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Elliott B. Oppenheim,
MD/JD/ LL.M. Health Law
President/CEO

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Web: http:// www.MedIntelNet.com

13 October 2020

Student Support and Conduct Committee Hearing Panel Members *in re* XXXXXXXXXXXXXXX Mr. John HJKL, Ph.D. Faculty representative Mr. Dan SDFG, Staff Mr. Reese ABCABC, Student	Mr. Ed GHJK, Attorney at Law 925 NW 6th Street ZZZZZZZZZZZZZZZZ 73106

Re: *in re* XXXXXXXXXXXXXXX; Request for Appeal: Basis for Appeal:

Dear Panel Members:

This submission fulfills the University's requirement to seek Appeal of its decision of 29 September 2020 which, by agreement and stipulation, has been extended to 13 September 2020 by the close of business, 5 PM, Central Standard Time.

Mr. XXXXXXXXXXXXXXX vigorously denies and challenges each and every finding included in the Committee Decision including the sanction.

This document is the response Mr. XXXXXXXXXXXXXXX submits in fulfillment of the form required for appeal in these Proceedings, under Grounds for Appeal pp. 3-4.

Pursuant to the rules and regulations promulgated and published in the Student Code of Conduct, SCC, Mr. XXXXXXXXXXXXXXX seeks an appeal according to the following:

SCC V p. 22:

> 1. The hearing was not conducted in conformity with prescribed procedures, and substantial prejudice to the complaint or the respondent resulted;
> 2. New information that could substantially affect the outcome of the previous lower hearing has been discovered since that hearing. The information must not have been available at the time of the original hearing. Failure to present information that was available is not grounds for an appeal under this provision;

> 3. The sanction is not appropriate for the violation. This provision is intended to be utilized when a determined sanction is inherently inconsistent with university procedures or precedent. Simple dissatisfaction with a sanction is not grounds for overturning a sanction under this provision.

Mr. XXXXXXXXXXXXXXX states that the (1) University violated his Constitutional rights; fundamental rights of due process and equal protection, self-incrimination, rights of confrontation, and interfered with and prevented his representation by an attorney. This hearing violated the most fundamental concepts of American law and justice.

In a new hearing, he would provide (2) evidence to show that in no way did he violate Ms. GHJK's[1] rights and that the couple proceeded at all times with mutual consent. The alleged violation of consent was an accident. The Panel will conclude that, after a four month delay, what happened here was that here Claimant has misgivings after accidental consensual intercourse. Alcohol intoxication was not an issue.

(3) The sanction the University proposes is a deviation from other sanctions and inconsistent for similar alleged conduct when compared to the sanctions included in Hearing Packet [HP]pp. 29-33.

The University has a fiduciary duty to Mr. XXXXXXXXXXXXXXX. Therefore, Mr. XXXXXXXXXXXXXXX seeks the following:

1. That the entirety of the Hearing of September 25, 2020 be vacated.
2. That at all times, the only approved reference and appellation for the Complainant, is Complainant; never "victim."
3. That Ms. GHJK's use of the term "rape" be stricken from the record and from any documentation. The word has no legal meaning and is inappropriate in these proceedings until proven.
4. That the entirety of the file be sealed in perpetuity unless opened through a valid Order issuing from a Court of competent jurisdiction.
5. That the Investigative Report(s) by Mr. Ross UIOP is hearsay and the submission must be struck from the record in its entirety and sealed in perpetuity;
6. The Edmond, OK trip is not at issue and should not be referred to or become part of the proceedings in any way.
7. That Mr. Ross UIOP shall be excluded from any further participation in any form in any subsequent proceedings involving these parties of any nature;
8. All previous documentation, including any statements by any persons of any sort or nature, any recordings, any photographs, including any and all notes, bench notes, or any informal recordings or writings, shall be struck and not used or referred to in any subsequent proceedings and shall, in perpetuity, be sealed;
9. That the University shall (a) dismiss this action in its entirety with prejudice; (b) or, in the alternative convene a new hearing with new personnel, none of whom shall have any knowledge of these former proceedings;

[1] I see no importance to the analysis that Ms. YYYYYYYYYY attended a different school from ZZZZ.

10. In the event of a new hearing, that the University shall use "beyond a reasonable doubt" as its standard of proof;
11. In the event of a new hearing, the Panel shall be selected from a pool of unbiased sources, wholly unassociated with ZZZZ or any State agency within the State of ZZZZZZZZZZZZZ;
12. Mr. XXXXXXXXXXXXXXX shall be entitled to examine, well in advance, the potential Panel members prior to being seated, for bias or conflict;
13. A suitably qualified and credentialed examiner / investigator may be appointed from an unbiased source wholly unassociated with ZZZZ;
14. In the event that an examiner is engaged, Mr. XXXXXXXXXXXXXXX shall, at his option, be represented by appropriate counsel.
15. That Mr. XXXXXXXXXXXXXXX or his designee attorney shall be entitled to examine Ms. YYYYYYYYYY under oath (deposition) prior to the hearing using the Rules of Civil Procedure of the State of ZZZZZZZZZZZZZ;
16. That deposition of Ms. YYYYYYYYYY, if taken, may be used for any purpose;
17. That there shall be free exchange of new interview materials;
18. That a suitably qualified expert witness(s) for either or both parties may be admitted to analyze the alcohol-related testimony;
19. That Mr. XXXXXXXXXXXXXXX shall be entitled to call appropriate witnesses, some of whom have appeared, but additionally Aleigha Mariott, Landrum Jackson, whoever this person is: 20191803+okstate@efc.maxient.com; and any and all other witnesses as he may determine in his pre-hearing investigations, including, but in no way limited to the Complainant's parents and associates (friends) or other persons with first-hand knowledge.
20. No matter what is the outcome, that the University shall retain and secure these proceedings in confidence and confidentiality in perpetuity from any and all third-parties, including law enforcement.

Sincerely,

Elliott Oppenheim, MD,JD, LLM Health Law

Elliott Oppenheim, MD,JD, LLM Health Law
CEO & President, coMEDco, Inc.
Attached: Mr. Oppenheim's curriculum vitae

MEDICAL LEGAL ANALYSIS OF THE PROCEEDINGS SETTING FORTH THE BASIS FOR MR. XXXXXXXXXXXXXXX'S APPEAL:

Medical-Legal Analysis *in re* Mr. Jared XXXXXXXXXXXXXXX, before the Student Support and Conduct Committee of ZZZZZZZZZZZZZZZZZState University

Exhibit A

1. STANDARD **coMEDco, Inc.** DISCLAIMER AND TERMS OF SERVICE

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RECORDS REVIEWED:

From Mr. GHJK, I have received:

1. Initial Notification [hereinafter IN p.x]
2. Initial Investigation Report [IIR p. x]
3. Final Investigation Report [FIR]
4. Hearing Notice [HN]
5. Hearing packet [HP]
6. Guide for Advisors [GFA]
7. ZZZZ Affiliation [ZZZZA]
8. Jared's Testimony [JYT}
9. Committee Decision [CD]

In addition, I have been provided:

Appeal Form

Appeal Process

In addition, I have accessed the ZZZZZZZZZZZZZZZZZState University Code of Conduct, 23 pages, https://studentconduct.okstate.edu/code, and, more

specifically, https://ssc.okstate.edu/site-files/docs/studentcodeofconduct2.pdf [hereinafter COC p. x][2]

HEARING AUDIO RECORDING:[3]

Mr. GHJK is Mr. XXXXXXXXXXXXXXX's lawyer of record in these proceedings and Mr. GHJK will address any and all legal issues which I may identify. Mr. GHJK may identify additional legal issues.

