

# Exhibit 3

EXHIBIT 3

Messages John Doe Edit

Call FaceTime Contact

Text Message  
Sep 8, 2013, 12:31 AM

The second that you're away from them, come back


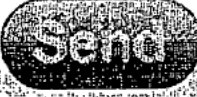
Okay

Get the fuck back here.

Get the fuck back here.

They're still with me o

Make them leave. Tell them yoy want to sleep. I'dc. Just get back here

 Text Message 

05/19/2014

Messages

John Doe

Edit

Make them leave. Tell them yoy want to sleep. I'dc. Just get back here

Okay do you have a condom

Yes.

Good give me two minutes

Come here.

Coming

Good girl.

Knock when you're here

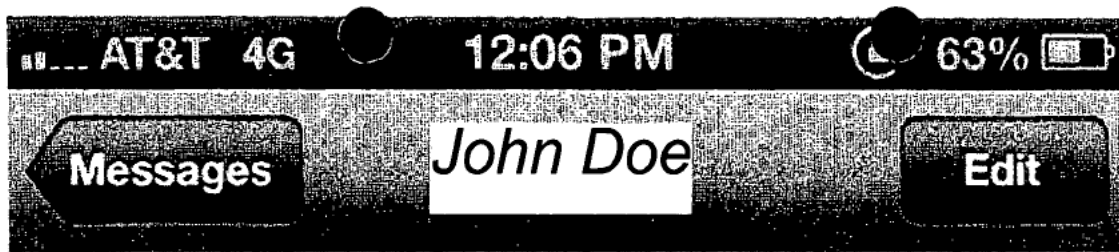
James



Text Message

Send

65-413-1014



James

I'd out ride my door

What

Jameson is outside my door

Sep 8, 2013, 12:45 AM

... Wtf

Right

Get him to leave.

Working on t

Ok what dorm do you live in



Text Message

Send

65-1137-1019



Messages

John Doe

Edit

Ok what dorm do you live in

320

Of Braun?

Yeah

My RA is here

... Leave. Say you're going to the bathroom.

Okay

...

Sep 8, 2013, 12:22 PM

Is my belt in your room?



Text Message

Send

05/19/2014 10:07:58

Messages

John Doe

Edit



Sep 8, 2013, 12:22 PM

Is my belt in your room?

Sep 8, 2013, 4:13 PM

Did you find it?

Sep 8, 2013, 8:13 PM

I have your earrings but I  
can't find your belt

Crap

It's somewhere in there.  
Are you in your room right  
now?

Can I come get my stuff  
now?



Text Message

Send

05/15/2014 10:07:50

Messages

John Doe

Edit

Sep 8, 2013, 4:13 PM

Did you find it?

Sep 8, 2013, 8:13 PM

I have your earrings but I  
can't find your belt

Crap

It's somewhere in there.  
Are you in your room right  
now?

Can I come get my stuff  
now?

I'm out right now, are you  
free later?

At like 2 probably



Text Message

Send

09/13/2014 4:10:7 PM

Messages

John Doe

Edit

Actually I'm here right now  
if you're back

Sep 8, 2013, 11:22 PM

Okay I lied. I'm not done  
talking

Want to talk now?

If you can?

Where are you

My room but my  
roommate is coming back

Same, Gavin is coming  
back soon. Meet me  
outside where we were  
talking before



Text Message

Send

05/10/2014

Messages

John Doe

Edit

Same, Gavin is coming back soon. Meet me outside where we were talking before.

Okay

Sep 9, 2013, 1:15 PM

Hey why aren't you in class?

I'm coming now. I went to emmons

I gotcha. We're on break and class starts up again in 10 mins.

They divided us into two



Text Message

Send

05/13/2014

Messages

John Doe

Edit

They divided us into two groups, you're upstairs with me

Okay thanks. I guess I'll just eat after class

Sep 9, 2013, 7:42 PM

Hey what's up

I'm just finishing with this stupid Fyre thing

Fyre is such shit. My group is cool though so its not all bad

I just finished. That was so borking



Text Message

Send

05/10/2014

Messages

John Doe

Edit

I just finished. That was so boring

\*boring

Sep 9, 2013, 8:22 PM

What did you guys talk about?

Making good decision.  
Which I found somewhat fitting

Ahaha that definitely is fitting. I think I'm gonna take a long break from alcohol here

I've been getting turnt way too often its no good



Text Message

Send

05/13/2014



Messages

John Doe

Edit

Ahaha that definitely is fitting. I think I'm gonna take a long break from alcohol here

I've been getting turnt way too often, its no good

I might join you on your stint of sobriety

Sep 9, 2013, 8:51 PM

Dooo itttt. I'm gonna be sober all week, I need to focus on school and get my head on straight.

Do you feel guilty?

You have blackout drunk



Text Message

Send

05/13/2014 10:07:01 AM



Messages

John Doe

Edit

Do you feel guilty?

Yes. I was blackout drunk but I still feel terrible about what happened. I'm so sorry that everything happened this way, I wish it was more special for you.

Sep 9, 2013, 9:01 PM

Okay

I don't know. I'm not angry that stuff happened between us, I just wish we had known each other more.



Text Message

Send

05/13/2014

Messages

John Doe

Edit

I don't know. I'm not angry that stuff happened between us, I just wish we had known each other more.

I'm glad that we're still talking :)

Sigh. I hope none of that came across in the wrong way. I just want you to know that I'm not a bad guy.

I think I'm still trying think through everything. And I'm not doing a great job



Text Message

Send

05/19/2014

Messages

John Doe

Edit

I think I'm still trying think  
through everything. And  
I'm not doing a great job

Sep 9, 2013, 9:24 PM

I completely understand. It  
gets easier with time,  
things fall into place.

I'm starting to remember  
things

Good. Good. Good. Good.  
That's good to hear.

Sep 9, 2013, 9:47 PM

Good. Good. Good. Good.  
That's good to hear.

Sep 9, 2013, 10:07 PM



Text Message

Send

Messages

John Doe

Edit

through everything. And  
I'm not doing a great job

Sep 9, 2013, 9:24 PM

I completely understand. It  
gets easier with time,  
things fall into place.

I'm starting to remember  
things

Good. Good. Good. Good.  
That's good to hear.

Sep 9, 2013, 9:47 PM

Good. Good. Good. Good.  
That's good to hear.

Sep 9, 2013, 10:07 PM

Not really



Text Message

Send

05/13/2014

## Exhibit 4

EXHIBIT 4



The second that you're away from them, come back

09/8/2013, 12:31 AM

Okay

09/8/2013, 12:31 AM

Get the fuck back here.

09/8/2013, 12:35 AM

They're still with me o

09/8/2013, 12:36 AM

Make them leave. Tell them yoy want to sleep. I'dc. Just get back here

09/8/2013, 12:36 AM

Okay do you have a condom

09/8/2013, 12:37 AM

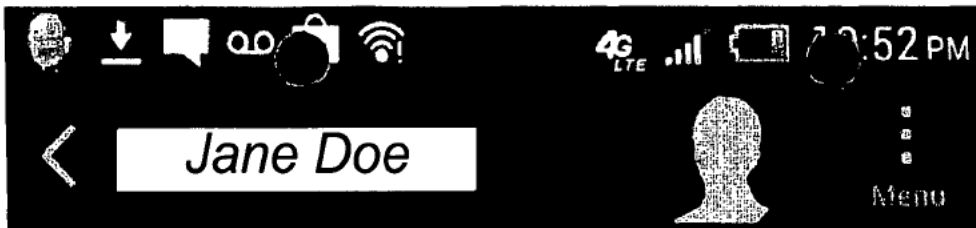
Yes.

09/8/2013, 12:38 AM

Good give me two minutes

00001

09/08/2013 12:52 PM



Good give me two minutes

09/8/2013, 12:39 AM

Come here.

09/8/2013, 12:41 AM

Coming

09/8/2013, 12:41 AM

Good girl.

09/8/2013, 12:42 AM

Knock when you're here

09/8/2013, 12:42 AM

James

09/8/2013, 12:43 AM

I'd out ride my door

09/8/2013, 12:43 AM

What

09/8/2013, 12:43 AM

Jameson is outside my door

00002

05/10/2014



Jane Doe



Menu

Jameson is outside my door

09/8/2013, 12:44 AM

... Wtf

09/8/2013, 12:45 AM

Right

09/8/2013, 12:45 AM

Get him to leave.

09/8/2013, 12:45 AM

Working on t

09/8/2013, 12:47 AM

Ok what dorm do you live in

09/8/2013, 12:49 AM

320

09/8/2013, 12:49 AM

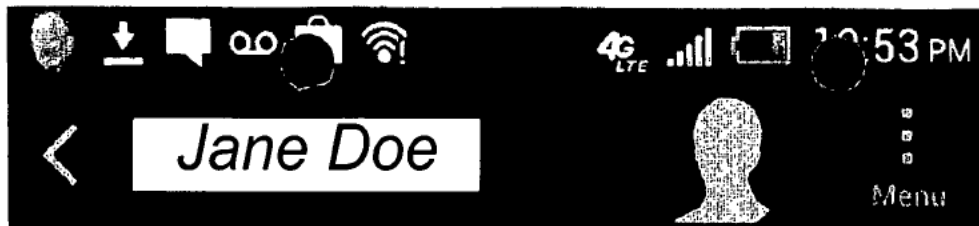
Of Braun?

09/8/2013, 12:49 AM

Yeah

00003





Of Braun?

09/8/2013, 12:49 AM

Yeah

09/8/2013, 12:50 AM

My RA is here

09/8/2013, 12:50 AM

... Leave. Say you're going to the bathroom.

09/8/2013, 12:50 AM

Okay

09/8/2013, 12:51 AM

...

09/8/2013, 12:55 AM

Is my belt in your room?

09/8/2013, 12:22 PM

Did you find it?

09/8/2013, 4:13 PM

00004

09/10/2014



Did you find it?

09/8/2013, 4:13 PM

I have your earrings but I can't find your belt

09/8/2013, 8:13 PM

Crap

09/8/2013, 8:14 PM

It's somewhere in there. Are you in your room right now?

09/8/2013, 8:14 PM

Can I come get my stuff now?

09/8/2013, 8:27 PM

I'm out right now, are you free later?

09/8/2013, 8:28 PM

At like 2 probably

09/8/2013, 8:29 PM

Actually I'm here right now if you're back

00005

09/08/2013



Actually I'm here right now if  
you're back

09/8/2013, 9:12 PM

Okay I lied. I'm not done talking

09/8/2013, 11:22 PM

Want to talk now?

09/8/2013, 11:23 PM

If you can?

09/8/2013, 11:24 PM

Where are you

09/8/2013, 11:24 PM

My room but my roommate is  
coming back

09/8/2013, 11:24 PM

Same, Gavin is coming back  
soon. Meet me outside where we  
were talking before.

09/8/2013, 11:25 PM

00006

09/08/2013 11:58



Okay

09/8/2013, 11:25 PM

Hey why aren't you in class?

09/9/2013, 1:15 PM

I'm coming now. I went to  
emmons

09/9/2013, 1:15 PM

I gotcha. We're on break and class  
starts up again in 10 mins.

09/9/2013, 1:16 PM

They divided us into two groups,  
you're upstairs with me

09/9/2013, 1:16 PM

Okay thanks. I guess I'll just eat  
after class

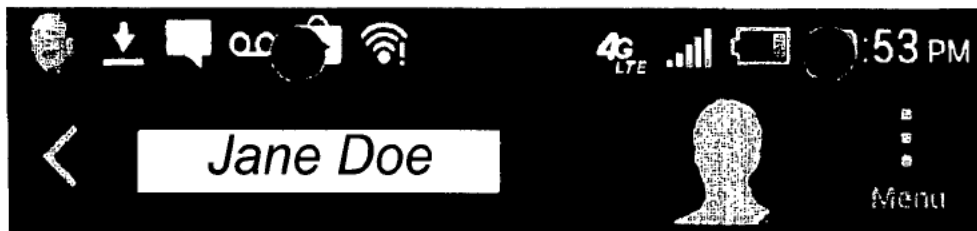
09/9/2013, 1:17 PM

Hey what's up

09/9/2013, 7:42 PM

00007

09/10/2013



I'm just finishing with this stupid Fyre thing

09/9/2013, 7:42 PM

Fyre is such shit. My group is cool though so its not all bad

09/9/2013, 7:43 PM

I just finished. That was so boring

09/9/2013, 7:45 PM

\*boring

09/9/2013, 7:45 PM

What did you guys talk about?

09/9/2013, 8:22 PM

Making good decision. Which I found somewhat fitting

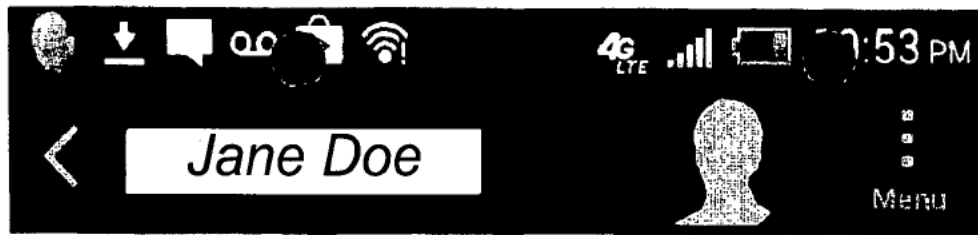
09/9/2013, 8:25 PM

Ahaha that definitely is fitting. I think I'm gonna take a long break from alcohol here

00008

09/9/2013 8:26 PM

09/09/2013 17:58



I've been getting turnt way too often, its no good.

09/9/2013, 8:27 PM

I might join you on your stint of sobriety

09/9/2013, 8:28 PM

Dooo itttt. I'm gonna be sober all week, I need to focus on school and get my head on straight.

09/9/2013, 8:51 PM

Do you feel guilty?

09/9/2013, 8:57 PM

Yes. I was blackout drunk but I still feel terrible about what happened. I'm so sorry that everything happened this way, I wish it was more special for you.

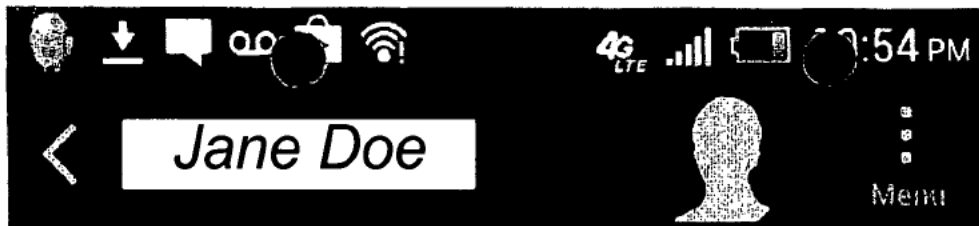
09/9/2013, 8:59 PM

Okay

09/9/2013, 9:01 PM

00009

05/10/2014



I don't know. I'm not angry that stuff happened between us, I just wish we had known each other more.

09/9/2013, 9:02 PM

I'm glad that we're still talking 🐼

09/9/2013, 9:02 PM

Sigh. I hope none of that came across in the wrong way. I just want you to know that I'm not a bad guy.

09/9/2013, 9:05 PM

I think I'm still trying think through everything. And I'm not doing a great job

09/9/2013, 9:09 PM

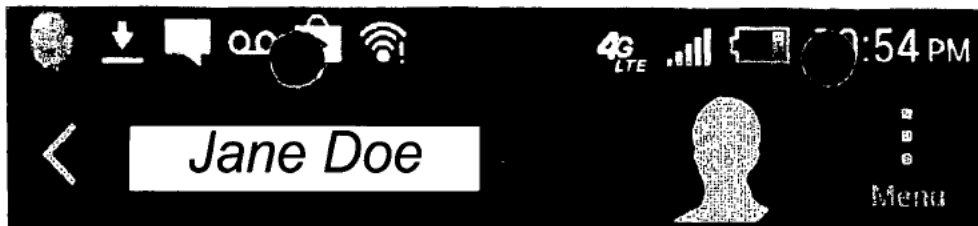
I completely understand. It gets easier with time, things fall into place.

09/9/2013, 9:23 PM

I'm starting to remember things

00010

09/13/2013



I think I'm still trying think  
through everything. And I'm not  
doing a great job

09/9/2013, 9:09 PM

I completely understand. It gets  
easier with time, things fall into  
place.

09/9/2013, 9:23 PM

I'm starting to remember things

09/9/2013, 9:28 PM

Good. Good. Good. Good. That's  
good to hear.

09/9/2013, 9:47 PM

Not really

09/9/2013, 10:07 PM

Add text

0 / 160

Send



00011

451071001



# Exhibit 5

EXHIBIT 5

Messages

Gentry Whitta...

Edit

I love you too

Sep 8, 2013, 12:20 AM

I'm wasted

Sep 8, 2013, 12:40 AM

The worlds moving

I'mgoingtohave sex now

Sep 8, 2013, 2:13 AM

I love you

You're the best

;)

Sep 8, 2013, 5:02 AM

Jane Doe

Jane Doe !!!!!!! What  
do you mean you're going



iMessage

Send

9/10/2013 10:10:50

Messages

Jameson

Edit

Sep 7, 2013, 7:53 PM

Are you still at the game?

Sep 8, 2013, 1:04 AM

U ok?

Sep 8, 2013, 1:46 AM

Where are you?

Sep 8, 2013, 2:05 AM

I'm drunk

Lol I know

Hi m

Lol whattt

I don't know

Delivered



iMessage

Send

05/13/2014

Messages

Matt

Edit

Sep 7, 2013, 10:46 PM

I'm drunk

Sep 7, 2013, 11:15 PM

What's going on?

Sep 7, 2013, 11:30 PM

Matt pick up

Sep 8, 2013, 2:06 AM

Matt

3\$

Sep 8, 2013, 2:15 AM

:)

??

I'm do drunk



iMessage

Send

05/10/2014

Messages Matt Edit

Sep 8, 2013, 2:15 AM

:)

??

I'm do drunk

M tio



Cool

Mmhm...

Ah bring the thunder to me babe ;)

Where aee you?

Stewie

 iMessage 

05/10/2014 4:10:15 PM

Messages

Matt

Edit

Mmhm...

Ah bring the thunder to me  
babe ;)

Where aee you?

Stewie

Sep 8, 2013, 2:30 AM

Im in braun

No way!

Wayyyyyi

Sep 9, 2013, 11:38 AM

Yes?

Delivered



iMessage

Send

05/10/2014

Messages

Derek Poetzin...

Edit

Sep 7, 2013, 11:27 PM

What are you up to?

Sep 8, 2013, 2:05 AM

The room is moving

Derlebbnn!!

Text Message

Sep 8, 2013, 9:04 PM

Sorry haha I'm really bad  
at checking my phone if  
you can't tell

Sep 8, 2013, 9:16 PM

Sorry haha I'm really bad  
at checking my phone if  
you can't tell

iMessage



iMessage

Send

05/10/2014

Messages

Quentin Texa...

Edit

Sep 8, 2013, 2:15 AM

Hi hi hi hi hi hi Josiah

Quit fiercely

Autocorrect

Sep 8, 2013, 9:25 PM

Meet us at the fountain

Sep 8, 2013, 10:51 PM

Thank you. Also I know  
this is something that  
probably does not need to  
be said, but please don't  
tell anyone

Delivered

I won't your good



iMessage

Send

09/10/2013



Messages

Nolan Watson

Edit

Sep 8, 2013, 12:20 AM

Hi

Sup?

