

EXHIBIT A

CONFIDENTIAL INVESTIGATORY REPORT

To: Melinda Stoops, Associate Vice President for Student Affairs and Student Title IX Coordinator
Corey Kelly, Associate Dean of Students

From: Jennifer Davis, Jenn Davis LLC
Kristen O’Driscoll, Assistant Dean of Students

Date: June 11, 2019

Re: Case [REDACTED]
Report by Jane Roe (BC [REDACTED]) of Sexual Misconduct by John Doe (BC [REDACTED])

I. Scope of Investigation

Jennifer Davis and Kristen O’Driscoll (“the Investigators”) investigated a report made by Complainant Jane Roe (“Jane”), a [REDACTED] student at Boston College (“BC” or the “University”) of alleged sexual misconduct by John Doe (“John”), also a [REDACTED] at BC (the “Alleged Incident”). Jane alleged that this sexual misconduct occurred during the early morning hours of [REDACTED], in the form of a non-consensual touching in [REDACTED] at “[REDACTED]” and then in John’s room in [REDACTED] (known as “[REDACTED]”), both while Jane was in a state of incapacitation due to alcohol.¹ In summary, Jane alleged that John approached her while she was standing in line at [REDACTED], put his arm around her waist and pulled her towards him, asked her back to his room, and subsequently engaged in kissing, touching of intimate body parts, and then penetrated her vagina with his penis, all while she was incapacitated and therefore unable to consent to sexual interaction.

John denied that he touched Jane in a sexual manner while in [REDACTED]. He also denied observing any indication that Jane was incapacitated due to alcohol while he was with her on [REDACTED], including while they were at [REDACTED], walking to [REDACTED], or in his suite, or when the parties were in his room. John admitted that he and Jane had a sexual interaction (and that he penetrated her vagina with his penis) while in his room; he stated that their sexual interaction was, at all times, consensual.

II. Relevant Provisions of Boston College Student Sexual Misconduct Policy

The Alleged Incident occurred during the [REDACTED] academic year. Accordingly, the definitions that appear in the [REDACTED] Sexual Misconduct Policy (the “Policy”) are applicable in this matter. Section 4.4.6 of the Boston College Student Guide sets forth the Policy, which prohibits all forms of sexual misconduct, including but not limited to, sexual harassment, sexual assault, stalking, and intimate partner violence, whether perpetrated by a stranger or acquaintance, whether occurring on or off campus, and whether directed against a member of the Boston College community or someone outside that community. At the time of the Alleged Incident, Section III of the Policy defined prohibited conduct to include the following, in pertinent part:

¹ [REDACTED].

- **Sexual Misconduct** is a broad term that encompasses a range of behaviors including all forms of sexual harassment, including sexual assault, as well as other forms of misconduct or violence of a sexual nature, including, without limitation, intimate partner violence, stalking, and sexual exploitation.
- **Sexual Assault** is any sexual contact or sexual penetration with another individual without consent.
 - **Sexual Contact** includes intentional contact with the intimate parts of another person, causing another person to touch one's intimate parts, or disrobing or exposure of another person 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. Sexual contact includes kissing and attempted sexual penetration.
 - **Sexual Penetration** includes vaginal or anal penetration, however slight, with a body part (*e.g.*, penis, tongue, finger, hand, *etc.*) or object, or oral penetration involving mouth to genital contact.
- **Consent** is the clear and voluntary agreement to engage in particular sexual activity, communicated through mutually understandable words or actions. Consent is always freely informed and actively given. Silence or lack of resistance cannot be assumed to imply consent. Consent must be ongoing, and it may be withdrawn at any time. Consent for one sexual act does not imply consent for any subsequent sexual activity. Consent may never be obtained through use of coercion, intimidation, force, or threats.

Consent cannot be obtained from an individual who is incapable of giving consent because the person:

- Has a mental, intellectual, or physical disability;
 - Is under the legal age to give consent;
 - Is asleep, "blacked out" unconscious, or physically helpless; or
 - Is incapacitated, including through the consumption of alcohol or drugs.
- **Incapacitation** is the inability to make informed, rational judgments and decisions. If alcohol or drugs are involved, incapacitation may be assessed by evaluating how the substance has affected a person's decision-making capacity, awareness, and ability to make informed judgments. The impact of alcohol and drugs varies from person to person; however, warning signs of possible incapacitation include slurred speech, unsteady gait, impaired coordination, inability to perform personal tasks such as undressing, inability to maintain eye contact, vomiting, and emotional volatility. The perspective of a reasonable person will be considered in the University's determination of whether a person knew, or reasonably should have known under the circumstances, whether the other party was incapacitated. Being intoxicated or incapacitated does not diminish one's responsibility to obtain consent and will not be an excuse for sexual misconduct.

Section VI of the College's Student Sexual Misconduct Policy ([REDACTED]) sets forth the process by which the College responds to reports of alleged sexual misconduct, including the investigation that may ensue. The Investigators investigated the Incident pursuant to that policy and process, applying the requisite preponderance of the evidence standard.

III. Process

A. Jane's Initial Report; Communications with Jane

On [REDACTED], Melinda Stoops, Associate Vice President of Student Affairs/Student Title IX Coordinator ("AVP Stoops") was notified by [REDACTED] that Jane had reported to her that over the weekend ([REDACTED]) a member of the [REDACTED] (later identified as John had engaged in sexual activity with her in his room in [REDACTED] without her consent, while she was intoxicated, and that she did not remember "a lot of what happened."

On [REDACTED], AVP Stoops met with Jane to discuss the incident she had reported on [REDACTED]. Jane shared with AVP Stoops that she was intoxicated and had "blacked out" at times throughout the evening-early morning of [REDACTED], including during much of the sexual interaction that she had with John. Jane reported that there "was penetration," and that she attempted to stop John from removing her underwear. AVP Stoops discussed multiple resources with Jane including the option to go through the student conduct process.

On [REDACTED], Jane emailed AVP Stoops and Dean Monica St. Louis stating she wanted to go forward with an investigation.

On [REDACTED], Associate Dean of Students Corey Kelly ("Dean Kelly") emailed Jane to set up a time to meet.

On [REDACTED], Dean Kelly met with Jane and provided her with information related to the sexual misconduct investigation process and BC "Stay Away" orders. Jane informed Dean Kelly she wanted to go forward with the investigation process. On [REDACTED], "Stay Away" orders were issued by Dean Kelly to both Jane and John via email.