My role is to examine the medical-legal issues regarding the charges brought by the University against Mr. XXXXXXXXXXXXXXX and to provide my analysis to Mr. GHJK, Attorney at Law, representing Mr. XXXXXXXXXXXXXXX.

THE INSTITUTION: ZZZZZZZZZZZZZZZZZSTATE UNIVERSITY:[4] [hereinafter ZZZZ]-Student Handbook [SH]

ZZZZ is a premier university in ZZZZZZZZZZZZZZZZZwith about 20,000 students. By its incorporation, it is a state school, operating under the color of the laws of the State of ZZZZZZZZZZZZZ. The University operates, then, as a state agency. Specifically:

> **B. Authority**
> Under authority granted by Article 6, Sections 31 and 31a of the Constitution of the State of ZZZZZZZZZZZZZZZZZand Title 70, ZZZZZZZZZZZZZZZZZStatutes, Section 3412 ZZZZZZZZZZZZZZZZZState University is granted full authority to adopt policies and procedures governing the conduct of its students. Attendance at ZZZZZZZZZZZZZZZZZState University is optional, voluntary, and a privilege. When students enroll at ZZZZZZZZZZZZZZZZZState University, they voluntarily accept obligations of performance and behavior consistent with ZZZZZZZZZZZZZZZZZState University's lawful mission, processes, and functions.

Student Code of Conduct, I, B, p. 2. [SCC I,B,p. 2]

The important legal point is that Mr. XXXXXXXXXXXXXXX's civil rights, to which he is entitled, spring from the authority of the Constitution of the United States and from those rights enunciated by the State of ZZZZZZZZZZZZZ.

For these proceedings, in this action, this is the University's standard of evidence:

> **Standard of Evidence:** The standard of evidence to be used in making a determination as to whether a violation has occurred is a **preponderance of the evidence**. [emphasis added]

[2] Apparently various versions of this appear on the internet. One version has 15 pages; another has 22 pages; and another has 23 pages. The one I am using here is the longest, of 23 pages. I do not know what additions have been made but, o far as I can tell, none involve our concern or affect in this analysis.

[3] I understand that there may be an audio recording of the Hearing. The interests of justice demand that the University reduce that recording to a written transcript by suitably licensed and credentialled court reporter and include that transcript a part of the record.

[4] https://ira.okstate.edu/studentprofile.html About 20,000 students; equal genders

> Under this standard, the burden of proof is met when evidence exists or is presented that establishes that it is "more likely than not" that a violation occurred. This standard is often described as requiring a showing that there is a greater than fifty percent (50%) chance that the claim is true.

SCC D

Further:

> **University-sponsored Activity:** Any activity on university premises or at an off-campus location that is directly initiated or supervised by the university or a university recognized group or organization. This includes, but is not limited to, fraternity and sorority organizations, study abroad programs, and sporting events. In addition, university-operated or -leased transit, such as THE BUS or THE BOB, is included even if the behavior occurs off university premises.

SCC D p. 3

Complainant: *victim* appellation or reference to be struck

Mr. XXXXXXXXXXXXXXX calls the Panel to observe a very important definitional distinction. SCC D p. 3
The SCC specifies that the Complainant is the person who brings the Complaint. Mr. XXXXXXXXXXXXXXX is the Respondent. These are well-recognized neutral terms used nationally, without particular connotation or inference. In various documents, in particular, Mr. UIOP's submission, the reference to *victim* is used. This term — victim — violates the SCC and must be struck, replaced at all times by *complainant*.

Apparently, this prosecution is brought under Federal Law, Title IX, and the Student Conduct Code applies to:

E. Applicability of the Student Code of Conduct

As previously stated, the ZZZZZZZZZZZZZZZZZState University Student Code of Conduct applies to conduct which occurs on university premises, at ZZZZZZZZZZZZZZZZZState University-sponsored events both on and off campus, and to off-campus conduct that adversely affects the ZZZZZZZZZZZZZZZZZState University community or the pursuit of its objectives.

SCC E

It appears, then, that Mr. XXXXXXXXXXXXXXX was a matriculated student and that the alleged activities transpired under the aegis of ZZZZ.

NOTIFICATION AND CHARGES:

On 20 July 2020, Mr. Ross UIOP, Coordinator of Student Conduct, by letter, notified Mr. XXXXXXXXXXXXXXX of the proceedings:

> … alleging you violated ZZZZ's sexual misconduct policy on February 9, 2020 at your family's guest house in Edmond, OK and on March 1, 2020 while attending your fraternity's destination formal in Memphis, TN.

IN p. 1

One incident allegedly took place in ZZZZZZZZZZZZZZZZand the other in Memphis, Tennessee.

Mr. GHJK will address this jurisdictional inter-state issue. It appears as if the Edmond, OK incident IS NOT of concern.

CONSTITUTIONAL LEGAL PROTECTIONS:

ZZZZ has a policy, I have been told, that, as a Policy, if an adverse conclusion, the University will provide to law enforcement the entirety of its file. At the time of the notification, Mr. UIOP was aware that this case represented very serious allegations of a criminal nature, if proven. In my opinion, Mr. XXXXXXXXXXXXXXXX was entitled to full Federal and State legal protections. Mr. GHJK will address that.

Mr. XXXXXXXXXXXXXXXX selected his father, Mr. David XXXXXXXXXXXXXXXX, as his Advisor but so far as I know, he did not associate with a Participant Guide: https://studentconduct.okstate.edu/Guiderequest.[5]

Mr. UIOP interviewed Jared twice in the presence of his parents. On 21 July 2020, Ms. Jill XXXXXXXXXXXXXXX, mother, attended the Initial Interview by Zoom, in Stillwater, OK in a 90 minute interview which may have been recorded with consent by the parties. In another interview, Mr. UIOP again interviewed Jared in the presence of his father, Mr. David XXXXXXXXXXXXXXX. Both parents report that Mr. UIOP actively dissuaded them from obtaining legal representation. If there is a recording, Mr. XXXXXXXXXXXXXXX, the Respondent, may supplement this Appeal with that document when the transcript becomes available.

If Mr. UIOP did wrongfully dissuade the family from hiring a lawyer, that conduct would be viewed with concern.