I'm duck

Sep 8, 2013, 12:50 AM

U okaay?

Boo

Sep 8, 2013, 1:47 AM

What are you up to?

Sep 8, 2013, 2:12 AM

No

Nolan



Text Message

Send

05/13/2014

## Exhibit 6

05/10/2014



That was the hugest game of rage cage I've ever seen.

09/7/2013, 8:35 PM

Bro I'm so drink

09/7/2013, 8:37 PM

Dunks

09/7/2013, 8:37 PM

It's not even 9 o'clock. I know a ton of people are going later. What's the address?

09/7/2013, 8:38 PM

Stay the fuck out of our room.

09/8/2013, 12:39 AM

<3 you. Our room is free, go back any time. I'll be there about 2:30

09/8/2013, 1:57 AM

You're the best fuckin roommate ever

09/8/2013, 1:59 AM

00012

09/7/2013



Bro I feel like such shit.

09/9/2013, 7:41 PM

Why?

09/9/2013, 7:42 PM

I'm sick and I have an ear infection, but that's not even it. Just about everything this weekend. I'm borderline furious with myself

09/9/2013, 7:43 PM

Did you fuck up this weekend? Absolutely. But can you learn from your mistakes? Totally. This is college and it's all about navigating through it and testing the waters which inevitably will entail fuck ups. But if you make it a learning experience, it's not as bad.

09/9/2013, 7:45 PM

The being sick and ear infection is just shit that happens though

09/9/2013, 7:45 PM

00013

4107/01/50



Yeah dude, thanks. I really need  
to get my head on straight and  
stop abusing my freedom. Are  
you out tonight?

09/9/2013, 8:21 PM

Yo its totally chill

09/11/2013, 11:25 PM

Okay cool!

09/11/2013, 11:26 PM

Where you at?

Sunday, 7:31 PM

Everything is ok

Monday, 10:14 PM

What do you mean

Monday, 10:15 PM

Just letting my friends who know  
about this that I'm okay. I  
included you on the message.

Monday, 10:16 PM

00014

05/13/2014



I wanna be drunk rn!!

09/7/2013, 7:59 PM

I'm so drunk. Jesus fucking Christ.

09/7/2013, 9:14 PM

I'm jealous.

09/7/2013, 9:17 PM

I'm drinking straight vod with two kids in a room rn this is pretty alcoholic

09/7/2013, 9:22 PM

I'm about to blak out

09/7/2013, 9:28 PM

Black out

09/7/2013, 9:28 PM

Don't!! Don't be dead when I come to polo!

09/7/2013, 9:29 PM

00015

09/07/2013



It canceled right

09/7/2013, 11:19 PM

Right

09/7/2013, 11:19 PM

John

09/8/2013, 2:08 AM

Hey what's good

09/8/2013, 2:08 AM

Chillin I tried to go to water polo  
but like campo was right there 🤔

09/8/2013, 2:09 AM

Yeah. I don't even know what  
happened, I'm so fucking out of  
this world.

09/8/2013, 2:10 AM

Hahah are you okay?? I'm like  
layin in bed extremely high rn

09/8/2013, 2:12 AM

00016

09/13/2014



I'm outside Braun. I'm so crossed.

09/8/2013, 2:13 AM

Come to stewie. Is there a kid named Matt on water polo?

09/8/2013, 2:14 AM

Yeah there is. Meet me on Stewie patio?

09/8/2013, 2:14 AM

Yeahh

09/8/2013, 2:15 AM

I'm here.

09/8/2013, 2:19 AM

No yr not I'm here!

09/8/2013, 2:20 AM

The patio is the back with the tables the beach is the front

09/8/2013, 2:20 AM

are you good at math??

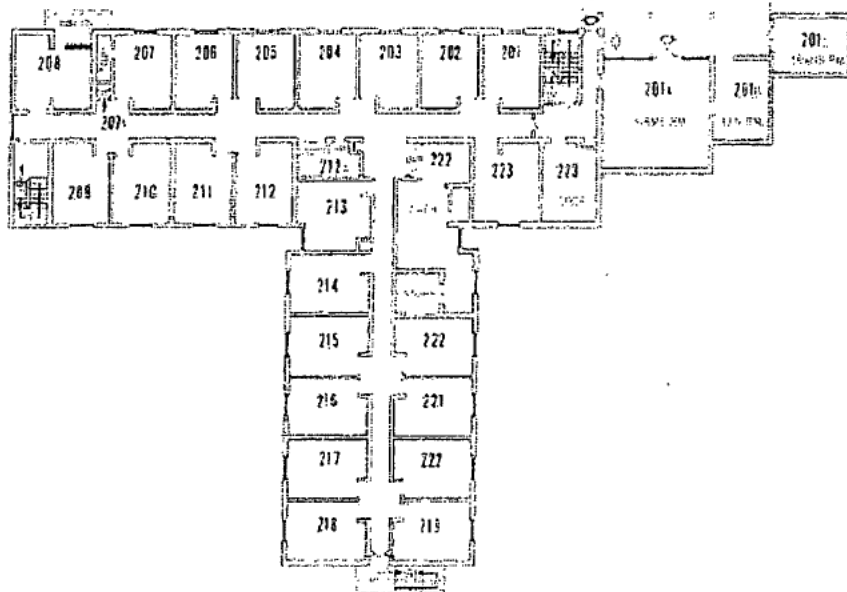
00017

05/10/2013



# Exhibit 7

05/13/2014



**F.L.W. AREA CLASSIFICATION**

1. GROSS AREA	2,500	SQ. FT.
2. ASSIGNABLE AREA	5,724	SQ. FT.
3. NONASSIGNABLE AREA	60	SQ. FT.
4. CIRCULATION	60	SQ. FT.
5. CUSTODIAL	60	SQ. FT.
6. MECHANICAL	60	SQ. FT.
7. CONSTRUCTION	60	SQ. FT.

NOTE: — FOR DETAILED CLASSIFICATION INFORMATION  
SEE F.L.W. CCDF FORMS PAGES 1 TO 10

Scale: 1" = 20' 0"

UNIT	DATE	REVISIONS	NOTES	BY	CHKD BY
201	4	NEW TO DATE	D. S.		

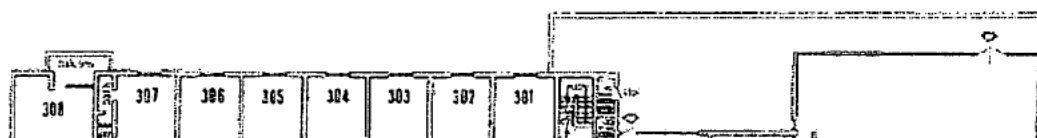
STUDENT ROOMS—2ND FLOOR—22, 34 FLOORS 1955

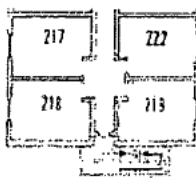
**OCCIDENTAL CC**  
1900 CAMPUS ROAD LOS ANGELES 900

TITLE: **BRAUN HALL**  
**SECOND FLOOR PLAN**

DESIGNED BY	DATE DRAWN	SCALE
W. J. J.	2-18-72	1/8" = 1'-0"
CHECKED BY	DATE	REVISIONS
APPROVED BY	DATE	REVISIONS

05/10/72 01/50

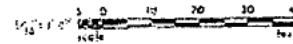




**PLANNING AREA CLASSIFICATION**

1. GROSS AREA	8,500	SQ. FT.
2. ASSIGNABLE AREA	5,724	SQ. FT.
3. UNASSIGNABLE AREA		SQ. FT.
4. CIRCULATION		SQ. FT.
5. CUSTODIAL		SQ. FT.
6. MECHANICAL		SQ. FT.
7. CONSTRUCTION		SQ. FT.

NOTE: — FOR DETAILED CLASSIFICATION INFORMATION SEE A.E.D. FORMS PAGES 10 —



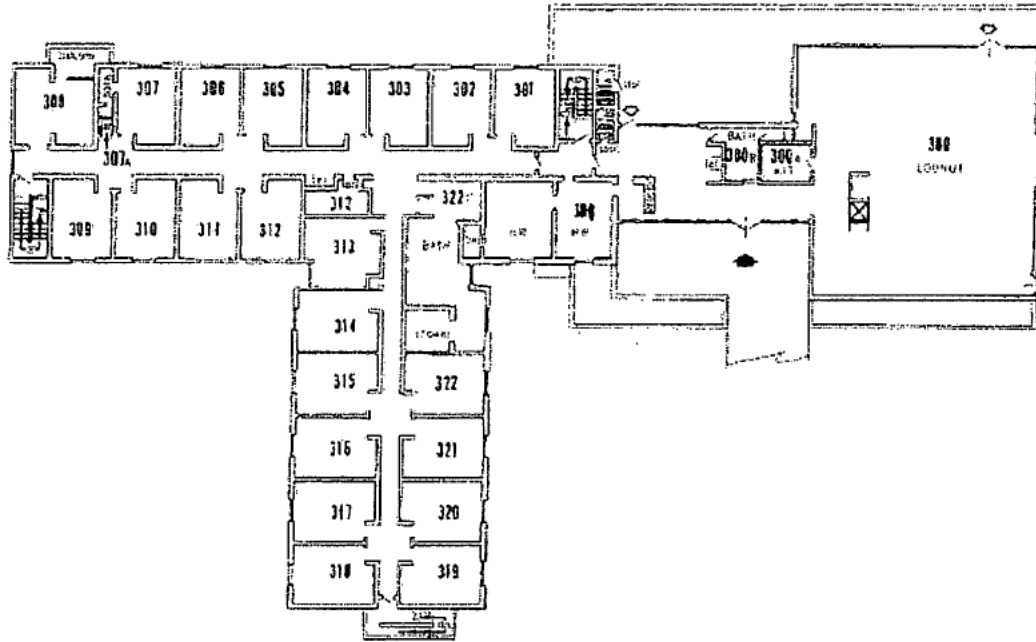
DATE	BY	REVISIONS	NOTES	OK	DATE
6-20-72	A	NEW TO DATE	D. J.		

STUDENT ROOMS - 2ND FLOOR - 22 3 FLOORS - 58

**OCCIDENTAL CC**  
1100 CAMPUS ROAD LOS ANGELES 900

**BRAUN HALL**  
**SECOND FLOOR PLAN**

DRAWN BY	DATE	SCALE	UNIT
B. J. J.	2-18-72	1/8" = 1'-0"	C-
CHECKED BY	DATE	SCALE	UNIT
APPROVED BY	DATE	SCALE	UNIT



**PLANNING AREA CLASSIFICATION**

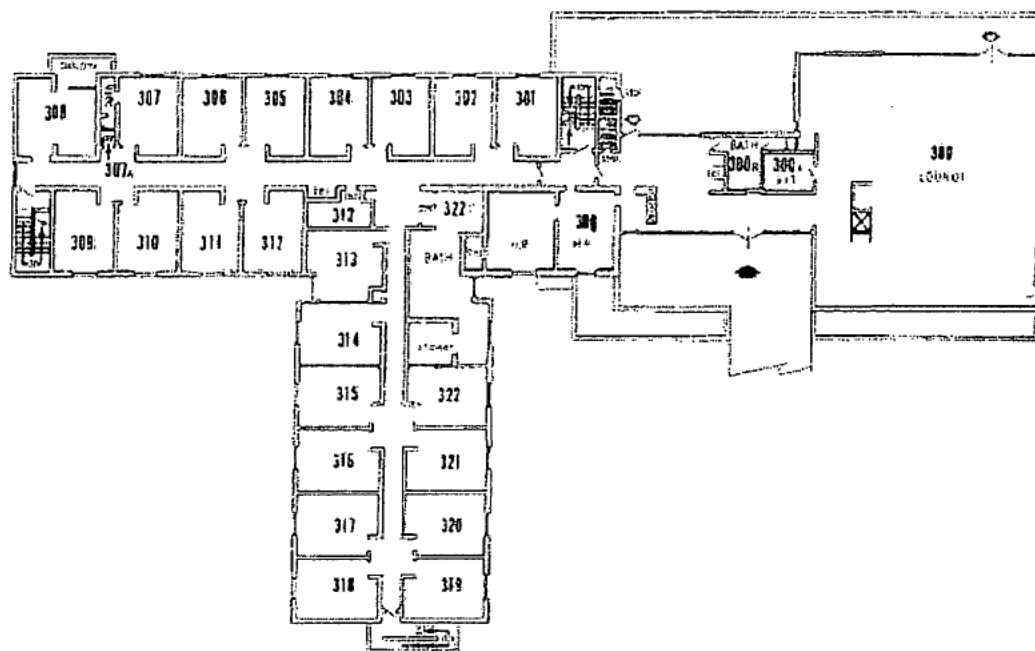
1. GROSS AREA		SQ. FT.
2. ASSIGNABLE AREA		SQ. FT.
3. UNASSIGNABLE AREA		SQ. FT.
4. CIRCULATION		SQ. FT.
5. CUSTODIAL		SQ. FT.
6. MECHANICAL		SQ. FT.
7. CONSTRUCTION		SQ. FT.

NOTE: — FOR DETAILED CLASSIFICATION INFORMATION SEE A.E.D. FORMS PAGES 10 —

STUDENT ROOMS - 3RD FLOOR - 22 3 FLOORS - 58

**OCCIDENTAL CC**

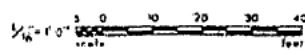
6107/611/58



**H.E.W. AREA CLASSIFICATION**

1. GROSS AREA	10,944	SQ. FT.
2. ASSIGNABLE AREA	7,504	SQ. FT.
3. NONASSIGNABLE AREA		SQ. FT.
4. CIRCULATION		SQ. FT.
5. CUSTODIAL		SQ. FT.
6. MECHANICAL		SQ. FT.
7. CONSTRUCTION		SQ. FT.

NOTE: — FOR DETAILED CLASSIFICATION INFORMATION SEE H.E.W. CODE FORMS PAGES... TO...



DATE	REV.	REVISIONS	AUTH.	CA.	CHKD.
6-80	A	REV. TO DATE	D.E.		

STUDENT ROOMS - 3RD FLOOR - 22 3FLOORS

<b>OCCIDENTAL C</b> 1600 CAMPUS ROAD LOS ANGELES	
<b>BRAUN HALL</b> <b>THIRD FLOOR PLAN</b>	
DRAWN BY: <i>M.J.J.</i> CHECKED BY: <i>[Signature]</i> APPROVED BY: <i>[Signature]</i>	DATE: <i>1-10-72</i> SHEET NO.: <i>18</i> TOTAL: <i>18</i> of <i>18</i>

05/13/2014 10:07:06

## Exhibit 8

05/10/59

To do:

- switch to Jenny
- screen grab
- non-Oxy email
- ok in CSP
- GNVH - piece of paper
- this kid - ok now
- other kid - 2x - Brent to km. went down town.
- getting pain

John

Grovers - held back, want to  
G: go to bathroom, then go in  
to bathroom,

drunk

7-8:30 soccer game

8:30 soccer game

- 10:00 pm 5 shots of  
✓ vodka

dixie cups 3-4 w/o  
shots

but not full - 3 more shots

(2nd fl.) added of drunk

(3rd fl.) - net to  
Oxy penny - net to

beer pong table

RA - came in, 1/2 need to  
leave, make go away

20-30 min - upstairs



10pm

2-3 more shots -  
down/bottom of solo  
cup

check out soccer/water polo  
ATG party

2-3 blocks / 1 friend gets  
text from water polo  
- nothing going on - so  
run into another group

some guys go to water polo -  
bc of withdrawal  
garn beers - 5 ~~am~~

continuous drinking  
husbandly fight



cornered ~~party~~ stopped by  
(un)pros safety

group decides to go back  
to dorm

wanted to go to Fiji

got 1/2 way to gate  
decide - way too drunk

Team friend passed  
decided to go back

friend who helps: chloe  
back to dorm - not sure if  
she stayed / left

stayed in bed for long passed  
time - no concept of  
of time - before mid  
night

extrig people @ this time -

it's clear that extrusion  
time + interaction

+ texts by John

Angle - went  
b/w time out to bed

don't remember waking up  
but found self on 2nd  
floor; helped take hallway

"dance party" - love dance  
while drinking

05/19/2014



Gavin - John roommate

Sees G, my idiot roommate  
is dancing -

2-3 ♀ - Gavin's friends

John pulls her into room  
to dance, start dancing

G + girls leave pretty  
immediately after

So, by

11:39 pm - Angie starts crying  
bc they went to check on  
her

A calls 3 times x

05/19/2014

2  
11:40 Angie calls

Angie comes to [REDACTED]'s Room

Came in around 11:45?

Whineson - guy  
Angie - making out on bed;

John - tells you to get  
Rd of friends

Whineson - brings vodka,  
taking smgs off of  
~~body~~ bottle. - 4 smgs

Angie stops you

Whineson + Angie - see  
something wrong; try up  
to get you out of there



12:30 AM - get text

John - "the second the  
key yonre away from  
them, come back"

they walk e back; turn  
off light + put her  
in bed.

stay in room is man

~~for~~ Jameson - stay  
a lot of people, make  
sure you don't leave.

Amn, RAS, & hot juice who  
Jameson, Ange?

RA - putting on a test  
not drunk

05/13/2014

Jensen  
↓

texting w/ John - "get him  
to leave"; tells him RA  
is there

"<sup>ref</sup> go to bathroom" - John  
tells her,

went to stairs down to  
D's Room;

10 ft away from garage  
wh: never been this  
drunk.

- Gavin holding hair
- going to room
- "knew she was going  
to go do"

05/13/2014



finish treaming up  
not sure what happened  
next?

Wetked 2-3 doors to room  
"they have a system" & Govin  
if either of them tells  
her

~~Govin~~

2-3 doors  
down -  
not sure

Sunday  
after Aiden  
tells you

knocked on door, John  
pulls you in - playful

closes door; automatically  
lock. key activated.

⑦ Grim disappears -  
could be piece of  
paper

---

lights - no

window open / blind s -

blocks window

don't remember seeing  
his face / blockiness -  
can't see.

- don't remember that much  
being on top.



threw up -

"I threw up"

"Gave piece of gum"  
- not sure what happened  
to that.

John - and condom was  
involved - 2 wrappers

texted him - "Isky over  
and over

~~again while a~~

do you have a condom?

might have checked

blurred - 10sted

friends made timeline

"I think I had sex w/  
John 10st night"

"I took you out of room"

John - ~~10st~~

↳ see him drinking  
→ double what I drank  
→ water pao - 5 beers.

@ 9am.

water prohibition

⊗ 9-11  
10/10  
→

05/13/2014

John - insulted Captain's  
sister + had to drink more.

---

Garvin + Aden → not sure  
if friends

---

No idea when they come in  
they leave

piece of paper - gone

which makes it clear that  
it was there early on

come in - see us - quickly  
leave

at some point, [REDACTED] left

(?) 1-2 minutes after  
very shortly after



they come in.

Aden + \_\_\_\_\_ knocked on  
door and came in to  
talk to you but couldn't  
get in

yelling/talking through the  
door

don't recall what was said

knock - open door + h- [REDACTED]  
Aden's back in.