B. Initial Notice to John of Jane's Report; Communications with John

On [REDACTED], Dean Kelly met with John to inform him of Jane's allegations, explain the sexual misconduct investigation process, and review the terms of the Stay Away Order. Dean Kelly explained to John that he would receive written notification of Jane's allegations and the policy sections that were implicated by those allegations, from Dean Kristen O'Driscoll ("Dean O'Driscoll").²

C. Initial Interview of Jane and Opportunity to Review Interview Summary

On [REDACTED], Dean O'Driscoll emailed Jane to arrange for an interview with the Investigators. Dean O'Driscoll informed Jane that she could bring an advisor of her choice to the interview, and she

² This Notice was sent to John on [REDACTED], as described below.

provided Jane with a copy of the Policy. Jane responded on [REDACTED] and agreed to go forward with an interview on [REDACTED]³.

On [REDACTED], the Investigators interviewed Jane for approximately 2 hours in the Office of the Dean of Students (the “Office”). Jane was accompanied, at this interview, by [REDACTED], (BC [REDACTED] (“[REDACTED]”), whom Jane identified as her support person.⁴ The Investigators and Jane agreed that they needed more time than the 2 hours for which Jane was available to complete this interview. Accordingly, they scheduled a “continued first interview” with Jane for [REDACTED]. The Investigators interviewed Jane for an additional one hour and 15 minutes on this day. [REDACTED] was also present, as Jane's support person, for this interview. At the end of the interview, the Investigators stated that they would contact Jane to schedule a second interview to review additional information obtained in the Investigation.

On [REDACTED], Dean O’Driscoll provided Jane with a written summary of her initial interview (conducted on [REDACTED]) and requested that Jane review it, and provide any comments within five (5) calendar days. On [REDACTED], Jane submitted comments on the summary. The Investigators considered those comments in preparing a final version of the summary of Jane's initial interview.⁵

D. Written Notice; Initial Interview of John; Opportunity to Review Interview Summary

As referenced above, Dean O’Driscoll notified John in writing on [REDACTED] that the University was conducting an investigation into Jane's allegations (the “Notice”). In the Notice, Dean O’Driscoll stated that based on Jane's initial report and interview, the following Policy provisions (as set forth in the Student Guide) were potentially implicated:

4.4.6 Sexual Misconduct Policy – Specifically, it is alleged that into the early morning hours of [REDACTED] in your residence hall room in [REDACTED], you sexually assaulted Jane Roe [REDACTED], by engaging in non-consensual sexual contact through kissing and touching of intimate body parts and penetrating her vagina with your penis without her consent while Ms. Roe was incapacitated. In addition, and prior to this, it is alleged you engaged in non-consensual touching in [REDACTED] at [REDACTED]. This alleged behavior may constitute Sexual Assault, as defined in the Sexual Misconduct Policy under Section III, *Prohibited Behavior*.

The Notice directed John to the Policy and informed him that he had the option of having an advisor of his choice accompany him to his interview(s) with the Investigators. John responded on [REDACTED], [REDACTED] and agreed to an interview on [REDACTED].

On [REDACTED], the Investigators interviewed John for approximately 2 hours in the Office. John was accompanied, at this interview, by his advisor/attorney Evan Krutoy (“Attorney Krutoy”). At the end

³ The Investigators offered to meet with Jane [REDACTED]. The University was open but classes did not begin until [REDACTED]. Jane elected to go forward on [REDACTED], [REDACTED].

⁴ [REDACTED] did not participate in this investigation as a witness.

⁵ See Evidence Binder, at Tab 1.

of the interview, the Investigators stated that they would contact John to schedule a second interview to review additional information obtained in the Investigation.

On [REDACTED], Dean O'Driscoll provided John with a written summary of his initial interview and requested that John review it, and provide any comments within five (5) calendar days. On [REDACTED] [REDACTED] Dean O'Driscoll (who had not heard from John) emailed John confirming that he had no comments. Later on [REDACTED], John replied, submitting a photo and Uber receipts.⁶ On [REDACTED], John emailed Dean O'Driscoll, stating that he did have comments on the summary of his initial interview; he provided these in the email. The Investigators considered those comments in preparing a final version of the summary of John's initial interview.⁷

E. Additional Interviews of Parties; Opportunity to Review Interview Summaries

Jane

[REDACTED], the Investigators conducted a second interview of Jane.⁸ On [REDACTED], Dean O'Driscoll provided Jane with a written summary of this interview for her review, and requested that Jane provide any comments within five (5) calendar days. On [REDACTED], Jane submitted comments on the summary. The Investigators considered those comments in preparing a final summary of Jane's second interview.⁹

On [REDACTED], the Investigators conducted a third interview of Jane.¹⁰ On [REDACTED], Dean O'Driscoll provided Jane with a written summary of this interview for her review, and requested that Jane provide any comments within five (5) calendar days. On [REDACTED], Jane submitted comments on the summary. The Investigators considered those comments in preparing a final summary of Jane's third interview.¹¹

John

On [REDACTED], the Investigators conducted a second interview of John.¹² On [REDACTED], Dean O'Driscoll provided John with a written summary of this interview for his review, and requested that John provide any comments within five (5) calendar days. On [REDACTED], John submitted comments on the summary. The Investigators considered those comments in preparing a final summary of John's second interview.¹³

⁶ See Evidence Binder, at Tabs 27, 31.

⁷ See Evidence Binder, at Tab 2.

⁸ Jane's support person, [REDACTED], was also present for this interview, which was technically the third time that the Investigators met with Jane

⁹ See Evidence Binder, at Tab 3.

¹⁰ Jane's support person, [REDACTED], was present for this third interview, but remained outside the interview, for support only, due to the fact that she was also a witness in the investigation.

¹¹ See Evidence Binder, at Tab 5.

¹² John's advisor, Attorney Krutoy, was present for this follow-up interview.

¹³ See Evidence Binder, at Tab 4.