The Notification instructed Mr. XXXXXXXXXXXXXXX to set up a meeting but in no way instructed him of his legal options and of the extraordinary academic and criminal dangers he faced if he proceeded. Mr. Jared XXXXXXXXXXXXXXX is a 21 year old, naive college student.

GUIDE FOR ADVISORS: [GA]

The role of an Advisor is codified in Guide for Advisors, 3 pages.

An Advisor:

[5] I tried this link and it did not work.

> An advisor may be an ZZZZ faculty or staff member, another ZZZZ student, a friend, a parent, an attorney, or any other person of the student's choosing.

GA p. 1

Mr. David XXXXXXXXXXXXXXX is a builder; not an attorney.

Mr. XXXXXXXXXXXXXXX needed a well-qualified and experienced lawyer. This is especially vividly demonstrated where the Advisor is to:

- Consult with their student during the hearing.
- Suggest questions for the student to ask.
- Assist the student in clarifying his/her response to questions.

GA p. 1

In my opinion, I would suggest that this proposed Advisor role *is* the practice of law and, unless the Advisor were a well-experienced and well-trained criminal defense lawyer, Mr. GHJK, for instance, in these proceedings, anything an Advisor would contribute would be useless, misleading, and potentially damaging. To fail to encourage Mr. XXXXXXXXXXXXXXX to seek competent legal representation shocks my conscience.

Further, the analysis of the Criminal system against the University system as contained in the document, GA p. 2, profoundly illustrates Mr. XXXXXXXXXXXXXXX's need for a lawyer. Note, too, the legal citations. The footnote seems to stand for the premise that the University can "do whatever it wants," never mind the law. The University, as case after court case shows, is subject to judicial review. University of ZZZZZZZZZZZZZ[6] is a frequent flyer in the courts for actions similar to what it is trying to perpetrate against Mr. XXXXXXXXXXXXXXX.

> **Mr. XXXXXXXXXXXXXXX needed a lawyer and any attempt to interfere with that Constitutional right, is wrong.**

In the proceedings, although there is the potential of criminal expZZZZre, there are no depositions, GA p. 3, there is no discovery, GA p. 3. The only evidence was Mr. UIOP's investigative report which I entirely conclusory and hearsay. The University process is as intricate as any criminal proceeding and it is inconceivable that anyone who is not an attorney would be able to successfully navigate this maze and meet all the specifications. Mr. GHJK will address these issues in much greater detail.

[6] https://ZZZZZZZZZZZZZZn.com/article/5666035/lawsuit-against-former-ou-vice-president-tripp-hall-settled; https://www.thecollegefix.com/university-of-ZZZZZZZZZZZZZZ-faces-class-action-lawsuit-for-inflated-donation-reports/; https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/03/10/no-a-public-university-may-not-expel-students-for-racist-speech/

These faulty proceedings represent heinous violations of the American Constitutional system and essentially created a lynch mob.

HEARING NOTICE:

On 21 September 2020, Ms. Aleigha Mariott, Director of Student Conduct sent a notice of the hearing to Mr. XXXXXXXXXXXXXXX and detailed how the hearing would progress. To characterize these proceedings as a kangaroo court demeans kangaroos. A kangaroo court, according to Merriam-Webster,[7] is a "mock court in which the principles of law and justice are disregarded or perverted" and "a court characterized by irresponsible, unauthorized, or irregular status or procedures." What transpired is like what Lewis Carroll portrayed in *Alice in Wonderland.*[8]

The issue in this case is "to what did Ms. YYYYYYYYYY consent?" To what degree was there mutually agreed upon conduct?

Mr. XXXXXXXXXXXXXXX, in the Hearing Notice, is charged without specificity:

> Section II (28) Sexual Misconduct: Engaging in non-consensual contact of a sexual nature. Sexual misconduct may vary in its severity and consists of a range of behavior or attempted behavior including, but not limited to, the following examples of prohibited conduct:
> **Unwelcome sexual touching:** Touching an unwilling or non-consensual person's intimate parts (such as genitalia, groin, breast, buttocks, mouth, or clothing covering same); touching an unwilling person with one's own intimate parts; or forcing an unwilling person to touch another's intimate parts.
> **ExpZZZZre:** Engaging in indecent expZZZZre, sexual acts in a public place, voyeurism, or nonconsensual sharing of sexually explicit images.
> **Non-consensual sexual assault:** Penetrating any bodily opening of an unwilling or nonconsensual person with any object or body part.
> **Forced sexual assault:** Penetrating any bodily opening of an unwilling or non-consensual person with any object or body part that is committed either by force, threat, intimidation, or through exploitation of another's mental or physical condition (such as lack of consciousness, incapacitation due to ingestion of drugs or alcohol, age or mental disability) of which the respondent was aware or should have been aware.
> HN p. 1

> **Effective consent** is informed, freely and actively given, using mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual

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7 https://search.aol.com/click/_ylt=Awr9GjDfuoBf.msAJwdpCWVH;_ylu=Y29sbwNncTEEcG9zAzEEdnRpZAMEc2VjA3Ny/RV=2/RE=1602300768/RO=10/RU=https%3a%2f%2fwww.merriam-webster.com%2fdictionary%2fkangaroo%2520court/RK=0/RS=oBVuG5YetnSO_uurzCGsAXj970c-

8 . . . "Let the jury consider their verdict," the King said, for about the twentieth time that day."No, no!" said the Queen. "Sentence first–verdict afterward. "Stuff and nonsense!" said Alice loudly. "The idea of having the sentence first!""Hold your tongue!" said the Queen, turning purple."I won't!" said Alice. "Off with her head!" the Queen shouted at the top of her voice. Nobody moved. "Who cares for you?" said Alice. (She had grown to her full size by this time.) "You're nothing but a pack of cards!" https://www.enotes.com/topics/alices-adventures/quotes/sentence-first-verdict-afterward.

> activity. Initiators of sexual activity are responsible for obtaining effective consent. Silence or passivity is not effective consent. The use of intimidation, coercion, threats, force or violence negates any consent obtained. Consent is not effective if obtained from an individual who is incapable of giving consent due to lack of consciousness, age, mental disability or incapacitation due to use of drugs or alcohol.
>
> Mr. XXXXXXXXXXXXXXX is charged with:
>
> Section II (28) Sexual Misconduct: Engaging in non-consensual contact of a sexual nature.
>
> HN p. 1

Despite the Complainant's lay characterization, Mr. XXXXXXXXXXXXXXX is NOT charged with rape:

> a. Rape – the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, **without the consent** [emphasis added] of the victim;
>
> > *Sexual Assault:* An offense that meets the definition of rape, fondling, incest, or statutory rape:
>
> SCC2 p. 9

In Hearing Notice [HN p. 1] ZZZZ recognized that these proceedings were very serious:

> These are serious allegations for which suspension or expulsion will be a consideration if found responsible.

HN p. 2.