Gunn - ? had key, not  
using it

05/10/2014

~~drake~~

Gavin - Gavin common person,  
felt completely nauseous

~~John - could beat T Gavin,~~

John - could beat T Gavin,

- screwed Gavin off?

Aiden - big guy - could have shut  
he is tall

(Handled it better than anyone  
else

lots of ♀

Gavin friends - Megan, M.W.

Aiden - lives on floor



in room for I hr - given  
texts + time line w/ friends

---

get

comes back on  
things pick up

---

leave about 4h home  
later - not sure why

wake up Sunday Am in own  
room; text. I think I'm  
going

05/10/2014

"most drunk @ 2am"  
- given text msgs.

- Jameson texted at 1:09pm  
- in room w/ [REDACTED]  
asked if ok - didn't reply

- only person

~~12/30/12~~

① ~~12/30/12~~ 1:09pm  
~~12/30/12~~

② D: 12:50 leave  
1am-2am ③



leave but left items -

got dressed.

- lost one evening the first time
  - second evening - took it off
  - left belt in room.
- 

don't remember ~~leaving~~ leaving

belt on 3rd floor  
by Angie's room.

Angie - I thought I put  
you to bed already,  
walks to room

Genevieve - Roommate

05/15/2014



to room.

Genevieve gets me

G+

friends help her into  
sleep shorts, take  
makeup + nonwearing PJ's

take to bedroom, walked  
about room in sleep.

G takes the phone - passed  
her off, convinced  
her to give it back to  
her.

G takes a shower + leaves

05/10/2014

looking for room key,  
phone + shoes - walked  
to Stemie - not sure  
how she got vic key  
(card doesn't work)

September 12th - Danny  
met night before -  
fits in his 1-p and talks

G: starts calling her - only  
gave 10 minutes

Danny picks up phone,  
tells she's really  
going to it w/ someone

G: freaked out &  
assumes Danny is just

05/10/2014



screening w/ her.

Jane may have talked  
to her to tell her she's  
at Stewie.

G:

looks like a Stewie + 2-3  
friends - can't walk -  
get a/needs help.

in pajamas - get back  
- no phone  
- matt missed

wake up drunk - 9 AM ext

- didn't realize it first  
- type on Skype different

05/10/2014

G- still in room.

**Jane** went to front street  
w/ laptop to talk to preo  
on Skype.

Rosene - texted; no memory of  
seeing her - she checked in.

- let's grab some breakfast

Maddie - run into her -  
tell her to go to bed; watch dumb  
to movies.

go get bfst w/ Rosene  
on Green Bean - felt  
horrible - she /-

Saturday - didn't eat  
the previous day

Brunch - cut down n/food  
smaller

not napier - still drunk -  
Really Nurses - but not  
nursing

go to gym - sweat it out  
10 min on elliptical - fat  
burnable

before brunch, put

Angie + e make timeline

05/10/2014



<sup>e</sup>  
- ~~she~~ was convinced she had sex but friends were convinced not.

- based on victim's  
not statements made by  
him;

he completely wasted -  
eyes crossed  
② "he wasn't acting like  
himself;"  
③ stumbling; - 100%

---

leave gym - 4-5 pm

go to wardrobe

05/10/2014

- drag through work @ Wacky

texted John @ 12pm

- asking for belt + earrings  
- doesn't return text until 8pm

- had earrings, no belt  
- wanted to ask in person  
about what had happened

"drunk until 3pm"

not @ dorm so can't pack  
it up - he asks her to  
come later

go to Room @ 8<sup>25</sup>pm get  
glasses

Proctor Shurtz.

added 3 friends of FB Wilkey  
sends FB msg

Aden - "how are you doing?"

add:

"did, sort of. do you know  
what happened?"

Know @ point what he  
I was going to me -

Aden comes to Room  
G leaves - knows why  
no 5 there

05/19/2014



Arden says: 'John' + e had  
sex; G + A walked in; tried  
to talk them out the door  
to get you out of there;  
asked if ok?

**Jane** in shock bc ~~she~~  
was here first time  
having sex.

G - find her + walk to  
quad to talk

'you're on birth control'  
- Champs. future.

---

takes back to dorm to  
get Arden's neutrins

emmons?

— "Nurse on duty"

Not helpful

"had had apparently  
to have unprotected sex"

didn't ask are you OK?

ask about Plan B — not 18

try to find Alana to go to  
CVS.

Nothing shown that SA/ violence

05/19/2014



looking for ride to cvs.

G: hesitant about ~~was~~ asking

~~Quentin~~

Quentin Buckner

"too aggressive"

maintained friends

efforts convince her  
to hook up w/ her.

Quentin - can you give us a ride?

Quentin - no questions asked,  
yes.

G & E goes w/ Quentin

- can't get bc pop'n w/ men

05/19/2014

find 29 pharmacy in  
Burbank - get it

email mo + Gabe:  
~~12pm~~ 12pm deadline -  
medical emergency

take foul in car

go to Green Bean - w/ David  
(G stays at daem)

Deanna +

11:30 / PM

See John @ Brown, asks  
if they can talk

05/10/2014

"did we have sex last night?"

"yes"

How do you know?

I found ~~both~~ condoms,  
+ 2 condom wrappers  
+ kys

don't want to talk about  
it?

Sat down @ Brown

tried piecing things  
together.

found belt

talk about going to CVS/  
Walgreens

+

05/10/2014



went back to rooms.  
5 min later & not dae talk,  
met again outside  
G would punch him

- first time
- everything I've learned now  
seemed really understanding

"his first time was  
similar"



He's dae talk before

16 when it happened.  
And pretty big.

Oct 6

11 yrs - 18 yrs.

John - not sure if she  
knows her age.

- not listed on FB

Not friends on FB -  
Not friends on FB.

talked on trade

- doesn't like pb
- DNA map - not a  
huge mother person

talked for another 20 min  
on work, left + went  
home

05/10/2014



"Apologized profusely"  
- both times he talked

emmons -

he left a second time - no den  
chart condom

went to class, need to go to  
emmons, no one calls

get a counselor + make appt

call emmons - receptionist?  
no

"need to talk to counselor today"  
can't sleep on Sunday  
slept in AM

11 am - meet w/ James

did rapid HIV  
+ more work

- ① did you want medical attn?
- ② gave Naddia her info
- ③ Naddia calls you
- ④ Get Naddia out of  
Emmonso
- ⑤ Naddia calls - let's meet  
at 4, but let's meet  
now
- ⑥ Meet w/ Naddia  
- Santa Monica Clinic  
- university  
- options

11 am - meet w/ James

did read HIV  
+ more work

① did you want medical attn?

② gave Neddin her info

③ Neddin calls you

④ Get help out of  
Emmonso

⑤ Neddin calls - let's meet  
at 4, but let's meet  
now

⑥ Meet w/ Neddin  
- Santa Monica Clinic  
- university  
- phone

05/10/2014



Started to go to class

John - sends text - "Where  
are you?"

2.5 MNF

4 hr class F

1.5 hrs MNF group lecture

.5 hr break + eat / sun

Spit into groups

$\frac{1}{2}$  Innovation Lab

$\frac{1}{2}$  group / room

texts - John - me hat  
some group together

05/10/2014

tell  
tell Mo - what's going on  
+ one says come in  
5pm

got to class, have to sit next  
John "didn't want to  
make a big deal out  
of it"

felt fine sitting next to him  
don't kn

"genuinely seems like a  
good person"

"good judge of character"

A roommate wants to confront  
him // processing to see

G: Had friend 9 months ago  
who had something very  
smile

"I think."

C: Know when drunk,  
if you have some sort of  
control.

[don't think he would  
have done this sober.]

texts: confrontational

coercive

coercive

authoritative

good girl

05/10/2014



John

"good girl" - "you're one's worst,  
my girl."

Gavin -

Assie video / NZ

- cover of night
- intentionally getting her drunk
- reminder to get

Went to  
know the side of Forey

Anna asks - "do you think  
he feels guilty?"

There no one

Asked.

I'm so sorry, I wish it was  
~~better~~ for you. <sup>mixed</sup>  
<sup>special</sup>

I'm glad we're still talking.

Just want you to know I'm  
not a bad guy.

Ann:

James - volunteer  
if he's mandatory  
or confidentially

left  
New York  
9150

Dad - had to tell com sch

05/19/2014

before  
10 AM

- scraped knee -
- went to cooler at some point in night
- put marks on tongue.
- scratch on back

→ no clue - found 10 ft  
night  
(~~searched~~  
Monday)

→ no clue  
- disturbed  
don't not know.

~~AB~~

Da can prosecute w/o  
your consent.

TH Ronko + dr let clerge

since I found out, I have not  
done any work

Concentration is shot.

Alex Puerto

DNA Hrb5

Reddy + Gasore.

→ sent Alex, Hrb5 ✓

05/10/2014

05/10/2014

05/10/2014

# Exhibit 5





OCCIDENTAL COLLEGE  
1600 CAMPUS ROAD  
LOS ANGELES, CA 90041-3314

December 13, 2013

Mr. *John Doe*

Dear *John Doe*:

I am writing to inform you of the outcome of the December 7, 2013, hearing before the external adjudicator regarding the alleged violations of the Sexual Misconduct Policy involving the complainant, *Jane Doe*.

Based on the adjudicator's consideration of the information received at the hearing, her review of the investigative report and accompanying witness summaries prepared in this matter, and her review of the Occidental College Sexual Misconduct Policy, the adjudicator has made the following findings, by a preponderance of the evidence:

**Findings of Responsibility**

Sexual Assault:	Responsible
Non-Consensual Sexual Contact:	Responsible

**Sanctions**

Sanctions for the above findings will be communicated in a separate letter, no later than December 20, 2013. In addition to information presented at the hearing, under the policy, you have the opportunity to submit a written statement about impact of this incident and/or requested sanctions. This information will be taken into consideration when making a determination regarding sanctions. If you choose to submit a written statement, please do so by 5:00pm, Wednesday, December 18, 2013.

0  
6  
2  
F  
C  
N  
C  
F  
F

## Appealing the Findings

Upon notification of the sanctions, you will have the opportunity to appeal this outcome in writing. Although the policy typically requires that an appeal be filed within five business days, the time frame for the appeal process will be extended given the College's closure between December 21, 2013 and January 5, 2014. If you wish to file an appeal, the appeal must be submitted, in writing, to the Hearing Coordinator in the Title IX Office by January 6, 2014. I will provide additional information about the appeals process in the sanctions letter. In the interim, the appeals process is outlined in the Sexual Misconduct Policy.

Please let me know if you have any questions or would like further clarification.

Respectfully,



Cherie A. Stricca  
Title IX Hearing Coordinator  
323.259.1358  
[scricca@oxy.edu](mailto:scricca@oxy.edu)

cc: Lauren Carella, Interim Title IX Coordinator

05/13/2014

05/10/2014

65-1972614

# Exhibit 6

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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SAN DIEGO  
(858) 485-9526  
FAX (858) 485-9412

OUR FILE NUMBER:

006159.00010  
11769206.1

December 9, 2013

***VIA EMAIL AND FIRST CLASS MAIL***

**CONFIDENTIAL COMMUNICATION**

Lauren Carella  
Interim Title IX Coordinator  
Occidental College  
1600 Campus Dr.  
Los Angeles, CA 90041

**Re: External Adjudicator's Decision**  
**Complaint Violation of Occidental College 2013-14 Sexual Misconduct Policy**  
**Complainant: Jane Doe**  
**Respondent: John Doe**  
**Hearing Date: December 7, 2013**

Dear Ms. Carella:

On December 7, 2013, I served as the external adjudicator in the hearing of the above-referenced matter. Based on the evidence received at that hearing, the investigative report and accompanying witness summaries prepared in this matter, and Occidental College's Sexual Misconduct Policy, I provide the following decision.

**I. Introduction**

**A. Procedural Background**

**1. Pre-Hearing Background**

In August 2013, Occidental College (the "College") implemented a new Sexual Misconduct Policy ("Policy"). (A copy of that Policy is attached as Exhibit "1.") Among the conduct prohibited by the Policy is sexual assault of an Occidental student by another Occidental student and Non-Consensual Contact of an Occidental Student with another Occidental Student. (Exhibit "1," Other Forms of Prohibited Conduct, p. 10.) The Policy provides a process to report a complaint of alleged misconduct and to resolve such complaints. (Exhibit "1," Campus Reporting Options, p.22 and Appendix A. Resolving Complaints Against a Student, p. 31.)



Lauren Carella  
December 9, 2013  
Page 2

In the matter at hand, on or about September 15, 2013, *Jane Doe*, the Complainant, reported an alleged violation of the Policy by *John Doe*, the Respondent. The Complaint states that during the early morning of September 8, 2013 the Respondent had sexual intercourse with her without her consent because, at that time, she was incapacitated by alcohol consumption.<sup>1</sup> Pursuant to the Policy, the College initiated an investigation of the reported violation. The College engaged Public Interest Investigations, Inc. ("PII") to conduct that investigation, and PII's lead investigator was Cathleen Watkins.

As the lead investigator, Ms. Watkins was present in all witness interviews, and those witnesses were 1. Genevieve Babcock, 2. Maddie DiMarco, 3. Danielle Dirks, 4. Aidan Dougherty, 5. Liam Driscoll, 6. *Jane Doe*, 7. Jamison Hayward, 8. Angela Peckham, and 9. Chloe Welmond. The Respondent's attorney, Mark Hathaway, did not make the Respondent available to PII for interview. Mr. Hathaway, however, did provide PII with various text messages from the Respondent's phone during the relevant time period. Based on all of this information, PII prepared a written report, along with summaries of the witnesses' testimony, that explained and provided context for the events at issue in this matter. (That report and the witness summaries are attached Exhibit "2" to this decision.)

## 2. Summary of Hearing Structure and Procedure

The following individuals were invited to be witnesses at the hearing: 1. Genevieve Babcock, 2. Aidan Dougherty, 3. Jameson Hayward, 4. Angela Peckham, 5. Gavin Rose, and 6. Chloe Welmond. Before the hearing, Mr. Hayward stated that he would not be attending the hearing.

The Hearing Officer for this matter was Cherie Scricca. The Complainant and the Respondent were present throughout the hearing. Professor Movindri Reddy was the Complainant's advisor, and she was present throughout the hearing. Amy Munoz, Occidental Associate Vice President, was the Respondent's advisor, and she was present throughout the hearing. Ms. Watkins, the lead investigator, was also present throughout the hearing.

After the Hearing Officer opened the hearing, the external adjudicator advised the parties that she had no prior connection to the College, the Complainant, the Respondent, their advisors, the Hearing Officer, or the Interim Title IX Officer. The external adjudicator then asked Ms. Watkins to present an opening statement. Ms. Watkins presented a brief opening statement during which she summarized the investigative report focusing on the areas of agreement and disagreement. Following the conclusion of Ms. Watkins opening statement, the external adjudicator asked Ms. Watkins questions, and the external adjudicator asked Ms. Watkins questions that the Complainant and Respondent had submitted in writing. After Ms. Watkins' questioning was completed, the Complainant provided an opening statement. After the Complainant completed her opening statement, the external adjudicator asked the Complainant questions, and the external adjudicator asked the Complainant questions submitted in writing by

<sup>1</sup> Both the Complainant and the Respondent are freshman at the College. At the time of the incident, the Complainant was seventeen years-old, and the Respondent was eighteen years-old. With the exception of Professor Dirks, all witnesses in the investigation and the hearing were freshmen at the College.

Lauren Carella  
December 9, 2013  
Page 3

the Respondent.<sup>2</sup> After the Complainant's questioning was completed, the Respondent provided an opening statement.<sup>3</sup> After the Respondent completed his opening statement, the external adjudicator asked the Respondent questions, and the external adjudicator asked the Respondent questions submitted by the Complainant in writing.

Following the Respondent's opening statement, the following witnesses were called in the order listed below: Gavin Rose, Angela Peckham, Aidan Dougherty, Geneviève Babcock, and Chloe Welmond. The external adjudicator asked each witness questions and asked the written questions submitted by the Complainant and Respondent. At the conclusion of those questions, the external adjudicator asked both the Complainant and the Respondent whether either had additional questions. If the Complainant, the Respondent, or both had additional questions, the external adjudicator posed those additional questions to the witnesses.

## **B. Summary of the Complaint and the Parties' Positions**

### **1. Overview of Complaint**

This hearing concerned two forms of conduct prohibited by the Policy: sexual assault and non-consensual contact. The two forms of prohibited conduct at issue in this matter, along with their Policy definition, are set forth below:

**Sexual Assault:** Having or attempting to have sexual intercourse with another individual:

- By force or threat of force;
- Without effective consent; or
- Where the individual is incapacitated.

*Sexual intercourse* includes vaginal or anal penetration, however slight, with a body part (e.g. penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact.

---

<sup>2</sup> The external adjudicator asked each parties' written questions to the other party and each witness, unless those questions had already been asked and responded to, related to the Los Angeles Police Department investigation, or were not relevant to the subject matter of this hearing.

<sup>3</sup> The Respondent's Advisor, Ms. Munoz, stated to the Hearing Officer that Ms. Carella had told the Respondent that he did not need to prepare an opening statement, and as a result, the Respondent had not prepared an opening statement. Ms. Munoz further advised the Hearing Officer that, despite this alleged instruction by Ms. Carella, the Respondent wished to make an opening statement. In light of this issue, although the Respondent proceeded with his opening statement, the external adjudicator provided the Respondent with additional time before his closing remarks to determine what additional evidence, if any, he wished to present in support of his position.

Lauren Carella  
December 9, 2013  
Page 4

**Non-Consensual Contact: Having sexual contact with another individual:**

- By force or threat of force;
- Without effective consent; or
- Where the individual is incapacitated.

Sexual contact includes intentional contact with the intimate parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without permission, intimate parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.

(Exhibit 1, p. 10.)

As stated previously, the Complainant states that the Respondent engaged in sexual assault and non-consensual sexual contact because he engaged in sexual intercourse with her when she was incapacitated by alcohol consumption. The Policy defines incapacitation as follows:

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

Incapacitation may result from the use of alcohol and/or drugs. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impact 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.

Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have known that the Complainant was incapacitated.

(Exhibit 1, p. 13.)

CONFIDENTIAL

Lauren Carella  
December 9, 2013  
Page 5

The Policy provides the following guidance regarding alcohol consumption in the context of sexual contact and incapacitation:

**Alcohol and Other Drugs:** In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, sexual violence, stalking or intimate partner violence and does not diminish one's responsibility to obtain consent.

(Exhibit 1, p. 13.)

The Respondent states that the Complainant was not incapacitated and that he asked for and obtained consent for sexual intercourse from the Complainant. The Respondent admitted that he knew the Complainant had consumed alcohol before the two had sexual intercourse; however, he directed the external adjudicator's attention to the following provision in the Policy, "Consumption of alcohol or other drugs alone is insufficient to establish incapacitation." As discussed below, the Respondent states that the Complainant's conduct showed that, despite her alcohol consumption, she was not incapacitated during the relevant time. Respondent also states that on the evening in question he, too, was significantly intoxicated by alcohol consumption.

## **II. Analysis and Findings**

### **A. Standard of Proof**

With respect to the standard of proof for this matter, the Policy states:

The hearing panel will determine a Respondent's responsibility by a preponderance of the evidence. This means that the hearing panel will decide whether it is 'more likely than not,' based upon all relevant information, that the Respondent is responsible for the alleged violation(s).

