

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDWIN BLEILER,

Plaintiff,

v.

COLLEGE OF THE HOLY CROSS,

Defendant.

C.A. No. 11-cv-11541

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ANSWER TO THE COMPLAINT BY THE
COLLEGE OF THE HOLY CROSS

FIRST DEFENSE

Defendant, College of the Holy Cross ("Holy Cross") admits that this purports to be a complaint for preliminary and permanent injunctive relief on the grounds stated but denies that plaintiff Edwin Bleiler ("Bleiler") has or has stated facts sufficient to warrant the requested relief. Holy Cross answers the numbered paragraphs of the Complaint as follows:

1. Admitted.
2. Admitted.
3. Denied. Bleiler was placed on interim suspension on May 9, 2011.
4. This action has been removed to Federal District Court rendering this allegation moot.
5. This action has been removed to Federal District Court rendering this allegation moot.
6. Admitted.
7. Denied. Bleiler was placed on interim suspension on May 9, 2011.

8. Admitted that Bleiler had successfully completed his coursework with a 3.13 GPA plus or minus and had received 32 credits for his coursework but denied that those are the only requirements for the award of a diploma from Holy Cross.

9. Admitted that C.M. made a written complaint to the college about Bleiler but denied that Bleiler's paraphrase of that written complaint is complete or accurate. The written complaint will speak for itself.

10. Admitted that Bleiler has claimed that C.M. was not incapacitated and has claimed that C.M. willingly engaged in sexual relations with him.

11. Admitted that a hearing was held, that Bleiler, C.M. and other witnesses testified, that Bleiler was found responsible and that Bleiler was expelled from Holy Cross but Holy Cross has insufficient information to respond to the allegation that he would have graduated or received a diploma from Holy Cross and, therefore, denies the same.

12. Admitted.

13. In response to the allegations in paragraph 13 of the Complaint, Holy Cross states that the Student Handbook and Planner 2010-2011 ("Handbook") is lengthy, contains numerous statements about community standards, discipline, disciplinary procedures and legal effect, including the partial statement set forth in paragraph 13 of the Complaint and that the statements in the Handbook all speak for themselves and must be read in context with all of the statements in the Handbook.

14. In response to the allegations in paragraph 14 of the Complaint, Holy Cross states that the Student Handbook and Planner 2010-2011 ("Handbook") is lengthy, contains numerous statements about community standards, discipline, disciplinary procedures and legal effect, including the partial statement set forth in paragraph 14 of the Complaint and that the statements

in the Handbook all speak for themselves and must be read in context with all of the statements in the Handbook.

15. In response to the allegations in paragraph 15 of the Complaint, Holy Cross states that the Student Handbook and Planner 2010-2011 (“Handbook”) is lengthy, contains numerous statements about community standards, discipline, disciplinary procedures and legal effect, including the paraphrased partial statements set forth in paragraph 15 of the Complaint and that the statements in the Handbook all speak for themselves and must be read in context with all of the statements in the Handbook.

16. In response to the allegations in paragraph 16 of the Complaint, Holy Cross states that the Student Handbook and Planner 2010-2011 (“Handbook”) is lengthy, contains numerous statements about community standards, discipline, disciplinary procedures and legal effect, including the paraphrased partial statements set forth in paragraph 16 of the Complaint and that the statements in the Handbook all speak for themselves and must be read in context with all of the statements in the Handbook.

17. In response to the allegations in paragraph 17 of the Complaint, Holy Cross admits that the Board is comprised of five members, two students, at least one faculty member, and at least one staff member and that the fifth member can either be faculty or staff. Holy Cross further states that the Student Handbook and Planner 2010-2011 (“Handbook”) is lengthy, contains numerous statements about community standards, discipline, disciplinary procedures and legal effect, including the partial statement set forth in paragraph 17 of the Complaint and that the statements in the Handbook all speak for themselves and must be read in context with all of the statements in the Handbook.

18. In response to the allegations in paragraph 18 of the Complaint, Holy Cross denies the statement that the “Disciplinary Procedures provide for no communication between the Accused, Accuser, Witnesses or Board members prior to hearing.” Holy Cross further states that the Student Handbook and Planner 2010-2011 (“Handbook”) is lengthy, contains numerous statements about community standards, discipline, disciplinary procedures and legal effect, including the partial quoted statement set forth in paragraph 18 of the Complaint and that the statements in the Handbook all speak for themselves and must be read in context with all of the statements in the Handbook.