Further, as above referenced, the school probably will refer an adverse finding to law enforcement. In my opinion, the extensive discovery and investigation, when provided to law enforcement in this matter, would vitiate Mr. XXXXXXXXXXXXXXX's Constitutional protections under Federal and State law.

As a consequence of the nuclear bomb blast into Mr. XXXXXXXXXXXXXXX's constitutional rights, as this matter now stands, absent a new hearing, if he had to mount a criminal defense, he would be at a considerable disadvantage.

> **INVESTIGATIVE REPORT I: ROSS UIOP, INVESTIGATOR**[9]
>
> **THIS REPORT IS HEARSAY AND WAS ERRONEOUSLY ADMITTED AS "EVIDENCE."**

[9] There is an Initial Investigative Report and a Final Investigative Report, each of 11 pages; each appearing identical. In my citations here, I am using the Initial Investigative Report, IIR.

This report is not evidence. These witnesses should have appeared so that the Panel would be able to judge the weight and credibility of their testimony and of the evidence.

The University tasked Mr. UIOP to engage in the investigation. His work is, in my opinion, incompetent and violative of BOTH interviewees' respective rights. Typically, in my experience, these investigators are credentialled in some manner or fashion.[10] Nothing is known about Mr. UIOP and his level of expertise. Clearly, however, from my experience, he has no idea what he is doing. His professional credentials should be available and part of the process.

The UIOP report is defective on its face. Usually, competent report would be about 20 pages or more and be very detailed. Merely "cherry picking" and juxtaposing incriminating sound-bytes which are consistent with a party's goal "doesn't cut the mustard" or judicial standards.[11] The report should be struck as incompetent.

The University has a vested interest: to meet Title IX demands and convict. Mr. UIOP's bias towards the University's position — for conviction — is obvious.

HEARING PACKET: [HP]

COMPOSITION OF THE PANEL:

> A Hearing Panel shall consist of three disinterested members — one faculty member, one student member, and one staff member —selected from the Student Conduct Committee by Student Support & Conduct. The faculty member will be the chairperson.
> SCC p. 16 E
>
> Hearing Panel Members[12]
> John Michael Riley, PhD, Faculty
> Dan Leifield, Staff
> Reese ABCABC, Student

These Panel Member are inherently biased in favor of the University. For two of them, the university writes their paychecks. In the third instance, a student, to vote adversely to the momentum in this case, conviction, presents an insurmountable and improbable obstacle.

In proceedings such as this, many institutions appoint people at distinguished levels (and a student) who are out of state or, at a minimum, outside the University system.

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[10] https://www.sapr.mil/d-saacp; see, also, https://www.forensicnurses.org/page/CertOpportunities; Because of the complicated legal implications and the medical and emotional consequences, ALL State and Federal jurisdictions proceed with well-credentialed investigators. 'The Commission for Forensic Nursing Certification (CFNC) currently offers two professional credentials: the **Sexual Assault Nurse Examiner-Adult/Adolescent (SANE-A®)** and the **Sexual Assault Nurse Examiner-Pediatric (SANE-P®).** Both credentials are recognized by the American Nurses Credentialing Center's (ANCC) **Magnet Program®**. From 2012-2017, the CFNC collaborated with the **American Nurses Credentialing Center** to offer its credential by portfolio in **Advanced Forensic Nursing**."

[11] This is called "confirmation bias."

[12] Nothing I known about these anonymous Panelist. At a minimum, Mr. XXXXXXXXXXXXXXX is entitled to examine their respective CV's.

The constitution of this Panel is flawed with institutional bias.

Ordinarily, in every proceeding of which I am aware, including reading many appellate decisions from many various jurisdictions, panel members are subjected to some sort of vetting and challenge by a selection form. Similar to jury selection, there is *voire dire*, and exclusions for cause or simple objection are available to either party.

Mr. XXXXXXXXXXXXXXX objects to selection of the Panel from ZZZZ and to his exclusion from the Panel selection process.

Of note, too, is that a lawyer participant, a non-voting legal advisor, introduced a substantial disadvantage to Mr. XXXXXXXXXXXXXXX:

> Hearing Panel Advisor
> Clint Pratt, J.D.[13]

Yet, Mr. XXXXXXXXXXXXXXX did not have access to legal counsel.

Of note, too, is the blatant fact that the University has insurmountable representation[14] in the preparation and carrying out of the proceedings and assistance; Mr. XXXXXXXXXXXXXXX had none. … he was alone.

MS. GHJK'S NARRATIVE:

There is no recorded interview of Ms. YYYYYYYYYY' statements with Mr. UIOP but below appears her narrative:

> What is the general nature of this sexual harassment?
> Sexual assault/rape
> Where did this incident or violation occur?
> Hotel room at the La Quinta Inn & Suites by Wyndham Memphis Airport Graceland in Memphis under the transaction of the ZZZZ fraternity
> Farmhouse as a part of a date party.
> Please provide the specific or approximate time this incident occurred:
> March 1st, 2020. 4:30 AM to 5 AM
> How long do you think this problem has been going on?

HP p. 4:
From: Landrum, Jackson <jackson.landrum@okstate.edu>

[13] https://voterrecords.com/voter/76245049/clinton-pratt Registered as an Independent of Stillwater, OK and assistant general counsel to the University. It seems as if he was representing the University on procedures. I am unable to tell to what degree he gave advice to Mr. UIOP.
[14] Look at the cast of character who prepared this prosecution! Mr. XXXXXXXXXXXXXXX and his attorney wee precluded from interviewing Ms. YYYYYYYYYY.

Sent: Thursday, July 2, 2020 11:37 AM
To: Mariott, Aleigha <aleigha.mariott@okstate.edu>
Subject: Ethics Point Case #1270

It is obvious that someone assisted her in this report. Mr. XXXXXXXXXXXXXXX is entitled to know how this report was created. And who were the participants in its preparation.

In Ms. GHJK's undated and unsigned *Timeline and Details of Jared and I's* [sic] *Relationship*, HP p. 8, Ms. YYYYYYYYYY provided what appears to be her *initial* account:

