



Gloria Allred with Oxy claimants; activists and professors

PHOTOGRAPH BY NICK UT/AP PHOTO

Caroline Heldman, a 42-year-old associate professor of politics, was there as well. "We filed at 2 a.m.!" she said, referring to the Title IX complaint she and Dirks had lodged against Oxy, high-fiving the students around her. Heldman writes about campus rape culture along with topics like sexual objectification for *Ms.* magazine and on her blog, *Coffee at Midnight*. A leader in the battle to reform the school's policies, she's been working on the issue at Occidental since 2009 and helped found the Oxy Sexual Assault Coalition, or OSAC, in 2012. She's also a frequent guest on Fox News, where the striking blond was once called "Dr. McHottie" by a pundit.

Dirks emerged from the hallway. "I love you all! Thank you so much for being here and supporting each other!" she said in her high voice. Tall with long red hair and freckles, she became involved in the sexual assault issue when a student named Carly Mee confided in her. Other students would follow, bearing their stories of rape.

FIGHTING BACK



Caroline Heldman. Photograph by Ted Soqui



Danielle Dirks. Photograph by Patrick Fallon/Getty Images



Oxy president Jonathan Veitch.

Shortly after noon, several of those students stood behind Allred as the 73-year-old media virtuoso sat at her conference table before a mass of cameras and reporters. Armored in her signature red jacket with gold buttons, Allred described the Title IX complaint against Oxy, ticking off the alleged violations, from rape to retaliation against those who'd spoken out. Then Allred delivered some more disturbing news. "The last reported rape occurred this last Friday night and was reported to police on Saturday and to Occidental College this past Sunday," she said. The students learned about the alleged rape that night when a CBS2 news van rolled up on campus and a reporter began interviewing students. The incident had ignited a protest after Oxy failed to issue a campus alert because, Allred said, "according to Jonathan Veitch, 'there was no ongoing danger of an unknown repeat offense because the student involved was immediately identified and interviewed by the

police and by Student Affairs.’ ”

One by one, the young women read their statements. Some looked frightened. A few held hands. A freshman with freckles and wavy brown hair was on the verge of tears as she recalled her story. Once the media left, the students and Heldman sat around the conference table and ate lunch while their attorney told a story about a sex discrimination case she'd won. "Can you be our commencement speaker?" a senior asked. Allred wanted to know how they felt about the event.

"It's been a really surreal day," said one student.

"This is very empowering for me," said another.

The talk continued along those lines until Allred realized I was still in the room. "This is just for the moms and students," she said, frowning from across the table before asking me to leave.

Occidental College defines rape as the act of any kind of sexual penetration without a person's consent. If a person is incapacitated—from alcohol or anything else—then the sex is not consensual. If students are reluctant to file reports with administrators, they're even more unlikely to go to the police. One reason is because many colleges fail to tell them they have the option. Another is because they're afraid the police won't believe them, especially if they don't report the attack right away. Others don't want to go to the police because of the social consequences they face if their case becomes public.

The weekend after she began her freshman year at Occidental in 2010, Carly Mee was raped twice in her dorm room by the same student. A player on Oxy's football team, he showed up at her room a week later and tried to force her to have sex again. After she repeatedly refused, he asked why, since they'd had sex before. But Mee had been drinking that first night and had no memory of it. When she insisted he was wrong, he laughed and relayed the details, continuing to try to rape her so she could "remember." He stopped when she started crying and said she couldn't breathe.

"I told someone right away," Mee recalled, referring to a friend. "He told me I was stupid for letting this person in my room." I met with her on a weekday morning in April 2013, shortly after she joined the Title IX complaint. We sat in a Starbucks in Highland Park. A senior nearing graduation, she was applying to law school and looked more like a job applicant than a student with her dress, makeup, and neatly brushed auburn hair. Initially Mee didn't tell Oxy officials about her attack because she'd heard the judicial process was extremely "alienating" and "victim blaming." As the months passed, she kept seeing her rapist everywhere—in the dining hall, in the dorm, at dances and parties. "He'd try to talk to me and follow me from room to room," she said. But she still didn't report him.

Then one night in the fall of her sophomore year, Mee was hanging out in a dorm room with other students when the name of her attacker came up in the conversation. Startled, she found herself looking across the room into the eyes of a student named Leah. Even before they spoke to each other in private, they already knew.

Leah Capranica was a 20-year-old political science major from a small town in Illinois. When she was trying to decide whether to report her rape, in January 2011, she talked to Emily Harris, director of student advocacy and accountability, and was troubled to hear that her attacker, if found responsible, would face only probation. He'd be allowed to remain in the dorm she lived in, too. What's more, she says she was told that her attack "wasn't that serious." Capranica had been sexually assaulted after her assailant—the same as Mee's—allegedly spiked her drink at a party and she blacked out. (Research has shown that most college sexual assaults are committed by a small number of serial rapists who often use alcohol in their assaults.) Meeting with Harris, Capranica felt so defeated that she didn't end up reporting the incident until the next semester. Although her attacker admitted to the assault, he received only probation, as Harris said he would.

In the fall of 2011, Mee followed Capranica's lead and reported her rape. By then she was working with Heldman and Dirks. The two feminist professors recorded the stories of assault survivors and taught them about their rights under Title IX and how to navigate Oxy's murky reporting process. Like activists at other schools, they thought their administration wasn't nearly transparent enough, particularly regarding sanctions, which ranged in severity from an apology letter to victims and/or community service to suspension or expulsion. Nobody on campus seemed to know how the sanctions were applied or on what criteria they were based. The professors also advocated for students in judicial hearings, another source of controversy. Campus judicial boards were never meant to try serious crimes

like rape. That change. In 2011, when the Department of Education sent schools a letter warning that if they didn't curb sexual violence, they were in danger of violating Title IX. Colleges scurried to establish panels to adjudicate and punish sex crimes. Like many schools, Oxy used a panel of faculty and staff to decide cases, including Mee's.

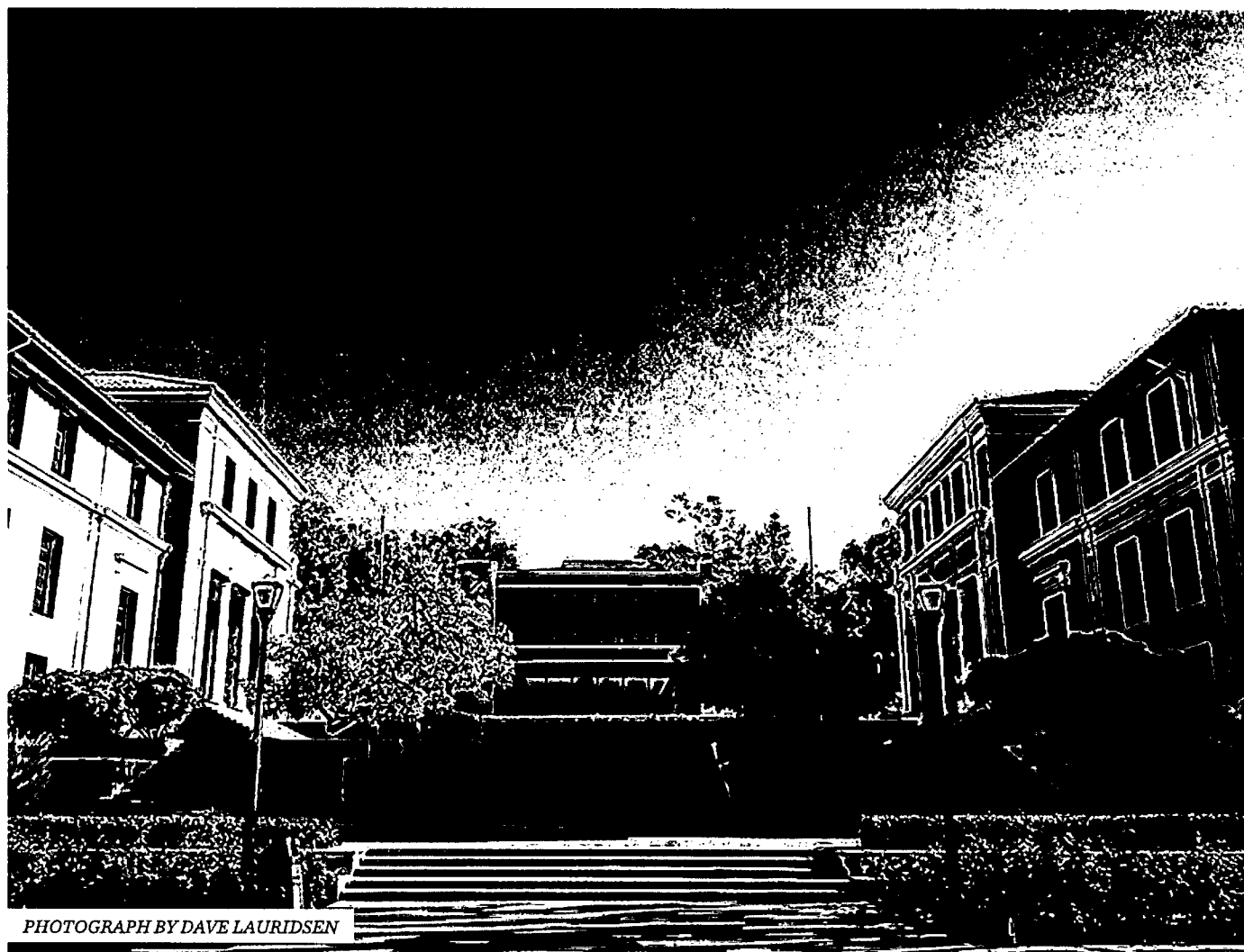
Mee was told her case would take three weeks to a month to investigate. Instead it took seven weeks, and her hearing occurred just before finals. Mee's schoolwork suffered, and she had to take two incompletes. "Every day I felt I was barely hanging on," she told me. "I'd call my mom, hysterical." During the process, schools are required to help victims with any housing or academic issues. Mee asked that her attacker be moved to another dorm because she felt threatened. But an administrator told her not to worry, "that she had met with my rapist," Mee said, "and that he didn't seem like the type of person who would do something like that." She was terrified that he would go after her.

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TAGS: CARLY MEE, CAROLINE HELDMAN, CLERY ACT, DANIELLE DIRKS, EMMA SULKOWICZ, GLORIA ALLRED, JONATHAN VEITCH, OCCIDENTAL COLLEGE

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LONG-FORM

The Trouble with Oxy

When the news hit that Occidental, the small liberal arts college in Eagle Rock, was the subject of two federal complaints over the way it handled sexual assault cases involving students, it set the campus

<http://www.lamag.com/longform/trouble-oxy/2/>

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reeling. Three years after the school has taken steps to improve, but it has yet to salve the bitter rancor between activists, administrators, and faculty

February 10, 2015 | Mona Gable | Crime | 2 Comments

A few days after Mee's hearing, she received an e-mail from the dean of students, Barbara Avery, according to a confidential copy of the federal complaint that a source provided me. Her attacker had been found responsible for two counts of rape and sexual assault; he'd be expelled. A couple of weeks later, however, Avery wrote to say she had accepted the assailant's appeal. When the hearing panel met again, it reached the same verdict—but overturned his expulsion. Instead he'd be suspended until Mee graduated. As to why, Avery said that it was because of "extraordinary circumstances." In January 2013, after being hit with criticism from activists about similar cases, Oxy stopped allowing victims and perpetrators to appeal sanctions.

If Mee was distraught by the news, Capranica was shattered by it. She experienced anxiety attacks, often during class. She stopped going out and hid in her room. During Capranica's judicial process, her assailant had repeatedly harassed her—as he later did Mee, according to the complaint. At one point he allegedly told Capranica: "I like to get confident girls drunk, watch them cry, and have sex with them." But because her case had already been decided, his ban from Occidental applied only to Mee's time there, which meant he would be returning to campus before Capranica graduated. Rather than have to face him, she worked so she could graduate six months early. What Mee and Capranica didn't realize then was that the man who'd

raped them had raped third woman twice. They soon would. The news that a serial rapist had been roaming Oxy shocked the campus. But it was only a hint of the uproar to come.

When Jonathan Veitch became the 15th president of Occidental College on July 1, 2009, one big goal was to steady the campus. It had gone through three leaders in four years, a remarkably short period, considering many college presidents serve a decade. Asked about his proudest accomplishments a year and a half into the job, he said, "just calming the waters a little bit, being accessible, building morale is an important part of what needed to be done."

Fifty-six years old, with brown hair ringing his crown, Veitch grew up on the Westside, the son of a Hollywood mogul. His father, John, worked at Columbia Pictures for more than a quarter century, rising to president of worldwide film production and overseeing films like *Taxi Driver*, *Kramer vs. Kramer*, and *Tootsie*. A historian with degrees from Stanford and Harvard, Veitch went on to become dean of the New School's Eugene Lang College in New York City, where he gained a reputation as a prodigious fund-raiser. At Occidental Veitch has focused on campus-building projects, raising money for the college's endowment, and recruiting more international students.

09/15/2015



The Oxy Sexual Assault Coalition leads a camp out in April 2013, after the lawsuit and federal complaints against the school were announced

PHOTOGRAPH BY PATRICK FALLON/GETTY IMAGES

If you were to pinpoint when faculty began to mistrust their president, it would be in late 2012. In November of that year, OSAC gave the president a list of 12 demands, describing changes it wanted made in the way Oxy handled sexual violence—from delivering a detailed annual sexual misconduct report to restoring its previous verbal consent policy, which required students to get consent before engaging in sexual activity. He promised to adopt ten of the demands. But in March 2013, when the activists complained that Veitch had done nothing, he said he had agreed only to *hear* the demands, not act on them. His response roiled the campus.

That same month Veitch alienated students and faculty further when he criticized activists for talking to the media about Oxy's failure to alert the campus about a rape in February—well before Allred blasted Veitch for not alerting the campus about a subsequent rape in April. "I'm dismayed that...a number of well-intentioned people have...actively sought to embarrass the College on the evening news," he wrote in a letter in *The Occidental Weekly*.

By the time of Allred's April press conference, the 127-year-old campus was a national media story, with faculty and students fighting for justice and an administration fighting to stem the bad publicity.

"He wasn't prepared, and you know he made mistakes," Lisa Wade, an associate professor of sociology, said of Veitch. "He didn't figure out fast enough that he should listen to the people who were experts on this issue and respect them. Caroline was walking in with all this documentation, not only what was going on at Oxy, but the ways in which our policies were not in compliance with the law, let alone best practices. This was long before the protests. She had been going in there for years."

Things got worse for Veitch in May 2013. That's when the faculty gave votes of "no confidence" to Avery and campus counsel Carl Botterud over their poor handling of survivors and their sexual assault complaints. More than being symbolic, the move was unprecedented, with 65 out of 74 professors weighing in against the dean and even more against Botterud. While Botterud quietly resigned (for unspecified reasons), Avery remains on staff.