19. Admitted.

20. Denied as stated. In further response to the allegations in paragraph 20 of the Complaint, Holy Cross states that the Student Handbook and Planner 2010-2011 (“Handbook”) is lengthy, contains numerous statements about community standards, discipline, disciplinary procedures and legal effect and that the statements in the Handbook all speak for themselves and must be read in context with all of the statements in the Handbook.

21. In response to the allegations in paragraph 21 of the Complaint, Holy Cross states that the Student Handbook and Planner 2010-2011 (“Handbook”) is lengthy, contains numerous statements about community standards, discipline, disciplinary procedures and legal effect, including the partial statement set forth in paragraph 21 of the Complaint and that the statements in the Handbook all speak for themselves and must be read in context with all of the statements in the Handbook.

22. In response to the allegations in paragraph 22 of the Complaint, Holy Cross states that the Student Handbook and Planner 2010-2011 (“Handbook”) is lengthy, contains numerous statements about community standards, discipline, disciplinary procedures and legal effect,

including the partial paraphrased statement set forth in paragraph 22 of the Complaint and that the statements in the Handbook all speak for themselves and must be read in context with all of the statements in the Handbook.

23. In response to the allegations in paragraph 23 of the Complaint, Holy Cross states that the Student Handbook and Planner 2010-2011 (“Handbook”) is lengthy, contains numerous statements about community standards, discipline, disciplinary procedures and legal effect, including the partial paraphrased statement set forth in paragraph 23 of the Complaint and that the statements in the Handbook all speak for themselves and must be read in context with all of the statements in the Handbook.

24. In response to the allegations in paragraph 24 of the Complaint, Holy Cross states that the Student Handbook and Planner 2010-2011 (“Handbook”) is lengthy, contains numerous statements about community standards, discipline, disciplinary procedures and legal effect, including the partial paraphrased statement set forth in paragraph 24 of the Complaint and that the statements in the Handbook all speak for themselves and must be read in context with all of the statements in the Handbook.

25. In response to the allegations in paragraph 25 of the Complaint, Holy Cross states that the Student Handbook and Planner 2010-2011 (“Handbook”) is lengthy, contains numerous statements about community standards, discipline, disciplinary procedures and legal effect, including the partial definition set forth in paragraph 25 of the Complaint and that the statements in the Handbook all speak for themselves and must be read in context with all of the statements in the Handbook.

26. In response to the allegations in paragraph 26 of the Complaint, Holy Cross states that the Student Handbook and Planner 2010-2011 (“Handbook”) is lengthy, contains numerous

statements about community standards, discipline, disciplinary procedures and legal effect, including the partial statement set forth in paragraph 26 of the Complaint and that the statements in the Handbook all speak for themselves and must be read in context with all of the statements in the Handbook.

27. No response is required to the allegations of paragraph 27 as it states a legal conclusion. To the extent a response is required, it is denied.

28. Denied. The referenced article is attached as and marked as Exhibit A.

29. Denied as stated. Holy Cross addresses complaints of sexual misconduct pursuant to the guidelines set forth in the Handbook all of which must be read in context. All students, male and female, may make complaints. Upon information and belief, Holy Cross has never had an instance where a male student has made a complaint under the disciplinary code that a female student has violated the sexual misconduct policy, but any such complaint, if made, would be addressed pursuant to the guidelines set forth in the Handbook.

30. Denied. C.M. made a written complaint against Bleiler which speaks for itself.

31. Denied. C.M. made a written complaint against Bleiler which speaks for itself.

32. Admitted.

33. Admitted that Paul Irish did not agree with Bleiler that Bleiler's complaint about the Board member justified the Board member's removal from the panel.

34. Denied.

35. Denied.

36. Holy Cross has insufficient information to respond to the allegations in paragraph 36 and therefore denies the same.

37. Holy Cross has insufficient information to respond to the allegations in paragraph 37 and therefore denies the same.

38. Holy Cross admits that Bleiler raised a concern with Mr. Irish as permitted by the Handbook, but denies the remaining allegations in paragraph 38.