> Timeline and Details of Jared and I's [sic] Relationship
> We matched on tinder[15] [sic] in late October - he seemed to be an intelligent, involved, wholesome Christian guy. Stayed as platonic friends until we started flirting and talking later in November. We did not hang out/meet in person until mid-January. First time seeing each other: we met up in Edmond which is where he is from and my first impression of him was that he seemed insecure and a bit unsure of himself but deep down he had a sweet side. He did not seem to be interested in my life as he rarely asked me questions about my life or my feelings. I would tell him something serious or personal and he would not seem to genuinely care or have any concern to know more details. He never offered to drive to Norman to see me and I was always the one driving to see him whether in Stillwater or Edmond. I thought this was weird, but I also thought maybe he needed time to warm up. From the first moment I met him something felt off, he was just odd. He talked in weird accents, used a baby voice or ironically a lisp even though he did not have one. He made fun of me sometimes, such as for the way that I kissed or some of the small things I would do. I never really felt safe or comfortable around him and my gut told me something was off but as I told my friends, I wanted to give him a shot and give things some time. Jared told me that he had dealt with problems of lust and pornography. He said that it has caused him lots of problems. He also told me he had lied to his family and parents about being a virgin. I am guessing he has had to suppress his sexuality his entire life. In regard to his social life: he never went out to parties, never drank alcohol or did drugs, was often alone on the weekends as well. He seemed to be socially awkward from my perspective and often avoided hanging out with friends and being in groups of people. He rarely showed emotions, even when talking about something he is passionate about. I found this to be very weird as well. He also told me he struggled with depression which I could very easily see in his behavior, but he did seem to be a little callous and closed off. That next weekend (or weekend after) I drove to Stillwater to hang out with him along with my best friend, and he came over to her apartment where we watched a few movies alone while my friend left to spend time with her boyfriend. While we were alone, Jared and I kissed a few times and when we did, he always seemed to make it heated very fast, almost in an assertive manner. Jared would pull me on top of him numerous times despite me pulling away and became slightly rude when I would get off of being on top of him. (Later, during another weekend I came to Stillwater on February 9th) he asked me out, but I had felt unsure about a relationship with him.

[15] The Panel should understand that Tinder is regarded as a "hook-up" site for young people seeking unencumbered sexual encounters. See, https://www.dummies.com/relationships/dating/what-is-tinder/

Right after this was when I set my boundaries which were that I did not want to have sex for a while, at least a year or staying at his family's guesthouse in Edmond:
That next weekend I met his parents and stayed with him in their guesthouse. There was only one bed and I wanted to sleep in there alone, but Jared insisted that he be out there too to "protect me" which at the time seemed like a nice thing for him to offer.
But that night, he tried pushed me to have sex with him and begged and begged for me to "just let him stick it in once or twice" I had said no multiple times and he finally gave up
I found this to be insulting so I reminded him that I did not want to have sex for at least a year or so. He was on top of me when this happened, so it was slightly more difficult for me to be in control of this situation. I was very upset with Jared over this, but I have had guys push my boundaries in the past so it did not phase me as much as it should have. Also because of how unsure of him I felt and wanted to break up with him, I did not want to go to the formal with him in Memphis, but I wanted to give the relationship a chance.

Formal in Memphis alcohol consumed:[16]

Ms. GHJK's Disclosed alcohol consumption:
Glass of wine at the venue
Smirnoff ice in a can before
(before) Malibu (3-5 shots) with sprite

There is a huge difference between "push my boundaries" and rape:

Her narrative and consent changed considerably over 2-3 July 2020 from her Timeline:

HP p. 5. This revised version was contained in an e-mail:

From: Landrum, Jackson <jackson.landrum@okstate.edu>
Sent: Thursday, July 2, 2020 11:37 AM
To: Mariott, Aleigha <aleigha.mariott@okstate.edu>
Subject: Ethics Point Case #1270

I was invited to a date party in Memphis, TN by my boyfriend of 2 weeks at the time, Jared XXXXXXXXXXXXXXX, who is a student at ZZZZ as well as a member of the fraternity "Farmhouse." Jared is also a member of the ZZZZZZZZZZZZZZZZZState University Student Foundation. Our last night in Memphis, the entire date party group, including Jared and I, participated in activities such as drinking at the party venue as well as in the hotel room we shared with another 2 students (Elizabeth Burks was one of them, also an ZZZZ student). The 4 of us that shared the hotel room at the La Quinta Inn & Suites stayed up until 2 AM drinking, I was nearly unconscious and fell asleep shortly after. At around 4:30 AM on March 1st, 2020, I woke up very dizzy and not very aware/consciously awake, still a little bit intoxicated. I remember Jared woke up as well and started kissing me, in which I kissed him back. But I was very tired, so I turned over onto my right side and fell back asleep. I woke up to Jared taking off my shorts and underwear, which I was

[16] https://en.wikipedia.org/wiki/Blood_alcohol_content

> aware of, and he then proceeded to place his penis near my vagina and in between my thighs and started to stroke in and out, not actually going inside of my vagina. I then felt Jared push his penis inside my vagina and went in and out a few times all the way, painfully continuing to do so until I realized what was happening to me and jumped out of the bed we were in and stumbled to the bathroom where I was in a state of shock and disbelief. After an hour or so of sitting in the bathroom feeling sick to my stomach, I had to get back in bed with Jared and he sarcastically and nonchalantly said "oops," having no remorse or concern. I had set my boundaries in our relationship clear and had told Jared on numerous occasions that I did not want to have intercourse for at least a year or two years, and he acknowledged that and was aware of this. On other occasions, Jared had tried to push my boundaries a week before this incident insisting on having sex, but I always refused and found it insulting. After he raped me, he claimed it was an accident and that he simply "slipped it in." After we got back to Stillwater from Memphis, I immediately broke up with him and had confronted him. It has taken me a few months to realize that you cannot accidentally rape someone and what he did was very wrong. Since this incident, I have had issues with nightmares from the trauma, intimacy with other partners, anxiety, depression as a result of feeling not being able to control what happens to my own body. I would like the respondent to face punishment for violating the Sexual Misconduct, Discrimination, and Harassment Policy at ZZZZ.

HP p. 5. Jackson Landrum, Director, EO/Title IX Coordinator, University Human Resources

This, above, is from Ms. YYYYYYYYYY hand and is the same as HP p. 6.[17] It appears as if Ms. YYYYYYYYYY transmitted her e-mail to Ms. Marriot, and then Ms. Marriott sent it to the Committee.[18]

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[17] HP p. 6: This is the 1 July official report: *Submitted on July 1, 2020 at 2:43:04 pm CDT*. I do not understand why Mr. XXXXXXXXXXXXXXX's birthdate appears in red or the reason it is included.

[18] Neither nor Mr. David XXXXXXXXXXXXXXX understand what are these attachments:

> image002.png *1076 bytes*
> image006.png *4982 bytes*
> image005.png *1243 bytes*
> image003.png *1181 bytes*
> image001.png *11470 bytes*
> image004.png *1241 bytes*

HP p. 4

Additionally, who is this recipient? **20191803+okstate@efc.maxient.com**

From: "Mariott, Aleigha" <aleigha.mariott@okstate.edu>
Sent: Friday, July 3, 2020 10:40 AM
To: "**20191803+okstate@efc.maxient.com**" <20191803+okstate@efc.maxient.com>
Subject: FW: Ethics Point Case #1270

… and what is "FW: Ethics Point Case #1270?"

In pre-hearing discovery, all of this should have been determined and revealed and disclosed. This omission supports Mr. XXXXXXXXXXXXXXX's need for an attorney.

Another phrase troubles me. "Here is another one:" In pe-hearing work, the attorney would have had that explained, as well.