Thus, the external adjudicator has used the preponderance of the evidence standard in making all findings in this decision.<sup>4</sup>

<sup>4</sup> Because the Respondent attempted to raise the outcome of an Los Angeles Police Department investigation that apparently concerned the events and circumstances at issue in the hearing, it is important to recognize that both the elements and standard of proof in a criminal investigation differ from the elements and standard of proof in the Policy.

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**B. Sexual Assault**

1. Elements of Sexual Assault under the Policy

In making a determination regarding the Sexual Assault complaint, the following elements were evaluated, in the order listed: 1.) Did sexual intercourse occur between the Complainant and the Respondent during the early morning of September 8, 2013? 2.) Did the Complainant demonstrate conduct or make statements that would indicate she consented to sexual intercourse with the Respondent? 3.) If the Complainant demonstrated conduct or made statements that would indicate she effectively consented to sexual intercourse, was the Complainant incapacitated at the time she demonstrated such conduct or made such statements?, and 4.) Whether the Respondent knew or should have known that the Complainant was incapacitated?<sup>5</sup>

2. Whether sexual intercourse occurred between the Complainant and the Respondent?

In the Investigator's opening statement, she stated that there was agreement that sexual intercourse occurred between the Complainant and the Respondent. The Investigator stated that the basis for that conclusion was Gavin Rose's statement to the investigators. Mr. Rose shared a dormitory room, on the second floor of Braun Hall, with the Respondent. Mr. Rose stated to the Investigators that on the evening in question, when he opened the door to dormitory room he shared with the Respondent, he saw the Respondent having intercourse with a woman, whom based on events earlier in the evening, he understood to be the Complainant. Similarly, at the hearing, Mr. Rose testified that he observed the Respondent naked, on his knees, between the legs of a naked woman, thrusting.

Aidan Dougherty, who also resided on the second floor of Braun Hall, stated to the Investigator and testified that he had a conversation with Mr. Rose during the early hours of September 8, 2013. In that conversation with Mr. Rose, Mr. Dougherty learned from Mr. Rose that 1) the Respondent and the Complainant were in the dormitory room that Mr. Rose shared with the Respondent, 2.) the Complainant and the Respondent were both intoxicated, and 3.) the Complainant had vomited earlier. Mr. Dougherty told the investigators and testified during the hearing that in response to learning this information, he expressed concern to Mr. Rose regarding the Complainant. Mr. Dougherty stated that in response to his expression of concern, Mr. Rose gave him, Mr. Dougherty, the key card and code for his dormitory room and stated that he could go check on the Complainant.<sup>6</sup>

<sup>5</sup> Although the definition of sexual assault under the Policy also includes sexual intercourse obtained by force or threat of force, the external adjudicator finds that "force" or "threat of force" were not factors in this matter. The external adjudicator expressly finds that the Respondent's emails to the Complainant on September 8, 2013 between 12:31 a.m. and 12:55 a.m. do not constitute "force" or "threat of force" under the Policy. Similarly, the external adjudicator finds those emails do not constitute coercion under the Policy.

<sup>6</sup> Mr. Rose told the investigators that he did not give his key card or code to anyone. At the hearing, Mr. Rose credibly testified that he could have given his key card and code for his room to someone and not remember doing



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Mr. Dougherty stated to the investigators and testified at the hearing that he then proceeded to the Respondent's room and discovered a piece of paper in the area where the swipe card would be placed. (Mr. Dougherty later learned that placement of paper was a signal between the two roommates that the other roommate required privacy for interactions with a woman.) Mr. Dougherty stated to the investigator and testified at the hearing that he removed the paper in the key card area and opened the dorm to the Respondent's room. Mr. Dougherty stated that he observed the Respondent on his bed naked, but with shorts in front of his crotch, and that the Complainant was in the Respondent's bed, under the covers.

Finally, the Respondent testified at the hearing that he had sexual intercourse with the Complainant during the early morning of September 8, 2013.<sup>7</sup>

Accordingly, based on the testimony of Mr. Rose, Mr. Dougherty, and the Respondent the external adjudicator finds that the Respondent had sexual intercourse with the Complainant during the early morning of September 8, 2013.

3. Did the Complainant demonstrate conduct or make statements that would indicate she consented to sexual intercourse with the Respondent?

Angela Peckham, the Complainant's friend, accompanied the Complainant for substantial periods during the evening of September 7, 2013 and the early morning of September 8, 2013. Ms. Peckham stated to the investigators and testified at the hearing that at one point during the evening when she became separated from the Complainant, she discovered that the Complainant had gone to the Respondent's room. Ms. Peckham also told the investigators and testified at the hearing that upon discovering that the Complainant had gone to the Respondent's room, she and her friend, Jameson Hayward, also went to the Respondent's room. While in the Respondent's room with the Complainant, Ms. Peckham observed the Complainant and Respondent kissing and at one point observed the Complainant on top of the Respondent while kissing him. Ms. Peckham also stated to the Investigators and testified at the hearing that the Complainant had taken off her shirt while dancing with the Respondent.

The Complainant and the Respondent also exchanged text messages after Ms. Peckham and Mr. Hayward removed the Complainant from his room and returned the Complainant to her dormitory room. During that period, the Complainant sent a text message to the Respondent asking whether he had a condom, and after he replied that he did she communicated that she would return to his room in "two minutes." Following that exchange, the Complainant

so because he does so regularly that he might not remember doing so. The external adjudicator believes that this information sufficiently explains why Mr. Rose did not remember providing his key card and code to Mr. Dougherty on September 8, 2013.

<sup>7</sup> The text messages between the Complainant and the Respondent as well as the text messages between Mr. Rose and the Respondent support the conclusion that the Complainant and the Respondent had sexual intercourse; however, in light of the Respondent's admission coupled with Messrs. Rose and Dougherty's testimony on this issue, an analysis of those text messages to determine whether sexual intercourse occurred between the Respondent and the Complainant was unnecessary.

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participated, through text messages with the Respondent, in creating a ruse to avoid Mr. Hayward and her Resident Assistant, who were outside the Complainant's room, so that she could return to the Respondent's room. The Complainant followed the ruse to avoid Mr. Hayward and her Resident Assistant and returned to the Respondent's room.

The Respondent testified that he asked the Complainant whether she consented to having sexual intercourse with him shortly before they engaged in sexual intercourse. Based on the fact that both the Complainant and the Respondent testified at the hearing that they did not recall any conversation between the two when the Complainant returned to the Respondent's room after eluding Mr. Hayward and her Resident Assistant, coupled with the Respondent's level of intoxication, the external adjudicator does not credit the Respondent's testimony on this point.

The external adjudicator, however, finds that the Complainant's text messages, as mentioned above, coupled with her actions in returning to the Respondent's room after that exchange of text messages are conduct and statements that would indicate that she consented to sexual intercourse with the Respondent. Accordingly, the external adjudicator finds that it is more likely than not that the Complainant engaged in conduct and made statements that would indicate she consented to sexual intercourse with the Respondent.

4. If the Complainant demonstrated conduct or made statements that would indicate she consented to sexual intercourse with the Respondent, was the Complainant incapacitated at the time she demonstrated such conduct or made such statements?

Under the Policy, "evaluating incapacitation requires an assessment of how the consumption of alcohol...impact[s] decision-making ability; awareness of consequences; ability to make informed judgments; or capacity to appreciate the nature and decision quality of the act. The evidence that the external adjudicator considered and credited on this issue is set forth below.

Ms. Peckham testified that after the soccer match on September 7, 2013, between 9:30 p.m. and 10:00 p.m., she and the Complainant were in various rooms on the second and third floor of Braun Hall. Ms. Peckham observed the Complainant drink three to four shots of vodka. During that same time, she observed the Complainant drinking vodka mixed with orange juice out of an orange juice bottle. Maddie DiMarco stated to the investigators that she also observed the Complainant drinking shots of vodka during this same time period. Ms. Babcock observed the Complainant drinking the orange juice and vodka drink when the Complainant returned to their room on or about 10:00 p.m. Ms. Babcock observed that the Complainant had been drinking, but was "pretty lucid."

Before 11:00 p.m. on September 7, 2013, the Complainant and Ms. Peckham left the dormitory and campus, and they were walking with a group of the students in search of a party. While the Complainant was walking with that group, Ms. Babcock, who was walking with another group of students, encountered the Complainant. Ms. Babcock observed that, at this time, the Complainant was more impaired than she had been in their dormitory room before she left that

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room with Ms. Peckham. At this time, the Complainant approached Ms. Babcock with an uncharacteristically high-pitched voice and was stumbling. The Complainant also fell during this period.

The group of students that the Complainant was with began walking towards to Braun Hall, the dormitory where the Complainant resides, and the group discussed a plan to walk to Mt. Fiji, a hill behind the College. As the students approached Braun Hall, the Complainant advised Ms. Peckham that she was not going to Mt. Fiji because she did not think she could walk up the hill because of her intoxication. After the Complainant made that statement to Ms. Peckham, Ms. Peckham communicated to Mr. Hayward, who was also with that group of students, that she was worried about the Complainant's level of intoxication. Because of that concern, Ms. Peckham and Mr. Hayward, decided to stay behind to take care of the Complainant because of her level of intoxication.

At this time, the Complainant became separated from Ms. Peckham and Mr. Hayward, and encountered Chloe Welmond. At approximately, 11:00 p.m., Welmond walked the Complainant to the front entrance of Braun Hall. Ms. Welmond observed that at that time the Complainant had a hard time walking, was slurring her words, looked very tired, and did not look well. Mr. Hayward told the Investigator at this time, Ms. Peckham told him she was "a little worried" about the Complainant because of her level of intoxication.

After returning to her room, the Complainant went to the second floor of Braun Hall and encountered Mr. Rose. Mr. Rose stated that the Complainant appeared drunk and was leaning up against the wall for support. Mr. Rose then observed the Complainant walk into the dormitory room he shared with the Respondent.

Shortly thereafter, Ms. Peckham discovered that the Complainant was in the Respondent's room. Upon discovering that the Complainant was in the Respondent's room, Ms. Peckham and Mr. Hayward went to the Respondent's room. Ms. Peckham observed that the Complainant was acting "sillier" and "crazy." While in the Respondent's room, Ms. Peckham observed the Complainant drinking swigs of vodka from a vodka bottle. During this time, the Complainant removed her shirt while dancing and was on the Respondent's bed "making out." At this time, because she was concerned about the Complainant's intoxication level, Ms. Peckham attempted to take the vodka bottle away from the Complainant, but the Complainant would consistently retrieve the vodka bottle and continue drinking from it.

In light of the above, Ms. Peckham was concerned that the Complainant did not know what she was doing; therefore, Ms. Peckham began attempting to remove the Complainant from the Respondent's room. Ms. Peckham encountered some resistance in her efforts to remove the Complainant from the Respondent's room. As a result, when the Respondent left his room, Ms. Peckham and Mr. Hayward removed the Complainant from the Respondent's room, and they escorted the Complainant to her dormitory room. Ms. Peckham stated that, although she and Mr. Hayward did not carry the Complainant to her room, the Complainant was walking like an intoxicated person; thus, to escort the Complainant to her room, Ms. Peckham and Mr. Hayward

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each linked arms with the Complainant and supported her when they were returning the Complainant to her room.

After Ms. Peckham and Mr. Hayward returned the Complainant to her room, the Complainant sent text messages indicating she was planning to have sex with the Respondent. The Complainant, and the external adjudicator believes on this point, testified that she has no recollection of sending the text messages on September 8, 2013 between 12:31 a.m. and 12:55 a.m. that are Exhibit "4" and "5" to the investigator's report.

After the Complainant left her room to return to the Complainant's room, she vomited in the hallway of the second floor of Braun Hall. Mr. Rose discovered the Complainant vomiting and assisted her by holding back her hair and directing her to the bathroom. The Complainant then returned to the Respondent's room. The external adjudicator recognizes that the fact that Complainant successfully navigated herself, under her own power to the Respondent's room, indicates both that, at the time, she had an 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.

As stated above, neither the Complainant nor the Respondent has a recollection of any verbal communication when the Complainant returned to the Respondent's room. The Complainant subsequently recalled giving the Respondent oral sex; however, the Respondent does not recall this act. The Complainant states, and the external adjudicator believes, she has no recollection of having sexual intercourse with the Respondent.

After the sexual intercourse, when the Complainant left the Respondent's room, she encountered Ms. Peckham who escorted the Complainant to her room. At this time, the Complainant did not mention to Ms. Peckham that she had sexual intercourse with the Respondent. When the Complainant and Ms. Peckham arrived at the Complainant's dormitory room, Ms. Babcock was present. Ms. Babcock stated that Ms. Peckham was supporting the Complainant because the Complainant had trouble walking on her own. Ms. Babcock testified, and the adjudicator believes, that at that time the Complainant was not making sense, was slurring her words, could not unbutton her clothing, and could not drink water without it dribbling down her face.

Ms. Babcock stated that when she left their dormitory room for about ten minutes to shower, when she returned, the Complainant had disappeared. Ms. Babcock contacted the Complainant on her cell phone and after struggling to understand the Complainant, she realized that the Complainant was in Stewart-Cleland Hall. Ms. Babcock went to Stewart-Cleland Hall and discovered the Complainant in her pajamas sitting on a male's lap. Ms. Babcock, with the assistance of a male student who had observed Ms. Babcock struggling to keep the Complainant upright, supported the Complainant in the return walk to Braun Hall. Ms. Babcock stated that at this time the Complainant was, in essence, incoherent, and that when the Complaint returned to their room, the Complainant still could not drink water without the water dribbling down her face. The Complainant testified, and the external adjudicator believes, that she does not recall

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these events. Ms. Babcock testified that the Complainant did not mention having sexual intercourse with the Respondent during these events.

The Complainant testified that she learned that she had sexual intercourse with the Respondent when Mr. Dougherty advised her of what he had seen in the Respondent's dormitory during the early hours of September 8, 2013. Mr. Dougherty testified that when he told the Complainant that she had sexual intercourse with the Respondent, she stated that she did not know she had had sexual intercourse with the Respondent, and he believed that statement.

In summary, the evidence shows that the Complainant, who is approximately 5'2" and of normal weight, was already significantly impaired by alcohol no later than 11:00 p.m. on the night of September 7, 2013. Nevertheless, the Complainant continued drinking swigs of vodka from a vodka bottle during the hour to hour and a half. As a result, the Complainant has very little memory of what occurred between the period beginning approximately 11:00 p.m. on September 7, 2013 until she woke up on September 8, 2013. In that regard, the Complainant does not recall creating or sending the text messages contained in the investigators' report during that time period and other events during that period, including having sexual intercourse with the Respondent. Thus, during that period the Complainant's level of intoxication by alcohol was so significant that she experienced "blackouts."

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

5. Whether the Respondent knew or should have known that the Complainant was incapacitated?

If a respondent did not know or should not have known that the Complainant was incapacitated at the time she engaged in conduct that demonstrated consent for sexual intercourse, a respondent does not violate the College's sexual misconduct policy. This concept, however, must be interpreted along with the provision in the Policy that states:

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, sexual violence, stalking or intimate



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partner violence and does not diminish one's responsibility to obtain consent.<sup>8</sup>

(Emphasis added.) The external adjudicator interprets the emphasized portion of the above sentence to mean that if a respondent is intoxicated, such intoxication does not diminish the requirement of determining whether a complainant is incapacitated as an incapacitated Complainant cannot give consent. Thus, whether a complainant is incapacitated must be determined from the perspective of a sober respondent.

In the instant case, this distinction is critical as the Respondent testified, and the external adjudicator believed this testimony, that on the night of September 7 and the early morning of September 8, 2013, he was more intoxicated than he had ever been. Furthermore, Mr. Dougherty credibly testified that on the evening of September 7, 2013, he observed the Respondent's intoxication as a "7," with a "10" being the highest level of intoxication. Also, Mr. Rose also testified that when the Respondent returned from the water polo team initiation, he, the Respondent, was so intoxicated that he canceled his plans to go out, so that he could watch the Respondent to ensure that the Respondent was safe. The external adjudicator finds that this level of intoxication so impaired the Respondent's ability to assess the Complainant's incapacitation that he did not have actual knowledge of the Complainant's incapacitation. Nevertheless, because the determination of the Complainant's incapacity is from the perspective of the sober respondent, the analysis does not end with that determination.

Rather, the external adjudicator must determine whether the sober Respondent should have known whether the Complainant was incapacitated. In the case at hand, a sober Respondent would have observed and fully appreciated the significance of the following facts: 1.) that the Complainant had vomited shortly before they had sexual intercourse; 2.) that the Complainant was swigging vodka in his room after drinking alcohol throughout the evening; 3.) that the Complainant's taking off her shirt while dancing in his room was inconsistent with her customary behavior; 4.) that the Complainant was slurring her speech, 5.) that the Complainant was having difficulty standing and walking; 6.) that the Complainant's friends, who were present in the room, were concerned that Complainant did not know what she was doing and were trying to remove her from his room because of those concerns. In light of these facts, the external adjudicator finds that a sober respondent would have known that the Complainant was incapacitated at the time she engaged in comments or made statements that indicated consent. Accordingly, the external adjudicator finds that the Respondent should have known that the Complainant was incapacitated.

6. Finding

The external adjudicator finds 1.) that sexual intercourse occurred between the Respondent and the Complaint, 2.) that although the Complainant engaged in conduct and made statements that

<sup>8</sup> From a policy standpoint, the perspective of the sober respondent is advisable as the alternative would result in the respondent's intoxication being a defense to sexual assault.

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demonstrated consent to sexual intercourse with Respondent, she was incapacitated at that time; and 3.) that the Respondent should have known that the Complainant was incapacitated at that time. Thus, the external adjudicator finds that all elements of sexual assault under the College's Policy have been established. Accordingly, the external adjudicator finds that the Respondent has violated the College's sexual misconduct policy.

**C. Non-Consensual Sexual Contact**

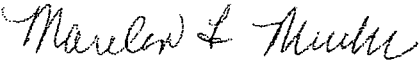
As set forth above, the external adjudicator has found sexual assault as defined in the College's sexual misconduct policy. The elements for a finding of sexual assault under the College's Policy encompass all of the elements of non-consensual sexual contact. Thus, a finding of sexual assault necessarily includes a finding of non-consensual sexual contact. For that reason, and that reason alone, the external adjudicator finds the Respondent also violated the College's prohibition of non-consensual sexual contact as set forth in the Policy,

**III. Conclusion**

Based on the investigative report and summaries of witness statements in this matter and on the testimony received in the hearing on December 7, 2013, the external adjudicator finds that the Respondent engaged in two forms of conduct prohibited by the College's Sexual Misconduct Policy: sexual assault and non-consensual contact.

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Marilou F. Mirkovich  
MFM:mfm  
Enclosures

EXHIBIT 6

05/13/2014

US / 10 / 2014

# Exhibit 7

I love Occidental College, fought hard to be admitted here, and I would be heartbroken if I were forced to leave the people, academics, and college culture that I enjoy so much. Since September 7th, and even before a complaint was filed, I resolved to never put myself in a position where I could use such poor judgment and behave in a manner that is very different from the values that my parents and family sought to instill in me. The text messages in the investigative report show that I was anguishing about the events of that night even before a complaint was filed. I made a commitment to stay away from alcohol and avoid making any new female acquaintances, not only to protect myself but to make sure that I never act in a way that could cause harm or embarrassment to someone else. I know that I screwed up but I want to make clear that I never would have intentionally done anything against someone's will. From my point of view at the time, I liked *Jane* and I thought *Jane* liked me. I thought that she came back to my room because she wanted to be there with me and was as happy and excited to see me as I was to see her. I am devastated and deeply regret that she later started to suffer anxiety, emotional difficulties, and nightmares.