39. Holy Cross admits that Mr. Irish declined to replace the other student and that Mr. Irish concluded that there were insufficient grounds to replace her but denies the remaining allegations in paragraph 39.

40. Admitted that Mr. Irish was aware prior to the hearing that one of the student board members had been C.M.'s Resident Advisor in a prior year.

41. Admitted that this is a partial list of duties for a Resident Assistant.

42. Holy Cross has insufficient information to respond to the allegations in paragraph 42 and therefore denies the same.

43. Admitted that Mr. Irish did not agree with Bleiler that Mr. Bleiler's complaint about the student justified the Board member's removal from the panel and the student remained a member of the Board.

44. Denied.

45. Denied.

46. Admitted that Mr. Irish did not testify at the hearing and, therefore, was not cross-examined but the remaining allegations in paragraph 46 are denied as stated.

47. Denied. Moreover, the statement is taken out of context. The referenced article is attached and marked as Exhibit A, along with an article in the press, attached and marked as Exhibit B, entitled "An Uncommon Outcome at Holy Cross," in which a well known expert

states with regard to Holy Cross's sexual assault policy, "Holy Cross is one of the schools that gets it right"

48. Denied.

49. Admitted that the procedures permit the Board to consult with the Hearing Coordinator, but the remaining allegations in paragraph 49 are denied as stated.

50. Holy Cross has insufficient information to respond to the allegations in paragraph 50 and therefore denies the same, except that it admits that the deliberations of the panel are not recorded.

51. Denied.

52. Denied.

53. Denied.

54. Denied except admitted that Bleiler was not permitted to make a copy of the audio recording and was not allowed to bring counsel.

55. Holy Cross has insufficient information to respond to the allegations in paragraph 55 and therefore denies the same except that it admits that no record of the deliberations is kept.

56. Denied.

57. Denied except that Holy Cross admits that Bleiler completed all coursework, received grades and had 32 credits.

58. Holy Cross admits that Bleiler (or others on his behalf) paid tuition and fees to Holy Cross but states it has insufficient information to respond to the remaining allegations in paragraph 58 and, therefore, denies the same.

59. Holy Cross has insufficient information to respond to the allegations in paragraph 59 and, therefore, denies the same.

60. Holy Cross has insufficient information to respond to the allegations in paragraph 60 and, therefore, denies the same.

COUNT I
(Violation of 20 U.S.C. §1681 (Title IX))

61. Holy Cross reasserts its responses to paragraphs 1-60 above.

62. No response is required to the allegations of paragraph 62 as it states a legal conclusion. To the extent a response is required, it is denied except that it is admitted that Title IX states in part the quoted language.

63. Admitted.

64. No response is required to the allegations of paragraph 64 as it states a legal conclusion. To the extent a response is required, Holy Cross has insufficient information to respond to the allegations in paragraph 64 and, therefore, denies the same.

65. No response is required to the allegations of paragraph 65 as it states a legal conclusion. To the extent a response is required, Holy Cross has insufficient information to respond to the allegations in paragraph 64 and, therefore, denies the same.

66. No response is required to the allegations of paragraph 66 as it states a legal conclusion. To the extent a response is required, Holy Cross has insufficient information to respond to the allegations in paragraph 64 and, therefore, denies the same.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

COUNT II
(Breach of Contract)

- 71. Holy Cross reasserts its responses to paragraphs 1-70 above.
- 72. Denied.
- 73. Denied.
- 74. Holy Cross has insufficient information to respond to the allegations in paragraph 74 and, therefore, denies the same..
- 75. Denied.
- 76. Denied.
- 77. Denied.
- 78. Denied.

COUNT III
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

- 79. Holy Cross reasserts its responses to paragraphs 1-78 above.
- 80. No response is required to the allegations of paragraph 66 as it states a legal conclusion. To the extent a response is required, Holy Cross has insufficient information to respond to the allegations in paragraph 80 and, therefore, denies the same.
- 81. Denied.

COUNT IV
(Unjust Enrichment)

- 82. Holy Cross reasserts its responses to paragraphs 1-81 above.
- 83. No response is required to the allegations of paragraph 83 as it states a legal conclusion. To the extent a response is required, it is denied.