In m YYYYYYYYYY' second iteration, it seems as if Ms. YYYYYYYYYY underwent coaching, adding important "buzzwords" to meet the school's definitional requirements:

1. Jared XXXXXXXXXXXXXXX, who is a student at ZZZZ as well as a member of the fraternity "Farmhouse." Jared is also a member of the ZZZZZZZZZZZZZZZZZState University Student Foundation (This statement adds the necessary jurisdiction element required in the SCC.)
2. I was nearly unconscious
3. … not very aware/consciously awake
4. … Jared taking off my shorts and underwear
5. … proceeded to place his penis near my vagina and in between my thighs
6. … Jared push his penis inside my vagina and went in and out a few times all the way, painfully continuing to do so until I realized what was happening to me
7. I had set my boundaries in our relationship clear … told Jared on numerous occasions that I did not want to have intercourse … Jared had tried to push my boundaries … insisting on having sex, but I always refused
8. … you cannot accidentally rape someone and what he did was very wrong.

These statements do not appear in the first narrative. Any competent lawyer would have examined her inconsistencies between these two statements. To do so — cross-examination by her own inconsistent statements— would have been probative and determinative.

These sound-bytes of alleged excited utterances Mr. UIOP uses are taken out of context and there is no testimonial proof of their truth. No witness can corroborate any of this.

These witnesses must testify to these facts at the Hearing in order to avoid an incurable hearsay violation.

Delay of Four Months:

There is an elephant in the room that was not raised at the hearing: delay. This alleged incident took place on 1 March 2020. Ms. YYYYYYYYYY reported on 1 July 2020. Mr. XXXXXXXXXXXXXXX is entitled to probe the reasons for the delay of four months.

CONSENT ISSUE:

In any relationship consent is a fluid concept. What the parties agreed to at the inception of the relationship changed over time. Here, Ms. YYYYYYYYYY' demonstrated her change in consent by her actions and conduct but she overtly did not supplement her previous position.

> **Effective consent** is informed, freely and actively given, using mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. Initiators of sexual activity are responsible for obtaining effective consent. Silence or passivity is not effective consent. The use of intimidation, coercion, threats, force or violence negates any consent obtained. **Consent is not effective if obtained from an**

> **individual who is incapable of giving consent due to lack of consciousness, age, mental disability or incapacitation due to use of drugs or alcohol.** [emphasis added]
> SCC2 p. 3

Although Ms. YYYYYYYYYY' was metabolizing alcohol, there is no showing that her mental faculties wee in any way impaired or that she was unable to fully function.

Mr. XXXXXXXXXXXXXXX cannot be expected to intuit Ms. GHJK's internal mental impressions and thought processes.

Both parties were consenting adults to attending the party. Both had the power to withdraw at any time. If there were intoxication, it was voluntary, and Ms. YYYYYYYYYY is responsible for her own ingestion. She does not relate that Mr. XXXXXXXXXXXXXXX coerced her ingestion.

The University's sexual definitional consent position:

> **Consent:** Effective consent is **informed, freely and actively given, using mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity.** [emphasis added]
>
> Further:
>
> **Initiators of sexual activity are responsible for obtaining effective consent.** [emphasis added]
>
> **Silence or passivity is not effective consent.**
>
> The use of intimidation, coercion, threats, force, or violence negates any consent obtained. **Consent is not effective if obtained from an individual who is incapable of giving consent due to lack of consciousness, age, mental disability, or incapacitation due to the use of drugs or alcohol.** [emphasis added]

SCC2 p. 3

EDMOND, OK: XXXXXXXXXXXXXXX FAMILY COTTAGE:

There is no allegation of wrongful sexual conduct without consent. HP pp. 8-9 *Timeline and Details*

Memphis, TN:

Described in her own words, Ms. YYYYYYYYYY consumed:[19]

(before) Malibu[20] (3-5 shots) with sprite[21]

[19] **Seven ounces over the evening.**
[20] Malibu = rum
[21] Use the higher number, for argument: 5 ounces

Smirnoff ice in a can before[22]
Glass of wine at the venue[23]

Ms. YYYYYYYYYY stated the drink order and I arranged the drinks according to her timeline.

This equates to 7 ounces of alcohol consumed over many hours.

HP pp. 8-9 Timeline and Details

Defects with Mr. UIOP's Investigation:

Ms. YYYYYYYYYY' narrative of the incident:[24]

Here follows, the essential points with footnoted analysis taken from Ms. YYYYYYYYYY' words relating to her participation and consent issues. On Appeal, if the Panel grants a new hearing conforming to generally accepted legal standards, Mr. XXXXXXXXXXXXXXX would examine this witness along the following lines, raising reasonable doubts:

From: Landrum, Jackson <jackson.landrum@okstate.edu>
Sent: Thursday, July 2, 2020 11:37 AM
To: Mariott, Aleigha <aleigha.mariott@okstate.edu>
Subject: Ethics Point Case #1270

HP p. 22, .pdf p. 5

I was invited to a date party in Memphis, TN[25] … Jared XXXXXXXXXXXXXXX, who is a student at ZZZZ …

Our last night in Memphis, the entire date party group, including Jared and I, participated[26] in activities such as drinking at the party venue as well as in the hotel room we shared with another 2 students (Elizabeth Burks was one of them, also an ZZZZ student).[27]

[22] One ounce of alcohol.
[23] One ounce of alcohol
[24] For the purpose of analysis, I am breaking the narrative provided to up the paragraphs.
[25] Her attendance was volitional, uninfluenced by Mr. XXXXXXXXXXXXXXX. Ms. GHJK's was free to not attend.
[26] Volitional consensual intoxication. https://en.wikipedia.org/wiki/Alcohol_laws_of_ZZZZZZZZZZZZZ "Minors under the age of 21 are not permitted to possess or purchase alcohol; however, consumption in a "private setting" is not prohibited by ZZZZZZZZZZZZZZZZlaw." For the purposes of this analysis, I assume that these persons were not in violation of law. It appears, however, as if Mr. XXXXXXXXXXXXXXX did not turn 21 until 15 September 2020. I have no knowledge of Ms. YYYYYYYYYY' date of birth. The University' report does not address the legality of the alcohol consumption.
[27] Consensual without objection.

The 4 of us that shared the hotel room at the La Quinta Inn & Suites stayed up until 2 AM drinking.[28] I was nearly unconscious[29] and fell asleep[30] shortly after.[31]

At around 4:30 AM[32] on March 1st, 2020, I woke up very dizzy[33] and not very aware/consciously awake, still a little bit intoxicated.[34] I remember Jared woke up as well and started kissing me, in which I kissed him back.[35] But I was very tired, so I turned over onto my right side and fell back asleep.[36] I woke up to Jared taking off my shorts and underwear, which I was aware of,[37] and he then proceeded to place his penis near my vagina and in between my thighs and started to stroke in and out, not actually going inside of my vagina.[38]

I then felt Jared push his penis inside my vagina[39] and went in and out a few times all the way, painfully continuing to do so until I realized what was happening to me and jumped out of the bed.[40]

… we were in and stumbled to the bathroom where I was in a state of shock and disbelief. After an hour or so of sitting in the bathroom feeling sick to my stomach, I had to get back in bed[41] with Jared and he sarcastically and nonchalantly said "oops,"[42] having no remorse or concern.