Veitch's initial reaction to the crisis back in 2011 had also dismayed

professors. Presented with cases of alleged rape, “he didn’t respond with ‘Oh, my God! The women on my campus are being assaulted. That’s something we need to fix in the best possible way immediately,’ ” recalled Wade. “He made promises that weren’t kept. We increasingly lost faith that he would do the right thing.”

Vowing to “make things right,” Veitch had hired Gina Smith and Leslie Gomez of the Philadelphia-based law firm Pepper Hamilton in April to review what went wrong and to draft a new sexual misconduct policy. That summer he created the Sexual Misconduct Advisory Board, a small group composed of faculty, students, and staff, to examine Oxy’s mistakes and offer recommendations based on research of campus sexual assault. He hired a survivor advocate to counsel students about their reporting options and a new Title IX coordinator to ensure the school complied with federal guidelines. He had the school’s Web pages on sexual assault revamped, launched a 24-hour hot line, and established a mandatory online course about sexual assault for students. Then, in September 2013, Occidental announced a confidential financial settlement with at least ten of Allred’s clients (several more had retained her after the press conference). That same month, in a story by Jason Felch and Jason Song in the *Los Angeles Times*, Veitch acknowledged the school’s problems, but he believed Occidental had some of the strongest sexual assault policies in the country.

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If Veitch thought the administration's problems were over, he was quickly disabused of that notion. The faculty was still reeling from the revelations that dozens of their students were being sexually attacked by their classmates. Professors were seething over how Avery had kept her job. To add to that, several faculty members had been asked to surrender their phones and laptops to O'Melveny & Myers, another law firm working for the school, in response to the federal complaints and the prospect of a suit from Allred (she never filed). Although the practice is common in lawsuits, professors viewed it as a chilling intrusion into their academic rights.

When the faculty gathered in Johnson Hall for its monthly meeting in September 2013, members assumed that Veitch would answer their questions about the Allred settlement. Instead the president spoke for nearly 30 minutes, declaring his administration to be "shell-shocked" by the acrimony directed toward it. He begged for empathy, asserting that the sexual assault battle had damaged his "health and my soul."

About a month later reporter Jason Felch detailed in the *Los Angeles Times* how Oxy had failed to include 19 anonymously reported incidents of sexual violence in its 2010 Clery report. They'd been discovered by another consulting firm hired by Oxy. In the *L.A. Times* story the college acknowledged the mistake to Felch, who followed with a second article on December 7. This one accused Occidental of underreporting another 27 cases of sexual assault in 2012—reinforcing the impression that Oxy was deliberately hiding rapes and assaults.

For almost three months after Felch's story ran, the administration said nothing publicly about the 27 cases. Then in late January 2014, Occidental hired G.F. Bunting + Co., a PR crisis communications firm run by Glenn Bunting, a former investigative reporter for the *Los Angeles Times*. Ralph Frammolino, another ex-*L.A. Times* reporter, works for Bunting. A few years earlier Frammolino and Felch, who were writing partners at the paper, had a bitter fight over a book they coauthored about the Getty Museum. Frammolino had been lobbying Oxy as a client since October, according to an anonymous source, boasting that he knew Felch's methods of reporting and could turn around the negative press. After Felch's December 7 story, Bunting's firm was hired.

In early March Bunting met with *L.A. Times* editors to dispute Felch's account in a PowerPoint presentation. Shortly after, Felch was fired and the newspaper published a letter on its Web site retracting the reporter's December 7 story. The 27 cases of sexual assault, it said, didn't qualify under the reporting guidelines for the Clery Act. For instance, some involved sexual harassment while others occurred off campus. Finally the paper revealed this: Felch had also been having an "inappropriate relationship" with a source for this and other stories he had written. Whether that was the reason he had been fired wasn't explicitly clear.

So began another national media frenzy. When journalists asked Oxy for the PowerPoint material about the cases, they were told it was confidential. Why then had editors at the *L.A. Times* gotten to see it? "We agreed to share certain information with the *Times* to prove that the newspaper got it wrong when it reported that Occidental failed to disclose 27 reports of

sexual assault,” Occidental spokesman James Trancada wrote in a statement to me. As for showing the PowerPoint material to me, too, he wrote, “Consistent with our response to other media outlets, we respectfully decline to share the presentation with *L.A. magazine*.”

Following his termination, Felch wrote that he was “dismissed for creating the appearance of a conflict of interest” and that he had voluntarily told his editors about the affair after learning that he was being investigated. He noted that he wasn’t shown the new information, so he never got the chance to defend his reporting. He also said that he repeatedly tried to get Oxy to verify or dispute the number of cases and was stonewalled. Oxy contended that Felch never mentioned a specific figure and waited until right before the story ran to ask to interview administrators, giving them insufficient time to respond.

On March 18 Veitch addressed the scandal at a faculty meeting. Many there were outraged that they hadn’t been told about the involvement of Bunting’s firm. One professor accused Oxy of “dirty tactics.” Heldman and Veitch argued over the disputed—and endlessly confusing—assault numbers. “Why wasn’t it cleared up for us last year?” Heldman asked and went on to out herself as a source for Felch’s story. Veitch tried to appease her. “There is so much misinformation, which is why we need an opportunity to talk together,” he said.

At that point Heldman got angry. “You have brought me into your office, you have asked my opinions, then you have told me I don’t know what I am talking about,” she said. “If you think there’s a snowball’s chance that I

would sit in a room with you again while you insult me, while you have lied to us, while you have promised things and not delivered—your statement today is the absolute best evidence that any of us have of what you’ve been doing behind the scenes.”

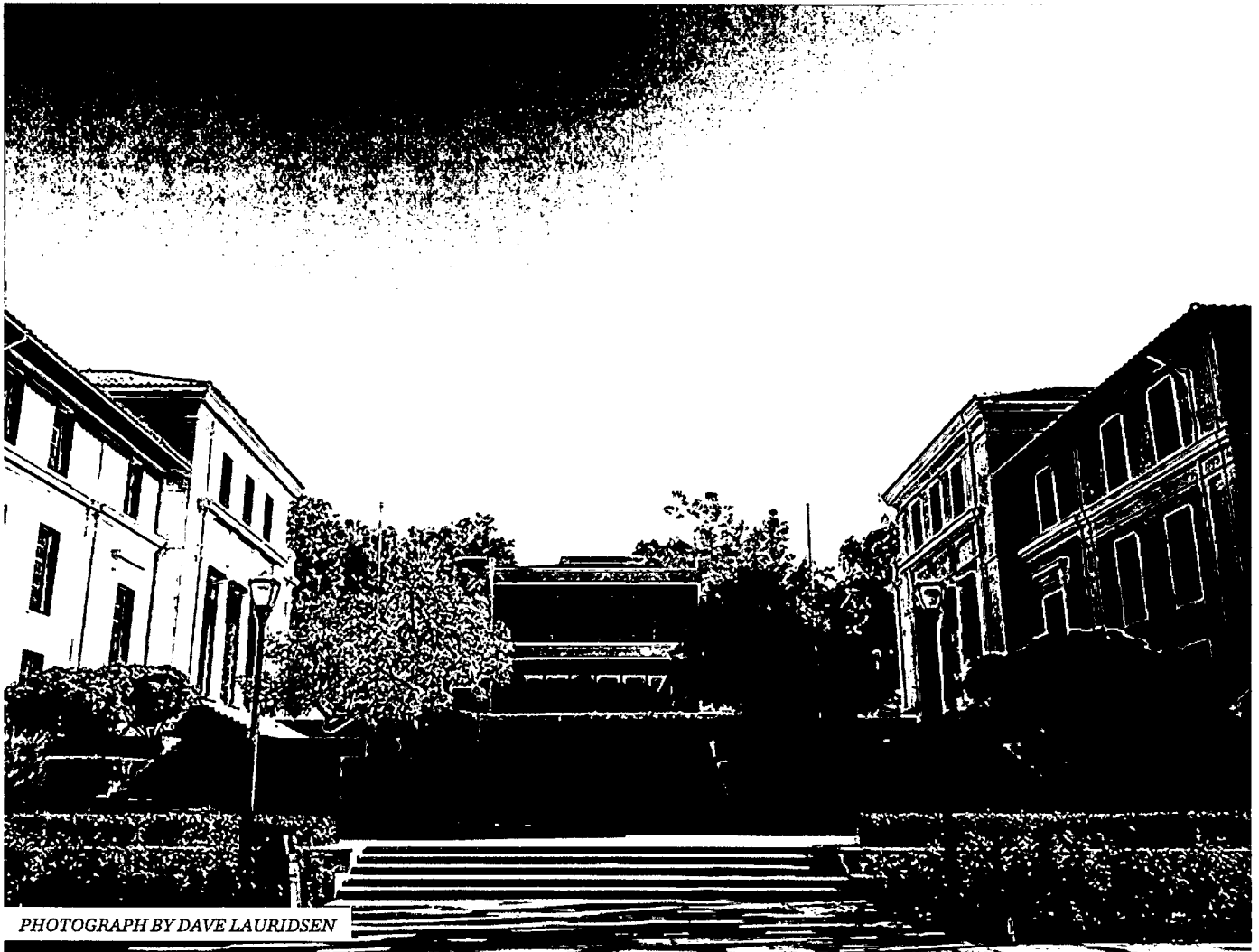
It seemed nobody was talking about Oxy’s sexual assault problems anymore.

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Like all liberal arts colleges, Occidental treasures academic freedom, the ability of faculty and students to say, argue, or publish almost whatever they like no matter how conservative or contrary. To that end, just days after the rancorous meeting with Veitch, Oxy’s faculty received a letter signed by several professors. “We write to you today out of concern for the well-being of the college,” it began. Without naming them, the letter seemed to blame Heldman and Dirks for the “polarization” of the faculty and the administration. “I signed it because I feared we had a no-end strategy,” an early OSAC member told me.

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LONG-FORM

The Trouble with Oxy

When the news hit that Occidental, the small liberal arts college in Eagle Rock, was the subject of two federal complaints over the way it handled sexual assault cases involving students, it set the campus

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reeling. Three years after the school has taken steps to improve, but it has yet to salve the bitter rancor between activists, administrators, and faculty

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What most faculty didn't know was that OSAC was fracturing, too. Dirks had quietly dropped out. Some of the seniors felt that Heldman was trying to exert too much control over the group. She wanted OSAC to stage a "Scarlet Letter" protest against Veitch, where they'd all show up on campus wearing scarlet A's. It was Veitch and his consultants for the *L.A. Times*, she charged, who were to blame for the public admission that a professor had been sleeping with its reporter. When the students questioned the idea, Heldman lashed out at them. "She wrote us an extremely long text message how she never trusted any of us," recalled one of the students, who asked not to be named for fear of retaliation. "All of us were very upset. All of us were crying." In April the students deleted their hero from OSAC's Facebook page and announced that from then on, OSAC would be a student-run organization.

Things were also getting tense between professors who'd been involved in the movement. One early OSAC member said that in June 2013, Heldman kicked her out of the organization. "She didn't like how I was handling things," the professor recalled. "She decided I wasn't in the inner circle anymore."

In August 2014, Heldman e-mailed me, warning of this person's credibility after I mentioned speaking with her. "However she may be presenting to

you, she is working against the struggle as we see it on campus.” From then on Heldman didn’t respond to my e-mails, texts, or phone calls. That same month I learned that Heldman and Dirks had split. For the movement’s sake they were trying to keep it quiet to maintain a united front, but those who knew found the news unthinkable. Since late 2012, the women had seemed inseparable. The two had been writing a book on campus rape. Any time activists and students referred to them, it was in tandem: Danielle and Caroline, Caroline and Danielle. As late as January 2014, a month before they stopped talking, Heldman had even tweeted a photo of the two leaning together, with the word “wifeys.”

Dirks met me one afternoon in August at an Eagle Rock diner, where she dashed in wearing workout clothes, her hair plopped in a bun atop her head. She had a Pilates appointment across the street, part of an effort to take better care of herself. “I am really so scared,” she said as she discussed the falling-out.

Her relationship with Heldman had been strained for months, a casualty of the incessant media attention on and power struggles in the movement. After they launched the national student-faculty advocacy group End Rape on Campus, in July 2013, the pressure only intensified. That November Kirby Dick, the Academy Award-nominated documentary filmmaker, came to Oxy to work on his film about the college sexual assault epidemic. The crew was shooting Heldman and Dirks when the director interrupted. He wanted Annie Clark and Andrea Pino, cofounders of EROC, in the scene—not the professors. Dirks figured the students made for a more compelling story, but she said that Heldman felt snubbed. Hadn’t the professors handed

this documentary to Dirk? Why were the media focusing so much on Clark and Pino?

When Dirks defended the students, she said, Heldman grew furious. "She accused me of not being in the trenches with her and turning against her," Dirks added. In February 2014, she told Heldman she was going to resign from EROC. She was stressed. "I didn't realize the extent of how much of that stress was her," Dirks told me. But when Dirks decided to remain in EROC, Heldman resigned instead. She cofounded the national group Faculty Against Rape, whose mission is to enlist more professors in fighting sexual assault and to protect them against retaliation from their schools.

Then came the revelation from the *L.A. Times* that a professor had been sleeping with Felch; some on campus assumed it was to influence the paper's sexual assault coverage. At first Heldman pretended to many people—including me—to be the source, but several faculty members knew it was someone else, who wished to remain anonymous.

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Studies show that only 2 to 8 percent of rape and sexual assault cases involve false claims. But in the push to end sexual violence on college campuses, there's a growing refrain coming from men found guilty of rape: that the system is now stacked against them. At Harvard this past fall, 28 law school professors deemed the school's new sexual assault policy "overwhelmingly stacked against the accused." And, of course, there is the *Rolling Stone* debacle from last fall, in which the

magazine backed away from a woman's claims of being gang raped at a fraternity house at the University of Virginia. First the magazine said its trust in the source was "misplaced." Then, changing course, it said its reporter had failed by not contacting the alleged attackers, confirming the worst suspicions of campus rape deniers.

"I still remember when I did my first interview and outed myself as a survivor, and that was so scary," Mee, who's studying law now, said to me about the story. "So it's hard to see the reactions to her, and the assumptions because there were errors in the journalism, that people are doubting her."

Students accused of sexual assault at schools including Brown, the University of Michigan, and Swarthmore College have filed charges of their own, some of them citing Title IX violations themselves. At Oxy there's been one such suit: In December 2013, a freshman identified as John Doe was expelled after he was found responsible for raping a 17-year-old female student, and he ranted about the case on social media. That same month a post on Reddit and 4chan about an online form enabling Oxy students to anonymously report sexual assault led to men's rights activists swamping the Web site with more than 550 fake complaints.



In February 2014, after losing his appeal, John Doe sued Occidental, alleging sex discrimination. Under Oxy's sexual consent policy, his lawyers argued Jane Doe had actually assaulted *him*. Both were drunk, and she'd given him oral sex while he was "intoxicated" and therefore couldn't consent. She also texted a friend that she was going to have sex. Oxy, which had long been criticized for not punishing rapists enough, was suddenly being accused of going too far.

