to text messages that *Jane Doe* provided, she received a text from "Jameson" at 1:04 a.m. on September 8th that said "U ok?"

⁶ The grassy area outside of Stewart-Cleland Hall is commonly referred to as "Stewie Beach."

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situation." Hayward said she looked "like her normal self" at this point on Sunday. Hayward described *Jane Doe's* typical demeanor as "straightforward, academic."

Hayward said that he did not know that *Jane Doe* and *John* had sex that night until he learned this weeks later from LAPD. According to Hayward, two to three weeks after the events of September 7th and 8th, he was off campus having a meal when he was contacted by the college that LAPD wanted to speak with him. He said that he learned later that other students were aware of them having sex, but Hayward said, "I had no idea."

Hayward said that he has not talked to *John* since September 7-8. "*John* is not really in my circle," Hayward said. According to Hayward, based on what *John* told him on September 7th or 8th, *John* was "hammered." Hayward also said that *John* "appeared drunk" that night and was "acting aggressively." In Hayward's view, *John*'s judgment was impaired that night, but not to the level that *John* lacked awareness of what he was doing. He added, "I am not sure he [*John*] was aware of how drunk *Jane* was because he [*John*] was so drunk."

Hayward stated, "What I remember about his room that night was that it wasn't a good atmosphere, but it wasn't dangerous or ludicrous."

He said that from what he knew of *Jane Doe* she would not have behaved as she did if she were sober.

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