… After he raped[43] me, he claimed it was an accident and that he simply "slipped it in."

Witnesses Testimonies:

[28] Ms. YYYYYYYYYY has submitted an account of her alcohol consumption.
[29] Unconscious: knocked out, insensible, senseless, insentient, insensate. See, generally, Glasgow Coma scale Legal limit in ZZZZZZZZZZZZZZZZis 0.08. Minor not to exceed 0.02. Typically, a person approaching such a blood alcohol level, if not a habitual drinker, would begin vomiting at a BAL of about 0.10. This takes place well before unconsciousness. Whether Ms. YYYYYYYYYY was “unconscious” or in any way suffering from any form of a diminished mental state requires expert witness testimony.
[30] She may have “fallen asleep” at 04:40 hours, but there is NO showing that she was (a) unconscious; (b) unable to self-care; (c) unable to navigate the hotel room; (d) or, in any way, incapacitated; (e) or that her judgement or reasoning abilities were in any way diminished.
[31] Ms. YYYYYYYYYY was able at all times to interact with her environment. She was not “unconscious.”
[32] Ms. GHJK’s was alert sufficiently to know or determine the time of night with precision and to provide the narrative which then followed and iterated in her own words.
[33] Colloquially known as “hang-over.”
[34] But in no way mentally impaired.
[35] Volitional, intentional conduct; consent. This reciprocity indicates consent to kissing and to further sexual contact.
[36] No mental incapacitation.
[37] Mentally alert. Conduct to which he did not object.
[38] Without objection. She was easily able to revoke consent at that moment with, “stop.”
[39] No OVERT revocation of consent. How would Mr. XXXXXXXXXXXXXXXX know that her consent had altered? Further, Mr. XXXXXXXXXXXXXXXX states that any penetration was accidental, not intentional.
[40] After the fact, a retrospective revocation of consent?
[41] Consensual return to the bed.
[42] Impossible to know the meaning of this utterance.
[43] “Raped me” is a lay term and a legal conclusion and the use of the term has no meaning.

It is crucial here to compare the versions in the UIOP Initial Investigative Report, pp. 9-10; and the Hearing Packet pp. 19-20 with Ms. GHJK's initial statement, *Timeline and Details of Jared and I's* [sic] *Relationship*, HP p. 8. Notice, too, the versions about the "spooning position," which Ms. YYYYYYYYYY does not mention in her report but this surfaced four months later.

This alleged incident transpired in a hotel room[44] with four persons in attendance: Ms. Elizabeth Burks and Mr. Sam Marcear: roommates in the hotel room.

Any unwanted conduct or resistance would have been apparent to Ms. Burks and to Mr. Marcear. Ms. YYYYYYYYYY made no comments at the time. .

In the UIOP report, IIR p. 9-10:

Witness #1 – Elizabeth Burks recount of the Memphis trip
Elizabeth described Jared and Alannah as super cuddly in bed. The only impact of alcohol Elizabeth noticed on Alannah was that Alannah was much more talkative after drinking. Elizabeth did not think anyone had much to drink overall.

Witness #2 – Sam Marcear recount of the Memphis trip
Jared and Alannah drank on the bus ride to Memphis. Sam does not remember how much they drank. He said they both seemed fine and the back of the bus was pretty calm. Sam does not remember if the group pre-gamed before the formal. Sam does not recall if Jared or Alannah drank. After the formal, they drank a little bit in the room. Alannah held up her bottle of Malibu and said, "Let's do this!" Sam had 3-4 Michelob beers to drink. Sam thinks Jared had 1-2 more drinks than Sam did. Sam said Alannah's behavior seemed consistent with the weekend but recognized he does not know her well. Played Mario Kart for about 45 minutes and watched a movie for about 1 hour 45 minutes. When Sam mentioned Alannah wearing her backpack on the bus ride back to Stillwater, he thought it strange, but said she could have been using it for a pillow. He also said she could have been using it for security.

Witness #3 – Isabella Green: This testimony must be excluded as lacking any personal knowledge of the alleged conduct at 04:30 hours on 1 March 2020. Her testimony is irrelevant to the proceedings. She was not present. Her testimony is entirely hearsay. This witness must be excluded.

THE HEARING:

The entire conduct of the hearing violates many legal principles and the only way to cure this fatal defect is to grant Mr. XXXXXXXXXXXXXXX an entirely new hearing, convened in such a manner as to guarantee him fundamental fairness and justice.

Apparently, the UIOP report was introduced into the record as "fact." There was no cross-examination of Mr. UIOP.

[44] I do not know if this was a two-room suite or a single room with double-beds. The area is very small.

My understanding of the hearing[45] was that it was convened over 90 minutes on Zoom. Ms. YYYYYYYYYY testified, but was not cross-examined; Mr. XXXXXXXXXXXXXXX testified, but was not cross-examined.

Witnesses testimony was wrongfully introduced by Mr. UIOP's report; but there was no actual witness pressence or cross-examination of these witnesses. The University introduced the report as "true" when, in fact, in its entirety, it is hearsay and should be excluded.

Mr. XXXXXXXXXXXXXXX's Testimony:

Incorporated in its entirety by reference.

UNSUPPORTED THEORY: ALCOHOL BLACKOUT; AMNESIA:

No evidence supports, or even suggests, that Ms. YYYYYYYYYY was intoxicated at any time. Further, NO evidence supports that she was ever unconscious. In addition, NO evidence supports that she was in any way neurologically impaired. Mr. XXXXXXXXXXXXXXX would demonstrate this at the new hearing.

I do not understand how this alcohol issue arose other than by some misconstrued lay notion. In my medical and legal experience, so-called blackouts, in an inexperienced drinker, ONLY occur when a person ingests a considerable volume of alcohol over a short time.[46] Without some showing that Ms. YYYYYYYYYY was so affected, to further pursue this theory is irrelevant and without foundation.

MEDICAL LEGAL ANALYSIS AND COMMENTARY:

Mr. XXXXXXXXXXXXXXX demands an entirely new hearing for the above articulated reasons.

I have helped attorneys defend many sexual assault cases. What happened here is NOT a sexual assault but an accident. Ms. YYYYYYYYYY and Mr. XXXXXXXXXXXXXXX were two youths engaged in consensual "college drinking and partying." The sequence of events led to accidental intercourse. This foreplay conduct, absent intercourse, was consistent with previous consensual sexual conduct between the couple. Then, after the fact, there was consensual accidental intercourse, after which Ms. YYYYYYYYYY, apparently, had some misgivings.