Making things worse, John Doe's lawyers released about 200 pages of confidential documents. The young woman had never wanted to go public, and now the excruciating details of her experience were splashed online.

When Oxy later went to court to have the material sealed or redacted, the judge declined. Then a civil liberties group called the Foundation for Individual Rights in Education rallied in defense of John Doe, unleashing a torrent of online harassment from trolls aimed at female witnesses.

Dirks was one of them. On June 6 she received an e-mail from a man in Missouri: "What kind of a radical fucking man hating dyke are you?" it read. "Please, slice your goddamn wrists, nail your pussy shut and go wait tables before you harm someone else."

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I'm making sure we're dotting our *I*'s and crossing our *T*'s," said Veronika Barsegyan from behind her desk at the Campus Safety office. It was early September, and Barsegyan was a month into her job as Oxy's Clery coordinator, managing the daily crime log and recording every incident. The 28-year-old was scrambling to pull together the annual Clery report. Due October 1, it was supposed to contain Occidental's crime numbers for the previous three calendar years, 2011 through 2013. "I'm auditing and auditing and auditing to make sure we are completely compliant," said Barsegyan.

She was being helped by Victor Clay, the new campus safety chief, who came on the job three days before. A burly 30-year veteran of the Los Angeles County Sheriff's Department, Clay replaced Holly Nieto, who retired in August. For years it was Nieto's job to ensure that Oxy's rape and sexual assault numbers were correct. Although she relied on departments to pass

along sex crime statistics to her, sometimes the reports fell into a black hole. Other times key information was missing. When Oxy's Clery Report came out on October 1, it revealed that the number of reported sex offenses surged from 12 incidents in 2011 to 64 incidents in 2013. Although 34 of those occurred in previous years and even more had been reported anonymously, this meant that students were finally coming out of the shadows to report.

Another person who'll strongly influence Oxy's ability to improve the way it handles sexual assaults is Ruth Jones, Occidental's new Title IX coordinator. In September California became the first state in the country to adopt what's regarded as the best policy to help students navigate sex. Part of Jones's job is to make sure everyone understands the state's affirmative sexual consent policy for colleges and universities—commonly known as “yes means yes.” (Unless someone says yes to having sex, there should be no assumption that it's consensual.) A lawyer in her sixties, Jones has a patchwork of recent federal laws—the White House “Not Alone” report, the Senator Claire McCaskill legislation to reduce the prevalence of college sexual assault—to consider. People want to get this right,” she said, “and there's not a common view of how to do that.”

While colleges like Dartmouth have moved to mandatory expulsion for students who commit certain kinds of sexual assault, Occidental has yet to adopt such a stiff or uniform approach. At Oxy a student found responsible for rape or sexual assault does face suspension or possible expulsion; however, the policy still doesn't make clear how punishments are decided. Is one form of sexual assault worse than another? What does it take to

warrant expulsion? But Jones's hardest job may be restoring confidence in the reporting process. She's already made mistakes. At the faculty meeting last May, she announced that from now on, professors would have to tell the college if a student privately came to them about a rape or sexual assault. The room erupted in anger and disbelief. Just minutes before, SMAB, the faculty-student committee, had advised that because of trust issues at Oxy, faculty should not be mandatory reporters. If students knew their information wouldn't be confidential, they wouldn't come to their professors. In fact, a month later a student I'll call Mary contacted me. Mary claimed she knew two students—one male, one female—who'd been sexually assaulted by the same male student but hadn't reported because they were leery of the process.

In late October, after repeated delays for more than a year, the Pepper Hamilton report finally landed. It was supposed to illuminate how Occidental had found itself in this mess. Instead the 130-page document absolved the administration of almost any blame and singled out just about everyone else, especially activists—presumably OSAC—writing that their tactics were standing “in the way of candid and collaborative communication between activists and administrators.”

In a prepared statement his spokesperson provided me, Veitch, who declined to speak to me, characterized the report as being “a frank and productive discussion.” But in an e-mail to me, Nalsey Tinberg, the head of Oxy's faculty council, chastised Smith and Gomez's account of Oxy's troubled history. “Unfortunately, the President and the Board of Trustees have missed another valuable opportunity to bring the campus together,”

wrote Tinberg, a professor of mathematics at Occidental since 1980. While some faculty members disapproved of OSAC's methods, she went on, "we all have stood together to make sure our students are safe, protected, and defended. And their fire and passion alone helped to ignite a nationwide movement that we should be proud of."

If anyone had helped create the toxic culture on campus, Tinberg wrote to me, it was Veitch. "It is his lack of understanding, his lack of empathy, and his sheer stubbornness that has impeded him," she wrote. The report was just "another public relations effort that blames faculty and staff, OSAC, the press, and even the White House for the inability of our college leaders to do the right thing."

In his statement Veitch focused on the positive: "We now have a deeper, more nuanced understanding of this issue. I know that I do.... Rebuilding trust takes time. Ultimately actions, not words are what we need."

As far as students are concerned, the actions of the recent past seem to say plenty. When I checked Oxy's daily crime log leading up to December 21, there were two rapes and one sexual assault reported for the entire year of 2014. None of them occurred in 2014 but were reported retroactively. By that measure, not a single sexual assault occurred in 2014. Either Occidental has completely solved its rape problem, or students have retreated, concluding the process isn't worth it.

Mona Gable wrote about Pasadena City College professor Hugo Schwyzer in the April 2014 issue. This feature originally appeared in the February 2015

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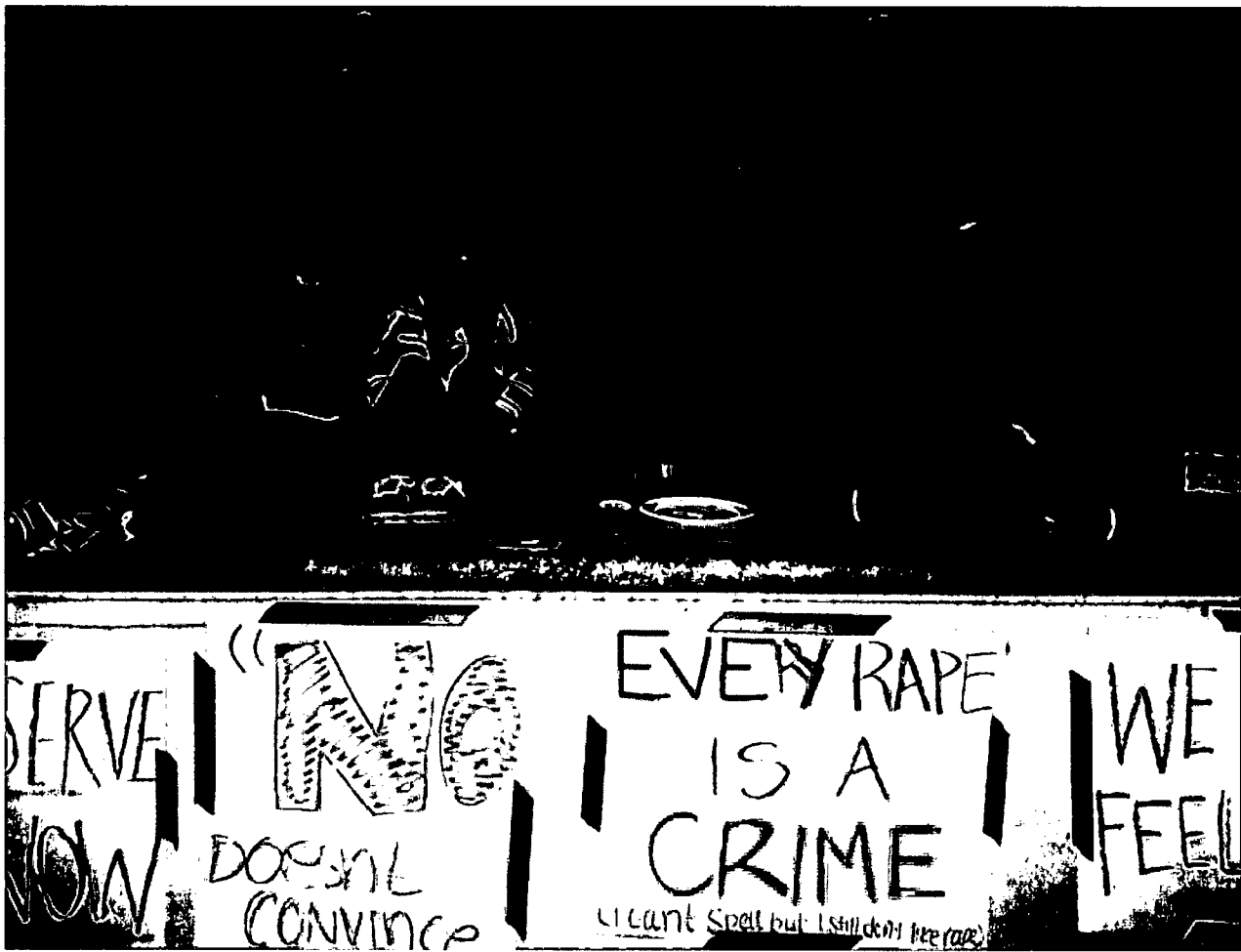
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Oxy Faculty Demand Campus Sexual Assault Policy Reform in Wake of Rape Allegations

In an open letter to the college community, 110 Occidental College faculty members vow to "transform the policies and underlying culture" surrounding sexual assault on students.

By AJAY SINGH (Patch Staff) (</users/ajay-singh>)

☺ May 8, 2013



Barely two weeks after six young women held a widely publicized news conference about how they were allegedly raped while they were students of Occidental College and how college authorities failed to take appropriate action following their complaints, as many as 110 Oxy faculty members signed an open letter to the college administration, calling for sweeping reforms in the college's sexual assault policy.

The letter, a copy of which was e-mailed to Eagle Rock Patch Wednesday, reads as follows:

We, the undersigned Occidental College faculty, reaffirm the right of all students to live, work, and study on a safe campus where equity prevails.

We, the undersigned Occidental College faculty, recognize and commend the courageous efforts of the members of the Occidental community who are working to ensure that sexual harassment, sexual battery, sexual assault and rape have no place in our community.

We, the undersigned Occidental College faculty, agree with OSAC that there must be changes to the sexual assault policies, there must be procedural integrity in hearing board cases, there must be additional resources for sexual assault and rape survivors, and that there must be significant, on-going sexual harassment, battery, assault and rape education for all students.

We, the undersigned Occidental College faculty, vow to work constructively and tirelessly to transform the policies and underlying culture of Occidental College toward the elimination of sexual harassment, sexual battery, sexual assault and rape.

Sincerely,

Jamie Angell

Arthe Anthony

Heather Banis

Renee Baran

Natasha Behl

Linda Besemer

Roger Boesche

Elizabeth Braker

Carolyn Brighthouse

Ron Buckmire

Thomas Burkdall

Larry Caldwell

Anthony Chase

Tsung Chi

Mary Christianakis

Lan Chu

Phoebe Dea

Allison de Fren

Nancy Dess

Danielle Dirks

Peter Dreier

Greg Drummond

Robert Ellis

Salvador Fernandez

Sharla Fett

Daniel Fineman

Brian Fitzmorris

Heng Lam Foong

James Ford

Broderick Fox

Debra Freas

Alan Freeman

Regina Freer

Douglas Gardner

Nina Gelbart

Irene Girton

Alicia González

Thalia González

Robert Gottlieb

Susan Gratch

Susan Grayson

Felisa Guillen

Laura Hebert

Mary Beth Heffernan

Caroline Heldmar

Marcia Homiak

Maryanne Horowitz

Andrew Jalil

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0045/2015

HEARING TRANSCRIPT
TO BE FILED UNDER SEAL

09/15/2015

06/14/07 11:03 AM

November 19, 2013

Mr. *John Doe*

Re: Notice of Charges Letter

Dear Mr. *Doe*

The Interim Title IX Coordinator received the investigation report regarding the complaint of alleged sexual misconduct from the investigators on November 14, 2013.

Threshold Determination

Under the College's Sexual Misconduct Policy, a threshold determination means there is sufficient information upon which an adjudicator could make a finding of responsibility of a violation of the policy. The basis for this threshold determination does not involve a determination of responsibility, nor does it involve a credibility assessment.

Based upon review of the information set forth in the investigation report, I find there is sufficient information upon which an adjudicator could make a determination of a violation of the Occidental College Sexual Misconduct Policy.

Brief Summary of Conduct at Issue

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

Alleged Policy Violations

The Sexual Misconduct Policy prohibits the following conduct, which is alleged to have happened, under the following sections:

0011512015

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

- By force or threat of force;
- Without effective consent; or
- Where that 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.

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

- By force or threat of force;
- Without effective consent; or
- Where that 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.

Formal Resolution of the Complaint

As noted above, based upon the information in the investigation report, there is sufficient evidence to meet a threshold determination. Given the nature and severity of the allegations of this complaint, and according to the policy, I will move forward with a formal hearing to resolve the alleged complaint of violation regarding sexual assault and non-consensual sexual contact of the College's Sexual Misconduct Policy. You will receive information regarding the hearing, as well as, an invitation to a pre-hearing meeting and a copy of the Sexual Misconduct Policy under separate cover.

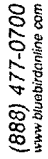
Please feel free to contact me with questions.

All my best,

Cherie A Scricca
Title IX Hearing Coordinator
323.259.1358
scricca@oxy.edu

Cc: Lauren Carella, Interim Title IX Coordinator

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Occidental College chief asks for reconciliation after accusations

School administrators were 'shell shocked' by criticism over the handling of student sexual assault reports, said President Jonathan Veitch. The complaints are now part of two federal investigations.

September 20, 2013 | By Jason Felch and Jason Song

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The president of Occidental College made an emotional plea for support from the faculty, saying his administration was "shell shocked" over its handling of student sexual assault allegations.

Speaking for 20 minutes without taking questions, President Jonathan Veitch pleaded for reconciliation on campus, saying the controversy had taken a toll "on my health and my soul," according to several people who attended the meeting.

He mentioned that his five-year contract was up for renewal, which suggested to some that he needed the faculty's backing.

The episode was the latest in a withering feud at the Eagle Rock college, where some faculty and students over the past year have accused top officials of discouraging victims from reporting sexual violence, handing down weak sanctions against men found responsible for rape and retaliating against professors and students who have spoken out in protest.

The complaints are now the subject of two federal investigations into possible violations of civil rights and campus crime-reporting laws, putting the tiny liberal arts school in a national spotlight. Dozens of other schools face similar allegations, including USC and UC Berkeley, although the number of complainants at Occidental is unusually high. Fifty students, staff and faculty have joined in the federal civil rights complaint on a campus of about 2,000 students.

Veitch's speech came a day after the Los Angeles Times revealed the college had reached a confidential monetary settlement with at least 10 Occidental students who said their accusations of rape and other assaults were squelched or downplayed by administrators.