I have gone over the events of that night from what I can remember and what the witnesses said in their statements. I know that my first mistake was to take part in drinking games as part of team initiation earlier Saturday night. I had a choice to make and instead of refusing to drink alcohol, I went along with the heavy drinking that left me more drunk than I ever have been before. In my mind I was celebrating and happy to be part of the team and to be at Occidental and I continued to celebrate in my dorm room. I was happy to be with friends and I was happy when *Jane* came to my room and joined my celebration. I misjudged my own condition and it never occurred to me that she might not be making free choices that night. To me she always conscious and awake, never said she wanted to leave, and never acted as if she didn't want to be with me. In mitigation I want to point out that I will never engage in such conduct again in the future. I am appalled that I got drunk and behaved as I did. This was a huge wake-up call for me and I am embarrassed with myself to have caused such trouble for *Jane*, my family, and the Occidental community.

I accept responsibility for my actions and will continue to work hard to show by my attention to class work, by making positive contributions to the Occidental community, and by complying fully with any conduct restrictions that I should remain at Occidental. I am willing to accept any sanction that will not cause permanent damage to my reputation and prevent me from completing my college education.

Respectfully,  
*John Doe*

EXHIBIT 7



05/13/2014

05/10/2014

# Exhibit 8



OCCIDENTAL COLLEGE  
1600 CAMPUS ROAD  
LOS ANGELES, CA 90041-3314

December 20, 2013

Mr. *John Doe*

Dear *John Doe*,

This letter communicates the sanction resulting from the findings of responsibility for violations to the Sexual Misconduct Policy.

**Findings & Sanction**

In accordance with the Sexual Misconduct Policy, the following sanction is being applied to both findings of responsibility.

Findings of Responsibility:	Sexual Assault Non-Consensual Sexual Contact
Sanction:	Permanent Separation from the College <ul style="list-style-type: none"><li>• Termination of student status</li><li>• Exclusion from College premises, privileges and activities</li></ul>
Effective:	Immediately

**Appealing the Findings**

You may appeal this outcome in writing. The appeal must be in writing and received by the Hearing Coordinator in the Title IX Office by January 6, 2014.

The appeal shall consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal. You may appeal only the parts of this outcome that directly relate to you. Dissatisfaction with the outcome of the hearing is not grounds for appeal.

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The only grounds for appeal are:

- A procedural or substantive error occurred that significantly affected the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- New evidence, unavailable during the original hearing or investigation that could substantially impact the original finding or sanction (a summary of this new evidence and its potential impact must be included).

Each party will be given the opportunity to respond in writing to the other party's appeal. Any response by the opposing party must be submitted to the Hearing Coordinator in the Title IX Office within three (3) business days from receipt of the appeal.

An appeals officer will be assigned to review the appeal and render a written decision on the appeal to the Complainant and Respondent within fifteen (15) business days from the date of the submission of all appeal documents by both parties. Appeal decisions are final.

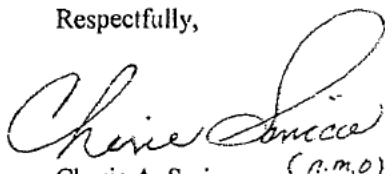
For more information regarding the appeals process, please consult the Sexual Misconduct Policy.

**Adjudicator's Report**

A copy of the adjudicator's report will be made available to you through an invitation to *One Hub*, the same online site used for pre-hearing materials.

Please let me know if you have any questions or would like further clarification.

Respectfully,



Cherie A. Scicca (A.M.O.)  
Title IX Hearing Coordinator  
323.259.1358  
[scicca@oxy.edu](mailto:scicca@oxy.edu)

Cc: Jane Doe  
Lauren Carella, Interim Title IX Coordinator

05/10/2014

PLATE 1/5



05/19/2014

# Exhibit 9

## STAGES OF ACUTE ALCOHOLIC INFLUENCE/INTOXICATION

BLOOD-ALCOHOL CONCENTRATION grams/100 mL	STAGE OF ALCOHOLIC INFLUENCE	CLINICAL SIGNS/SYMPTOMS
0.01-0.05	Subclinical	Influence/effects usually not apparent or obvious Behavior nearly normal by ordinary observation Impairment detectable by special tests
0.03-0.12	Euphoria	Mild euphoria, sociability, talkativeness Increased self-confidence; decreased inhibitions Diminished attention, judgment and control Some sensory-motor impairment Slowed information processing Loss of efficiency in critical performance tests
0.09-0.25	Excitement	Emotional instability; loss of critical judgment Impairment of perception, memory and comprehension Decreased sensory response; increased reaction time Reduced visual acuity & peripheral vision; and slow glare recovery Sensory-motor incoordination; impaired balance; slurred speech; vomiting; drowsiness
0.18-0.30	Confusion	Disorientation, mental confusion; vertigo; dysphoria Exaggerated emotional states (fear, rage, grief, etc) Disturbances of vision (diplopia, etc.) and of perception of color, form, motion, dimensions Increased pain threshold Increased muscular incoordination; staggering gait; ataxia Apathy, lethargy
0.25-0.40	Stupor	General inertia; approaching loss of motor functions Markedly decreased response to stimuli Marked muscular incoordination; inability to stand or walk Vomiting; incontinence of urine and feces Impaired consciousness; sleep or stupor
0.35-0.50	Coma	Complete unconsciousness; coma; anesthesia Depressed or abolished reflexes Subnormal temperature Impairment of circulation and respiration Possible death
0.45+	Death	Death from respiratory arrest

KURT M. DUBOWSKI, Ph.D., D.A.B.C.C., D.A.B.F.T.  
The University of Oklahoma  
Department of Medicine  
Oklahoma City, Oklahoma

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# KNOW YOUR LIMIT

## Approximate Blood Alcohol Content (BAC) In One Hour

Source: National Highway Traffic Safety Administration

Drinks	Body Weight In Pounds								Influenced
	100	120	140	160	180	200	220	240	
1	.04	.03	.03	.02	.02	.02	.02	.02	Possibly
2	.08	.06	.05	.05	.04	.04	.03	.03	
3	.11	.09	.08	.07	.06	.06	.05	.05	Impaired
4	.15	.12	.11	.09	.08	.08	.07	.06	
5	.19	.16	.13	.12	.11	.09	.09	.08	Legally Intoxicated
6	.23	.19	.16	.14	.13	.11	.10	.09	
7	.26	.22	.19	.16	.15	.13	.12	.11	
8	.30	.25	.21	.19	.17	.15	.14	.13	
9	.34	.28	.24	.21	.19	.17	.15	.14	
10	.38	.31	.27	.23	.21	.19	.17	.16	

**Subtract .015 for each hour after drinking.**

One drink equals 1.5 oz. of 80 proof liquor (40%), 12 oz. beer (4.5%), or 5 oz. wine (12%).

*Note: The figures are averages and may vary based on the amount of food in your stomach.*

### INTOXICATION:

- Not having normal use of mental or physical faculties by reason of the introduction of:
  - Alcohol;
  - A controlled substance; or
  - A combination.
- Having a BAC of 0.08 or more.

Texas Penal Code §49.01

**TABC**



[www.legal2drink.org](http://www.legal2drink.org)

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# KNOW YOUR LIMIT

## Approximate Blood Alcohol Content (BAC) In One Hour

Source: National Highway Traffic Safety Administration

Drinks	Body Weight In Pounds								Influenced
	100	120	140	160	180	200	220	240	
1	.05	.04	.03	.03	.03	.02	.02	.02	Possibly
2	.09	.08	.07	.06	.05	.05	.04	.04	
3	.14	.11	.11	.09	.08	.07	.06	.06	Impaired
4	.18	.15	.13	.11	.10	.09	.08	.08	
5	.23	.19	.16	.14	.13	.11	.10	.09	Legally Intoxicated
6	.27	.23	.19	.17	.15	.14	.12	.11	
7	.32	.27	.23	.20	.18	.16	.14	.13	
8	.36	.30	.26	.23	.20	.18	.17	.15	
9	.41	.34	.29	.26	.23	.20	.19	.17	
10	.45	.38	.32	.28	.25	.23	.21	.19	

**Subtract .015 for each hour after drinking.**

One drink equals 1.5 oz. of 80 proof liquor (40%), 12 oz. beer (4.5%), or 5 oz. wine (12%).

*Note: The figures are averages and may vary based on the amount of food in your stomach.*

### INTOXICATION:

- Not having normal use of mental or physical faculties by reason of the introduction of:
  - Alcohol;
  - A controlled substance; or
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**TABC**



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05/10/2014

# Exhibit 10



## RESPONDENT QUESTIONS

WITNESS: *Jane Doe*

1. On September 7th at about midnight were you in *John* and Gavin's dorm room dancing with *John*, lying down on his bed, grabbing *John*, and trying to kiss him?
2. Were you excited and happy?
3. Were your friends trying to get you to leave *John*'s room and go to bed?
4. Before you left *John*, did you agree to come back to his room and have sex with him?
5. Did you tell the investigators that *John* told you to come back down "so he can fuck you"?
6. And you gave *John* your cell phone number so he could text you when to come back, isn't that correct?
7. You went up to your room and waited and then *John* texted you to come back like you had planned, is that correct?
8. When you were going back to *John*'s room, did you try to avoid being seen by Jamison Hayward and your resident advisor?
9. Were you excited when you were able to sneak out past them?
10. Just before you went back downstairs to *John*'s room, did you text a friend back home, "I'm going to have sex now"?
11. Did you text to *John*, "Okay do you have a condom."?
12. And did *John* text back "Yes,"?
13. And did you reply, "Good give me two minutes?"
14. The next day, Sunday, did you tell people that you had a difficult time remembering what happened that night?
15. The next morning, Angela Peckham came over to your room and to help you piece together the events of the previous night, is that right?
16. Did you tell Genevieve that you and Angela 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?
17. You remember details of that night that happened before and after you went back

*Jane Doe* – Page 1

to *John*'s room, but aren't sure you remember what happened during that hour, is that right?

18. But in your statement, you told the investigators about a number of things that you do remember happening about that time, correct?
19. You remembered *John* telling you to come back down so you can have sex, right?
20. You remember giving *John* your cell phone number so he could text you when to come back, yes?
21. You remember texting your friend back home, "I'mgoingtohavesexnow", correct?
22. You remember being excited to sneak out of your room to get back to *John*'s room like you had planned, true?
23. You remember throwing up on the way to his room?
24. You remembered that when you got downstairs to *John*'s room that he gave you a piece of gum? Is that right?
25. You told the investigators that you remembered asking *John* if he had a condom because you had not used any birth control, is that right?
26. And you asked for a condom because you knew you were going to have intercourse, not just oral sex, true?
27. You remembered that *John* left you alone in his room at one point, correct?
28. You remembered that while *John* was out of the room, someone knocked on the door, and asked if you were ok.?
29. You remembered responding three times that you were fine, correct?
30. You told the investigators that you remembered performing oral sex on *John* when you were in his room, correct?
31. And you also remember that *John* said that his roommate Gavin had just came in the room, correct?
32. And Gavin came in the room right when you were having sex, correct?
33. Gavin 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?
34. And Gavin saw that you were conscious because he saw you moving, true?
35. And you were conscious and aware because you heard *John* say that Gavin just came in, and you remember that, correct?

*Jane Doe* – Page 2

36. You remember *John* telling you about Gavin 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?
37. 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?
38. 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?

*Jane Doe* – Page 3

05/10/2014

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# Exhibit 11

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**OCCIDENTAL COLLEGE  
LOS ANGELES, CALIFORNIA**

<p><u>John Doe</u> an individual, Petitioner, v. OCCIDENTAL COLLEGE, Respondent.</p>	}	APPEAL [AMENDED]
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1. Petitioner John Doe is a first-year student at Occidental College.

2. Respondent OCCIDENTAL COLLEGE ("Occidental") is California corporation formed April 20, 1887 and operates as a private, co-educational liberal arts college located in the Eagle Rock neighborhood of Los Angeles, California.

3. Complainant Jane Doe is a first-year female student at Occidental College.

4. On December 20, 2013, Occidental College notified Mr. John Doe by letter that he is to be expelled from the college and must appeal Occidental's findings and sanctions by January 6, 2014. (Exh. 8, page1.) Respondent Occidental College has agreed that the imposition of sanctions will not occur until after final conclusion of the case, including determination of appeals.



1           5.     Mr. *Doe* appeals the findings and sanctions on the grounds that:

2           (a.)   Procedural and substantive errors occurred that significantly affected  
3                 the outcome of the hearing; and

4           (b.)   New evidence is now available that could substantially impact the  
5                 original findings or sanctions. (See Exh. 1, page 45.)

6  
7           PROCEDURAL HISTORY

8           6.     Occidental College is under scrutiny for alleged indifference to sexual  
9                 violence on campus in violation of Title IX, the federal civil rights law that  
10                prohibits discrimination in education on the basis of gender. In April 2013  
11                Occidental College professors Caroline Heldman and Danielle Dirks<sup>1</sup>, in  
12                association with 36 alleged victims of rape or sexual assault at Occidental, filed a  
13                250-page complaint with the U.S. Department of Education's Office of Civil Rights  
14                alleging that Occidental maintains a hostile environment for sexual assault victims  
15                and their advocates and violated Title IX laws against sexual discrimination and the  
16                Clery Act, which requires all colleges and universities that participate in federal  
17                financial aid programs to keep and disclose information about crime on and near  
18                their respective campuses.<sup>2</sup> Compliance with reporting sexual assaults is monitored  
19                by the U.S. Department of Education, which can impose civil penalties, up to  
20                \$35,000 per violation, against institutions for each infraction and can suspend  
21                institutions from participating in federal student financial aid programs. (See 20

22 \_\_\_\_\_  
23                <sup>1</sup>In February 2012, Occidental College Associate Professor of Politics Caroline  
24                Heldman and Assistant Professor of Sociology Danielle Dirks founded the Occidental  
25                Sexual Assault Coalition, a campus advocacy group that has pushed the college to address  
26                what it calls the "rape culture" on campus and with a "mission is to raise awareness of the  
                 sexual assault epidemic." (<http://oxysexualassaultcoalition.wordpress.com/>)

27                <sup>2</sup> Occidental College Sexual Assault Response Subject Of Federal Complaints,  
28                [www.huffingtonpost.com](http://www.huffingtonpost.com) 04/19/2013, Updated: 12/03/2013, Tyler Kingkade, see also  
                 USC, Occidental Underreported Sexual Assaults, *Los Angeles Times*, October 7, 2013,|  
                 Jason Song and Jason Felch.

1 U.S.C. § 1092(f), with implementing regulations in the U.S. Code of Federal  
2 Regulations at 34 C.F.R. 668.46.)

3 7. In September 2013, Occidental College settled with at least ten of the  
4 Occidental student complainants under an agreement negotiated by attorney Gloria  
5 Allred. The ten female complainants received cash payments from Occidental  
6 College and agreed not to participate in the Occidental Sexual Assault Coalition.  
7 Asst. Professor Danielle Dirks criticized attorney Gloria Allred's negotiated  
8 settlement stating that requiring "the women to remain silent and not to participate  
9 in campus activism could have a chilling effect at Occidental."<sup>3</sup>

10 8. In August 2013, Occidental College implemented its new Sexual  
11 Misconduct Policy<sup>4</sup> (Exh. 1; Exh. 6, page 1) that has caused the pendulum to swing  
12 far in the other direction with Occidental discriminating against male students in  
13 order avoid federal penalties and settlement pay-outs for Occidental's past  
14 indifference to the plight of female students.

15 9. On September 16, 2013, Mr. *John Doe* was accused of violating  
16 the Occidental College Sexual Misconduct Policy as follows:

17 *Jane Doe* (a first-year freshman, Class of 2017) alleges that on or  
18 about the early morning hours of Sunday, September 8, 2013 between the  
19 approximate times of 12:50 A.M. and 2:00 A.M., she and Mr. *Doe* (a  
20 first-year freshman, Class of 2017) had sex. During the investigation, Ms.  
21 *Jane Doe* recalled performing oral sex on Mr. *Doe*, but could not  
22 specifically recall having intercourse with Mr. *Doe* in his dormitory room  
23 on the second floor of Braun Hall. Ms. *Jane Doe* alleges that she consumed  
24 multiple alcoholic beverages in the hours leading up to the sexual contact.  
(Exh. 2, page 1.)

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25 <sup>3</sup> Rape Settlement at Occidental College: Victims Barred from Campus Activism,  
26 *The Nation*, Jon Wiener, September 19, 2013.

27 <sup>4</sup> The Policy was developed with the assistance and recommendations of former sex  
28 crime prosecutors Lisa M. Gomez and Gina Maisto Smith, attorneys with the Philadelphia  
law firm of Pepper Hamilton LLP.

1           10. Ms. *Jane Doe* initially denied that she had been raped or sexually  
2 assaulted and did not want to make a formal complaint (Exh. 4, pages 46, 53), but  
3 eventually relented a week later because she was told that 90% of rapes are done by  
4 repeat offenders and Asst. Professor Dirks told her that “*Doe* fits the profile of  
5 other rapists on campus in that he had a high GPA in high school, was his class  
6 valedictorian, was on the water polo team, and was ‘from a good family.’”<sup>5</sup> (Exh 4,  
7 page 41.) Ms. *Jane Doe* also stated that she decided to report what had happened  
8 when she realized how much it had affected her emotionally, while seeing no  
9 reaction from Mr. *Doe*. She noted that he attended his classes without difficulty,  
10 and she “saw that he wasn’t fazed by what had happened at all.” (Exh. 4, page 40.)

11           11. Also on or about September 16, 2013, Ms. *Jane Doe* filed a sexual  
12 assault report with Los Angeles Police Department. (Exh. 4, page 41.) Los  
13 Angeles Police Department Det. Michelle Gomez was in charge of the LAPD  
14 investigation and interviewed Ms. *Jane Doe* and other student witnesses at  
15 Occidental. On November 5, 2013 the Los Angeles District Attorneys Office,  
16 Sexual Crimes Unit declined to prosecute for lack of evidence. Deputy District  
17 Attorney Alison Meyers concluded, after meeting with Ms. *Jane Doe*, that both  
18 parties were drunk and “they were both willing participants exercising bad  
19 judgment” and “[s]pecifically the facts show the victim was capable of resisting  
20 based on her actions.” Deputy Meyers also stated that “it would be reasonable for  
21 him to conclude based on their communications and her actions that, even though  
22 she was intoxicated, she could still exercise reasonable judgment.” (Exh. 3, page 1-  
23 2.)

24           12. On November 14, 2013, Occidental’s investigators submitted their  
25 \_\_\_\_\_

26           <sup>5</sup> On September 20, 2013, four days after Ms. *Jane Doe* filed her complaint, Asst.  
27 Professor Dirks told the LA Times, “I’ve heard from three students since the beginning of  
28 the school year who say they were raped. None of them has been handled appropriately.”  
(Occidental College Chief Asks for Reconciliation after Accusations, *Los Angeles Times*,  
September 20, 2013, Jason Felch and Jason Song.)