84. Admitted that room, board, tuition and fees were paid to Holy Cross on behalf of Bleiler but has insufficient information to respond to the remaining allegations in paragraph 84 and, therefore, denies the same.

85. Denied.

86. Denied.

87. Denied.

88. Each allegation of the Complaint is denied unless specifically admitted.

SECOND DEFENSE

The complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

The complaint is barred by the Doctrine of Unclean Hands.

FOURTH DEFENSE

The plaintiff has waived and/or is estopped from asserting the claims set forth in the complaint.

FIFTH DEFENSE

The irreparable harm to the defendant that would result if the relief sought in the complaint were granted outweighs any harm alleged by the plaintiff in the complaint.

SIXTH DEFENSE

To the extent, if any, that the plaintiff has an adequate remedy at law, his complaint for injunctive relief is barred.

SEVENTH DEFENSE

The defendant's conduct, as alleged in the complaint, was neither arbitrary nor capricious and the relief sought in the complaint would constitute an unreasonable and impermissible

interference with the defendant's rights and duties to ensure the health and safety of all in the Holy Cross Community.

EIGHTH DEFENSE

Defendant is a 501(C)3 Corporation organized for nonprofit, charitable and educational purposes. Accordingly, it is partially immune from the claims asserted in the complaint under the doctrine of charitable immunity as provided by the acts and resolves of the Commonwealth.

NINTH DEFENSE

In expelling plaintiff, the defendant acted in good faith and on reasonable grounds.

TENTH DEFENSE

The procedure through which plaintiff was suspended and expelled was conducted with basic fairness, and his suspension and expulsion were consistent with the reasonable expectations of the students and the greater community at the College of the Holy Cross.

RELIEF REQUESTED

WHEREFORE, defendant College of the Holy Cross demands that the Complaint be dismissed with prejudice and that it be awarded its costs.

THE COLLEGE OF THE HOLY CROSS

By its attorneys,

HOLLAND & KNIGHT LLP

/s/Harold W. Potter, Jr.

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Dated: September 12, 2011

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system on September 12, 2011, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and by sending paper copies to non-registered participants as indicated on the NEF.

/s/ Harold W. Potter, Jr.

Harold W. Potter, Jr.

EXHIBIT A

Seeking Justice For Campus Rapes: An NPR News Investigation College Of Holy Cross Responds To Campus Assault

March 1, 2010

text size A A A

NPR's investigative team has been working with reporters at the Center for Public Integrity on a sensitive topic: sexual assaults on college campuses. The investigation shows that campus discipline systems rarely expel men who are found responsible for a sexual assault. Today, Tell Me More focuses on an exception to that norm: the College of Holy Cross in Worcester, Mass., which expelled a young student for sexual assault. Host Michel Martin discusses the case, and the larger issue of campus sexual assault, with Paul Irish, dean of student conduct and community standards at the College of Holy Cross, and Kristen Lombardi, a staff writer at the Center for Public Integrity who has reported extensively on this topic.

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LYNN NEARY, host:

Im Lynn Neary and this is TELL ME MORE from NPR News. Michel Martin is away.

Coming up, In Your Ear, with the music group Los Amigos Invisibles. But first, for the last few weeks, NPR's investigative team has worked with reporters at the Center for Public Integrity, or CPI, on a sensitive topic: sexual assaults on college campuses. The center interviewed 33 students who reported having been sexually assaulted by another student. Only four alleged attackers were expelled and two of those after multiple acquisitions of sexual misconduct. But one campus that is taking a different approach is the College of the Holy Cross in Worcester, Massachusetts.

There, a young sexual assault victim did find a measure of justice when the school expelled her attacker. And I want to mention that this story might not be appropriate for some because the discussion does involve some explicit details.

Host Michel Martin recorded this conversation last week and she was joined by Paul Irish, the dean of student conduct and community standards at the College of the Holy Cross; and Kristen Lombardi, a staff writer at the Center for Public Integrity. She reported a series of stories on this topic. Lombardi talked about how the CPI gathered data for this investigative series.