The settlement bars the women from publicly discussing the college's handling of their cases. The women's attorney, Gloria Allred, said in an email Thursday that it would not prevent them from participating in federal or campus judicial proceedings, as some faculty had feared.

At the faculty meeting Thursday, Veitch defended his handling of the broader controversy.

"It was really a plea for civil discourse on campus and an expression of affection for people," Veitch said in an interview after the meeting. "None of us got in here to fight with each other."

Veitch said he did not mean to suggest to faculty that his job was in jeopardy. Indeed, Stephen Rountree, a vice chairman of Occidental's Board of Trustees, said Veitch had been recently offered a multi-year contract and had "a thousand percent" support from the board.

Veitch acknowledged several missteps over the past year but said he believes Occidental now has some of the strongest sexual-assault policies in the country. The college has also hired an advocate for victims and is requiring more training on the issue during freshman orientation. "I think we've been doing well, and it frustrates me that we haven't been able to convey that," he said.

He praised the efforts of two of his most vocal critics, Caroline Heldman, chair of the politics department, and Danielle Dirks, a member of the sociology department faculty, who helped organize the students to file the federal complaint.

"This is a dispute over tactics and not goal," Veitch said. "I'm actually grateful they've brought this to the



Danielle Dirks, right, an Occidental College faculty member, meets with... (Bob Chamberlin / Los Angeles...)

forefront."

Heldman and Dirks, who have gained national attention for their outspoken advocacy on behalf of students, were not satisfied that progress had been made under Veitch.

"The best way to describe it is failed leadership," Heldman said.

"I've heard from three students since the beginning of the school year who say they were raped," said Dirks. She said of the cases: "None of them has been handled appropriately."

In February 2012, Heldman and Dirks banded together with students to form Occidental Sexual Assault Coalition, a campus advocacy group that has pushed the college to address what it calls the "rape culture" on campus.

The group appeared to have reached agreement on policy changes with Veitch, but the campus' handling of a sexual assault accusation in February 2013 angered students and faculty. Critics said the campus failed to alert students as promised. In a TV interview, Dirks and Carly Mee, a student who said she had been raped as a freshman, accused the administration of failing to honor its pledges.

In response, Veitch released a letter saying the two had "actively sought to embarrass the college on the evening news." He later apologized, but the letter is now an attachment to the federal complaint, in which Dirks and Mee say they were victims of retaliation.

Heldman and Dirks say the public rebuke persuaded them that only a federal investigation would force Veitch to take their concerns seriously. They and dozens of students filed the federal complaints two months later. The professors have the broad support of the college's faculty, said mathematics professor Nalsey Tinberg, president of the faculty council.

"Those two women have shown courage," Tinberg said. Other professors at Occidental have also voiced support for Dirks and Heldman and expressed their concern in May with a vote of no-confidence in two top administrators.

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Email: oxymag@oxy.edu

As a national conversation emerges, Oxy refines its approach to sexual misconduct with new policies, resources, and programs

Occidental moved aggressively over the summer to enhance its approach to the issue of sexual misconduct, revising its policies and procedures, adding new resources, and increasing educational programs. The College's efforts came as the U.S. Department of Education informed Oxy on September 10 that it had launched a second investigation following a complaint from students and faculty alleging that the College underreported the number of sexual assaults on campus. (The first, announced May 8, is in response to a separate complaint alleging that Occidental mishandled sexual misconduct cases.)

The filing of complaints against the University of Connecticut and Emerson College in October brings to 25 the number of colleges and universities whose handling of sexual misconduct cases has come under fire. "All the steps we are taking are based on a single goal: We are determined to be a national leader on this issue," says President Jonathan Veitch.

On August 23, Oxy unveiled a new interim sexual misconduct policy, drafted with the assistance of attorneys Gina Smith and Leslie Gomez. Drawing on the latest thinking about effective practices and recommendations from the Occidental community, it offers clear guidance about reporting options; an expanded discussion of available resources; and more detailed definitions of what constitutes sexual assault, consent, coercion, and incapacitation. It also underlines the College's commitment to encouraging bystander engagement and intervention.

The new Sexual Misconduct Advisory Board—a permanent committee of faculty, staff, and students chaired by Mary Christianakis, associate professor of critical theory and social justice—has been asked to conduct a review of the new policy and offer recommendations for possible changes next spring.

When students returned to campus this fall, they also found a new around-the-clock confidential telephone hotline, a full-time survivor advocate, an ongoing search for a full-time Title IX coordinator, and a Project SAFE staff doubled in size to carry out its advocacy and education work. Even before they arrived on campus, all new and returning students were required to complete an online preventative educational program. The amount of time spent on the issue at Orientation more than doubled, and education efforts have continued

through residence hall programming and a series of campus speakers.

The College's most vocal critic on this issue was unimpressed. "We applaud these steps, but they do not constitute substantial changes to policy, personnel, or the processing of sexual assault cases," said a statement by the Oxy Sexual Assault Coalition distributed at the August 26 faculty meeting.

The College also carried out a comprehensive internal audit of its reporting procedures mandated by the Clery Act, the federal law that requires colleges and universities to report annually on sex offenses and other serious crimes that occur on or near campus. As a result, the College's latest Clery report, released October 1, revised its sex offense numbers for 2010 and 2011, chiefly because the results of an anonymous written survey conducted by Project SAFE in 2010 should have been included in Oxy's Clery statistics, but were not. "The safety of our students is our primary concern, and we need to get this right," said Jim Tranquada, director of communications.

Officials with the Department of Education's Office of Civil Rights and the office of Federal Student Aid have not disclosed when the results of their investigations will be made public. (Both offices were closed and all investigations suspended during the recent government shutdown.) In the meantime, Smith and Gomez are scheduled to deliver an interim report later this semester that will provide an analysis of Occidental's handling of the previous two years of sexual misconduct cases.

All of this suggests that the issue of sexual misconduct will remain at the forefront of the campus conversation this year—and that change is beginning to make itself felt. "There has been a heightened sense of awareness on campus regarding hooking up and partying," *Occidental Weekly* editor Juliet Suess '14 reported in a lengthy October 2 analysis. Although much has been done, Suess wrote, "there needs to be an emphasis on education and healing for the campus."

OCCIDENTAL COLLEGE

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CHARGE EVALUATION WORKSHEET

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I interviewed the victim regarding the facts of the case. I explained to her the definition of PC 261(a)(3) and the lack of evidence as to certain elements. Specifically the facts show the victim was capable of resisting based on her actions. [REDACTED] More problematic is the inability to prove the suspect knew or reasonably should have known that she was prevented from resisting if she was in that state. It would be reasonable for him to							
(CONTINUED ON NEXT PAGE)							

LAST NAME:

FIRST NAME:

DA CASE NUMBER:

09/15/2015



A DRUNK FRESHMAN
BOY MET A DRUNK
FRESHMAN GIRL IN
THIS DORM AT
OCCIDENTAL COLLEGE.
WHEN THEIR SEXUAL
ENCOUNTER COLLIDED
WITH A PANICKED
AND PRESSURED
ACADEMIC
BUREAUCRACY,
IT QUICKLY
BECAME A
DISASTER.

OCCIDENTAL JUSTICE

BY RICHARD DORMENT
PHOTOGRAPHS BY EMILY SHUR

ON SEPTEMBER 7, 2013, TWO FRESHMEN

were gearing up for their third Saturday night at Occidental College. The small liberal-arts school in the Eagle Rock section of Los Angeles was just beginning its fall term, and after an unseasonably warm day that ran well into the 90s, the campus settled into one of those clear 70-degree nights that people plan their retirements around. In the southeastern corner of campus, under the red tile roof of Braun Hall, the hours ahead offered nothing but possibility.

The one freshman, John, eighteen years old and a slim six one, was good and drunk by sundown. He'd started drinking earlier in the day as part of a freshman-jock initiation. Shots, chugging, stupid human tricks—bonding and hallowed ritual to some, hazing to others—left him too drunk to finish the initiation, and around 11:00 P.M. a teammate escorted him back to the second floor of Braun. He would later describe that night as the drunkest he's ever been, and a neighbor from down the hall would describe his level of intoxication as a "shitshow." He was "slurring his words, stumbling over the others when he got up." *That kind of drunk.*

The other freshman, Jane, one month shy of her eighteenth birthday and a mere five feet two inches tall, was rebounding from the previous night's hangover by shooting vodka and sipping screwdrivers at a small gathering in a friend's room. Around 10:15, she and some friends went looking for a party off campus, but once her preparty buzz turned into full-blown, falling-down drunkenness, she parted ways with the group and started to make her way back to her room on the third floor of Braun. One of the friends who helped get her back to the dorm would later say Jane had a hard time walking and, upon seeing a resident advisor, said, "I have to act normal." *That kind of drunk.*

Once inside the dorm, Jane ran into John's roommate, who told her that John was having a little dance party in their room. Her interest piqued, she went into the room, and by the time John's roommate caught up with her a few seconds later, John and Jane were embracing. The roommate promptly left John and Jane alone, and minutes later, two of Jane's friends who'd been with her earlier in the evening came in to check on her. One of them would later describe the ensuing half hour as Jane "trying to kiss John and dance with him... and

John trying to get [the two friends] to leave."

That friend also said that "Jane was grabbing John and trying to kiss him.... John was

◀ Braun Hall on Occidental's campus in Los Angeles, where both Jane and John lived in the fall of 2013.

'somewhat' responsive...but 'also seemed pretty indifferent' to Jane's advances. [The friend] observed that John was 'not at all going for her...it was not like he was grabbing her and pulling her onto the bed.'" Eventually, according to Jane's other friend in the room, "John and Jane laid down together on John's bed, with Jane on top of John... 'getting really physical'... [with Jane] 'kind of riding on top of John. Her hips were moving... It looked like something sexual was going down.'" Her two friends convinced Jane it was time to go home, but not before she gave John her number. (The college would later commission an inquiry into the events of the night, with two independent investigators interviewing witnesses and summarizing their statements—and in some instances quoting them directly—in an official report. All observations attributed to witnesses in this story, as well as texts cited, are taken from that report.)

The two friends got her back to her room, put her to bed, and left. It was 12:31 A.M., and she got a text.

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

JANE: Okay

JOHN: Get the fuck back here.

JANE: They're still with me o

JOHN: Make them leave. Tell them yoy want to sleep. I'dc. [I don't care.] Just get back here

JANE: Okay do you have a condom

JOHN: Yes.

JANE: Good give me two minutes

JOHN: Come here.

JANE: Coming

JOHN: Good girl.

JOHN: Knock when you're here

Seemingly aware of what was coming next, Jane texted a friend "I'm wasted" and "I'mgoingtohave sex now," and while she made her way down to John's room, she vomited in a trash can in the hallway before making it to the men's bathroom and, finally, John's room.

Later, John would say he remembers few specifics about the following hour, including the 12:39 A.M. text he sent to his roommate instructing him to "stay the fuck out of our room." He also put a piece of paper in the slot for the key card to the room, the millennial equivalent of the sock on the doorknob. Jane would say that she doesn't remember much either, except for when she told John she'd just thrown up and needed a piece of gum; and when she asked him again if he had a condom; and when she performed oral sex on him; and when John told her that his roommate had just walked in on them having sex. (His roommate would later tell investigators that, based on what he was told to look out for during the sexual-assault-prevention training he received during orientation, what he saw when he walked in the room didn't look like sexual assault.) Later, when John went down the hall to use the restroom, a neighbor from down the hall knocked on John's door to check on Jane. According to the investigators' report, "He asked if she was okay. Jane responded, 'yeah.' [He] said he asked, 'Are you sure?' Jane replied, 'Yeah, I'm fine.' [He] said he asked Jane Doe a third time if she was okay, and she answered that she was." While the neighbor would also say that Jane answered "kind of unconvincingly" and she sounded "kind of sad," he said he "took her word for it." (Jane told investigators that she also remembers this exchange.) John returned from the restroom, and thirty minutes later Jane left his room.

At 1:57 A.M., John texted his roommate, "Our room is free, go back any time," and twenty minutes later Jane sent the following text message to two friends:

.)

John would later learn that he finished the night by talking to a female friend for a few minutes—about what he does not recall—and going to sleep. Jane, meanwhile, went back to her room, where, her roommate would later say, she "was not making sense, was slurring her words, could not unbutton her clothing..." However, when Jane's roommate went to take a shower, Jane got out of bed and made her way to the common room in another dorm. Her roommate eventually found her in her pajamas, "sitting on a couch on some guy's lap," as her roommate put it, and joking about Nascar. Her roommate got her out of there, stating later that Jane was incoherent.

John and Jane would both wake up the next day extremely hungover and uncertain about what had happened. Later in the day, Jane would learn she was no longer a virgin. Three months later, John would find out he'd been expelled.

BEFORE ROLLING STONE AND UVA, BEFORE JAMEIS WINSTON

and Florida State, before a slight young woman began hauling a mattress around Columbia University, there was Title IX, the landmark 1972 statute establishing that no student in a federally financed education program can be discriminated against or deprived of equal access to education because of his or her gender. For decades Title IX was known mostly for its impact on college sports, and though the law technically covered incidents of harassment and violence, sexual assaults on college campuses were generally matters left to the discretion of college administrators. "Most schools were not thinking of these cases as being about Title IX," says Nancy Cantalupo, a professor at Georgetown Law and a vice-president at the National Association of Student Personnel Administrators. "They were just thinking about them as being a part of their student disciplinary process."

That all began to change in 2011, when the Office for Civil Rights in the Department of Education, which is charged with enforcing Title IX compliance, sent out what it calls a "Dear Colleague" letter informing any college that receives federal funding—that would be almost all of them—that it must treat sexual-assault claims as potential federal civil-rights violations or risk losing their funding. The decision effectively put colleges in the law-enforcement business, and it also provided a powerful tool to a new generation of activists across the country who were fed up with how administrators too often blamed or dismissed victims of sexual assault on campus.

In the spring of 2013, two professors at Occidental, Caroline Heldman and Danielle Dirks, filed two complaints against the school, under Title IX and a related law, on behalf of the recently formed Oxy Sexual Assault Coalition (OSAC), alleging Occidental had mishandled investigations and underreported incidents of sexual assault for dozens of women. OSAC's list of grievances is disturbing, including: "two of three respondents found responsible for multiple rapes have been invited back on campus, exposing a new crop of students to known predators"; "administrators telling survivors after meeting their assailants, 'he didn't seem like the type of person who would do something like that' or 'he didn't seem like a rapist'"; and a college administrator "telling a group of male athletes that most of the cases of alleged rape at Oxy are 'girls getting back at their ex-boyfriends.'" There were allegations that critics of the administration were being intimidated and that their e-mails were being secretly monitored, both charges that Occidental would

deny. Under intense pressure from both the OCR—which was investigating the potential Title IX violations and could, theoretically, withhold Occidental's federal funding—and campus activists, the college president, Jonathan Veitch, promised to make amends and turn Occidental into a national leader in fighting sexual assault, in part by revising its policies on investigating such offenses and expanding its definition of sexual assault.