1 investigative report that confirmed what law enforcement had found, including that  
2 just before going to Mr. *Doe* 's dorm room to have sex, she texted to Mr. *Doe* ,  
3 "Okay do you have a condom." When Mr. *Doe* replied, "Yes," Ms. *Jane Doe*  
4 texted back, "Good give me two minutes." (Exh. 4, page 93.) Ms. *Jane Doe* then  
5 texted to another friend, "The worlds moving I'mgoingtohave sex now." (Exh. 4,  
6 page 120.)

7 13. In spite of Ms. *Jane Doe*'s written confirmation of consensual sex, the  
8 LAPD criminal investigation, the District Attorney's rejection for lack of evidence,  
9 and Occidental's own investigative report, Occidental was determined to hold Mr.  
10 *Doe* , but not Ms. *Jane Doe* , responsible for violating the Sexual Misconduct  
11 Policy in order to bolster Occidental's defense against campus activists and the loss  
12 of federal education funding and fines.

13 14. In fact, there was no sexual assault, no non-consensual sexual contact,  
14 and no violation of Occidental's Policy. Indeed Ms. *Jane Doe* perpetrated exactly  
15 the same conduct against Mr. *Doe* when she went back to his dorm room and  
16 performed oral sex on him while he was intoxicated and had sexual intercourse.  
17 Mr. *Doe* is being expelled because he is male; Ms. *Jane Doe* is not because she  
18 is female.

19  
20 SUMMARY OF THE FACTS

21 15. *Jane Doe* was drunk the night of Friday, September 6, 2013  
22 and attended a dance party in Mr. *Doe* 's dorm room at 207 Braun. (Exh. 4, page  
23 31.) Ms. *Jane Doe* suffered from a hangover the next morning (Exh. 4, page 31),  
24 and "has always loved dancing, particularly when she is drunk." (Exh. 4, page 33).

25 16. On Saturday evening, September 7, 2013, Ms. *Jane Doe* was drunk  
26 again, taking part in "pre-gaming," an Occidental ritual where under-age students  
27 consume alcohol before attending a college sports game, in this case the men's  
28 soccer game between Occidental and Arizona Christian in Jack Kemp Stadium.

1 (Exh. 4, page 5.) After leaving the game, Ms. *Jane Doe* continued drinking, was  
2 acting flirtatious with male students (Exh. 4, page 65), and intoxicated in public  
3 with a group of students who encountered Occidental campus security. Occidental  
4 campus security took no action with the students nor to assist Ms. *Jane Doe* (Exh.  
5 7, page 7) and subsequently filed a false report claiming that "Subjects were gone  
6 upon Officer's arrival." (Exh. 4, page 5.)

7 17. Around midnight Ms. *Jane Doe* left her friends and went to Mr.  
8 *Doe*'s room, who was also drunk. Ms. *Jane Doe*'s friends found her dancing,  
9 kissing, and "making out" with Mr. *Doe*, both standing up, and lying down on the  
10 bed, "getting really physical" with Ms. *Jane Doe* riding on top of Mr. *Doe* on his  
11 bed with her hips moving. (Exh. 4, page 67.) Ms. *Jane Doe* was grabbing Mr.  
12 *Doe* and trying to kiss him while Mr. *Doe* was "somewhat responsive to  
13 *Jane Doe* but "also seemed pretty indifferent to *Jane Doe*'s advances." (Exh. 4,  
14 page 73.)

15 18. Earlier that evening Mr. *Doe* had become intoxicated at a sports  
16 team hazing incident.<sup>6</sup> (Exh. 4, pages 32, 49-50, 66.) Mr. *Doe* "acted like a drunk  
17 person" and stumbled around, slurred his words, and talked loudly (Exh. 4, page  
18 10) and was more drunk than he had ever been before. (Exh. 4, page 11; Exh. 6,  
19 page 12.)

20 19. After dancing and grinding with Mr. *Doe* in his room, Ms.  
21 *Jane Doe* left Mr. *Doe*'s room with her friends and went upstairs to her own  
22 room on the third floor. At 12:31 a.m., Mr. *Doe* texted to Ms. *Jane Doe*, "The  
23 second that you away from them, come back" and Ms. *Jane Doe* responded,  
24

25 <sup>6</sup> Hazing is a violation of National Collegiate Athletic Association  
26 ("NCAA") rules and Educ. Code § 32051. Occidental is already under NCAA  
27 sanctions and in February 2013 was placed on two years probation for major  
28 violations of recruiting, benefits, and out-of-season practice rules, but has taken no  
action to investigate the hazing of Mr. *Doe*.  
<http://oxyathletics.com/othernews/2011-12/ncaaprobaton>.

1 "Okay." (Exh 4, pages 92, 108.) At 12:36, Mr. Doe texted, "Make them leave.  
2 Tell them yoy want to sleep. I'dc. Just get back here." Ms. Jane Doe responded to  
3 Mr. Doe, "Okay do you have a condom." When Mr. Doe replied, "Yes," Ms.  
4 Jane Doe texted back, "Good give me two minutes." Ms. Jane Doe then created  
5 a ruse to sneak past her friends and her Resident Advisor to get back downstairs to  
6 Mr. Doe's dorm room to have sex. (Exh. 6, page 8.) Just before going back to  
7 Mr. Doe's dorm room to have sex, Ms. Jane Doe texted another friend, "The  
8 worlds moving I'mgoingtohave sex now." (Exh. 4, page 17.)

9 20. At 12:42 a.m. Mr. Doe texted to Ms. Jane Doe, "Knock when you  
10 are here." (Exh. 4, page 17.) Ms. Jane Doe snuck past her friends and R.A. and  
11 walked downstairs to Mr. Doe's room at approximately 1:00 a.m., knocked on the  
12 door, went in, took off her earrings, got undressed, performed oral sex on Mr.  
13 Doe and had sexual intercourse. When Mr. Doe was out of his dorm room for a  
14 few minutes in the bathroom, Ms. Jane Doe called out to a friend knocking on the  
15 door, "Yeah I'm fine," – three times. (Exh. 4, page 57.) Ms. Jane Doe heard Mr.  
16 Doe tell her that his roommate Gavin Rose had just come in. (Exh. 4, page 36.)  
17 Mr. Rose said that he witnessed the couple having sex when he opened the door and  
18 saw Ms. Jane Doe's legs moving. (Exh. 4, page 78.)

19 21. Shortly before 2:00 a.m. Ms. Jane Doe got dressed and left Mr.  
20 Doe's room, forgetting her belt and earrings. (Exh. 4, pages 36, 96.) At 2:05 a.m.  
21 Ms. Jane Doe began texting her various friends again including with the smiley  
22 face symbol, [ ":" ] (Exh. 4, pages 120, 122, 123, 125, 127.)

23 22. Ms. Jane Doe then returned to her own room, changed into pajamas,  
24 and went to bed. As soon as her roommate left her alone, Ms. Jane Doe got out of  
25 bed again because, "I didn't feel like going to sleep." (Exh. 4, page 37.) She found  
26 her phone and her key card, and put on her shoes, walked down the stairs and across  
27 the grassy area known as "Stewie Beach" to Stewart-Cleland Hall, a.k.a Stewie.  
28 Ms. Jane Doe walked in the front entrance of Stewie, went to the common room,



1 saw a male student whom she met the night before, and sat on his lap, talking and  
2 joking. (Exh. 4, pages 37, 45; Exh. 6, page 10.) The last of her texts that Ms.  
3 *Jane Doe* provided to investigators was at approximately 2:30 a.m. when she told  
4 a friend that she was in Stewie. (Exh. 4, page 123.) Her roommate went to Stewie  
5 brought her back to their dorm room and put her to bed again. Ms. *Jane Doe* fell  
6 asleep around 3:00 a.m. or 3:30 a.m. Six hours later at 9:00 a.m. Ms. *Jane Doe*  
7 woke up feeling drunk with a lightheaded feeling and dehydrated. (Exh. 4, page  
8 37.)

## 10 FINDINGS AND SANCTIONS

### 11 23. Procedural and Substantive Errors Significantly Affected the Outcome.

12 Occidental College disciplinary proceedings are to be conducted in  
13 compliance with the requirements of state and federal law (Exh. 1, page 8), which  
14 require at minimum that Occidental's policy and proceedings must be non-  
15 discriminatory, fair, impartial, treat participants in good faith, not violate students'  
16 civil rights, not be arbitrary or capricious, and permit only findings that are  
17 supported by the evidence, and reach only decisions that are supported by the  
18 findings.<sup>7</sup> In this case, Occidental has failed on every point.

#### 19 (a.) No Rights for the Accused.

20 Occidental College's new 46-page Sexual Misconduct Policy ("Policy")  
21 denies accused male students the most basic due process recognized by the U.N.  
22 Universal Declaration of Human Rights, the U.S. Constitution, and the California  
23 Constitution, including the assistance of counsel, the right to remain silent in the  
24 face of criminal accusations, and the presumption of innocence. Occidental claims  
25 that the Policy is fair and balanced because both sides are treated equally; however,  
26 in practice, Occidental pits accused male students (with only high school

27 \_\_\_\_\_  
28 <sup>7</sup> See, e.g., Title IX, Civ. Code § 43, Civ. Code § 52 et seq., Code Civ. Proc. §  
1094.5, *Comunale v. Traders & General Ins. Co.* (1958) 50 Cal.2d 654, 658.

1 educations) against Occidental's sophisticated, well-organized institutional process  
2 designed by former criminal prosecutors and run by academics, a professional and  
3 experienced staff, private investigators, and outside consultants and attorneys, while  
4 the female student is supported by Occidental's Sexual Assault Coalition and the  
5 National Women's Law Center and given access to advisors and advocates anytime  
6 day or night.<sup>8</sup> This denial of basic due process is a procedural error that is  
7 discriminatory, unfair, lacking in good faith, in violation of students' civil rights,  
8 and that significantly affected the outcome of the hearing.

9 (b.) Lack of Diversity.

10 The utter lack of any gender diversity among Occidental personnel, advisors,  
11 outside contractors, adjudicator, and consultants involved in this disciplinary  
12 proceeding reflects actual and apparent bias against students of the male gender.  
13 This lack of diversity is discriminatory, unfair, lacking in good faith, violates  
14 students' civil rights, and significantly affected the outcome of the hearing.

15 (c.) Irrelevant and Prejudicial Materials Presented.

16 Mr. *Doe* has the right to have the only evidence that is relevant and  
17 nonprejudicial presented at the hearing. (See, Exh. 1, page 38.) In this case,  
18 Occidental redacted information favorable to Mr. *Doe* from its Investigation  
19 Report,<sup>9</sup> which was presented at the hearing, but left intact in the Investigation  
20 Report statements of personal opinion that are highly prejudicial and are neither  
21 direct observations nor reasonable inferences from the facts, including the  
22 following:

- 23 i. "*Doe* fits the profile of other rapists on campus in that he had  
24 a high GPA in high school, was his class valedictorian, was on  
25 the water polo team, and was 'from a good family.'" (Exh. 4,

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26  
27 <sup>8</sup> In contrast, Mr. *Doe* was unable to secure an advisor until mid-November. (Exh.  
28 4, page 3.)

<sup>9</sup>See Exh. 4, pages 3, 25, 26-28, 40, 41, 54, 63, 65, and 83-87.

- 1 page 41.)
- 2 ii. “*Jane Doe*’s symptoms are like “the dozens of other survivors
- 3 [of sexual assault] I have met with on campus.” (Exh. 4, page
- 4 53.)
- 5 iii. “*Jane Doe* appeared to be “in a strong state of denial” about the
- 6 events, and told her at one point that she was not yet able to call
- 7 the incident “rape.”” (Exh. 4, page 53.)
- 8 iv. “*Jane Doe*’s reluctance to call what had happened to her “rape”
- 9 was consistent with other victims of sexual assault. . . on
- 10 campus.” (Exh. 4, page 53.)
- 11 v. “*Doe* was ‘acting in the same way all these other young men
- 12 [involved in sexual assaults] have acted’ by checking in on
- 13 *Jane Doe* after the incident, and seeking to manage *Jane Doe*
- 14 by being nice in a manner. . . described as “disingenuous.”
- 15 (Exh. 4, page 54.)
- 16 vi. *Jane Doe* was experiencing Post-Traumatic Stress Disorder
- 17 (PTSD) (Exh. 4, page 53.)

18 Admitting statements of personal opinion by an Occidental professor and the

19 founder of the Occidental Sexual Assault Coalition that refer to Mr. *Doe* as a

20 “rapist,” stating that he acts like other sex assault perpetrators, and that Ms.

21 *Jane Doe* is in denial about being raped, is far more prejudicial than probative.

22 Including such statements while at the same time excluding relevant evidence

23 favorable to Mr. *Doe* is a substantive error that significantly affected the outcome

24 of the hearing.

25 (d.) No Hearing Panel Convened.

26 According to Occidental’s Sexual Misconduct Policy formal resolution of a

27 complaint is to occur through the use of a Conduct Conference or a Hearing Panel.

28 (Exh. 1, page 34.) The Hearing Panel typically consists of three members drawn

1 from a pool of trained faculty and campus administrators (Exh. 1, page 35) and the  
2 Hearing Panel Procedures are set forth at pages 39 through 42 of the Policy. (Exh.  
3 1, page 39-42.) These policies and procedures give only the outward appearance of  
4 fairness and impartiality. In fact, under its "Policy" Occidental may hire an external  
5 adjudicator to serve as a member of the Hearing Panel or in lieu of the Hearing  
6 Panel altogether, or have the Vice President for Student Affairs and Dean of  
7 Students decide the case, or have the case decided by a designee of the Vice  
8 President for Student Affairs and Dean of Students, or Occidental "may substitute  
9 an entirely different method of adjudication at its discretion." (Exh. 1, page 35.) A  
10 "policy" that Occidental may unilaterally change entirely at any time is no policy.<sup>10</sup>  
11 In this case, Occidental refused to convene a Hearing Panel because the facts so  
12 clearly show consensual sex that Occidental could not rely on a three-member panel  
13 to hold the male student responsible. Occidental's failure to hold the typical three-  
14 member Hearing Panel is a procedural and substantive error that significantly  
15 affected the outcome of the hearing.

16 (e.) Relevant Questions Not Asked.

17 According to Occidental's Policy, all parties in the hearing have the  
18 opportunity to ask questions of witnesses through the Hearing Panel (Exh. 1, page  
19 38) and are encouraged to prepare a list of written questions in advance. (Exh. 1,  
20 page 41.) Mr. *Doe* presented written questions for the witnesses at the hearing, as  
21 he was encouraged, but questions were not asked that go to the heart of Ms.  
22 *Jane Doe*'s complaint that "Ms. *Jane Doe* recalled performing oral sex on Mr.  
23 *Doe* , but could not specifically recall having intercourse with Mr. *Doe* in his  
24 dormitory room" because "Ms. *Jane Doe* alleges that she consumed multiple  
25 alcoholic beverages in the hours leading up to the sexual contact." (Exh. 2, page 1;  
26

27 <sup>10</sup> Policy: a definite course or method of action selected from among alternatives  
28 and in light of given conditions to guide and determine present and future decisions.  
Merriam-Webster.com. Merriam-Webster, n.d. Web. 5 Jan. 2014.  
<<http://www.merriam-webster.com/dictionary/policy>>.

1 see Exh 10.) Occidental did not confront Ms. *Jane Doe* concerning her selective  
2 memory when she remembers significant details about her actions that night but not  
3 during the “missing hour” when she went back to Mr. *Doe* ’s room to have sex.  
4 “That [missing] hour still freaks me,” Ms. *Jane Doe* told Occidental. (Exh. 4, page  
5 40.) But Ms. *Jane Doe*’s memory of the hour is not “missing,” merely highly  
6 selective (and convenient). For instance, Ms. *Jane Doe* remembered agreeing to  
7 come back down to Mr. *Doe* ’s room to have sex, remembered giving Mr. *Doe*  
8 her cell phone number so he could text her when to come back, remembered texting  
9 her friend in Tennessee “I’mgoingtohave sexnow,” remembered being excited to  
10 sneak out of her room to get back to Mr. *Doe* ’s room, remembered throwing up,  
11 remembered getting a piece of gum, remembered asking Mr. *Doe* if he had a  
12 condom because she had not used any birth control, remembered that while Mr.  
13 *Doe* was out of the room someone knocked on the door and asked if she was ok,  
14 remembered responding three times to her friend that she was fine, remembered  
15 performing oral sex on Mr. *Doe* , remembered Mr. *Doe* saying that his  
16 roommate Gavin had just come in the room while they were having sexual  
17 intercourse and saw Ms. *Jane Doe*’s legs moving. (Exh. 4, pages 33-36, 78.)  
18 Occidental ignores these facts in its findings because the relevant questions  
19 prepared by Mr. *Doe* weren’t asked, contrary to what Occidental states in its  
20 findings letter. (See, Exh. 6, page 3, fn. 2; Exh. 10.)

21 Occidental’s refusal and failure to pose the relevant questions to confront Ms.  
22 *Jane Doe* concerning the heart of her complaint are substantive and procedural  
23 errors that significantly affected the outcome of the hearing.

24 (f.) Misstated Standard of Proof.

25 Occidental misstates the standard of proof and its own Policy in order to  
26 dismiss and ignore the prosecutor’s finding of lack of evidence to charge Mr. *Doe*  
27 for sexual assault and non-consensual sexual contact. (Exh. 6, page 5; see Exh. 3.)  
28 The Policy states that Occidental’s definition of sexual assault incorporates both

1 federal and state law and both the Policy and California law have the same  
2 elements. (Exh. 1, page 10; see Pen. Code § 261(a)(3).) The test in California for  
3 the government to hold a citizen to answer for a felony is "a strong suspicion,"  
4 which is *less* than the preponderance of the evidence standard under Occidental's  
5 Policy.<sup>11</sup> In order to reach Occidental's desired result to hold the male student  
6 responsible, Occidental misstates the prosecutor's finding of "no strong suspicion"  
7 of sexual assault in order to find Mr. *Doe* responsible under Occidental's higher  
8 standard proof. Occidental's misstatement of the standard of proof and  
9 misstatement of its own Policy are substantive and procedural errors that  
10 significantly affected the outcome of the hearing.

11 (g.) Findings Not Supported by the Evidence.

12 It would be difficult to imagine a better documented case of consensual sex  
13 than this case, where the female student initiates the sexual contact, asks for a  
14 condom in writing, tells a friend she is going to have sex in writing, tells friends she  
15 is "fine" when she is having sex, willingly performs oral sex, is interrupted by a  
16 roommate while having sexual intercourse and continues, and then sends smiley  
17 faces to friends right after having sex.

18 In fact, Occidental made findings that Ms. *Jane Doe* engaged in conduct and  
19 made statements that would indicate she consented to sexual intercourse with Mr.  
20 *Doe* (Exh. 6, page 8) and there was no force, threat of force, or coercion involved.  
21 (Exh. 6, page 6, fn. 5.)