<p>Roommate 1</p>
<p>Five photos of Jane Roe on [redacted] beginning at 9:47 PM spanning to [redacted] at 1:15 AM (prior to alleged incident) (submitted by Jane Roe on [redacted]) Corresponding photos of Jane Roe (prior to alleged incident) (submitted by [redacted] on [redacted])</p>
<p>Two Uber Receipts for Jane Roe dated [redacted] at 10:45 PM and [redacted] at 12:54 AM (to and from party on [redacted]) (submitted by Jane Roe on [redacted])</p>
<p>Two Uber Receipts for John Doe dated [redacted] at 11:10 PM and [redacted] at 12:06 AM (to and from [redacted]) (submitted by [redacted] on [redacted])</p>
<p>Two Uber Receipts for John Doe dated [redacted] at 12:49 AM and 1:29 AM (to and from [redacted] BC to [redacted]) (submitted by [redacted] on [redacted])</p>
<p>Text messages between Jane Roe and [redacted] dated [redacted] beginning at 1:20 AM through 9:32 PM ([redacted]). (submitted by Jane Roe on [redacted])</p>
<p>[redacted] Transaction Record for Jane Roe dated [redacted] at 1:42 AM in [redacted] (submitted by Jane Roe on [redacted])</p>
<p>Email with Jane Roe's Itemized Dining Transaction on [redacted] (email from [redacted] on [redacted])</p>
<p>Two handwritten diagrams of [redacted] on [redacted] (drawn by Jane Roe during interview on [redacted]) (drawn by John Doe during interview on [redacted])</p>
<p>John Doe Room Photograph of John Doe's room (submitted by John Doe on [redacted]) Handwritten sketch of John Doe's suite and room (drawn by John Doe during interview on [redacted])</p>
<p>Text messages between Jane Roe and [redacted] dated [redacted] beginning at 9:30 AM (submitted by Jane Roe on [redacted])</p>
<p>Text messages between Jane Roe and [redacted] dated [redacted] beginning at 5:21 PM (submitted by Jane Roe on [redacted])</p>
<p>Text message between John Doe and [redacted] on [redacted] at 1:49 AM (submitted by John Doe on [redacted])</p>
<p>Text messages between [redacted] and Jane Roe beginning [redacted] at 1:48 AM to [redacted] at 7:40 AM</p>

(submitted by [REDACTED] on [REDACTED])
Text messages between Jane Roe and [REDACTED] dated [REDACTED] beginning at 9:02 AM
(submitted by [REDACTED] on [REDACTED])
Text message between Jane Roe and [REDACTED] dated [REDACTED] beginning at 7:19 AM
(submitted by Jane Roe on [REDACTED])
Text messages between Jane Roe and [REDACTED] dated [REDACTED] at 11:06 AM
(submitted by Jane Roe on [REDACTED])
Texts between [REDACTED] and Jane Roe [REDACTED] (submitted by [REDACTED] on [REDACTED] and [REDACTED]) (resubmitted with clearer date/time stamps as requested)
Text message between [REDACTED] and [REDACTED] dated [REDACTED] at 9:33 PM
(submitted by [REDACTED] on [REDACTED])
iPhone Note written on [REDACTED] by Jane Roe documenting deleted SnapChat text language from John Doe
(submitted by Jane Roe on [REDACTED])
Text messages between Jane Roe and John Doe dated [REDACTED] at 1:27 PM to [REDACTED] at 2:04 PM (arranging meeting in [REDACTED])
(submitted by Jane Roe on [REDACTED])
Jane Roe medical record for STD testing dated [REDACTED]
(submitted by Jane Roe on [REDACTED])
Two SnapChat Videos of Jane Roe : [REDACTED] at 10:39 PM [REDACTED] at 1:04 AM
(submitted by Jane Roe on [REDACTED])

G. Evidence Binder; Parties’ Opportunity to Review; Submission of Comments

After the interviews were complete and the parties had submitted any comments on their interview summaries, the Investigators prepared the Evidence Binder. The Evidence Binder included all summaries of the interviews of the parties and witnesses conducted as of that date, as well as the tangible evidence described above. On [REDACTED], Dean O’Driscoll informed Jane and John that the Evidence Binder was available for review in the Office, and that each party would have ten (10) days to submit any comments he or she might have on the evidence contained therein.

On [REDACTED], Jane reviewed the Evidence Report for approximately 2 hours. On [REDACTED], Jane reviewed the Evidence Binder for approximately 3 hours with a support person present outside the room. Jane reviewed the Evidence Binder on [REDACTED] for two hours and on [REDACTED] for approximately 2 hours and 15 minutes. Jane reviewed the Evidence Binder for the last time on [REDACTED], for approximately 1 hour.

On [REDACTED], John reviewed the Evidence Report for approximately 3 hours and 20 minutes. On [REDACTED], John reviewed the Evidence Binder for approximately 3 hours. John reviewed the Evidence Binder on [REDACTED] for approximately 2 hours. John reviewed the Evidence Binder for the last

time on [REDACTED] for approximately 3 hours with his father, Mr. Doe . An Evidence Binder was sent to John's advisor/attorney (Attorney Krutoy) in New York City.¹⁴

On [REDACTED], Attorney Krutoy asked for the 10-day evidence review period to begin upon his receipt of the Evidence Binder. Dean O'Driscoll granted the requested extension, and informed John and Jane of the extension and revised due date of [REDACTED]. On [REDACTED], Jane submitted her written comments on the Evidence Report ("Jane's Comments"). On [REDACTED], John also submitted his written comments on the Evidence Report ("John's Comments").

IV. Allegations, Responses, Witness Observations and Findings

Jane's allegations and John's responses to those allegations are set forth in detail, below, along with the relevant observations of witnesses, and any other relevant evidence. Where facts were disputed, the Investigators made Findings, based on the requisite "preponderance of the evidence" standard, and set forth the rationale for those Findings.

A. The Parties and Their Interactions Prior to the Alleged Incident

Jane

Jane is from [REDACTED]. She started at BC as a first-year student in the [REDACTED], in the fall of [REDACTED]. She is currently a [REDACTED], and lives in [REDACTED] in an [REDACTED] person suite. Her direct roommate is [REDACTED]. Some of Jane's suitemates were witnesses in this investigation, including [REDACTED]), and [REDACTED]).¹⁵ Jane stated that she met John towards the end of the fall semester of her first year at BC, through other students. Jane stated that she and John did not have regular contact of any sort; they said "hello" in the dining hall and "that was about it." Jane noted that they were connected via Instagram and Snapchat, and had a brief communication when John posted a Snapchat story about being at the [REDACTED] on his birthday during the [REDACTED].¹⁶ Jane said that she also saw John near the beginning of their [REDACTED] year, at a party. She stated that they exchanged greetings, and he "gave her a hug," after which they "spoke for a minute." Jane recalled asking John what his friend's name was (another male BC student also in attendance at the party), and being "shocked" when John asked, "You want to make out with him?" Jane stated that she was "not interested" in John or his friend, and had no further conversation with John after this brief interaction, until the early morning of Sunday, [REDACTED].

John

¹⁴ On [REDACTED], Mr. Krutoy contacted Nora Field, Boston College Deputy General Counsel, requesting that the evidence be sent to his office for review with an agreed non-disclosure agreement. Mr. Krutoy confirmed receipt of the Evidence Binder on [REDACTED].

¹⁵ [REDACTED] is also one of Jane's suitemates. As noted above, [REDACTED] served as Jane's support person during this investigation, and was not a witness.

¹⁶ Jane stated that she liked [REDACTED], and that she sent John a brief message in which she told him that she was "jealous" of him for being at a [REDACTED] and wished him Happy Birthday.