Ms. KRISTEN LOMBARDI (Staff Writer, Center for Public Integrity): We got our hands on the only database on sexual assault proceedings at institutions of higher education, nationwide. And it shows that schools rarely expel students who are found responsible for sexual assaults. Much more common were seemingly modest penalties, such as reprimands, counseling, community service, suspensions. The data also included other restrictions in our interviews with administrators. They told us that would typically be educational penalties, like required alcohol treatment.

MICHEL MARTIN: One of the exceptions to the pattern that you found, was that of a girl named - how do we pronounce it - Melandy?

Ms. LOMBARDI: Its Melandy, actually.

MARTIN: Melandy, Melandy. And she was a student of the College of the Holy Cross. And would you just give us, as briefly as you can, just tell us about her circumstances?

Ms. LOMBARDI: Melandy had accused a friend raping her in a public bathroom in an academic building on campus on the last night of her spring semester, freshmen year, in May 2007. Melandy had been drinking that night, she says, for the first time, and she was inebriated. Her alleged attacker was also drinking. They were both at a party. They had been hanging out together with friends. You know, she says her alleged attacker lured her to this public bathroom and assaulted her.

And she was incapable and unaware of resisting. And he says that she was a willing participant and had consensual sex. There was no physical evidence. There was no corroborating eye witnesses of the alleged assault itself. It was a very difficult case to determine the truth. And we heard, repeatedly, from college administrators, these kinds of he said-she said cases are very, very difficult for them to adjudicate.

MARTIN: But in this case, the person who she accused was expelled. And so...

Ms. LOMBARDI: Yes, he was found responsible.

MARTIN: I want to Dean Irish at this point. Im going to ask, what is the policy regarding sexual assault at the college? Why was this student expelled under that policy?

Mr. PAUL IRISH (Dean of Student Conduct and Community Standards, College of the Holy Cross): We have a very detailed descriptive policy in place and these cases really hinge on two key items that we talk about from the time students come, in orientation, to the training of our boards - around incapacitation through alcohol. And if somebody is incapacitated, they cannot give consent to engage in sexual activity. Its very clear in our handbook and throughout the information that we provide to students. And prior to my arrival in Holy Cross in 2004, a lot of work had been done on really a descriptive types of examples of what could be considered sexual assault.

MARTIN: Was this policy in place when this incident occurred?

Mr. IRISH: Yes.

MARTIN: So, both parties had reason to know what the rules were.

Mr. IRISH: Absolutely, absolutely.

MARTIN: Right?

Mr. IRISH: And I think, you know, the young woman in this situation, spoke to, you know, the clarity of the policy as something that was helpful for her. And she is revealing it and trying to weigh her options of whether she wanted to enter into a very unpleasant judicial proceeding. The language was there for her to look at and say, well, you know, I was incapacitated and I didnt give consent. And I think that was helpful for her.

MARTIN: If youre just joining us, this is TELL ME MORE from NPR News. Were talking about reporting, spearheaded by the Center for Public Integrity, that found that the rate of sexual assault on college

campuses is high. But even more importantly, that men - or young men - who are found responsible for committing an act are rarely punished in any significant way. And were talking about this with Kristen Lombardi who is a reporter with the Center for Public Integrity. Were also talking with Paul Irish from the College of the Holy Cross. And were talking about a specific case. It was an exception to this pattern where a young man was expelled after he was found responsible for assaulting a young woman, a friend.

Kristen, when you met Melandy, one of the things that stood out for me from this reporting is that she waited quite sometime to report the assault. She had to know that it would've been difficult but what made her want to go forward? What was it that made her say, I really have to go forward and pursue some action here?

Ms. LOMBARDI: What really prompted Melandy, she told me, was returning to campus in the fall of 2008, and seeing her alleged attacker on campus and having to face him, not knowing when she would have to face him. Holy Cross is not a big campus. And so when she walked around on campus she could, you know, encounter him. And that is what I think prompted her to go to Holy Cross public safety officers.

MARTIN: She didnt go to law enforcement outside of the campus. She only pursued this complaint with campus public safety officers, is that correct?

Ms. LOMBARDI: Yes. And Melandy was very aware of, I guess, the challenges, you would say, to adjudicating her case. She knew she was late in reporting. She knew she didnt have forensic evidence. She knew that it would be a question of credibility. She was intimidated by the criminal justice process. For those reasons, she felt like proving her case beyond a reasonable doubt would be really, really difficult. And she wanted to pursue the campus process first. She told us that she had it in her head that, you know, she would see how it goes with the campus process and perhaps pursue criminal charges. She ended up not pursuing criminal charges after her proceeding.