It took her four months to object.

On the morning of 2 March 2020, had Ms. YYYYYYYYYY taken legal offense, and not merely stewed in shame and guilt over her participation in accidental consensual sexual intercourse, she could have filed a complaint with the local law enforcement. It is hard to speculate why she took

[45] From Mr. David XXXXXXXXXXXXXXX, who attended.
[46] Gulping half-bottle of vodka or more. This can be fatal.

four months to complain to the University. If she felt so violated it is further hard to understand her reason for not making a timely law enforcement complaint.

Ms. YYYYYYYYYY discusses the sorts of conversations between youths when contemplating relationship issues. Ms. YYYYYYYYYY cites no coercion, no use of force, and by her own words and actions, she was in full control.

This proceeding is NOT brought by the State in a State of ZZZZZZZZZZZZZZZZcourt to adjudicate criminal violations of law. The conduct this University tribunal is asked to consider, and to rule upon, could. conceivably, however, wind up in a criminal court. These proceedings will mark Mr. XXXXXXXXXXXXXXX forever, a youth of twenty-one years who is a promising and adept student at ZZZZZZZZZZZZZZZZZState University.

Mr. XXXXXXXXXXXXXXX has never been "in trouble."

Under the law of the United States and of the State of ZZZZZZZZZZZZZ, both Ms. YYYYYYYYYY and Mr. XXXXXXXXXXXXXXX are entitled to a full and fair airing of these allegations. Full and fair means objective and unbiased.

Objective means unbiased as judged by a "reasonable person" who has no conflicts or fealty with the University, no vested interests, no "axes to grind," without taint.

The Student Code of Conduct Sets forth the goals of this inquiry:

> The primary focus of the conduct process is on educational and corrective outcomes; however, sanctions such as suspension or expulsion from the university may be necessary to uphold community standards and to protect the campus community.

SCC 2, 1.A.

Superficially, although this inquiry appears as an "academic" inquiry, like a frog dissection in a biology lab, the outcome is not good for the frog. Mr. XXXXXXXXXXXXXXX will never be the same and, even if found not responsible, the lifelong consequences and scars of this experience will remain and could be catastrophic for both him and his family.

> 28. **Sexual Misconduct:** This term used to encompass Sexual Assault, Indecent ExpZZZZre, and Sexual Exploitation. a. *Rape* – the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim;
>
> > *Sexual Assault:* An offense that meets the definition of rape, fondling, incest, or statutory rape:

Ms. YYYYYYYYYY' level of intoxication at the time of the incident was less than the legal limit for driving, with, to a reasonable degree of probability, only one ounce active in her

metabolism.[47] There is NO showing that she was at any time mentally incapacitated. This notion of alcoholic blackout is unsubstantiated by the evidence.

CONCLUSIONS:

It is clear, by testimony, that (a) Mr. XXXXXXXXXXXXXXX was NOT intoxicated; (b) that Ms. YYYYYYYYYY was NOT intoxicated at 04:30 hours on 1 March 2020. Ms. YYYYYYYYYY was, probably, experiencing alcohol metabolism and detoxification.[48] The fact that she vomited further supports this.[49] IIR p. 10 Green testimony. These facts would been fleshed out through testimony but not by Mr. UIOP's incompetent report. Ms. YYYYYYYYYY was available, testified at the hearing, but should have undergone cross-examination.

Further, if the degree of intoxication and impairment is an issue, then the University needs an expert witness to explain these MEDICAL and SCIENTIFIC issues. It is wrong to intuit interpretations by "common sense" or lay general knowledge.

Typically, most people metabolize alcohol at about one ounce per hour. Thus, if Ms. YYYYYYYYYY consumed the amounts as she previous described, her total ingestion was 7 ounces. By the time the alleged incident took place at 4 AM, she would have had, probably, the equivalent of only once ounce of alcohol active in her system.

Ms. YYYYYYYYYY and Mr. UIOP, neither scientifically qualified experts, failed in their attempt to introduce the alcohol consumption as an issue. There was no medical or scientific foundation or expertise. These lay opinions are legally incompetent.

Mr. XXXXXXXXXXXXXXX was entitled to determine the scientific substance of the alcohol issues and, in his defense, to obtain his own expert witness and to cross-examine any opposing expert witnesses.

There is no point in according Mr. UIOP's work any form of evidentiary legitimacy.

BASIS FOR APPEAL:

Committee Decision:

> The hearing was not conducted in conformity with prescribed procedures and substantial prejudice to the complainant or respondent resulted;
>
> New information which could substantially affect the outcome has been discovered since the

[47]Hypothetically, if the evening began at 6 PM (before) and the incident took place at 04:00 hours, that is 10 hours. By that time, she would have metabolized all of the alcohol. While she may have been experiencing an hangover, she was not intoxicated.

[48] Hangover.

[49] One of the serious dangers of alcohol poisonings where the patient IS unconscious, is that they may vomit and aspirate into the lungs. Suh an episode can become fatal. Clearly, Ms. YYYYYYYYYY was NOT unconscious or in any way mentally incapacitated.

hearing;

When compared to other cases, the sanction is not appropriate for the violation.

Mr. XXXXXXXXXXXXXXX seeks appellate review:

The entirety of the proceedings are legally flawed. Attorney Mr. GHJK will address that. The evidentiary basis and standard of preponderance of the evidence for this proceeding does not comport with any law of Due Process and Equal Protection.

There was no showing by competent medical testimony that Ms. YYYYYYYYYY was intoxicated or that she was unable to consent.

This Panel is a lay Panel. Other than from general knowledge the Panel is medically incompetent. At a minimum, Mr. XXXXXXXXXXXXXXX should be able to summon a medical witness.

Mr. XXXXXXXXXXXXXXX vigorously denies that "non-consensual penetration of the complainant's vagina by the respondent's penis did occur." What happened was an accident.

Mr. UIOP's conclusion ignores the medical facts.

Mr. XXXXXXXXXXXXXXX does not agree that any penetration was non-consensual; penetration was mutually achieved, co-participatory accident..

Mr. XXXXXXXXXXXXXXX demands that the entirety of the proceeding be vacated and voided as a violation of his Due Process rights for the reasons above enunciated under the proper evidentiary standard: beyond a reasonable doubt.

The Edmond, OK trip is not at issue.

That he be granted a new hearing where he is able to present competent medical testimony.

That the sanctions, in view of the flawed process and actual sanction imposed, be vacated.

Mr. XXXXXXXXXXXXXXX reserves his right to supplement this analysis within thirty days with additional document and evidence including the UIOP interview transcripts, if available.

Attorney Mr. GHJK will supplement an appropriate legal response.

Sincerely,

Elliott Oppenheim, MD,JD, LLM Health Law
Original signed document forwarded this day by US Mail.
Elliott Oppenheim, MD,JD, LLM Health Law

CEO & President, coMEDco, Inc.
Attached: Mr. Oppenheim's curriculum vitae