John is also from [REDACTED] (his parents currently live in [REDACTED]). He started at BC as a first-year student in the [REDACTED], in the fall of [REDACTED], and is a member of the [REDACTED]. John is currently a [REDACTED] at BC, and lives in [REDACTED] with [REDACTED] other male students. Two of John's suitemates (Roommate 1) ("Rm. 1") and [REDACTED] were witnesses in this investigation. John stated that he "believed" he met Jane "sometime [REDACTED] year," but could not recall precisely when or in what context. He stated that he and she were connected via Snapchat, and he recalled receiving a Snapchat message from her during [REDACTED] (which he attended). John stated that he and Jane never had any relationship, or sexual interaction, prior to [REDACTED].

B. The Parties' Independent Actions on the Night/Early Morning of [REDACTED]

I. Jane's Actions

Prior to [REDACTED] (9:00 PM – 10:45 PM)

Jane stated that, on the night of [REDACTED] she ate dinner around 6:30 PM,¹⁷ and then prepared to go out, starting at approximately 9:00 PM, with her friend and suitemate, [REDACTED]. Jane said that they planned to go to two parties; the second one was a [REDACTED], off campus, to which BC [REDACTED] [REDACTED] had invited Jane.¹⁸ Jane and [REDACTED] initially dressed in clothes for the first party, but then – at approximately 10:00 PM – they decided not to go to the first party, and changed into [REDACTED] party.¹⁹ Jane wore a [REDACTED] [REDACTED] under which she wore spandex shorts in addition to underwear (a gray and white lace thong).

Jane stated that starting at around 9:00 PM, until she and [REDACTED] left the suite (via Lyft) at 10:45 PM,²⁰ they "pre-gamed" by drinking shots of "either Svedka or Smirnoff" vodka.²¹ Jane stated that the shot glasses they used (that belonged to their suitemate [REDACTED]) were "a bit bigger" than average shot glasses; Jane estimated that these glasses held "about 1.25 more alcohol than a standard shot glass." Jane stated that she "typically" used these larger glasses to "pre-game."

Jane said that she typically drank 5 shots when she "pre-gamed," and was certain that she had "at least" 5 shots of vodka, prior to going to the [REDACTED], and "probably drank more than 5 shots." She said that [REDACTED] told her, shortly after [REDACTED], that they "might have had as many as 7 [shots]" prior to the party. Jane stated that, in addition to [REDACTED] comment, she believed she had more than 5 shots on this occasion because she had such a spotty recollection of what transpired both at, and after, the [REDACTED]. She said that although she had had nights after which she could not recall "certain details," she had never woken up not remembering "large amounts of time," as she did on the morning of [REDACTED]

¹⁷ Jane did not recall what she ate and drank during the day on [REDACTED], but stated that she typically eats a "solid meal" for dinner; she described this as "meat, potato/starch and a vegetable." Jane stated that she often ate a steak and cheese sandwich for dinner. She also stated that she "typically drinks a lot of water during the day."

¹⁸ [REDACTED] was a witness in this investigation. He lived at [REDACTED], with [REDACTED] housemates during the [REDACTED] academic year. [REDACTED] stated that he and his housemates hosted the [REDACTED].

¹⁹ Jane produced photographs that she took on her phone on [REDACTED], showing her and [REDACTED] in their initial outfits at 9:45 PM and then in [REDACTED] at 10:16 PM. See Evidence Binder, at Tab 25.

²⁰ See Evidence Binder, at Tab 26 (Lyft receipt).

²¹ "Pre-gaming" is a reference to the practice of drinking alcohol prior to attending a social event.

██████████ Jane noted that she drank even more vodka (an unmeasured amount, in a Solo cup) later, at the ██████████.

Jane stated that she only felt “a little buzzed” when the Lyft driver dropped her and ██████████ off (at 10:48 PM) at the off-campus ██████████.²²

██████████ corroborated that she and Jane “pre-gamed” as they got ready for the ██████████ in their suite, and said that they “probably” used the larger shot glasses. She stated that they drank “a lot,” and “more than they usually drank.” ██████████ estimated that they “probably had 6 shots,” but was not sure of the exact amount. ██████████ noted that she got sick (vomited) later that night, which she said was not typical for her; this caused her to believe that she had had more than the 3-4 shots of alcohol she usually drank, while “pre-gaming.”²³

██████████ were also in the suite on the night of ██████████, while Jane and ██████████ were getting ready to go to the ██████████. ██████████ stated that she did not see how many shots Jane took, but noticed that Jane was “drunk.”²⁴ She observed that Jane was “dancing around and being silly;” her “inhibitions were lowered.” ██████████ described this as “normal drunk” for Jane and said that Jane “typically drank 4-5 shots” when she drank.²⁵ ██████████ stated that when Jane was “normal drunk,” she was “giggly” but “in control,” whereas when she got more intoxicated she was “giggly” but also had a “glaze” in her eyes and her gait was “off.” ██████████ noted that, in this higher state of intoxication, Jane would “repeat herself,” and seem unable to “form a lot of coherent thoughts.” ██████████ stated that when Jane and ██████████ left for the ██████████, she had not observed any sign that Jane was more than “normal drunk.”

██████████ stated that she was not feeling well on the night of ██████████, and was in the suite as Jane and ██████████ “pre-gamed.” She stated that she recalled that they were using her large shot glasses and that they drank “a lot.”²⁶ ██████████ stated that she remembered telling them, “You have to stop drinking,” and telling ██████████ that it was “not good” that they were drinking so much. ██████████ said that she did not know exactly how many shots they drank. She said that she had seen Jane when she (Jane) was intoxicated, and had observed that alcohol caused Jane to be “more talkative” and “loud” and made her eyes “look different.” ██████████ stated that Jane “was not as aware of things going on around her” when she was intoxicated. She said that when Jane and ██████████ left for the party, she knew that they had had “a lot” to drink, but Jane did not appear “super crazy drunk.”

²² Jane said that this was “typical,” in that alcohol did not tend to “hit her” immediately; she said that once she starts to “feel it” she is “really intoxicated for 2-3 hours” and then, typically, goes to bed.

²³ ██████████ noted that she and Jane also drank an indeterminate amount of vodka out of a Solo cup they shared at the ██████████ as well, contributing to both their levels of intoxication.

²⁴ ██████████ stated that she later heard Jane say that she had had 6-7 shots of vodka prior to the ██████████ on this night.

²⁵ ██████████ stated that she knew this because she (██████████) has “low tolerance,” and would only do 2-3 shots. ██████████ stated that she was “always behind” when she drank with Jane

²⁶ ██████████ showed one of these shot glasses to the Investigators.