MARTIN: Why did these cases never become a matter for the criminal justice system?

Ms. LOMBARDI: Well, that is really dependent, I think, on the student themselves. The vast majority of them also went to local authorities and tried to press criminal charges. But oftentimes, local prosecutors chose not to take these cases. And they were left with campus judicial proceedings as their course of recourse.

MARTIN: So, Dean Irish, what was the process by which this case was investigated? What happens after a student or, I guess, presumably any member of the campus community comes forward with a complaint like this, what happens then?

Mr. IRISH: Sure, I think it happens before a student comes with a complaint through training our officers. Most of the officers at Holy Cross are trained sexual assault investigators so that its not just a student versus student. But in this case if a student went to public safety, we say that they drive the process - do they want it to go to the DA? Do they want it to go to the student conduct office? You know, do they want it - more time to make decision on how theyre going to proceed? So, it's really empowering, you know, the student to make those decisions along the way.

MARTIN: Kristen, I commend you because you also sought out the other side of the story, which is the student who was expelled and his name - you give him a pseudonym: Jordan?

Ms. LOMBARDI: Yes.

MARTIN: Right. So, Jordan says that he was also intoxicated and he says that this was consensual. And he, in this proceeding, he didn't have an advocate, which he would have had in criminal court. And I have to ask you Dean, do you think that's fair?

Mr. IRISH: I think it is. Because it is a student-to-student hearing with advisors that are not advocates for them hearing like you might think of as an attorney in a court of law. It's really the student asking the questions and answering them. And, you know, it, again, is not a court of law or - it's a hearing to determine whether the rules at our college about sexual misconduct were broken.

MARTIN: (unintelligible) I guess, but that's part of what - I guess what I'm having trouble with articulating is that there's something about this that is not the same as - this is not the same as somebody, sort of, crawling into somebody's room or breaking down their door and assaulting them that there are issues around a conduct on both parties. And I sort of wondered are women just kind walking around as like potential victims here or are they being taught anything about the way they should conduct themselves in these situations? Do you know what I mean? I mean, it's like...

Mr. IRISH: Yeah, I...

MARTIN: that people (unintelligible) you're just - you're good girl or you're a bad girl. And if you're not a good girl, then anything can be done to you and nobody is supposed to say anything to the point where, you know, boys or young men are all potential predators and they're always responsible if something bad happens. Do you know what I mean? Do you hear what I'm saying?

Mr. IRISH: Right. I think on College campuses we've focused a lot on talking to young women about, you know, partying safe and not leaving your friend alone and watching your drink and that. But I think we haven't done enough with our young men to say, you know, if you get involved with a young woman and you do not know her all that well and you've been drinking, you know, this is a warning sign. This is not something that you want to engage in because of what possible consequences could be. And we know that in these situations that young men and women are not clearly communicating about, you know, what they want to engage in and what's okay in each step, you know, and that doesn't happen. And that's part of the confusion in the issue on our campuses.

MARTIN: Kristen, can I just ask you finally, did Jordan feel he had done anything wrong?

Ms. LOMBARDI: I would say no. And he was not different from any of the other students the accused students who were found responsible that we interviewed. You know, all of them still believed that they or at least they maintained to us that they had engaged in consensual sex. If they were found responsible, a lot of them believed and articulated to us that they felt that they were pressured to confess to the complaining student's version of events. I can't say that we spoke with anybody who felt in hindsight that they had done anything wrong and that includes actually a student that we did interview in a Texas prison right now who had been accused of raping four Texas A&M students. And even he says that all four of those students had willingly engaged in sex, that college is about drinking and sex and a lot of drunk sex goes on and that's just the way it is. So, I think it's a really interesting question actually for educators.

MARTIN: And when you confronted him with the policy that said, if, by definition, the other party is intoxicated and therefore consent cannot be given, what did he say to that?

Ms. LOMBARDI: You know, he basically believes that consent was given...

MARTIN: Mm-hmm.