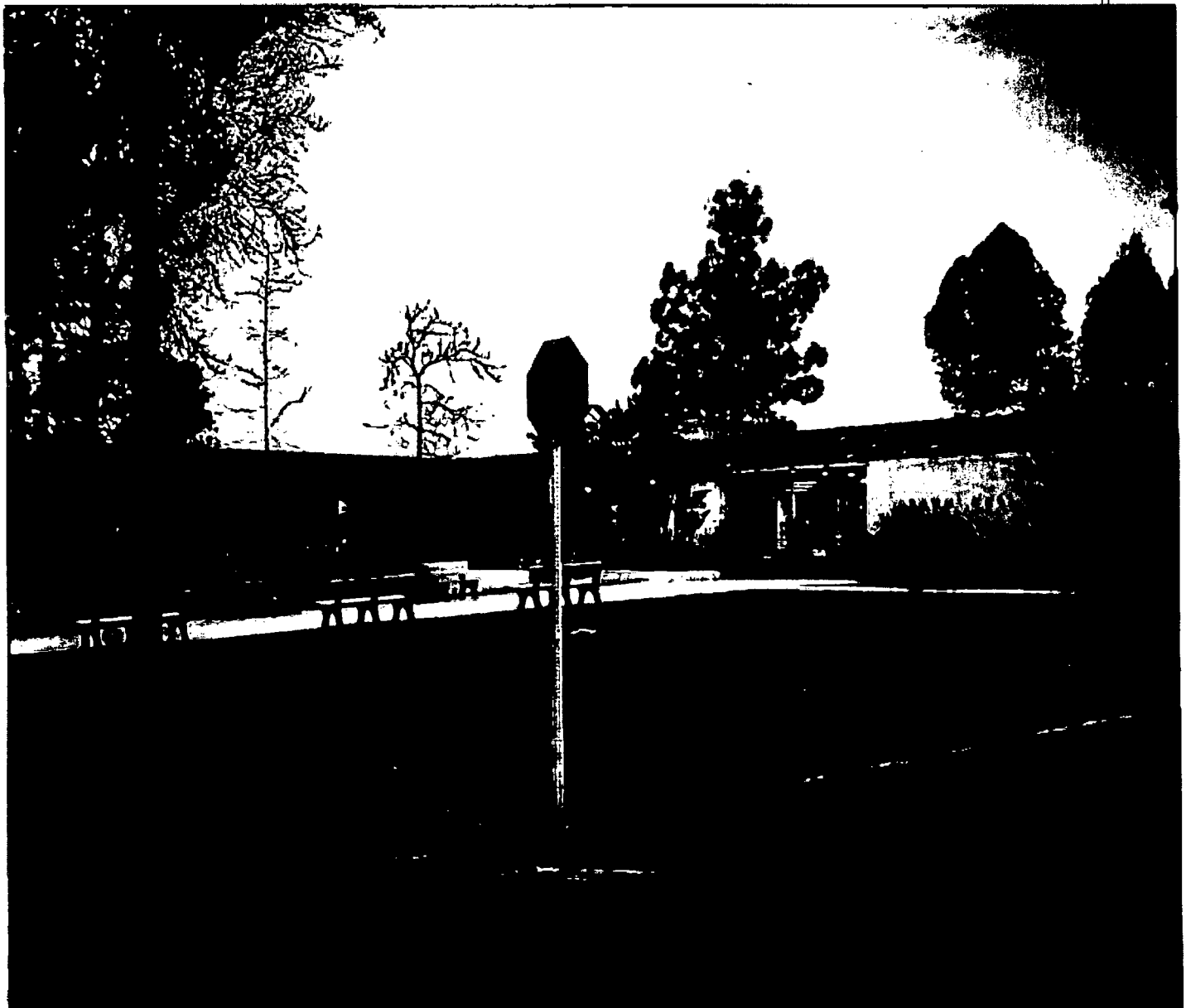
John was only vaguely aware that all this was going on when he made his decision to attend Occidental. "I'd heard about it, but I had this kind of 'it won't affect me' mentality," he says, sitting in the shaded area outside a Starbucks in a sunny part of California last November. "College has this built-up reputation as being the best years of your life. You're gonna get a great education, you're gonna meet amazing people, you have the social and moral liberty to indulge yourself. It's built up as that in our society, and it was definitely that way for me."

Fourteen months since that night, John has agreed to speak in detail for the first time about his experience at Occidental. With a pristine white zit just above his mouth and little evidence of ever having shaved, he's a young nineteen, and in between bites of a bagel and sips of some chai concoction, he spoke a little about his life

before college: born and raised in California to religious parents; an A student who drank a little but not much in high school; a varsity athlete in a prep-school sport; a highly social kid who, in the words of his father, never clung to his mother's leg when entering a new room. He'd applied to Occidental in part because his grandparents had met there as students and in part because he liked its international-relations program, and when he was accepted, he crossed his other options off the list.

John—not his real name, as he prefers to remain anonymous—arrived on campus at the end of August and, like all incoming students, attended the mandatory orientation seminars. "Absolutely mandatory," he says today. "And due to the fact that they'd just been hit with this major Title IX suit a couple months earlier, our orientation was absolutely dominated by sexual assault." When the presentations turned to alcohol and its role in sexual assaults, John recalls, "the line is basically that you have to get consent. If someone's incapacitated, if someone's passed out, [they] can't give consent. That was pretty clear." Nothing about signs of potential incapacitation beyond obvious unconsciousness? None that he can recall, John says. "Even now it's murky on where the line is between drunk and incapacitated." (Occidental declined to clar-

▼ The night after their drunken encounter, John and Jane sat outside Braun Hall and, according to John, talked for two hours about what had happened the night before—which both claimed they couldn't really remember.



ify how its orientation distinguished between intoxication and incapacitation either during 2013 or after.)

He knew Jane a little from around the dorm and from a class they had together. "I had seen her two or three times in class. I had one conversation with her. I really didn't know her at all." And then came his initiation night. "There were a variety of drinking games, like you had to drink a certain amount of alcohol in a certain amount of time, then you had to do push-ups and run to another house. There were four challenges, and I made it through three because I was throwing up so much."

John says he remembers almost nothing from the following hours back at his dorm. "Nothing specific. I woke up and I was like, wow. Like, *what?*" He checked his text history and put the pieces together, slightly mortified by what he was reading. ("When I look in the mirror, do I see that person [from the texts]? No. That was me extremely, extremely intoxicated.")

Jane—also not her real name—told investigators that she woke up on Sunday morning still a little drunk and saw a number of missed calls and "freaked out voice mails" from the friend to whom she wrote "Imgoingtohave sex now." Reading through her text messages, she began to suspect what had happened, but she wasn't certain until later in the day, around seven, when she met with John's neighbor from down the hall—the "Are you okay?" one—who confirmed what happened. (John's roommate told investigators that he'd met with Jane earlier in the day, around 3:00 P.M., and told her that she'd had sex with John, though Jane never mentioned this meeting in her statements.) Around 11:00 P.M., she bumped into John and, according to the investigators' report, "asked him bluntly, 'Did we have sex last night?' He told her that they did. But when she asked how he knew, he said he did not remember having sex with her. He said that he concluded they had sex, because he found her belt and earrings, he saw his text messages, and he found a used condom." (Jane, through her attorney, declined to comment for this article and has never spoken publicly about that night or its aftermath. All statements and recollections attributed to her are from the investigators' report.)

After this initial encounter, John says, they met up again later that night and spoke for a while outside their dorm. "We just sat outside Braun Hall and talked for like two hours. I was like, 'Wow, we had sex last night and I don't really know you,' and she was like, 'I don't really know you.' And we just talked it through. I mean, it's awkward, but we had a pretty decent conversation and basically chalked it up to a drunken mistake. We left things very good right then."

"That was Sunday night, and Monday, the next day, I was sitting in class and she wasn't there," he says. "And halfway through the period—there's a whole bunch of open seats—she walked in. I was at the far side of the classroom. We made eye contact, she came over and sat next to me." John's roommate, who was also in the class, told investigators that it looked like the two were getting along normally. "I thought it was weird after I learned of the complaint," he said. "Why sit next to him if he assaulted you?"

Jane was late for class because, acting on advice from her roommate, she'd gone to the campus health center to speak to a counselor about Saturday night. According to Jane's statement to investigators, the counselor listened to her story and responded: "That sucks a lot." Jane then met with the resident survivor advocate, who advised her to go get a rape kit performed at a local clinic. The advocate also told her that since she was seventeen, the doctor would have to alert the authorities. As Jane did not want to involve the police, she instead went to class and sat next to John because, as an advisor would later report, she "didn't want to make a big deal of it." (The advisor also reported that she told her she "felt fine sitting next to him" and that he "genuinely seems like a

good person"—which may have been plain statements of fact or, as some would later contend, evidence she was in denial, which is not uncommon among trauma and abuse victims.) After class, she approached her professor, Movindri Reddy, and over two conversations, told her everything that had happened. Reddy suggested she speak to someone.

Jane and John would text later that night:

JOHN: What did you guys talk about? [referring to a group dorm meeting]

JANE: Making good decision. Which I found somewhat fitting.

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

JANE: I might join you on your stint of sobriety

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

JANE: Do you feel guilty?

JOHN: 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.

JANE: Okay

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

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

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

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

"I thought we were just kinda gonna have an awkward friendship moving forward," John says. "Unbeknownst to me, she'd been talking to a lot of people. You know, counselors."

WHAT ABOUT THE POLICE?

Law-enforcement agencies have a terrible reputation among victim advocates for their unwillingness and/or inability to build a case against alleged sexual assailants. Among the efforts to fix how police departments handle sexual-assault cases, few show as much promise as Carrie Hull's. A detective with the Ashland, Oregon, police department, Hull launched a program in 2013 called You Have Options, and she's seen sexual-assault reports to the police more than double (especially among the students at nearby Southern Oregon University) in just a year. You Have Options takes the best parts of what many colleges offer students—support, guidance, and the ability to set the scope and pacing of the investigation (hence the Options)—and combines them with the rigors of a full-blown police investiga-

tion. "It's a training issue for law enforcement," says Hull, who's currently in touch with fifty-three police departments across the country on You Have Options training. "You have to give anybody who is interviewing a victim of trauma, particularly sexual trauma, in-depth training on how to do a trauma-informed interview.... Then you have to actually get out of your chair and take that really good information that you often get from these interviews and start corroborating it." Background checks on suspects, forensic interviews, wiring an accuser so she might surreptitiously record a confession from an assailant: "We're not doing anything that is not being done in any other caseload. We're just using it within a sexual-assault caseload.... That's the stuff the DA needs" to build a case.

One of those counselors was Danielle Dirks, the professor who'd helped file the Title IX complaint the previous spring and the someone that Reddy suggested she speak to. According to Dirks's statements to investigators, when Jane first told Dirks her story, Dirks called what happened to Jane "rape," to which Jane replied, "Oh, I am not calling it rape yet." According to Jane's statements to investigators, Dirks told her that John "fit the profile of other rapists on campus in that he had a high GPA in high school, was his class valedictorian, was on [a sports] team, and 'from a good family.'" Dirks would also tell the investigators that Jane's behavior matched "the dozens of other survivors [of sexual assault] I have met with on campus"; that Jane had been in "a strong state of denial" about the nature of the event; that John was "acting in the same way all these other young men [involved in sexual assaults] have acted by checking in on Jane after the incident, and seeking to manage her by being nice in a manner... described as 'disingenuous.'"

(Dirks did not respond to requests to be interviewed for this story, but she told the Web site Business Insider in May 2014 that "regarding my alleged statement on the 'profile of a rapist' at Occidental, the College's investigative report misrepresents my statements and contains factual errors regarding my involvement in the case." Whether Jane misrepresented to investigators what Dirks told her, or whether investigators made a mistake when recording Jane's testimony, and whether it bothered the college that a key witness in its investigation, the person whose handwritten notes from meeting with the accuser were submitted as evidence, is now alleging factual errors and misrepresentations in the final report is unknown. Occidental declined to comment on Dirks's claims or anything else regarding the details of the case, citing pending litigation. However, Dirks elaborated on her view of male college students in general to *New York* magazine in September: "Research, [Dirks] says, shows that only a small percentage of college guys truly don't know where the line is—and, for them, if you tell them to get verbal consent, they don't push so hard." She pauses. "But the rest of them—and I know it's hard to think of our brothers, our sons, like this—are calculated predators. They seem like nice guys, but they're not nice guys.")

Over the following week—as she continued speaking with Dirks and, as she relayed to investigators, her roommate "pushed her to realize that she had been sexually assaulted"—Jane started to develop what she described as emotional problems. Nightmares. Problems focusing. Flashbacks to that night. According to the investigators' report: "Jane Doe stated that she decided to report what had happened when she realized how much it had affected her emotionally, while seeing no reaction from John. She noted that he attended his classes without difficulty, and she 'saw that he wasn't fazed by what had happened at all.'"

Jane told investigators that since the incident with John, "navigating around corners with right angles 'scare[d] the hell out of me [because] I don't know what is around the corner.'" She also said that she heard John was "going on about how much he hates women." (John denies saying anything like this.) And she told investigators, "It scares me that he still goes out and still goes to party. I don't think anyone should have to go through what I have gone through."

About ten days after the event, Jane decided she would report the incident to both the campus and criminal authorities. (At Occidental, like nearly all colleges, a student can choose both options, one option, or neither—there is typically no requirement that the accuser or the college alert the local police that a potential crime occurred—though in Jane's case, because she was under the age of eighteen at the time of the incident, Occidental policy would have likely required administrators to contact the authorities whether she wanted them to or not.) Jane was ready to call it rape.

"I WAS WALKING ON CAMPUS WITH SOME FRIENDS AT AROUND 9:30," John recalls of the night when his life as a normal Occidental student effectively ended. "I got a call on my cell phone from an unknown number and I picked it up. It was the Title IX director of the school, saying, 'You need to get all your stuff and get out of the dorm. We're gonna have officers take you somewhere.' She was being extremely legalistic, telling me that there's a complaint against me but not really clarifying what it is. And I remember just being like, 'Tell me what's going on.' And she was just like, 'We really can't.'"

"I called my dad right away," John says, "and I was like, 'You should go outside. I have something to tell you.'"

John's father called a family friend, an attorney in Los Angeles named Mark Hathaway, and after learning the extent of the allegations over the next few days, according to John, they started "looking over the text-message evidence. It was like, logically, there's no way they could expel me."

Around the time Jane filed her complaint with Occidental, she went to the LAPD, where, according to her statement to investigators, she was asked by a desk officer "if John forced her into his room, and when she said 'No,' the officer stated, 'Well then, it's not rape.'" Jane went home distressed. (According to a representative from the LAPD, this was a procedural error and not how accusations of sexual assault are typically handled. It is also a prime example of exactly what women fear they will encounter if they go to the police.)