██████████ at ██████████ k (10:48 PM – 12:54 AM)

Jane stated that she had never been to ██████████ before, but was friendly with ██████████ (a ██████████ who was also ██████████). She said that she had a “clear recollection” of getting to the party, which was going on mainly in the living room of the one-story house. She stated that she remembered seeing a ██████████ set up in the living room.²⁷ Jane said that she and ██████████ decided to share a standard-size (16 ounces) Solo cup of vodka; they filled it “halfway” and did not dilute it. Jane stated that she drank from this cup, but was unable to estimate how much she drank, or when she drank it. She did recall that she was holding the Solo cup, and that she spilled/sloshed some (but not a lot) of vodka out of it at one point.²⁸

Jane stated that she did not see many people whom she knew, and that she and ██████████ stayed in the kitchen talking to ██████████, for a while. She also had a recollection of “hanging out” with “██████████,” including witness BC student ██████████ (“██████████”).²⁹ Jane stated that although she remembered standing with ██████████ and others, and recalled “touching ██████████ leg” at one point, she did not recall the conversation she had with him (or anyone else).³⁰ Jane stated that she had a memory of “leaning on the door” in the living room, but not “guarding” it (telling people who could and could not go through), as ██████████ later told her she did (*see* below).

Jane stated that she remembered asking ██████████, a BC ██████████ on the ██████████, to hold her phone for her at one point during the party, because she did not want to lose it and had no pockets. She did not recall getting it back from him, although her later review of texts indicated that she did get her phone back before she left. She stated that she also remembered going to the bathroom twice, with ██████████, and said that this was not something that they “typically did.” Jane provided a cell phone photo that she took of herself and ██████████ in the bathroom, at 11:06 PM on ██████████³¹, and said that she had no memory of taking it and that it was not characteristic of her to take photos in the bathroom.³¹

Jane stated that, at some point, she and ██████████ danced with others in the living room. Jane remembered dancing with witness BC student ██████████ “a lot,” as well as with others. She recalled hearing Shakira (*Hips Don’t Lie*), and “dropping it low” as she danced, repeatedly.³² Jane stated that she was feeling “pretty affected” by the vodka, and that she fell while dancing “because her motor skills were not great at that point.”³³ Jane stated that she “knew” ██████████

²⁷ This is a reference to the drinking game of ██████████.

²⁸ Jane stated that she did not believe she spilled much of the vodka because she had no recollection of creating a mess, having to clean up a spill, or anyone commenting on it.

²⁹ Jane stated that her former boyfriend, ██████████ was on the ██████████, and that she had become friendly with ██████████ while she was in a relationship with ██████████ during her ██████████ year at BC and the beginning of their ██████████.

³⁰ Jane explained that she had known ██████████ since her ██████████ year at BC, and did not touch his leg in order to express any sexual interest. Jane stated that this “touching” was a “harmless and playful” gesture and one that she has made to friends (including female friends) “when drunk.”

³¹ *See* Evidence Binder, at Tab 25.

³² “Dropping it low” means dropping into a low squat and moving the hips/buttocks in a suggestive manner, while dancing.

³³ In response to a question from the Investigators as to what shoes she was wearing, Jane stated that she was not certain, but that she had noticed that one of the photos she produced showed her wearing socks. Jane stated that

saw her fall, and thought that [REDACTED] might have as well.³⁴ [REDACTED] stated that he recalled seeing **Jane** dancing at the [REDACTED], but did not see her fall. He described **Jane** as “definitely intoxicated;” he placed her at a “7-8” on a 1-10 scale of intoxication, with “10” being the highest level of intoxication. [REDACTED] noted that **Jane** hugged him on this night, which he said she “did not usually do,” and that she seemed more “outgoing” and touchy” than usual.

[REDACTED] also stated that he saw **Jane** at the party; he said that when he saw her, she was intoxicated, but “not at a level of concern;” [REDACTED] said that he would place her at a “5-6” on the 1-10 intoxication scale referenced above. He commented that she was usually “pretty reserved” but seemed “more outgoing” after drinking.

Jane stated that her only other recollections from the party were of seeing [REDACTED] interacting drunkenly with [REDACTED] which was “not typical,” and of walking outside with [REDACTED] (at some point during the dancing) to get some air. **Jane** stated that she and [REDACTED] walked around the circular drive “because they felt so out of it” and then went back in and continued dancing. She stated that she had no recollection of calling Lyft for a ride back to BC, although she did locate the receipt showing that she had done so, leaving the party at 12:54 AM and getting back to campus at 1:01 AM on [REDACTED].³⁵ **Jane** stated that she had no memory of this ride, or of getting to her residential hall. Her next memory was of being in her suite, as described below.

[REDACTED] stated that she remembered that “everyone at the party” was dancing, and that she and **Jane** poured vodka into a red Solo cup from a bottle in the freezer, agreeing that they would share it. [REDACTED] recalled seeing **Jane** holding the cup, and was “sure” that she (**Jane** drank from it, although she could not say how much she drank. [REDACTED] stated that she had no memory of either holding the cup herself, or of drinking from it. [REDACTED] did recall seeing **Jane** fall at one point, while she was dancing, causing some vodka to spill out of the cup.³⁶ [REDACTED] stated that she and **Jane** “were both pretty drunk.” [REDACTED] described going to the bathroom with **Jane** twice, and stated that she and **Jane** did not usually go to the bathroom together.

[REDACTED] stated that she did not recall many details from the party, although she did remember walking outside with **Jane** for about 15 minutes after [REDACTED] had been dancing and “making out” with [REDACTED]. [REDACTED] stated that her own judgment “wasn’t great by then.” She said that **Jane** “didn’t seem horrible,” and they were both “walking okay,” and talking, although she did not recall what they discussed. [REDACTED] stated that they went back inside after this. She did not remember anything about leaving the party, or the ride back to campus, or vomiting when she got back to her suite, although she learned, after the fact, that she had.

she would only have worn socks with shoes that were not heels; this caused her to believe that she likely wore her [REDACTED] shoes, which she stated indicated to her that it was not her shoes that had caused her to lose her balance.

³⁴ [REDACTED] are both [REDACTED] at BC. **Jane** also identified [REDACTED] (another BC student) (“[REDACTED]”) as someone whom she believed had attended the [REDACTED] and might have seen her fall. The Investigators interviewed [REDACTED]; he stated that he was certain he had not gone to the [REDACTED] because he was not on campus at the time.

³⁵ See Evidence Binder, at Tab 26.

³⁶ [REDACTED] stated that she saw **Jane**’s feet “just slide out from under her,” after which **Jane** “got up quickly.”