Ms. LOMBARDI: ...that is what he believes. And, you know, he mentioned that he was drinking as well and he suggested that Melandy was not too drunk to consent.

MARTIN: Is he bitter about what happened?

Ms. LOMBARDI: Well, he's very upset that he was expelled. He believes the process was unfair.

MARTIN: And how does she feel now? How does Melandy feel now?

Ms. LOMBARDI: I think Melandy would tell you that she's at peace. She is unlike all the other students that we've interviewed in the sense that she did not feel like she had to drop out. She's going to graduate in May. She told me she's ready to be somebody and, you know, her process her proceeding, you know, worked in her favor.

MARTIN: Well, you've raised some very rich and important issues with this reporting and with this series and so, Kristen, we appreciate that and Dean, we sure appreciate your taking the time to discuss this. So, I wanted to ask for a final thought. Dean, what would you like people to draw from this?

Mr. IRISH: Oh, I think this is a pervasive problem on all our campuses. It's very underreported and we really have to ask: Why is it so underreported? What can we do to make victims feel comfortable to come forward, to feel supported and to let people know that when there is an outcome, that it's a very serious outcome with everlasting, you know, life-altering, you know, consequences?

MARTIN: Paul Irish is the dean of student conduct and community standards at the College of the Holy Cross, and he was kind enough to join us from Boston. Kristen Lombardi is a staff writer at the Center for Public Integrity. She joined us from our bureau in New York. And I thank you both so much for speaking with us.

Ms. LOMBARDI: Thank you.

Mr. IRISH: Thank you, Michel.

MARTIN: To hear more of NPR's investigative series on sexual assaults on college campuses, please go to our Web site. Just go to npr.org.

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EXHIBIT B

An Uncommon Outcome at Holy Cross

The way Melandy saw it, there wasn't enough room for both of them.

The College of the Holy Cross has fewer than 3,000 students. Months after she says she was raped by another student, Jordan, in a men's bathroom on campus, Melandy feared running into him on the paths of the Worcester, Mass. college, at parties, and at the dining hall where he worked. The sight of him would make her shake, cry, and lose her appetite.

"I was tired of having to change my whole life," said Melandy, a slight, soft-spoken psychology major. (She asked that only her first name be used to protect her privacy; Jordan is a pseudonym.)

So when she undertook the often painful process of filing disciplinary charges against the other student, Melandy knew that one of two things would happen. Either he would be expelled, or she would leave the school.

INTERVIEWS

Melandy, the victim of an alleged sexual assault at Holy Cross, explains how the constant fear of running into her alleged assailant caused her to report the incident to university officials.

Audio

In the end, it was his life that would be upended. The college hearing board found Jordan responsible for the school's most serious charge of "sexual misconduct" — sex without consent — in December 2008. The school dismissed him, revoking his full-tuition scholarship and derailing his academic career and plan to study in Europe, he says. He went back to his native Jamaica, feeling betrayed by his former friend, and "traumatized," his mother says, by the knowledge that college officials did not believe him.

Expulsion rarely results from college disciplinary actions in sexual assault cases, making the Holy Cross case a notable exception. In interviews the Center for Public Integrity conducted with 33 students who reported being sexually assaulted by another student, four said their alleged attackers were expelled — two of them only after multiple accusations of sexual misconduct. It was far more common for the alleged victim to drop out or transfer, while the accused student remained on campus.

Melandy credits her faith in God, among other things, for the outcome in her case. But she also relied heavily on the school's unusually detailed sexual assault policy and its comprehensive set of procedures for responding to sexual assault. In preparing her testimony, she frequently consulted a peer advocate at the school, as well as Colby Bruno, an attorney at the Boston-based Victim Rights Law Center. And both Melandy and the accused student cite the role of the college's public safety officers as key players in the case outcome — particularly their description of the dark bathroom where the incident occurred. That image seemed to resonate, Melandy recalls, with the hearing board members.

"The school had a policy, they enforced the policy, they found her credible and they expelled the guy," said Bruno who advised Melandy free of charge. She added that the outcome was unusual even among other cases she had seen at Holy Cross. "That's the way it should work."