Despite the initial encounter, LAPD detectives visited Occidental several days later and told Jane that they would investigate the case. Six weeks later, after collecting evidence—including the text messages exchanged by John and Jane—and interviewing witnesses (except for John, who, on the advice of his attorney, declined to be interviewed by the officers), they found insufficient evidence to charge John with a crime. According to the Charge Evaluation Worksheet completed on November 5, filled out and signed by the deputy district attorney, "witnesses were interviewed and agreed that the victim and suspect were both drunk, however, that they were both willing participants exercising bad judgment.... Specifically, the facts show the victim was capable of resisting based on her actions.... More problematic is the inability to prove the suspect knew or reasonably should have known that she was prevented from resisting in that state. It would be reasonable for him to conclude based on their communications and her actions that, even though she was intoxicated, she could still exercise reasonable judgment...."

A little over a year later, the investigating officer (who asked that her name be withheld, explaining that she doesn't want to appear in Web searches about this case and potentially dissuade victims from speaking to her) remembered the case clearly: "We had these really bad text messages that supported a consensual encounter," she says. "Even though everything pointed to her being intoxicated, she still had enough frame of mind to send these text messages saying, 'I'm on the way. I'm coming. I'm coming. Do you have a condom?' So his state of mind is, she's saying yes.... How was he supposed to know that she did not want to give consent? And if he's intoxicated, then that kind of falls under the same category: Was he able to give consent? There's a whole bunch of different factors that went into this."

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

WHEN HE STEPPED UP TO A PODIUM AT THE WHITE HOUSE LAST September to launch "It's On Us," a campaign to combat sexual assault on college campuses, President Obama said, "An estimated one in five women has been sexually assaulted during her

college years." That statistic—which quickly took hold in conversations around the issue—stems primarily from a 2007 study commissioned by the National Institute of Justice in which 19 percent of female students reported experiencing a completed or attempted sexual assault during their four years in college, with sexual assault defined as ranging from forced vaginal sex to "forced kissing or fondling." The findings were based on Web surveys of students at two unnamed public universities, and they more or less mirror the findings of a few other studies over the past few decades.

However, the lead author of the NIJ study, Christopher Krebs of RTI International, a research organization in North Carolina, is the first to point out the limitations of his data. "We don't think our data are nationally representative. We've never described them in that way or claimed that they are," he says by phone from his office outside Raleigh. And since data on the prevalence of college sexual assault is widely considered soft (due especially to varying definitions of sexual assault as well as an estimated 90 percent nonreporting rate among victims), it's easier to understand the Obama administration's actions as less the urgent response to a growing crisis and more the logical extension of its long-held sympathies. "There really has not been an increase in incidents," says Brett Sokolow, a lawyer and the founder of the National Center for Higher Education Risk Management, which consults with colleges and universities on their sexual-assault policies. "The catalyst was a shift in priorities for a new administration coming into office."

"When I started here at the White House," says Lynn Rosenthal, who joined the Obama administration in its early days as the White House advisor on violence against women and left her position in January, "the vice-president asked me to look at all the data about violence against women and girls, and he wanted to know what was different from fifteen years ago, when we passed the Violence Against Women Act." (Then-senator Biden was instrumental in the passage of the 1994 bill, which helped contribute to a staggering 67 percent decrease in reported rates of domestic violence between 1993 and 2010.) "And when we looked at the data, the high rates of both dating violence and sexual-assault experience by women in the sixteen- to twenty-four-year-old age group just really stood out. The vice-president looked at this data and said, 'This is where we need to be working. If we can make a difference here, we can make a difference.'"

Concentrating on college campuses made sense for the administration, as the women at risk were of college age and it was also where the administration had some direct control. "The federal government has no jurisdiction over rape," explains Senator Claire McCaskill, a former sex-crimes prosecutor who is leading the charge on a bill to strengthen the process by which colleges measure and report incidents of sexual assault. "But it has jurisdiction over campus sexual assault via Title IX."

The 2011 Dear Colleague letter "was the first time the administration called sexual violence specifically a civil-rights issue," says Catherine Lhamon, the current assistant secretary for civil rights at the Department of Education. And in threatening to cut off funding to a college or university that the OCR determined was unable or unwilling to enforce Title IX, the administration literally made a federal case of campus rape. College administrators were officially on notice, and the stakes for noncompliance—loss of money to cover financial aid and scientific R&D, among other federal

funds, as well as the very bad publicity that comes with being on the OCR's hit list—couldn't be higher.

In addition to requiring every college to employ a dedicated Title IX coordinator to oversee compliance, the Dear Colleague letter recommended schools provide "holistic and comprehensive victim services" to accusers (counseling, etc.) and stipulated that colleges must apply a "preponderance of the evidence" standard to its proceedings rather than the higher "clear and convincing" standard or even the highest "beyond a reasonable doubt" standard used in criminal cases. (Although some experts estimate that 80 percent of colleges were already using the preponderance-of-the-evidence standard prior to 2011, it became the national standard thereafter.) The preponderance standard dictates that any judge or jury be only 50.1 percent sure that the accused is responsible, and it typically applies to civil cases in which monetary damages (rather than jail time) are what's at stake.

While advocates of the shift to preponderance say it merely brought campus investigations in line with other Title IX investigations and civil proceedings, it also considerably lowered the bar for achieving a finding of "responsible," or guilty, against the accused. "It should not be harder for a victim to prove that she was assaulted than it is for the person she's accusing to prove the assault didn't occur," explains Sokolow. "A preponderance [standard] creates a level playing field, whereas with any higher standard, it technically privileges men. It makes it harder for a victim to prove that a male assaulted her." Besides, Sokolow says, "Colleges aren't really addressing rape. They're addressing sexual violence as a civil-rights violation and as a form of discrimination, and their definitions are much broader."

This shift helped spur reports to campus authorities—by nearly 50 percent, with the number of sexual-assault reports on college campuses across the country jumping from 3,177 in 2011 to 4,721 in 2013. (At Occidental, it increased by more than 400 percent, from twelve incidents in 2011 to sixty-four in 2013.) However, there was no comparable shift in the number of reports to the police. "It should surprise no one that students are choosing to go to colleges" before criminal authorities, says Joseph Cohn, the policy director with the Foundation for Individual Rights in Education (FIRE), an advocacy group for free speech and due-process rights





◀ Occidental—of which seventy-seven-year-old Thorne Hall is the symbolic center—is awaiting rulings from the federal government on complaints of its handling of sexual-assault cases.

on campus. "Complainants are being told by well-intentioned victims' advocates that law enforcement doesn't really have an interest in doing this for you, and you'll be put under intense scrutiny and they'll cross-examine you and they won't believe you. On campus, there's a lower standard of evidence, and you'll get a much easier outcome with much less scrutiny." In a Senate roundtable on sexual assault last year, Alexandra Brodsky, a prominent sexual-assault activist and herself a sexual-assault survivor, confirmed as much: "When I reported violence to my school, five, six years ago now, I was explicitly told not to go to the police—that it wouldn't be worth it and would be emotionally draining. ... I know I would never have come forward if I had been forced into that option."

In the case of John and Jane, how the LAPD and the district attorney's office interpreted and acted on the evidence would have no bearing on the campus investigation. Occidental, using its own standard of proof and its own policies and definitions, was in charge.

"I WENT INTO MONK MODE," JOHN SAYS OF THE DAYS AND weeks following Jane's formal complaint. "Like: I'm just not gonna feel things, which is easier said than done. ... Like, I'm nineteen. I just left home. My mom's poring over details of me having sexual intercourse with a girl. I felt like I was a kid that got completely thrown around by a bunch of people with high-powered doctorate degrees and a lot of institutional power."

John was being investigated for two potential violations of the school's student conduct code—sexual assault, and nonconsensual sexual contact. (The former is defined by Occidental as "having or attempting to have sexual intercourse with another individual: by force or threat of force; without effective consent; or where that individual is incapacitated"; the latter is a broader definition and encompasses inappropriate touching, kissing, and the like.) He also received a "stay away" letter from the school's dean of students' office, directing him to avoid contact with Jane. "On a small campus of two thousand people," he says, "everyone knew. I would get death stares daily." Jane, according to her attorneys and investigators, continued to struggle with anxiety and fear, with Dirks reporting Jane telling her that "at one point, [she] sat unable to move for twenty minutes on a bench on campus."

The college hired an outside agency, Public Interest Investigations, to oversee its inquiry, with two independent investigators interviewing ten witnesses, including Jane. John declined to speak with them, although he and Jane both agreed to turn over their texts. At Occidental, as at many colleges, neither the accused nor the accuser is permitted to have an attorney present during questioning, which campus authorities believe is the best way to keep bickering and blowhards out of what's supposed to be a

private, speedy deliberation. However, any testimony given to the private investigators can be considered fair game in criminal investigations, and because of the LAPD inquiry, John's attorney advised him to decline to be interviewed by campus investigators.

John and Jane were each able to choose an advisor to help guide them through the process, and Jane's was Movindri Reddy, the professor who had first put her in touch with Danielle Dirks. John, however, had a more difficult time trying to find someone. "I'm at a new place, and I don't know any of the staff. My lawyer pulled up a list of people with Title IX training, because they were the only ones who could serve as advisors. I just kind of went down the list. Most of the people I asked said no." (Five Occidental staffers declined to be his advisor.) "Eventually I found a nice lady who worked in dining services to sit with me. She'd previously served on a panel, and she said my chances of winning were extremely good."

According to college policy, "Formal resolution of a complaint... will occur through the use of a Conduct Conference"—which is recommended for uncontested accusations—"or a Hearing Panel... which typically consists of three members drawn from a pool of trained faculty and campus administrators." However, Occidental determined that John would not face a hearing panel but rather a single external adjudicator, Marilou Mirkovich, a local lawyer specializing in employment law. (Occidental's policy

permits it to appoint an external adjudicator at its sole discretion. It declined to explain its decision, either to John's attorney or to Esquire.)

To Mirkovich, the hearing needed to resolve four issues: Did John and Jane have sex? Did Jane, at the time of the incident, appear to give consent? Was Jane too drunk—and in fact incapacitated—to provide consent? And did John know, or should he have known, that she was incapacitated? John and Jane were allowed to make opening statements. Witnesses were called and questioned. And John, who'd entered the proceedings confident of his chances, says he grew uncomfortable as the hearing unfolded. "I was in a room full of women, and there's a crying girl with a lengthy speech about how I sexually assaulted her, and she broke down in tears," he says. "And looking around, I saw the look on all these women's faces, and they're relating. My adjudicator, hired by the school, I saw the look on her face and I'm like, *That's not good.*" (Occidental has no policy about the optimal male-female balance of such proceedings, meaning, in theory, Jane could just as easily have been placed in a room full of men.)

Over the course of the six-and-a-half-hour proceeding, it was quickly determined that, yes, John and Jane had sex, and, yes, at the time, via text messaging, it was reasonable to conclude that Jane was giving consent. But was Jane too drunk to give consent—was she, in fact, incapacitated? And should John have known that Jane was so drunk that her consent was questionable, despite the fact that he himself was just as drunk?

To John, those questions began and ended with what he gleaned from the sexual-assault orientation: You're incapacitated and unable to

WHAT ABOUT YES MEANS YES?

Over the past year, California has enacted, and New York's governor has proposed, affirmative consent laws for colleges that receive state funding, and these so-called "yes means yes" statutes require unambiguous verbal agreement between two students before any sexual activity as well as between various levels of sexual activity. Setting aside how realistic such requirements are, these laws do little to obviate the he-said-she-said nature of most sexual-assault cases, and they also do nothing to clarify the "How many beers is too many?" guessing game, as Rebecca O'Connor of RAINN recently put it, that clouds whether someone is able to offer meaningful consent. Even going so far as to dictate that any alcohol consumption is enough to nullify consent would at least clear up the confusion that affirmative consent measures have left in place. Drastic, maybe, but impossible to misunderstand.

give consent when you're passed out and you physically can't speak or indicate yes or no. To Scott Berkowitz, the president of the Rape, Abuse & Incest National Network (RAINN), incapacitation is about "being physically unable to resist or unable to speak. Generally it's understood to mean that drugs or alcohol have had such an effect on [a victim] that they're not in a position to express consent." To the state of California, incapacitation means "incapable of resisting because the victim... was unconscious or asleep [or] was not aware, knowing, perceiving, or cognizant that the act occurred."

None of these definitions mattered. The only definition that mattered to Mirkovich was Occidental's:

"Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because s/he 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.... 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."

Mirkovich concluded that Jane's "successfully navigat[ing] herself, under her own power to [John's] room... [indicates that she] had an awareness of where she was and that her motor skills were sufficiently intact." However, Mirkovich also concluded that because multiple witnesses describe her as "slurring her speech, stumbling, and not making sense... [Jane's] decision-making ability was significantly impaired.... [She] 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, [Mirkovich] finds [Jane] was incapacitated."

Did John know she was incapacitated? Mirkovich decided that even though John "was more intoxicated than he had ever been," and that "this level of intoxication so impaired [John's] ability to assess [Jane's] incapacitation that he did not have actual knowledge of [her] incapacitation," his state of mind had no bearing. Occidental policy dictated that "being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, sexual violence... and does not diminish one's responsibility to obtain consent." If a sober person would have known that Jane was too drunk to know what she was doing, Mirkovich reasoned, then John should've known that, too. (At press time, Occidental had refused to release a transcript of the hearing, so all of Mirkovich's findings come from her final report to the college. Mirkovich declined to speak with Esquire.)

Mirkovich declared John responsible for both violations. Occidental, like many colleges, had a variety of options for punish-

ments, ranging from community service and censure to expulsion. (In 2010, the Center for Public Integrity found that a mere 10 to 25 percent of students found responsible for some degree of sexual assault were expelled. Occidental, for its part, once assigned a book report to a student found responsible for sexual assault.) However, John was given the most severe punishment: "permanent separation from the college."

"I was in shock," John says now. "I went from *There's no way I could lose to Wow, okay. I'm going to be living with my family again.*" Under Occidental's system, both students can appeal the decision on the grounds of procedural errors or the existence of new evidence. In his appeal, John cited, among other factors, the all-female makeup of the deliberations and Danielle Dirks's potentially prejudicial statements in the investigators' report (which Dirks herself now disputes), but the college found none of his objections qualified.

It was the middle of December, with winter break looming, and John had to act quickly if he was going to transfer to another school before the next semester began. He contacted a small college in the Midwest he'd previously considered attending, and the college agreed to take him, unaware of what had happened at Occidental. It was not a world-class institution, but it would allow him to continue his education while his lawyer plotted his next move. He arrived on the first day in January, just a few weeks after his expulsion from Occidental, and immediately, he says, "I get called into the dean's office. They said, 'We got an anonymous call. Have you been expelled from Occidental for sexual assault?' I was like, 'How do you know this?' And they were like, 'We can't say. An anonymous phone call.' They rescinded their acceptance, and I flew back home the next day." (Officials at the college would only confirm that John had been accepted and that his acceptance had been rescinded.)