█████ stated that he remembered seeing **Jane** (whom he had invited to the party) arrive, with █████. He said that he talked with **Jane** and █████ in the kitchen, and that █████ seemed “less drunk” than **Jane** at that point. █████ said that he did not see **Jane** drinking, but observed her at points and noticed that she was “clearly very drunk” by the end of the night.³⁷ █████ said that he had not been with **Jane** on prior occasions when she was intoxicated, but that she was exhibiting “obvious” signs of intoxication at the party that would cause him to place her at an “8” on a scale of 1-10, with “10” being the “most intoxicated.” █████ said that **Jane** was “wobbling” as she danced, and that it looked to him “as though if **Jane** were to walk, she would fall.” He observed her “guarding” the door (despite the fact that it was not her house) and “directing” people whom she did not know; █████ said that her speech was “slow” and “a little bit slurred,” and that “she was obviously very drunk.” He also noted that **Jane's** eyes appeared “far” and “distant;” he stated that there was a point at which she did not appear to recognize him. █████ stated that he also recalled seeing **Jane** fall at one point, as she was dancing and he was walking by; he pulled her back to her feet, and she continued to dance.

█████ stated that he went to the █████; he said that he only had “a few” drinks and was not intoxicated. █████ stated that he recalled seeing **Jane** at the party, and saw her drinking; he did not observe what she drank or how much. █████ stated that he had occasional “regular” conversations with **Jane** during the party and that she seemed “intoxicated” but was “not stumbling around.” He would place her on a scale of “5-6” on a 1-10 scale, with “10” being the “most intoxicated.”

█████ (█████ roommate) stated that he and █████ went to the █████ together. █████ recalled that █████ drank about “half of a handle of liquor” prior to going to the party and said that this was “pretty regular” for █████ in order to “feel a buzz.” █████ said that he did not drink anything prior to the █████, and had two beers while he was there. He recalled seeing **Jane** and █████ arrive, and saw **Jane** dancing. Initially, █████ said that **Jane** did not appear “totally intoxicated” while dancing, although she seemed to be “feeling a buzz,” and “a little bit of dizziness.” Later in his interview, █████ stated that he thought that “everyone at the party” knew that **Jane** was “really intoxicated.”

█████ stated that he recalled **Jane** being “very flirtatious” with him, because she had never done this before and people had told him that she had a “soft spot” for him and he had never believed it. █████ stated that this flirtation consisted of **Jane** trying to make conversation and dance with him. █████ stated that he shied away from doing these things because █████ (**Jane's** former boyfriend) was one of his best friends, and he felt it would be a “no no” to flirt with **Jane**. He also noted that **Jane** was dancing in a “sexual” manner; she was “grinding,” and “twerking,” with people.

█████ stated that, towards the end of the party, he observed that █████ was “very intoxicated” and “hooking up” with █████, and █████ wanted to leave. He placed this at about 11:45 PM - midnight. At some point after this, █████ went outside and saw **Jane** and █████. █████ thought that █████ might have been there as well. █████ stated that **Jane** wanted to know where he (and, he thought, █████) were going, and wanted to leave with them, but said that they did not leave together. █████ observed that **Jane** was “not walking in a straight line” at this point, and was “bumping into” her friend.

³⁷ █████ clarified that **Jane** did not say good-bye to him when she left, so he was not sure of what the time was, but said that he noticed that she got there a little late (around 11:00 PM) and stayed “pretty late” (until about 1:00 AM). He stated that he and his housemates had told people that the party would go from 10:00 PM-2:00 AM.

Back at [REDACTED] (Approx. 1:01 AM -1:15 AM)

Jane stated that although she did not recall getting back to her dorm, she did remember seeing her suitemate [REDACTED], when she got there. Jane stated that she recalled “having a plan” to go see [REDACTED] and [REDACTED], and [REDACTED] asking her if she was “okay to do that.” Later on [REDACTED], when she was no longer intoxicated, Jane found a video that she had taken (using her phone) of [REDACTED] vomiting in the suite bathroom, as well as a photo of her and [REDACTED] putting [REDACTED] to bed.³⁸ Jane stated that she had no memory of taking the video, or of helping to get [REDACTED] into bed.

[REDACTED] had a recollection of seeing [REDACTED] back at the suite, but did not recall anything else about the return to [REDACTED], and did not recall vomiting or how she got to bed. She stated that later that morning, when she awoke, she “felt like she had thrown up,” but had no memory of it.

[REDACTED] stated that she returned from [REDACTED] (where she competed in a [REDACTED]) at about 11:00 PM on [REDACTED].³⁹ She was not able to sleep and recalled hearing Jane “knock lightly” on her bedroom door and ask her to “help with [REDACTED]” in the bathroom. [REDACTED] stated that [REDACTED] was “highly intoxicated” and vomiting. [REDACTED] stated that she and Jane changed [REDACTED] into pajamas and “put her to bed;” she did not recall exactly what Jane did in connection with this. [REDACTED] said that she asked Jane how much she and [REDACTED] had had to drink, and remembered Jane telling her that they had “had a lot.” [REDACTED] stated that she thought Jane told her that they had taken shots, but she did not recall how many Jane said they took. [REDACTED] noted that she thought Jane’s “usual” was 3 shots, and said that she had observed Jane and [REDACTED] to have about the same level of tolerance (as each other) on prior occasions. [REDACTED] stated that the fact that [REDACTED] was “so far gone” caused her to believe that Jane was “highly intoxicated” as well.

[REDACTED] stated that, after she stopped focusing on [REDACTED] and started talking with Jane she observed that Jane was “also clearly drunk.” She stated that Jane was [REDACTED] Jane when she first came into the room, and [REDACTED] was the priority, but that once [REDACTED] was in bed and Jane relaxed, her level of intoxication showed. Specifically, [REDACTED] described Jane as not walking “normally” (although “not falling over”) and said that her speech “sounded different.” [REDACTED] said that on prior occasions when she had seen Jane in a state of intoxication, Jane had neither stumbled, nor slurred her words, but both her gait and her speech “became different” and [REDACTED] saw and heard this difference as she interacted with Jane after putting [REDACTED] to bed.

[REDACTED] stated that Jane told her that she “had had a good night” and wanted to go talk to [REDACTED] [REDACTED] knew that [REDACTED] lived close by (at [REDACTED]), but asked Jane if she wanted her to go with her because [REDACTED] “could see that Jane was intoxicated, although functional.” [REDACTED] stated that Jane said, “No, no, you can go to bed,” and [REDACTED] asked her to text her when she got back.⁴⁰ [REDACTED] said that she knew Jane and [REDACTED] were “really good friends,” and assumed that Jane “could just crash” at [REDACTED] if she

³⁸ Jane produced this video and photo. The video is time stamped 1:05 AM; the photo was taken at 1:15 AM on [REDACTED].