22 These findings, which are supported by the evidence, should have concluded  
23 the hearing in Mr. *Doe* 's favor.

24 To obtain its desired result, however, Occidental made the further  
25 unsupported and erroneous findings that Ms. *Jane Doe* was incapacitated when  
26

27 <sup>11</sup>Reasonable or probable cause "means such a state of facts as would lead a man of  
28 ordinary caution or prudence to believe, and conscientiously entertain a strong suspicion of  
the guilt of the accused." (*People v. Nagle* (1944) 25 Cal.2d 216,222.)



1 she engaged in the conduct or statements that indicated she consented to sexual  
2 intercourse and when she had sexual intercourse because Ms. *Jane Doe* “did not  
3 have the capacity to appreciate the nature and quality of the act.” (Exh. 6, page 11.)

4 Occidental’s reasoning is entirely circular and misstates its own definition of  
5 “Incapacitation”.<sup>12</sup> Occidental attempts impossible mental gymnastics in  
6 maintaining that while Ms. *Jane Doe* was consciously performing voluntary acts  
7 that indicate she consented to sexual intercourse, she did not have the capacity to  
8 perform the very acts that she was in fact performing. The evidence clearly shows  
9 that at the time she was having sex in Mr. *Doe*’s dorm room, Ms. *Jane Doe* was  
10 conscious, not asleep, and was aware sexual activity was occurring.<sup>13</sup> (See, Exh. 1,  
11 page 13.)

12 Finally, Occidental wrongly faults Mr. *Doe* for failing to do the impossible  
13 and “fully appreciate the significance of events” that he did not and could not have  
14 observed. Events such as Ms. *Jane Doe*’s taking off her shirt while dancing in his  
15  
16  
17

---

18 <sup>12</sup> “Incapacitation: Incapacitation is a state where an individual cannot make an  
19 informed and rational decision to engage in sexual activity because s/he lacks conscious  
20 knowledge of the nature of the act (e.g., to understand the who, what, when, where, why or  
21 how of the sexual interaction) and/or is physically helpless. An individual is incapacitated,  
22 and therefore unable to give consent, if s/he is asleep, unconscious, or otherwise unaware  
23 that sexual activity is occurring.” (Exh. 1, page 13.) Occidental also confuses appreciation  
24 of the nature and quality of the act with appreciation of the *consequences* of the act, and  
25 wrongly equates *intoxication* with *incapacitation*. Clearly both parties were drunk and they  
were both willing participants exercising bad judgment, but neither was incapacitated  
under the Policy definition.

26 <sup>13</sup> Occidental also ignores Ms. *Jane Doe*’s statements about what she does  
27 remember from the “missing hour,” which contradicts a finding of incapacitation. (Exh. 4,  
pages 34-36.) Occidental’s finding that Ms. *Jane Doe* “does not recall creating or sending  
the text messages contained in the investigators report during that time period and other  
28 events during that period” is directly contradicted by Ms. *Jane Doe*’s own statements in  
the Investigators Report. (Exh. 6, page 11; see Exh. 4, pages 33-37.)

1 room was inconsistent with her customary behavior,<sup>14</sup> what Ms. *Jane Doe* did  
2 outside of his dorm room that night, or what her friends were thinking. (Exh. 6,  
3 page 12.) All a sober Mr. *Doe* would have observed when Ms. *Jane Doe* was  
4 dancing in his room is that she was swigging vodka, was coming on to him, wanted  
5 to stay with him, and didn't want to leave with her friends. Both were intoxicated  
6 but neither was incapacitated.

7 Occidental's findings that are not supported by the evidence are procedural  
8 and substantive errors that significantly affected the outcome of the hearing.

9 (h.) Decision Not Supported by the Findings.

10 Under Occidental College's new Sexual Misconduct Policy, Section F.  
11 Sanctions, "The hearing panel will make a recommendation about the appropriate  
12 sanction." (Exh. 1, page 43.)

13 Sanctions for a finding of responsibility for sexual assault range from  
14 suspension to expulsion, however, "[t]he hearing panel may deviate from the range  
15 of recommended sanctions, based upon a full consideration of the following factors:  
16 (1) the Respondent's prior discipline history; (2) how the College has sanctioned  
17 similar incidents in the past; (3) the nature and violence of the conduct at issue; (4)  
18 the impact of the conduct on the Complainant; (5) the impact of the conduct on the  
19 community, its members, or its property; (6) whether the Respondent has accepted  
20 responsibility for his actions; (7) whether the Respondent is reasonably likely to  
21 engage in the conduct in the future; (8) the need to deter similar conduct by others;  
22 and (9) any other mitigating or aggravating circumstances, including the College's  
23 values." (Exh. 1, pages 42-43.)

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24  
25 <sup>14</sup> The first-year students had known each other for less than two weeks and could  
26 have no knowledge or experience with each other's customary behavior. Ms. *Jane Doe*'s  
27 own statements that she loves dancing when she is drunk, that she was drunk the night  
28 before, and evidence that she becomes flirtatious when she is drunk, and that she flirted  
with other male students both before and after having sex with Mr. *Doe* do not show that  
her removal of her shirt is inconsistent with her customary behavior.

1 In this case, Occidental College imposed the maximum sanction of expulsion  
2 in the absence of any Hearing Panel recommendation (or adjudicator standing in  
3 lieu of a Hearing Panel), a procedural error that significantly affected the outcome  
4 of the hearing.

5 The decision to expel Mr. *Doe* is not supported by the findings that Ms.  
6 *Jane Doe* engaged in conduct and made statements that would indicate she  
7 consented to sexual intercourse with Mr. *Doe* (Exh. 6, page 8) and there was no  
8 force, threat of force, or coercion involved. (Exh. 6, page 6, fn. 5.) This is  
9 especially true in light of the nine factors to be considered under the Policy in that  
10 there is no prior discipline history, there is no violent conduct at issue, Mr. *Doe*  
11 has accepted responsibility for his actions and is not reasonably likely to engage in  
12 the conduct in the future (Exh. 7), expulsion was not imposed by Occidental for  
13 similar incidents in the past, and various mitigating circumstances, including  
14 Occidental's failure to prevent or investigate the hazing of Mr. *Doe* (which led to  
15 his intoxication and poor judgment) and Occidental's toleration of "pre-gaming"  
16 and under-age drinking and failure to intervene when Ms. *Jane Doe* was found  
17 drunk in public by Occidental security.

18 Occidental made decisions in a manner that does not conform with its own  
19 Policy and that are not supported by the findings, which are procedural and  
20 substantive errors that significantly affected the outcome of the hearing.

21  
22 24. New Evidence Unavailable at the Original Hearing.

23 (a.) Redacted Evidence.

24 In this case Occidental improperly redacted information favorable to Mr.  
25 *Doe* from its Investigation Report,<sup>15</sup> evidence unavailable during the original  
26 hearing that could substantially impact the original findings or sanctions. The  
27  
28

---

<sup>15</sup>See Exh. 4, pages 3, 25, 26-28, 40, 41, 54, 63, 65, and 83-87.

1 redacted favorable evidence included the redaction of an entire exhibit to the  
2 Investigative Report (Exh. 4, pages 83-87), which contain the prosecutor's finding  
3 of lack of evidence to charge Mr. *Doe* for sexual assault and non-consensual  
4 sexual contact. (See Exh. 3.) Occidental misstated the elements and standard of  
5 proof of sexual assault under its own Policy and state law in order to ignore the  
6 relevant finding of "no strong suspicion" of sexual assault in order to find Mr.  
7 *Doe* responsible under Occidental's higher standard proof of a preponderance of  
8 the evidence.

9 The redacted information in the Investigative Report that is favorable to Mr.  
10 *Doe* should be presented in further proceedings.

11 (b.) Blood Alcohol Levels and Stages of Acute Alcoholic  
12 Influence/Intoxication

13 The level of Ms. *Jane Doe*'s blood alcohol over the course of the evening of  
14 September 7, 2013 and morning of September 8, 2013 is central to any  
15 determination of incapacitation due to her voluntary alcohol consumption.  
16 Occidental noted in its findings the evidence of Ms. *Jane Doe*'s height and weight  
17 and alcohol consumption that night, but makes no reference to any standard Blood  
18 Alcohol Content (BAC) Charts or the standard Stages of Acute Alcoholic  
19 Influence/Intoxication. (See Exh. 9.)

20 Without reference to the standard BAC reference charts, Occidental's  
21 conclusion are speculative, if not intentionally false. For instance, Occidental  
22 asserts that Ms. *Jane Doe* had very little memory of what occurred between the  
23 period beginning approximately 11:00 p.m. on September 7, 2013 until she woke up  
24 on September 8, 2013 and does not recall creating or sending the text messages  
25 contained in the investigators report. (Exh. 6, page 11.) This is false and not  
26 supported by the evidence. In fact Ms. *Jane Doe* remembered agreeing to come  
27 back down to Mr. *Doe*'s room to have sex, remembered giving Mr. *Doe* her cell  
28 phone number so he could text her when to come back, remembered texting her

1 friend in Tennessee "I'm going to have sex now," remembered being excited to sneak  
2 out of her room to get back to Mr. *Doe*'s room, remembered throwing up,  
3 remembered getting a piece of gum, remembered asking Mr. *Doe* if he had a  
4 condom because she had not used any birth control, remembered that while Mr.  
5 *Doe* was out of the room someone knocked on the door and asked if she was ok,  
6 remembered responding three times to her friend that she was fine, remembered  
7 performing oral sex on Mr. *Doe*, remembered Mr. *Doe* saying that his  
8 roommate Mr. Rose had just came in the room while they were having sexual  
9 intercourse. (Exh. 4, pages 33-36.) Ms. *Jane Doe* also remembered going back to  
10 her own room, remembered meeting her friends again, remembered having her  
11 phone taken away, remembered going to bed. She remembered that as soon as her  
12 roommate left her alone, Ms. *Jane Doe* got out of bed again because, "I didn't feel  
13 like going to sleep." (Exh. 4, page 37.) She remembered finding her phone and her  
14 key card, and putting on her shoes, walking down the stairs and across the grassy  
15 area known as "Stewie Beach" to Stewart-Cleland Hall, a.k.a Stewie. Ms.  
16 *Jane Doe* remembered walking in the front entrance of Stewie, going to the  
17 common room, seeing a male student whom she met the night before, and  
18 remembered sitting on his lap, talking and joking about a NASCAR program on the  
19 television. (Exh. 4, pages 37.)

20 Based on standard Blood Alcohol Level Charts and the standard Stages of  
21 Acute Alcoholic Influence/Intoxication, which were not available at the original  
22 hearing, Ms. *Jane Doe*'s symptoms and behavior reflect that she was at the  
23 Euphoria or Excitement Stage of Alcoholic Influence and was not incapacitated.

24  
25 Respectfully submitted,

26 January 6, 2014

*John Doe*

EXHIBITS

<i>Exhibit</i>	<i>Description</i>
1	Occidental College Sexual Misconduct Policy
2	Occidental Notice of Charges Letter, dated November 19, 2013
3	Los Angeles District Attorney Charge Evaluation Worksheet
4	Occidental Investigation Report, PII Case Number: 13-4175
5	Occidental Outcome Notification Letter, dated December 13, 2013
6	Occidental Findings Letter, dated December 9, 2013
7	<i>John Doe</i> Response Letter to Hearing Outcome
8	Occidental Sanctions Letter, dated December 20, 2013
9	Three Charts: (1) Stages of Acute Alcoholic Influence/Intoxication; (2) Women Know Your Limit, Approximate Blood Alcohol Content (BAC) In One Hour' (3) Men Know Your Limit, Approximate Blood Alcohol Content (BAC) In One Hour
10	Respondent Questions, Witness: <i>Jane Doe</i>



05/10/2014

05/10/2014

# Exhibit 12

RICHARD D. EMERY  
ANDREW G. CELLI, JR.  
MATTHEW D. BRINCKERHOFF  
JONATHAN S. ABADY  
EARL S. WARD  
ILANN M. MAAZEL  
O. ANDREW F. WILSON  
KATHERINE ROSENFELD  
ELIZABETH S. SAYLOR  
DEBRA L. GREENBERGER  
ZOE SALZMAN  
SAM SHAPIRO  
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<sup>2</sup> As the hearing adjudicator found, the elements necessary to reach a finding of sexual assault encompass the elements of non-consensual sexual contact. As such, “a finding of sexual assault necessarily includes a finding of

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adjudicator properly identified four inquiries that are relevant to a finding of sexual assault: (1) whether sexual intercourse between the Complainant and the Respondent occurred, (2) whether the Complainant demonstrated conduct or made statements that would indicate she consented to sexual intercourse, (3) if such conduct was demonstrated or such statements were made, was the Complainant incapacitated at the time, and (4) whether the Respondent knew or should have known that the Complainant was incapacitated. Ex. 6 at p. 6. The hearing adjudicator found that (1) it was undisputed that Mr. Doe and Ms. Jane Doe engaged in sexual intercourse; (2) Ms. Jane Doe engaged in conduct and made statements that would indicate she consented to sexual intercourse; (3) Ms. Jane Doe was incapacitated at the time she engaged in such conduct and made such statements; and (4) Mr. Doe should have known that Ms. Jane Doe was incapacitated. Ex. 6 at pp. 12-13.

Mr. Doe's principal assertion is that the evidence does not support the finding that Ms. Jane Doe was incapacitated at the time she engaged in conduct and made statements indicating that she consented to sexual intercourse. Mr. Doe's selective reading of the record must be rejected. Ms. Jane Doe began drinking alcohol between 9:30 p.m. and 10:00 p.m. on the night of September 7, 2013. Multiple witnesses observed Ms. Jane Doe taking shots of vodka and drinking a mixture of vodka and orange juice. Ex. 4 at pp. 43-44, 48-49, 71; Ex. 6 at p. 8. Witnesses who were with Ms. Jane Doe at the time testified that she was stumbling, slurring her words, and talking with an uncharacteristically high voice. Ex. 4 at pp. 44, 82; Ex. 6 at pp. 8-9.

Ms. Jane Doe ultimately made her way to Mr. Doe's room in Braun Hall, where she continued to drink vodka—at this point, straight from the bottle—and took her shirt off. Ex. 6 at p. 9. Ms. Jane Doe testified that she did not normally act in that manner, even when she was intoxicated. Ex. 6 at p. 11. Angela Peckham, a friend of Ms. Jane Doe's who followed her to Mr. Doe's room, confirmed that Ms. Jane Doe was acting “crazy” and that it appeared that Ms. Jane Doe did not know what she was doing. Ex. 6 at p. 9.

Ms. Peckham and another one of Ms. Jane Doe's friends, Jameson Hayward, removed Ms. Jane Doe from Mr. Doe's room because they were concerned she was too intoxicated. Ex. 6 at p. 9. Ms. Peckham and Mr. Hayward had to support Ms. Jane Doe as they walked her back to her room because she could hardly walk. Ex. 4 at p. 67; Ex. 6 at pp. 9-10. A short time after getting back to her room, Ms. Jane Doe left again and returned to Mr. Doe's room. Ex. 6 at p. 10. On the way to Mr. Doe's room, Ms. Jane Doe vomited. Ex. 4 at p. 78; Ex. 6 at p. 10. Mr. Doe then had sexual intercourse with Ms. Jane Doe. Ms. Jane Doe testified that she had no recollection of engaging in sexual intercourse with Mr. Doe. Ex. 6 at p. 10. The hearing adjudicator credited this testimony. *Id.*

After leaving Mr. Doe's room, Ms. Jane Doe did not mention to anyone that she had had sexual intercourse with Mr. Doe. Ex. 6 at pp. 10-11. In fact, the undisputed evidence shows that Ms. Jane Doe did not even know she had had sexual intercourse with Mr. Doe until a fellow student, Aidan Dougherty, told her the following morning that he had walked in on her and Mr. Doe the night before. Ex. 6 at p. 11.

Based on this evidence, the hearing adjudicator found that, at the time Ms. Jane Doe and Mr. Doe had sexual intercourse, Ms. Jane Doe "was not aware of the consequences of her action" and "did not have the capacity to appreciate the nature and quality of her act." Ex. 6 at p. 11. As a result, the hearing adjudicator concluded she was incapacitated. *Id.* This conclusion is consistent with the evidence that was presented at the hearing. It should be upheld.

Mr. Doe also challenges the hearing adjudicator's finding that he should have been aware that Ms. Jane Doe was incapacitated. As the hearing adjudicator points out, Mr. Doe should have been aware that Ms. Jane Doe vomited shortly before they had sexual intercourse, that Ms. Jane Doe was drinking vodka directly from the bottle in Mr. Doe's room and dancing with her shirt off, that Ms. Jane Doe was slurring her speech and having trouble walking, and that Ms. Jane Doe's friends were concerned about how drunk she was. Ex. 6 at p. 12. This evidence is sufficient to support the hearing adjudicator's conclusion that Mr. Doe should have known Ms. Jane Doe was incapacitated.

**The sanction against Mr. Doe should be upheld.**

The sanction imposed against Mr. Doe is warranted by the findings of the hearing adjudicator. This incident has had a devastating impact on Ms. Jane Doe. Throughout the College's three month investigation, Ms. Jane Doe unwillingly encountered Mr. Doe on several occasions. Each one of these encounters was detrimental to her well-being. Indeed, Ms. Jane Doe's fear of encountering Mr. Doe paralyzed her during the fall semester, severely limiting her ability to participate in classes and College activities. If Mr. Doe is permitted to remain on campus, Ms. Jane Doe is bound to continue running into him. The fear of these encounters would significantly impair Ms. Jane Doe's ability to benefit from the College's programs going forward. Mr. Doe's permanent separation from the College should be upheld.

**There is no "new evidence" that could substantially impact the findings and sanctions.**

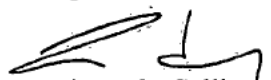
Finally, we briefly address Mr. Doe's argument that "new evidence" is now available that could substantially impact the findings and sanctions. Doe Br. at pp. 16-18. First, the prosecutor's findings have no impact on Occidental's separate adjudication process. Occidental's obligation to investigate and adjudicate instances of sexual misconduct that occur on its campus is not diminished by a concurrent law enforcement investigation, regardless of what the outcome of that law enforcement investigation is. Indeed, the law enforcement investigation has no bearing on the College's investigation or the College's conclusions with respect to violations of its Sexual Misconduct Policy.

Second, despite having no knowledge of Ms. Jane Doe's actual blood alcohol level on the date of the incident, Mr. Doe asserts that standard Blood Alcohol Level Charts indicate that Ms. Jane Doe was not incapacitated. This "new evidence" is meaningless without knowing what Ms. Jane Doe's blood alcohol level actually was, which we do not. Mr. Doe's contentions with respect to these charts define speculation, and are contradicted by the testimony of multiple witnesses indicating that Ms. Jane Doe was highly intoxicated. Mr. Doe's "new evidence" is no reason to disturb the findings of the hearing adjudicator or the sanctions imposed by the College.

**Conclusion**

For all the foregoing reasons, and for the reasons explained in the hearing adjudicator's detailed report, the findings and sanction against Mr. Doe should be upheld.

Respectfully submitted,

  
Andrew G. Celli, Jr.