John had nowhere to go.

AND SO HE SUED. MOSTLY, HE SAYS, BECAUSE OCCIDENTAL left him no choice. "After learning that I would have trouble attending another institution, I had to press charges. I have to get an education." In February 2014, he filed suit with the L.A. Superior Court to ask for a Writ of Mandate, which would overturn the college's decision and clear John's record on the grounds he didn't receive a fair hearing.

Upon filing his petition, John also asked the court to stay the school's decision so he could apply to other schools without a mark on his transcript that may or may not be final.

To make his case, John submitted the college's investigation and hearing reports as evidence, which made all of the internal documents, texts, e-mails, and deliberations part of the public record. (Occidental says that John or his lawyer had no right to remove these documents from the college's secure server or to make them public. Occidental requested the court seal all the files,



▲ From left, attorney Gloria Allred at a press conference in April 2013 with Occidental students who complained that the college violated federal standards for dealing with their claims of rape or sexual assault; Occidental students on sexual-assault-awareness night, the day after students and alumni filed their Title IX complaint; President Obama signing a memo establishing the White House Task Force to Protect Students from Sexual Assault, in January 2014.

and the court declined to do so.) The names of Jane and John are redacted, though none of the witnesses are so fortunate. After the documents became public, one of the female witnesses described to the Huffington Post that she received hate mail along the lines of: "What kind of a radical fucking man hating dyke are you?" and "Please, slice your goddamn wrists, nail your pussy shut and go wait tables before you harm someone else. It's bitches and whores like you who give women a bad name." (Neither Jane's friends nor any of the other witnesses we contacted responded to our requests for comment on this story. We have withheld their names for obvious reasons.)

Using these documents as evidence, John's attorney, Mark Hathaway, set about attacking the external adjudicator's decision: "It would be difficult to imagine a better documented case of consensual sex than this case, where the female student initiates the sexual contact, asks for a condom in writing, tells a friend she is going to have sex in writing, asks for a condom again when she gets to the room, tells friends she is 'fine' when she is having sex, willingly performs consensual oral sex, is interrupted by a roommate while having sexual intercourse and continues having intercourse, and then texts smiley faces to friends right after having sexual intercourse." All of this, Hathaway argued, demonstrated that Jane "had 'conscious knowledge of the nature of the act (e.g., to understand the who, what, when, where, why or how of the sexual interaction).'" Occidental, meanwhile, defended its procedures and policies as legal and fair, particularly given its prerogatives as a private university.

In deciding whether to issue the stay, Judge James Chalfant told John's attorney and the lawyer representing Occidental that "[John's] got a pretty strong position. ... I would think an eighteen-year-old boy who gets these texts would think she's fully capable of consenting." The court is expected to issue its final decision in May, but Chalfant granted John's request for a stay: "Why wouldn't it be in the public interest to stay this scarlet letter that's being attached to his transcript until such a time as there is a final decision on the merits?"

A few weeks after filing with the Superior Court, in an apparent effort to show Occidental's inconsistent application of its own sexual-assault policies, John filed a sexual-assault complaint against Jane Doe with Occidental. He claimed she did not obtain his consent prior to performing oral sex on him—as he doesn't even recall this happening, and nobody ever asked Jane whether she received consent from John, he believes it should be subject to the same scrutiny under which he was investigated. (Sexual intercourse, as it's defined in the Occidental policy, includes oral sex, and there is no statute of limitations on when an accuser can file a claim.) However, because he would not meet with the university's investigator without his attorney present—just as he wouldn't meet with the investigator during the earlier investigation without his attorney present—the school declined to hear his complaint, citing his "inconsistent assertions, the timing of [his] complaint, and [his] failure to cooperate in the initial assessment process."

With Occidental refusing to investigate John's accusation of sexual assault, John's lawyer then filed a Title IX complaint against

WHAT ABOUT ALCOHOL?

There are growing efforts, and countless creative ideas, to try to minimize alcohol's role on college campuses and the part it plays in sexual misconduct. While there is only one known cause of rape—rapists—it is impossible to overstate the role that drinking to excess plays in putting everybody involved in potentially dangerous situations. Limit beer at sanctioned parties to cans, as UVA decided in the fallout from the Rolling Stone scandal. Ban hard liquor, per Dartmouth. Lower the drinking age so staff or security personnel could supervise parties. Open up sorority houses to take away fraternities' home-field advantage. Encourage marijuana use. "I would never have [gone back to John's room] if I had been sober," Jane told investigators, and John says alcohol basically annihilated his better judgment. It's hard to say they're wrong.

Occidental with the Office for Civil Rights in mid-October. The OCR, which receives many complaints but only commits full investigations to a fraction of them, has yet to determine whether it will look into John's case.

"THE CURRENT SYSTEM IS, ON THE WHOLE, poor and improving," says Sokolow, the risk-management consultant, which turns out to be the nicest thing anybody has to say about how colleges are handling sexual-assault allegations. (The new documentary *The Hunting Ground* captures the appalling and unethical ways that many colleges continue to treat women who report sexual assaults.) "The Department of Education has created a square-peg/round-hole phenomenon by asking colleges to take on a function that is simply not innate, or intuitive, for those who work on college campuses. And I think what's happening on a lot of campuses is they're feeling the pressure of OCR to push things forward that really should not be."

"These investigations are hard to do even for trained law-enforcement professionals," says Berkowitz of RAINN. "So many schools turn them over to people with minimal training, and the process is just set up in such a way that it's really hard to investigate the truth of the crimes. And colleges just are not very good at it."

"Imagine a student is murdered on a college campus," says David Lisak, a psychologist who has studied sexual assault—including cases at colleges and in the military—for more than two

decades. "Nobody thinks that colleges should investigate and adjudicate the case. Well, rape is really not that much less serious. Rape is a very serious, violent crime ... so do I think that universities are equipped right now to do a proper investigation? No."

Under the current guidelines recommended by the Office for Civil Rights, schools have considerable leeway in how they structure their investigation and adjudication processes. Some rely on multiperson hearing panels and some rely on what's called the single-investigator model; some colleges have more expansive definitions of assault than others. And some provide more protections to the accused than others, an issue that has gained prominence as increasing numbers of accused students file lawsuits against their former colleges for unfair hearings.

Last October, twenty-eight professors at Harvard Law School wrote an op-ed in *The Boston Globe* detailing their objections to Harvard's recently enacted sexual-assault policies, which they believe "lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused, and ... [jettison] balance and fairness in the rush to appease certain federal administrative officials." (Harvard's policies align with both the guidelines issued by the OCR and Occidental's policies.) One of the signers, Nancy Gertner, writing recently in *The American Prospect* and describing herself as "an unrepentant feminist," argued that "just because the legal system has moved away from the view that all rape accusations are contrived does not mean it must move to the view that none are."

Janet Halley, another cosigner and a prominent feminist legal scholar, explained the larger issue this way: "Thing number one: We want to have workplaces and educational settings where sexual abuse is absent," she says by phone from [continued on page 124]

Occidental Justice

[continued from page 99] her office in Cambridge. "Thing number two: When we're charging somebody with a violation of norms that are morally and legally important, we need to understand that we are bringing a major accusation against them, one that can destroy their career, their peace of mind, and their reputation. And three, we need to remember that the legitimacy of the sex-harassment system will be squandered if we don't try to do both."

Halley finds fault with many of Harvard's policies, including the preponderance standard. "Every legal lever has been ticked in the direction of the accuser and against the [accused]. . . . I think it's almost in bad faith to be arguing that we 'need' [the preponderance standard] because we have to get equality of the parties. It's called going too far." What's more, she doesn't buy the idea that because there is no prospect of losing one's liberty, the preponderance standard is appropriate. "The idea that what we're talking about here is just a civil sanction, the equivalent of money damages, is unreal to me. When we expel or suspend a student and put that on the transcript, it's going to be very hard for that person to go to any other institution of higher education." (In a letter rebutting John's appeal to Occidental, Jane's lawyers wrote, "Ms. Jane Doe was raped by. . . John Doe," citing the adjudicator's "well-reasoned, thirteen-page opinion," which suggests just how empty the distinction really is between sexual assault as a breach of student conduct and rape as a criminal offense.)

Like both Halley and Gertner, Joseph Cohn of FIRE thinks the preponderance standard doesn't reflect the true gravity of the circumstances, and "since [the accused] can potentially be expelled and branded a rapist, the right to counsel in these hearings seems like it should be required." The recent Violence Against Women Act reauthorization included a provision that, starting in July 2015, all schools need to allow both students to have the advisor of their choice, including lawyers, throughout the process. However, it's up to the schools whether the lawyer can speak or not, and any lawyer could effectively be reduced to what more than one expert has described as a "potted plant."

With active, participating attorneys comes the prospect of heightened scrutiny of everyone involved—including the accuser, who at present can be shielded from having to answer questions from either the accused or the accused's representative. Critics of the current system believe that without meaningful scrutiny through cross-examination, there is no way to achieve a faithful verdict. "Sexual assault advocates will argue," Gertner wrote in *The American Prospect*, "it will be traumatic for the [accuser] to confront [the accused], even if only through her representatives rather than directly. It will be traumatic for the [accuser] to be asked to repeat her story over

again. . . . These arguments, however, assume the outcome—that the [accuser's] account is true—without giving the accused an opportunity to meaningfully test it."

Or, as Cohn put it, "The way we sort through fact and fiction in any process that's fair is by putting accusations through scrutiny. We can do things that try to make it less difficult [for the accuser], but it can't be avoided." Nobody is suggesting a "Did you order the code red?" level of questioning, but merely a guarantee that the accused (or his representative) can ask reasonable questions of the accuser (if not directly then through a representative) about the accusations. At Occidental, as at many colleges, those accused can submit questions for the accuser (and vice versa) to the hearing coordinator, who then has the discretion to choose which questions he or she will ask. John says that of the thirty-eight questions he submitted to his hearing's coordinator, the ones he most wanted the coordinator to ask—like how Jane could remember performing oral sex on John but not remember having intercourse, or how she could remember John telling her, while they were having intercourse, that his roommate had just walked in on them yet not actually remember having intercourse—were never asked, and nobody bothered to tell him why.

The thing is: The system, as it was designed and reformed over the past few years, worked here. The OCR investigation of Occidental created a campuswide, historically high sensitivity to allegations of sexual assault. The college exercised its discretion broadly, without transparency—a lone adjudicator instead of the three-person panel; an expansive, extralegal definition of incapacitation; the selective choice of which questions Jane had to answer—just as the federal guidelines allow. The criminal burden of proof proved too high a barrier for Jane to meet, but the college's lower preponderance standard delivered the desired outcome for her. And John's expulsion, with a potential mark on his transcript for sexual assault, is likely to result in a life of diminished opportunity. There were no mistakes at Occidental, and if John's experience with college justice sounds reasonable—if it sounds fair—then this is all much ado about some kid getting exactly what he deserved.

If, however, something about this doesn't sound quite right, and if the L. A. Superior Court judge ultimately finds John's "strong position" from the hearing is enough to overturn Occidental's ruling, then there will be more and more conversations (and lawsuits) about whether colleges, with their myriad competing interests (reputation and ranking, building endowment and protecting athletic programs), can ever be competent and trustworthy stewards of justice. Whether everyone might be better served by a better-funded, better-trained police force that uses advanced police work (see page 94) to investigate all claims of sexual assault (and

if it doesn't, it'll have to answer to the elected officials who have to answer to voters). Whether more prosecutors might be convinced to stop limiting themselves to slam-dunk cases—as many critics claim—and start taking more chances to try putting sexual assailants behind bars (and face removal from office if they refuse to do so). Whether colleges might be allowed to leave the actual investigation and adjudication to law-enforcement experts while still providing sustained, on-the-ground support and guidance for the accuser and the accused. Or, ideally, all of the above, anything that would treat sexual assault as far too serious an accusation for jerry-built adjudication—and too terrible an offense to treat as less than a crime. Such an approach would also benefit women who don't go to college and face a 30 percent greater risk of being assaulted between the ages of eighteen and twenty-four than do their college-attending peers, according to one recent study of the Department of Justice's National Crime Victimization Survey data from 1995 to 2011.

"No one here knows," John says, finishing his chai. He's enrolled at a college not far from the Starbucks—unlike a great many other schools he wanted to attend, this college didn't require what's called a transfer registrar report from Occidental, which would have indicated his expulsion. (He had to supply his transcript, which, because of the order of stay from the Superior Court, is clean for now.) And unlike his experience at the small midwestern college he attended for approximately one hour, no one's phoned in an anonymous tip yet. "I haven't been called into the dean's office, but it's always in the back of my mind."

His case is on the L. A. Superior Court docket at the end of May. If the judge finds in his favor, his family may pursue additional litigation against Occidental to cover its legal fees, which amounted to \$76,000 as of February. He still has friends attending Occidental, though not his former roommate—who declined to comment but who has transferred to a less politically toxic campus, John says—and none of the other witnesses from that night. He doesn't know what they think of him, if they think of him at all, though he likes to remember what one of them—Jane's close friend, one of the friends who pulled her out of John's room to begin with—told investigators: "I think Jane was just as much a part of this as John. . . . She could have said, 'No,' or she could have just not responded to his texts, or just not gone back down to his room."

Jane, meanwhile, remains at Occidental, though the *Los Angeles Times* reported last spring that she had taken some time off and was in therapy for what her lawyer characterized as post-traumatic stress disorder. She'll likely be there still this fall, when a few hundred lucky teenagers, the Occidental class of 2019, arrive on campus, the years in front of them filled with nothing but possibility. ■

001542015

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


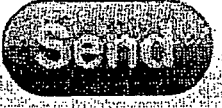
Okay

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 

09/15/2015

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

09/15/2015

Messages

John Doe

Edit

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

09/11/13 12:01 PM

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

09/15/2015

Messages

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

00151700151

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

09/15/2015

Messages

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

0011512015

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

09/15/2015

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

09/15/2013

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

0011512015

Messages

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

00011512015

Messages

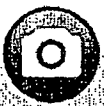
Edit

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

09/15/2015

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

09/15/2015

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



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

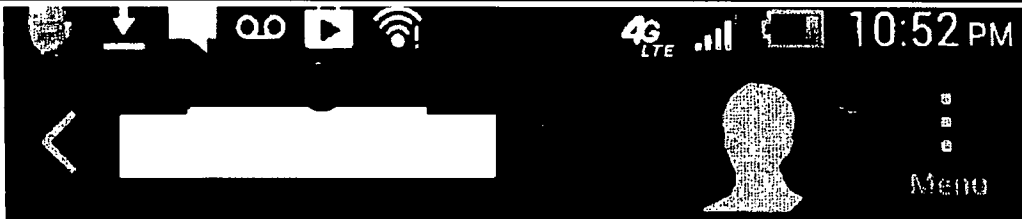
Yes.