³⁹ [REDACTED] stated that she recalled the time because if they had gotten back to campus after midnight, they would not have had practice the next day, and they did have practice.

⁴⁰ [REDACTED] stated that Jane “never asks for help.” Jane stated that her friends have told her that she tends to be “sort of stubborn and impulsive” when she is intoxicated.

needed to do so. She stated that she also remembered thinking that she had **Jane** on her “Find my Friends” application (on her cell phone) and could track her location.

The texts that **Jane** produced reflected that [REDACTED] sent a text to **Jane** at 1:45 AM on [REDACTED] saying “How r ya doin? **Jane** responded, “I’m ok.”⁴¹ [REDACTED] then texted, “Hmm okay text me when you’re back puggerino.” **Jane** texted, “Ok love you.” [REDACTED] responded, “[love you] too girly.” They had no further text exchange until much later in the morning.⁴² [REDACTED] went to bed, and stated that she thought she set an alarm for “a couple of hours later,” but slept through it.

Walk from [REDACTED] to [REDACTED] (Approximately 1:15 AM -1:31 AM)⁴³

In both of her interviews, **Jane** stated that she had no memory of walking from [REDACTED] to [REDACTED], although she had a “vague memory” of leaving her own dorm. She stated that she later saw that she had texted [REDACTED] during this period of time (when she was attempting to get into [REDACTED] as well as later, from [REDACTED], during and after her interactions with **John**), but said that she had no recollection of doing so.⁴⁴

None of the witnesses observed **Jane** walking from [REDACTED] to [REDACTED], nor did they see her as she stood outside that dorm, attempting to get in. The texts that **Jane** produced were as follows:⁴⁵

[REDACTED] 01:20 AM

JANE:	<i>I’m not okay</i>	01:20
	<i>Deadass I’m terrified</i>	01:20
[REDACTED]:	<i>What’s wrong</i>	01:25
JANE:	<i>I’m alone</i>	01:25
[REDACTED]:	<i>What?</i>	01:25
JANE:	<i>I’m doing to you guys room</i>	01:25
	<i>Is [REDACTED] up there?</i>	01:25
	<i>Bad plan but it’s happening</i>	01:25

⁴¹ [REDACTED]. The Investigators found it more likely than not that [REDACTED] sent this text at 1:45 AM [REDACTED], because this would have been about 45 minutes after **Jane** and [REDACTED] returned to the dorm from [REDACTED] (as opposed to one hour and 45 minutes).

⁴² The next text between [REDACTED] and **Jane** was at 9:38 AM, when [REDACTED] texted, “baby giirrrlll I heard you were crying.”

⁴³ This section also covers a period of time during which **Jane** stood outside [REDACTED], texting [REDACTED], asking to be let into the dorm.

⁴⁴ **Jane** produced these texts. See Evidence Binder, at Tab. 28. **Jane** stated that she also saw, in her phone log, that she had attempted to reach both [REDACTED] and [REDACTED] by phone “a number of times” during this period of time. **Jane** stated that she deleted this call history because she felt embarrassed about it. She produced a text she sent to [REDACTED] on [REDACTED] at 11:06 AM in which she apologized for having “called [him] a million times last night.” See Evidence Binder, at Tab 37.

⁴⁵ The Investigators did not correct misspellings or grammar in these texts.

[REDACTED]: *Yeah I think he's here* 01:26
 JANE: *Ok love you [REDACTED]* 01:26
 [REDACTED]: *Is everything good?* 01:26
 JANE: *No ones letting me into the elevator* 01:26
 [REDACTED]: *Where* 01:27
 JANE: *And I'm sloshed* 01:27
 [REDACTED]: [REDACTED] *here I think* 01:27
 JANE: ☹️ 01:27
Tell him to come get me 01:27
 [REDACTED]: *You're good homie you just got to. Hill out* 01:27
Just chill out 01:27
 JANE: *Here where???* 01:27
I'm chicken 01:27
Oh boy 01:27
 [REDACTED]: *Just go back to your room and chill.* 01:27
 JANE: *Chillen*** 01:27
 [REDACTED] *guy* 01:28
That's not an option no more 01:28
 [REDACTED] *where are you* 01:29
 [REDACTED] *where r u* 01:29
 [REDACTED]: *Lol Jane just go to sleep* 01:31
 JANE: [REDACTED] 01:31
 [REDACTED]: *You got to relax* 01:31
 JANE: *I'm relaxed and alone* 01:31

Jane reviewed the above text exchange with the Investigators during her initial interview. She stated that she believed [REDACTED] did not let her in because [REDACTED] was there, and she and [REDACTED] were “not speaking” at the time. She did not recall why she said that going back to her own dorm was “not an option.” She stated that she could see, from the texts, that she stopped asking [REDACTED] to let her into [REDACTED] and went to [REDACTED] (in [REDACTED]). Jane stated that she had no recollection of this walk to [REDACTED]. None of the witnesses (other than [REDACTED]) stated that they were communicating with Jane during this walk, and no one observed her walking to [REDACTED].

█ stated that Jane “might have” sent him a text saying that she was coming to see him, but he did not recall and no longer had the texts on his phone. He stated that he remembered Jane sending a text saying that she was going to █, and a later one saying that she was “going back with John” but “didn’t really want to go back with him.” █ said that he sent Jane a text telling her that she should just go back to her room, and that he “didn’t hear back from her [by text] after that.”⁴⁶

2. John's Actions

Prior to █

John stated that he and some of his friends were “pre-gaming” in his room on the night of █, █, “likely around 9:00 PM.” John identified █ and █ as being among this group, in addition to his suitemates █, Rm. 1 █) and █. John stated that █ female BC students were there as well. He stated that they were all playing music in the common room of the suite and drinking. John recalled that he and █ split a “regular size” bottle of “Barefoot rosé.” John stated that they stayed in the suite until about 10:30 PM, then decided to go to the █ in Boston. John said that the half-bottle of rosé did not cause him to feel impaired; he “felt fine.”

John produced an Uber receipt showing that he took an Uber to █ in Boston at 11:10 PM.⁴⁷ He stated that everyone who had been pre-gaming went into Boston, to this bar. John stated that the line for the █ was long, however, and that after 15-20 minutes of waiting, some of the group (including John decided to go to █, located at █ in Boston. John and the others waited in line at █ until they learned that there was a cover charge, at which point they decided to Uber back to BC.⁴⁸ John stated that he did not drink any alcohol during these drives to and from the █ or █, or on the way back to campus. Once back at BC, John decided to go with █ and █ to an off-campus party that BC student █ (“█”) had told him about, on █, and they Ubered there.⁴⁹

John stated that they only stayed at this party for 30 minutes to an hour, after which they took another Uber back to campus and went to █, in █. He stated that he did not drink any alcohol at the █ party. John produced an Uber receipt showing that he got back to campus from █ at 1:31 AM on █.