College administrators sometimes cite the difficulty of acquaintance rape accusations as a reason that so few disciplinary hearings result in tough penalties. But this case was every bit as complex as many other college rape reports: The two students were friends, they were drinking, and the victim waited months to tell the college. It happened on a night in May 2008 when they were hanging out in a group. She says she was a virgin, was drunk for the first time, and was too unaware to resist when he led her, she says, to a public bathroom for the purpose of raping her — locking the door and turning off the light behind them. He says he was also drunk, that she never said no, and that she seemed upset only that he had a girlfriend. It wasn't until the fall semester that she reported

the alleged assault to Holy Cross public safety officers at the urging of a counselor. There was no rape kit performed, and no obvious physical injuries.

At many other schools, the Center has reported, similar reports were ignored or dismissed for lack of evidence. Instead, Melandy's case ended up before a Holy Cross hearing board.

INTERVIEWS

Melandy describes how school officials at Holy Cross handled her sexual assault accusation, making her feel more comfortable about the process.

Audio

Brett Sokolow, a well-known consultant to college administrators, was commissioned to help Holy Cross overhaul its sexual assault policy a decade ago. He recommends that schools frame sexual assault as an offense without consent, rather than an offense against the will of the victim. The difference, he says, shifts the responsibility from the victim having to prove refusal to consent, and requires the initiator of the sexual activity to demonstrate that consent was given. He recommends too, that colleges be specific about what constitutes incapacitation by alcohol, a common factor in college rape cases.

"Holy Cross is one of the schools that gets it right, as far as I'm concerned," Sokolow says noting in particular the college's thoroughness in implementing its own policy. It trained residence hall staff, public safety officers, faculty, and anyone else who might come in contact with victims. Members of campus judicial panels also receive about three hours of training on sexual assault, according to the dean of student conduct.

In preparing her testimony against Jordan, Melandy highlighted the parts of the policy that seemed to back her up

[I]t is the responsibility of the initiator ... to make sure that he/she has the consent from his/her partner(s).

Consent may never be given ... by one who is incapacitated as a result of alcohol.

Silence ... may not ... be taken to imply consent.

Too uncomfortable to tell a professor about the accusation against him, Jordan did not bring a faculty advisor to the hearing in mid-December 2008. On the other side of a partition, Melandy sat beside a trusted statistics professor, as well as the dean of student conduct and two public safety officers. A male friend of Melandy's told the campus panel that he could see how intoxicated she was on the night in question.

Colleges are obligated to conduct their own investigations into sexual assault reports. But they often don't. Here, again, Holy Cross proved to be an exception; the two public safety officers — trained in sexual assault investigation — testified about what they found. Jordan had said the bathroom was not that dark, but the officers said that with the light switched off, it would have been pitch black. Their testimony also differed from his on the size of the bathroom.

"At that point, I said, OK, wow, I know I'm going to lose," said Jordan.

Holy Cross did not provide records of the outcomes in previous sexual assault cases. Bruno, the victim rights attorney, said that other cases she had seen at Holy Cross resulted in findings of "not responsible." An administrator said expulsion was the most common outcome when students are found responsible for rape, reflecting a philosophy that the school has an obligation to protect its community.

"I think there's certain conduct on a college campus that's just not acceptable," says Paul Irish, dean of student conduct and community standards. "And if someone does it, they can't be a community member any more. Period."

After the hearing, Jordan finished his finals and packed his bags, leaving behind what he couldn't fit in two suitcases.

INTERVIEWS

Having achieved a sense of peace as a result of the campus judicial process, **Melandy** says that she's ready to move on.

Audio
the GRE.

He believes it was unfair that the school exacted such a punishment without giving him the due process that a criminal trial would have afforded. "The whole process is fundamentally flawed," and "ridiculous," says Jordan, now a law student in Kingston. In a letter to the Holy Cross president, he appealed the board's decision, saying that Melandy initiated the sexual contact. The appeal was denied.

The school defends its process, saying that attendance at Holy Cross is a privilege, not a right.

The campus panel's decision to expel Jordan brought Melandy to tears — of joy and relief this time. A year later, she was preparing to graduate from Holy Cross, and studying for

"I guess you never really forget — not just the rape, but you don't forget the process, either," she says. "But I feel like I'm at peace right now, and that's what I wanted."

Staff writer Kristen Lombardi and reporting fellow Claritza Jiménez contributed to this article.