09/8/2013, 12:38 AM

Good give me two minutes

00001

00001



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

09/15/2015



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

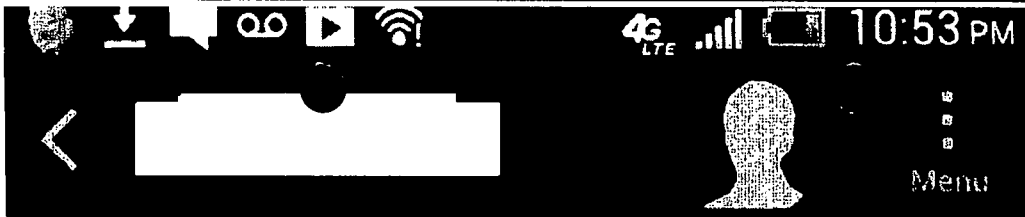
Of Braun?

09/8/2013, 12:49 AM

Yeah

00003

09/15/2015



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

09/15/2015

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?

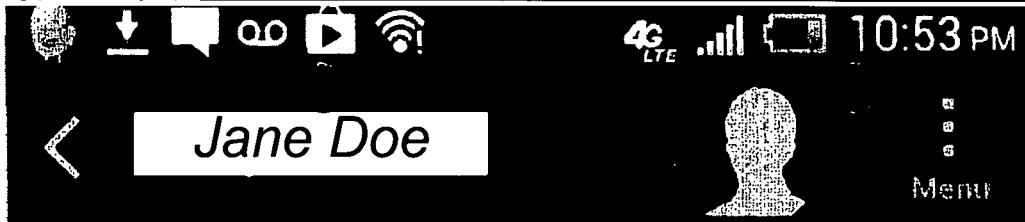
09/8/2013, 8:28 PM

At like 2 probably

09/8/2013, 8:29 PM

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

00005



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

09/15/2015

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

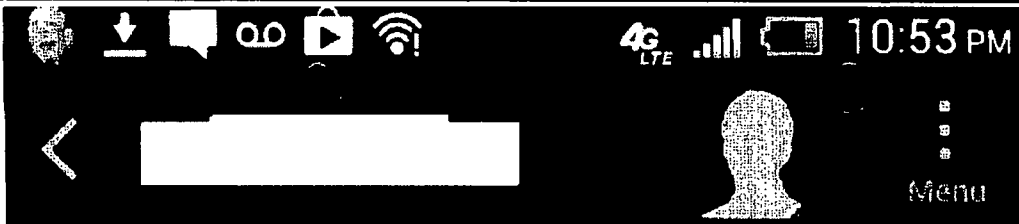
09/9/2013, 1:17 PM

Hey what's up

09/9/2013, 7:42 PM

00007

09/15/2015



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
borking

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

09/15/2015



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

00009



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

09/15/2015



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

0011512015

0011512045

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Occidental College's underreporting of sexual assault allegations was far more extensive than campus officials have acknowledged, according to documents, interviews and a Times review of two confidential federal complaints against the school.

In October, the college said it had failed to disclose two dozen sexual assault allegations made by students in 2010 and 2011, a potential violation of federal law. At the time, officials said their revisions represented a complete accounting of the assault cases.

A Times review found 27 additional sexual assault allegations made in 2012 that have not been disclosed. Dozens more may have been ignored by the dean of students' office since 2009 because they were made anonymously, records and interviews showed.

EDITOR'S NOTE:

A front-page article in the Los Angeles Times on Dec. 7, 2013, was incorrect in reporting that Occidental College failed to disclose 27 alleged sexual assaults that occurred in 2012.

The article ("College shelved more assault reports") dealt with Occidental's obligations under the federal Clery Act, which requires schools to publish statistics annually on reported crime on or near campus.

Occidental representatives approached The Times early this month to seek a correction. Documents reviewed by The Times this week show that the 27 incidents did not fall under the law's disclosure requirements for a variety of reasons.

Some were not sexual assaults as defined by the Clery Act. Rather, they involved sexual harassment, inappropriate text messages or other conduct not covered by the act. Other alleged incidents were not reported because they occurred off-campus, beyond the boundaries that Occidental determined were covered by the act. Some occurred in 2011, and the college accounted for them that year.

Subsequent Times articles published Dec. 20 in the LATExtra section and Jan. 23 in Section A repeated the original error regarding the alleged underreporting of sexual assaults.

The Times regrets the errors in the articles.

Separately, as they began looking into the complaint, Times editors learned from the author of the articles, staff writer Jason Felch, that he had engaged in an inappropriate relationship with someone who was a source for the Dec. 7 story and others Felch had written about Occidental's handling of sexual assault allegations. Felch acknowledged that after the relationship ended, he continued to use the person as a source for future articles.

Times Editor Davan Maharaj dismissed Felch on Friday. Maharaj said the inappropriate relationship with a source and the failure to disclose it earlier constituted "a professional lapse of the kind that no news organization can tolerate."

He added: "Our credibility depends on our being a neutral, unbiased source of information in appearance as well as in fact."

FOR THE RECORD:

Occidental College assaults: An article in the Dec. 7 Section A about Occidental College's failure to report sexual assaults stated that college President Jonathan Veitch told the campus newspaper he had met with an alleged assailant and decided the student did not pose an ongoing threat. A campus spokesman said Veitch's staff, not Veitch, met with the student.

In other cases, administrators actively discouraged victims from filing reports, according to the

complaints reviewed by The Times. "Are you sure you really want to go through with this?" Associate Dean of Students Erica O'Neal Howard told one student who said she was raped last February, according to the complaint. "It is a really long and hard process, and it may cause you more pain and suffering." Top administrators — including the college's president, dean of students and former general counsel — are accused in the complaints of suppressing assault reports, retaliating against those who raised concerns and, in one case, attempting to organize a group of male athletes to rebuff administration critics.

The complaints were filed last spring by dozens of students and faculty members at the small liberal arts college in Eagle Rock. They sparked Department of Education probes into alleged violations of the Clery Act, which requires campuses to disclose all reports of serious crime, and Title IX, the federal anti-discrimination law.

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A national debate

The federal investigations come amid a national debate over how administrators deal with sexual assault reports. Dozens of campuses across the country, including USC and UC Berkeley, have been the subject of similar complaints. Several of them have been organized by Know Your IX, a group of activists who have used social media to raise awareness about victims' rights and colleges' obligations under the law.

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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.)

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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.¹ 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

¹ 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.

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the Respondent.² After the Complainant's questioning was completed, the Respondent provided an opening statement.³ 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.

² 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.

³ 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.

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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.)

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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.⁴

⁴ 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?⁵

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.⁶

⁵ 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.

⁶ 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, 2013.⁷

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.

⁷ 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

Lauren Carella
December 9, 2013
Page 12

partner violence and does not diminish one's responsibility to obtain consent.⁸

(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

⁸ 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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Page 13

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

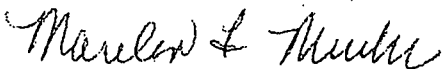
As set forth above, the external adjudicator has found sexual assault as defined in the College's sexual misconduct policy. The elements for a finding of sexual assault under the College's Policy encompass all of the elements of non-consensual sexual contact. Thus, a finding of sexual assault necessarily 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

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09/15/2015



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.

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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

cc: Lauren Carella, Interim Title IX Coordinator

001512015

5/10/2015 09:15:00

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.

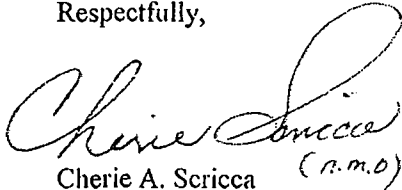
For more information regarding the appeals process, please consult the Sexual Misconduct Policy.

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. Scricca (n.m.o.)
Title IX Hearing Coordinator
323.259.1358
scricca@oxy.edu

Cc: Jane Doe
Lauren Carella, Interim Title IX Coordinator

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09/15/2015

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**OCCIDENTAL COLLEGE
LOS ANGELES, CALIFORNIA**

John Doe an individual,
Petitioner,
v.
OCCIDENTAL COLLEGE,
Respondent.

APPEAL
[AMENDED]

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.

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- 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 Dirks¹, 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.² 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 ¹In 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

27 sexual assault epidemic." (<http://oxysexualassaultcoalition.wordpress.com/>)

28 ² Occidental College Sexual Assault Response Subject Of Federal Complaints, 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."³

10 8. In August 2013, Occidental College implemented its new Sexual
11 Misconduct Policy⁴ (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.)

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

27 ⁴ 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.

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

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

12. On November 14, 2013, Occidental's investigators submitted their

⁵ On September 20, 2013, four days after Ms. *Jane Doe* filed her complaint, Asst. Professor Dirks told the LA Times, "I've heard from three students since the beginning of 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.)

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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.⁶ (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 ⁶ 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/ncaaprobation.](http://oxyathletics.com/othernews/2011-12/ncaaprobation)

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.⁷ 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 ⁷ 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.⁸ 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,⁹ 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,

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

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

page 41.)

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

Admitting statements of personal opinion by an Occidental professor and the founder of the Occidental Sexual Assault Coalition that refer to Mr. *Doe* as a “rapist,” stating that he acts like other sex assault perpetrators, and that Ms. *Jane Doe* is in denial about being raped, is far more prejudicial than probative. Including such statements while at the same time excluding relevant evidence favorable to Mr. *Doe* is a substantive error that significantly affected the outcome of the hearing.

(d.) No Hearing Panel Convened.

According to Occidental's Sexual Misconduct Policy formal resolution of a complaint is to occur through the use of a Conduct Conference or a Hearing Panel. (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.¹⁰
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 ¹⁰ 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>>.

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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’mgoingtohavesexnow,” 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.)

Occidental's refusal and failure to pose the relevant questions to confront Ms. *Jane Doe* concerning the heart of her complaint are substantive and procedural 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.¹¹ 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 ¹¹Reasonable 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.)

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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".¹² 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.¹³ (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 ¹² "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
26 were both willing participants exercising bad judgment, but neither was incapacitated
27 under the Policy definition.

28 ¹³ Occidental also ignores Ms. *Jane Doe*'s statements about what she does
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
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,¹⁴ 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.)

24
25
26 ¹⁴ The first-year students had known each other for less than two weeks and could
27 have no knowledge or experience with each other's customary behavior. Ms. *Jane Doe*'s
28 own statements that she loves dancing when she is drunk, that she was drunk the night
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,¹⁵ evidence unavailable during the original
26 hearing that could substantially impact the original findings or sanctions. The
27
28

¹⁵See 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'mgoingtohave 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

09/15/2015

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EARL S. WARD
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CHARLES J. OGLETREE, JR.
DIANE L. HOUK

January 22, 2014

Via Email & FedEx

Lauren Carella
Interim Title IX Coordinator
Occidental College
1600 Campus Road
Los Angeles, CA 90041
lcarella@oxy.edu

Re: *Appeal of John Doe*

Dear Ms. Carella:

This firm represents *Jane Doe* Occidental College Class of 2017. On September 8, 2013, Ms. *Jane Doe* was raped on the campus of Occidental College by a fellow Occidental student, *John Doe*. Occidental held a hearing regarding this incident on December 7, 2013. In a well-reasoned, thirteen-page opinion, the hearing adjudicator found that Mr. *Doe* "engaged in two forms of conduct prohibited by the College's Sexual Misconduct Policy: sexual assault and non-consensual contact." Ex. 6 at p. 13.¹ Based on these findings, the College permanently separated Mr. *Doe* from Occidental on December 20, 2013. Mr. *Doe* now appeals the findings of the hearing adjudicator and the sanctions imposed by the College, arguing that procedural and substantive errors affected the outcome of the hearing. Mr. *Doe*'s arguments are without merit. The findings of the hearing adjudicator are supported by the evidence and the sanction imposed is warranted. Mr. *Doe*'s appeal should be denied.

The findings of the hearing adjudicator should be upheld.

The evidence presented at the hearing was more than sufficient to support a finding of sexual assault under the College's Sexual Misconduct Policy.² The hearing

¹ All citations to "Ex. ____" herein refer to the exhibits attached to the appeal of *John Doe*

² 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

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.

non-consensual sexual contact." Ex. 6 at p. 13.

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* 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* 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* 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* 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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5/10/2015

ORIGINAL

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number, and address):

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Superior Court Of California
 County Of Los Angeles

SEP 15 2015

Sherrin A. [Signature], [Title] Officer/Clerk

By Kristina Vargas, Deputy
Kristina Vargas

TELEPHONE NO.: (213) 688-0460 FAX NO.: (213) 624-1942

ATTORNEY FOR (Name): John Doe

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

STREET ADDRESS: 111 N. Hill Street

MAILING ADDRESS: 111 N. Hill Street

CITY AND ZIP CODE: Los Angeles CA 90012

BRANCH NAME: Stanley Mosk Courthouse

CASE NAME: DOE V. OCCIDENTAL COLLEGE

CIVIL CASE COVER SHEET

Complex Case Designation

☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)

☐ Counter ☐ Joinder
 Filed with first appearance by defendant
 (Cal. Rules of Court, rule 3.402)

CASE NUMBER BC 594472

JUDGE:

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

- ☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- ☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

- ☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

- ☐ Wrongful termination (36)
☐ Other employment (15)

Contract

- ☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

- ☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

- ☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

- ☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

- ☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

- ☐ RICO (27)
☒ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- ☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
 b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): (1) Damages (2) Injunctive Relief

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 9/14/15

Mark M. Hathaway, Esq. (SBN 151332)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)
Employment
Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

SHORT TITLE: DOE V. OCCIDENTAL COLLEGE

CASE NUMBER

BC 594472

**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☐ YES CLASS ACTION? ☐ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL ☐ HOURS/ ☐ DAYS

Item II. Indicate the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

Step 3: In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- | | |
|--|--|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, central district. | 6. Location of property or permanently garaged vehicle. |
| 2. May be filed in central (other county, or no bodily injury/property damage). | 7. Location where petitioner resides. |
| 3. Location where cause of action arose. | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred. | 9. Location where one or more of the parties reside. |
| 5. Location where performance required or defendant resides. | 10. Location of Labor Commissioner Office |

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/ Property Damage/ Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4. 1., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 4.
		<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 3.
		<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 4.

SHORT TITLE: DOE V. OCCIDENTAL COLLEGE

CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/ Property Damage/ Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Real Property	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

SHORT TITLE: DOE V. OCCIDENTAL COLLEGE

CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1., 2., 3.
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1., 2., 8.
		<input checked="" type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
		<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., **Step 3** on Page 1, as the proper reason for filing in the court location you selected.

REASON: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case.

☐ 1. ☒ 2. ☐ 3. ☐ 4. ☐ 5. ☐ 6. ☐ 7. ☐ 8. ☐ 9. ☐ 10.

ADDRESS: Occidental College
1600 Campus Road

CITY:

Los Angeles

STATE:

CA

ZIP CODE:

90017

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subds. (b), (c) and (d)].

Dated: 9/14/15

(SIGNATURE OF ATTORNEY/FILING PARTY)

Mark M. Hathaway

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.