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05/13/2014

# Exhibit 13

MARK J. WERKSMAN  
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KELLY C. QUINN\*\*  
MELISSA A. WEINBERGER  
NINA DALY

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January 23, 2014

VIA EMAIL TO [maciver@oxy.edu](mailto:maciver@oxy.edu)  
WITH CONFIRMATION VIA U.S. MAIL

Mr. Devon MacIver  
Designated Appeals Officer  
Occidental College  
1600 Campus Road  
Los Angeles, CA 90041

Re: Reply to *Jane Doe* Response Letter

Dear Mr. MacIver;

*Jane Doe*'s response letter shows that both *Jane* and *John* agree on the following very important findings:

1. *Jane* engaged in conduct and made statements that show she consented to sexual intercourse with *John*. (Exh. 6, page 8); and,
2. There was no force, threat of force, nor coercion involved. (Exh. 6, page 6, fn. 5.)

Where *Jane* and *John* disagree, and the reason the result is wrong, boils down to *Jane*'s highly subjective and selective memory, – that she remembers many details, including consensual oral sex, but “could not specifically recall having intercourse.” (Exh. 2, p. 1.)

*Jane* was dancing drunk in *John*'s room the night before. She went back to dance the next night. She tricked her friends to get back to *John*'s room, asked for a condom, both in a text message and when she got to the room. It is not possible she was “asleep, unconscious, or otherwise unaware that sexual activity is occurring.” (Exh. 1, p. 13.)

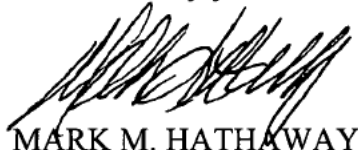
Designated Appeals Officer  
Occidental College  
January 23, 2014  
Page 2

Later *Jane* tricked her roommate again, pretending to be asleep and letting water trickle down her face. Then, as soon as she was alone, she left for Stewie, walking downstairs, and texting her friends again. It is not physiologically possible for a human being to be texting, walking downstairs, asking for condoms, walking back upstairs, then be in a drunken stupor, and then the next minute be wide awake, walking downstairs and texting on an iPhone keypad again. The finding that *Jane* "has very little memory of what occurred between the period beginning approximately 11:00 p.m. on September 7, 2013 until she woke up on September 8, 2013" is simply wrong. Just read *Jane*'s statements to the investigators at Exh. 4, pages 33-36.

Of course *Jane* didn't tell her new friends at Occidental she had sex. She didn't want them to know, – that's why she tricked them. But she did tell her friend back home that she was going to have sex and then sent a smiley face right after having sex. (Exhibit 4, Page 120.) *Jane* woke up the next morning (not hung over and after six hours of sleep) and was probably embarrassed by her behavior and that other students saw her having sex. So she told a little white lie, "I cannot specifically recall having intercourse." In spite of her selective memory loss, *Jane* was aware sexual activity was occurring at the time because she remembers asking for a condom and remembers performing oral sex.

Please reverse the finding of incapacitation and the sanctions.

Sincerely yours,



MARK M. HATHAWAY

cc: Cherie A. Scricca (via E-Mail to [scricca@oxy.edu](mailto:scricca@oxy.edu))  
Title IX Hearing Coordinator, Occidental College

Lauren Carella, Esq. (via E-Mail to [lcarella@oxy.edu](mailto:lcarella@oxy.edu))  
Interim Title IX Coordinator, Occidental College

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# Exhibit 14



OCCIDENTAL COLLEGE  
1600 CAMPUS ROAD  
LOS ANGELES, CA 90041-3314

February 12, 2014

Mr. *John Doe*

### **Outcome of Appeal**

Dear Mr. *Doe*,

I am writing to inform you of the outcome of the appeal you filed January 6, 2014, regarding the findings of responsibility for sexual assault and non-consensual sexual contact of the College's Sexual Misconduct Policy.

Based on the appeals officer's review of the investigation report and exhibits, information gathered at the hearing, the outcome of the hearing and decision of the external adjudicator, your appeal and the response to your appeal by Ms. *Jane Doe* and with consideration of the Occidental College Sexual Misconduct Policy, the appeals officer has made the following decisions with respect to the timeliness, standing and merits of your appeal.

### **Timeliness**

The appeal is determined to be timely.

### **Standing and Merits of the Appeal**

The appeal was determined to have standing on the following three grounds: 23 (c), 23 (f) and 24 (b). However, none of these were determined to have merit.

### **Conclusion**

The findings of responsibility of the adjudicator are affirmed. The resulting sanctions remain in place.

EXHIBIT 14



The decision of the appeals officer is final, and this matter is considered closed. A full copy of the appeals officer's outcome and determination is attached.

Please let me know if you have any questions or would like further clarification.

Respectfully,



Cherie A. Scricca  
Hearing Coordinator

Cc: *Jane Doe* 1  
Lauren Carella, Interim Title IX Coordinator

65713/2014

February 12, 2014

Maria Hinton  
Asst. Director for Housing Services  
Residential Education and Housing Services  
Occidental College  
1600 Campus Drive  
Los Angeles, CA 90041

**RE:** Determination on Appeal filed by *John Doe*

On February 3, 2014, the Hearing Coordinator of the Title IX Office of Occidental College requested that I review the appeal filed by *John Doe* regarding the complaint of violation of the Sexual Misconduct Policy filed by Ms. *Jane Doe* against Mr. *John Doe*. I do not know the Complainant, the Respondent, or the Adjudicator, nor have I previously been involved in this case. The documents reviewed for this appeal are noted below.

#### **Procedural Background**

On September 15, 2013, *Jane Doe* filed a Complaint stating that *John Doe* had violated the College's Sexual Misconduct Policy. The College began investigation of *Jane Doe*'s complaint on or about October 1, 2013. The investigators completed interviewing witnesses on or about October 28, 2013 and issued a report to the Title IX Office on or about November 14, 2013.

On December 7, 2013, the College conducted a hearing presided over by an external adjudicator, Marilou F. Mirkovich. On or about December 9, 2013, the adjudicator issued a decision on the complaint. In that decision, the adjudicator found by a preponderance of the evidence that *John Doe* was responsible for sexual assault and non-consensual sexual contact under College policy. On December 13, 2013, the College notified the Complainant and Respondent of the adjudicator's decision. Because of the Winter Break, the parties were given until January 6, 2014 to submit an appeal. On January 6, 2014, the Respondent appealed the adjudicator's decision. An amended appeal was submitted on January 7, 2014.

#### **Stated Basis for Appeal**

In his January 7 letter appealing the adjudicator's December 7 decision, the Respondent asserts that the following constitute procedural/substantive errors and/or new evidence

and constitute standing for his appeal. For the sake of clarity, I have used the paragraph numbers from the Respondent's appeal:

- 23(a): No Rights for the Accused
- 23(b): Lack of Diversity
- 23(c): Irrelevant and Prejudicial Materials Presented
- 23(d): No Hearing Panel Convened
- 23(e): Relevant Questions Not Asked
- 23(f): Misstated Standard of Proof
- 23(g): Findings Not Supported by the Evidence
- 23(h): Decision Not Supported by the Findings
- 24(a): New Evidence Unavailable at the Original Hearing: Redacted Evidence
- 24(b): New Evidence Unavailable at the Original Hearing: Blood Alcohol Levels and Stages of Acute Alcoholic Influence/Intoxication

### **Basis for Appeal under the Policy**

In any request for an appeal, the burden of proof lies with the party requesting the appeal. The Appeals Officer shall first consider whether the appeal is timely filed and if so, whether the appeal is properly framed based on the two grounds.

According to the policy, dissatisfaction with the outcome of the hearing is not grounds for appeal. The policy provides for two grounds for appeal:

- A procedural or substantive error occurred that significantly affected the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- New evidence, unavailable during the original hearing or investigation that could substantially impact the original finding or sanction (a summary of this new evidence and its potential impact must be included).

Appeals are not intended to be full rehearing of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. This is not an opportunity for the Appeals Officer to substitute his/her judgment for that of the original hearing body merely because s/he disagrees with its finding and/or sanctions. Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is clear error.

## **Evidence Reviewed to Determine Whether Standing for the Appeal Exists**

In determining whether the Respondent's appeal has standing, the following documents were reviewed:

- The amended appeal and exhibits
- Complainant's response to the appeal
- The outcome letter to the Respondent
- The sanction letter to the Respondent
- The external adjudicator's decision
- The investigation report
- The Occidental College Sexual Misconduct Policy

### **Timeliness of Appeal**

According to the policy, the appeal must be filed in writing within five (5) business days of receiving the written outcome.

The Respondent received the written outcome of the hearing on December 13, 2013. Because of the impending Winter Break, the Respondent was given until January 6, 2014 to submit an appeal. The original appeal is dated January 6, 2014, which was the deadline given to the Respondent in the written outcome of the hearing. As a result, the Respondent's appeal is timely under the Policy.

### **Standing for Appeal**

#### **23(a). No Rights for the Accused**

The Respondent claims that there was a procedural error because the proceedings deviated from procedures outlined in the U.N. Universal Declaration of Human Rights, the U.S. Constitution, and the California Constitution. He asserts that the due process rights afforded alleged criminals under those documents were not provided him in this case. The Policy, however, explicitly states that "[t]he hearing is an informal proceeding not comparable to a criminal trial."<sup>1</sup> Thus, the procedures associated with the criminal process are not applicable to proceedings under the Policy. Because the Respondent does not claim that there was an error with regard to the procedures established by the Policy, I find that ground 23(a) lacks standing.

#### **23(b). Lack of Diversity**

Here, the Respondent asserts that the lack of gender diversity among those responsible for administering these proceedings constitutes "actual and apparent bias against students of the male gender."<sup>2</sup> This ground for appeal is not properly

<sup>1</sup> Occidental College Sexual Misconduct Policy, 40.

<sup>2</sup> Amended Appeal, pg. 9

framed for two reasons. First, the Policy does not mandate a particular gender composition among those administering the proceedings. Secondly, the Policy states that *substantiated* bias is grounds for appeal. In this case, the Respondent does not point to a specific source of bias for any of these administrators, other than their female gender. A person's gender alone is not enough to substantiate bias. Therefore, the gender composition of persons administering the College's policy does not constitute a procedural error. For these reasons, I find that ground 23(b) lacks standing.

### **23(c). Irrelevant and Prejudicial Materials Presented**

The Respondent claims that irrelevant and prejudicial materials in the form of statements made by Professor Danielle Dirks were presented at the hearing and that this constitutes a substantive error that impacted the outcome of the case. I find that this ground was properly stated for appeal and therefore has standing.

### **23(d). No Hearing Panel Convened**

In this case, the matter was heard by an external adjudicator, as opposed to a three-person hearing panel. The Respondent contends that this is a procedural and substantive error. While it is true that sexual misconduct cases are often heard by a three-person panel, the Policy expressly allows for a case to be heard by an external adjudicator at the discretion of the Hearing Coordinator.<sup>3</sup> Thus, the fact that this case was heard by an external adjudicator is not a procedural or substantive error.

The Respondent also argues that the Policy itself is unfair, because it allows for certain specific procedures to be determined at the discretion of the College. Challenging the Policy itself is not one of the two grounds for appeal under the Policy, and in any event, this objection to the policy does not raise an issue of procedural or substantive error. For this reason, and the reason stated above, I find that ground 23(d) lacks standing.

### **23(e). Relevant Questions Not Asked**

Here, the Respondent contends that the fact that the external adjudicator failed to ask some of the questions he submitted constitutes a procedural and substantive error. The Policy, however, does not require the hearing panel or external adjudicator to ask every (or any) question submitted by the parties. In fact, the Policy states that the decision to ask questions posed by the parties is left to the discretion of the hearing panel or external adjudicator.<sup>4</sup> Therefore, I find that ground 23(e) lacks standing.

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<sup>3</sup> Occidental College Sexual Misconduct Policy, 35.

<sup>4</sup> Id. at 41

### **23(f). Misstated Standard of Proof**

The Respondent claims that the external adjudicator misstated both the Policy's and the State of California's standards of proof in her decision and that this is a substantive and procedural error. I find that this ground is properly framed for appeal and therefore has standing.

### **23(g). Findings Not Supported by the Evidence**

In this section, the Respondent reevaluates the facts of the case and claims that the external adjudicator came to the wrong conclusions based on these facts. He does not point to a specific procedural or substantive error; rather, the Respondent appears to be questioning the outcome of the case. This is not proper grounds for appeal. The Policy states that "[d]issatisfaction with the outcome of the hearing is not grounds for appeal."<sup>5</sup> As a result, I find that ground 23(g) lacks standing.

### **23(h). Decision Not Supported by the Findings**

The Respondent contends that the assignment of expulsion as a sanction in the absence of a sanction recommendation from a Hearing Panel or external adjudicator is a procedural error. While it is true that there was no sanction recommendation from the external adjudicator in this case, nothing in the Policy prevents the Hearing Coordinator and Title IX Coordinator from assigning a sanction in the absence of a recommendation. In fact, responsibility for assigning a sanction ultimately lies with the Hearing Coordinator and Title IX Coordinator, even when a recommendation has been made.<sup>6</sup> Thus, the fact that a sanction was assigned without a recommendation from the external adjudicator is not a procedural error.

The Respondent also challenges the reasoning of the College in assigning expulsion as a sanction. This does not fall under either of the two permissible grounds for appeal under the Policy. As indicated above, the Policy states that "[d]issatisfaction with the outcome of the hearing is not grounds for appeal."<sup>7</sup> Therefore, I find that ground 23(h) lacks standing.

### **24(a). New Evidence Unavailable at the Original Hearing: Redacted Evidence**

The Respondent claims that the information redacted from the Investigation Report for purposes of the hearing is new evidence that could substantially impact the original finding or sanction. This ground is not properly framed for appeal, because

<sup>5</sup> Occidental College Sexual Misconduct Policy, 45.

<sup>6</sup> The Policy states, "The Hearing Coordinator, in consultation with the Title IX Coordinator, will review the recommendations and impose an appropriate sanction," (pg. 42) and "[t]he Hearing Coordinator and Title IX Coordinator will review the panel's recommendations and take reasonable steps to foster consistency for similar violations and circumstances." (pg. 43)

<sup>7</sup> Id. at 45.

the redacted information is not new evidence. This information was available during the investigation. The Hearing Coordinator chose to redact it prior to the hearing, concluding that it was not relevant or material to the determination of responsibility. Such redaction is permissible under the Policy.<sup>8</sup> Therefore, ground 24(a) lacks standing.

**24(b): New Evidence Unavailable at the Original Hearing: Blood Alcohol Levels and Stages of Acute Alcoholic Influence/Intoxication**

The Respondent also claims that Blood Alcohol Charts and Standard Stages of Acute Alcoholic Influence/Intoxication Charts are new evidence unavailable for the hearing. Although it is questionable whether an adequate showing of unavailability of this kind of publicly available information has been made for purposes of standing on appeal, I will review and determine this ground as if standing existed.

In summary, I find that grounds 23(a), 23(b), 23(d), 23(e), 23(g), 23(h), and 24(a) do not have standing under the Policy.

The following have standing under the Policy: 23(c), 23(f), and 24(b). I will address the merits of each to determine whether these might have affected the outcome of the case.

**Evaluation of the Merits**

**23(c). Irrelevant and Prejudicial Materials**

When contesting a matter based on a substantive error, the Respondent must first demonstrate that there was an error, and secondly, that this error significantly affected the outcome of the hearing. In this case, the first requirement was not met. I find that there was no substantive error here.

Under the Policy, the Hearing Coordinator is given the discretion to determine whether information contained in the documentary evidence is relevant and material to the determination of responsibility and to redact any information that he/she deems to be irrelevant, more prejudicial than probative, or immaterial. The Hearing Coordinator may also redact statements of personal opinion and statements as to general reputation for any character trait.<sup>9</sup>

Here, it was not unreasonable for the Hearing Coordinator to allow statements made by Professor Dirks to be part of the record and considered for potential relevance, and to be assigned weight (or lack thereof) as the adjudicator deemed appropriate. Among other things, Dirks described the Complainant's demeanor after the incident, which could speak to the Complainant's credibility.

<sup>8</sup> Occidental College Sexual Misconduct Policy, 38.

<sup>9</sup> Id.



Even if the Hearing Coordinator erred in not redacting Dirks' statements, there is no indication that this had a significant impact on the outcome of the hearing, or that the exclusion of such statements would have materially impacted the outcome. Indeed, the determination itself strongly suggests the opposite. Though the external adjudicator cited testimony from most of the other witnesses interviewed by the investigators, she did not mention Dirks' statements in her decision. Particularly telling is that Dirks' statements did not factor into any of the external adjudicator's conclusions, while the statements of most of the other witnesses did.

For these reasons, ground 23(c) does not provide a basis for overturning the external adjudicator's decision.

### **23(f). Misstated Standard of Proof**

The Respondent also fails to establish that there was a procedural or substantive error on this ground.

With regard to the standard of proof under the Policy, the external adjudicator quoted the Policy verbatim when stating the standard of proof in her decision.<sup>10</sup> Because the standard of proof was accurately and directly quoted from the Policy, there was no misstatement and therefore no procedural error that impacted the outcome of the case.

The external adjudicator also correctly stated that both the elements and standard of proof under California law do not apply here.<sup>11</sup> While it is true that the Policy's definition of sexual assault incorporates both the federal and state definitions of sexual assault, the Policy also makes it clear that all proceedings under the Policy are separate from criminal proceedings. The goal of a hearing is to determine whether the Policy has been violated, not whether state or federal law has been violated.<sup>12</sup> Because the Policy's relationship to state criminal law was correctly stated, there was no substantive or procedural error.

### **24(b). New Evidence Unavailable at the Original Hearing: Blood Alcohol Levels and Stages of Acute Alcoholic Influence/Intoxication**

In the case of new evidence, the Respondent must demonstrate that it could substantially impact the original finding or sanction. The Respondent does not meet

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<sup>10</sup> External Adjudicator's Decision, pg. 5.

<sup>11</sup> Id. at 5, footnote 4.

<sup>12</sup> "A hearing is not intended to be adversarial; rather, it is intended to be educational and developmental. The hearing is intended to provide a fair and ample opportunity for each side to present his/her account of the incident and for the hearing panel to determine the facts of the case, make a determination as to whether *College policy* was violated, and to recommend appropriate sanctions, if necessary. The hearing is an informal proceeding not comparable to a criminal trial; it is the mechanism by which the College assesses, and as appropriate, takes formal disciplinary action regarding *a violation of College policy*." Occidental College Sexual Misconduct Policy, pg. 40. Emphasis added.

that requirement. The Blood Alcohol Charts and the Stages of Acute Alcoholic Influence/Intoxication are of little help here, as there is no way to know what the Complainant's actual blood alcohol level was on the night in question. Reference to the charts would support little more than speculation and would not shed much more light on the Complainant's state of capacity on the night of September 7, or impact all of the other evidence considered by the adjudicator in reaching a determination on this issue. Thus, the charts would not have substantially impacted the external adjudicator's analysis and decision in my view.

### **Conclusion**

I find that grounds 23(a), 23(b), 23(d), 23(e), 23(g), 23(h), and 24(a) do not have standing under the Policy.

While grounds 23(c) and 23(f) are properly framed grounds for appeal, both grounds fail to demonstrate that there was a procedural or substantive error that significantly affected the outcome of the case. Similarly, though 24(b) is also a properly framed ground for appeal, the Respondent fails to demonstrate that the new evidence would have substantially impacted the original finding or sanction.

Based on all of the above, I find no basis for overturning the external adjudicator's decision in this matter.

Sincerely,

Maria Hinton