⁴⁶ █ described himself as being a friend of both Jane and John. He stated that he had distanced himself from both of them, in an attempt to remain “neutral” as a witness. He stated that █ (Jane’s former boyfriend) was one of his best friends, and that he met Jane during their first year when she was dating █. █ stated that he also typically █ with Jane on Sundays. █ said that he saw less of Jane when █ broke off their relationship, and that things had become “awkward” between them after the Alleged Incident. █ stated that he “always kind of knew” John but became friendlier with him during █ year, because they had a class together. █ stated that he would describe John as a “close friend” now.

⁴⁷ See Evidence Binder, at Tab 27. The █ is located at █ in Boston.

⁴⁸ John produced this Uber receipt, which showed that he got back to BC at 12:49 AM on █. See Evidence Binder, at Tab 27.

⁴⁹ John produced this Uber receipt as well; it showed that he arrived at █ at 12:54 AM on █.

█ corroborated John's statement that the two of them shared a bottle of wine in John's suite, during a "pre-gaming" gathering on the night of █. He stated that he was the one who called the Uber (he stated that he later gave the receipt to John), and that he, John and a female BC student rode into the city together after they "pre-gamed." █ stated that they did not drink while they were out, and were "sort of hopping around." █ recalled going back to BC eventually (he thought it was around midnight) and said that he was tired, and did not go with John and some of the others to the party on █.

█ also corroborated John's description of the "pre-gaming" gathering, and of going into Boston but not actually drinking in any bar there. █ stated that after they got back from Boston, he, John and █ decided to go to the party on █, but only stayed for 30-40 minutes before going to █ "around 1:30 AM."

█ stated that he did not recall exactly where he went on the night of █, but was "sure" that he was with █ and the "█" and that they went to a party, after which they went to █ where they saw Jane █ stated that he thought the party he went to was off-campus, because he did not typically go to parties on campus. He was not certain as to whether John was with him at the party; he "didn't think" Jane was at the party with them.⁵⁰

█ stated that he met up with John and "two of [John's] roommates" at the party on █ on █, and "hung out for a bit" prior to returning to campus.⁵¹ █ stated that he did not remember seeing John drinking anything at the party. █ said that he, John and the two roommates, took an Uber to █ after this.

C. Parties' Interactions on █ (Prior to Alleged Incident in John's Room)

1. Jane's Account

Jane stated, in both of her interviews, that she recalled being in line at █ (█) during the early morning hours of █, and seeing John there. She stated that she had a recollection of him putting his arm around her waist and pulling her close to him, as they stood in line. Jane said that she had no memory of what she and John talked about, if anything, nor did she recall talking with anyone else. Jane stated further that she had no memory of buying food, for herself or anyone else, and did not remember eating (either at █ or later, in John's suite). She said that later that day, when she woke up, she saw a circular pizza stain on her █ (which she was still wearing), and that this triggered a memory of dropping pizza on herself while standing with John and his friends at █. She stated that she then also had a "triggered" memory of buying food for John and his friend at █.

⁵⁰ █ attributed his lack of recollection to the fact that 4 months had passed since this night, at the time of his interview. He stated that he did not attribute his lack of recollection to having been intoxicated on █.

⁵¹ █ stated that he thought John got to the party around 12:30 AM. He stated that he did not know the names of the two roommates, but knew that they were not ^{Rm. 1} and █.

The [REDACTED] records reflected that Jane used her BC Eagle One Card at 1:42 AM on [REDACTED], [REDACTED], to purchase a flatbread pizza, chicken tenders, milk and chips. See Evidence Binder, at Tab 29.

Jane stated that she did not recall John inviting her back to his suite, or walking from [REDACTED] to [REDACTED] (where John lived on the first floor). She stated that she had no memory as to how she ended up going there. Jane stated that the next memory that she had (after [REDACTED]) was of being with John in his room.

Jane stated that later in the day on [REDACTED], she saw that she had texted [REDACTED] while she was at [REDACTED] (as well as prior to going to [REDACTED], and again, later, after going to John's suite). Jane produced this text exchange (a continuation of the one set forth above):

[REDACTED], 01:20 AM

JANE:	<i>I'm relaxed and alone</i>	01:31
	<i>Bro I'm not Trynna be raped⁵²</i>	01:32
	<i>That was aggressive but true</i>	01:32
	<i>[REDACTED] r u still at the house</i>	01:34
[REDACTED]:	<i>What are you talking about</i>	
	<i>You're good</i>	01:39
	<i>If anyone try's you I'm</i>	
	<i>Beating their ass</i>	01:39
JANE:	John Doe	01:39
	Doe ***	01:39
[REDACTED]:	<i>That's my boy he's not</i>	
	<i>Going to touch you</i>	01:39
JANE:	<i>In. [REDACTED] where are you</i>	01:39
[REDACTED]:	<i>Where is he</i>	01:40
JANE:	<i>He already tried to</i>	01:40
[REDACTED]:	Jane just go to your room	
	<i>He's not going to touch you</i>	01:40
JANE:	[REDACTED]	01:41
	<i>We are at [REDACTED]</i>	01:41
[REDACTED]:	<i>You're good Jane</i>	01:41
JANE:	<i>And his hands are saying another thing</i>	01:41

⁵² Jane stated, in her interview, that she believed this reference was to the fact that John had “pulled her close to him by her waist,” and she felt that he was “getting handsy.” She stated that she felt as though she did not know John well enough for him to be touching her in this way.

[REDACTED]: *You just eating (plate and utensils emoji)* 01:41
 (3 “thumb’s up” emojis) 01:47
 JANE: *No* 01:47
 [REDACTED] 01:47
 John’s 01:47
Is going to try to do something 01:47
 [REDACTED]: *Jane nobody is doing nothing* 01:47
 JANE: *You’re good homie* 01:50
You just faded 01:50

The next text is from [REDACTED], at “1:00.” [REDACTED]

The following texts occurred after the [REDACTED].

[REDACTED] *You good?* 01:00
 JANE: *Not exactly* 01:00
I’m in John Doe’s room
And I s
Wish I was in [REDACTED]⁵³ 01:01
 [REDACTED]: *Jane chillll* 01:03
Just go back to your room 01:03
 JANE: *I’m not in my room* 01:10
 [REDACTED]: *Lmao go back* 01:13
You good cuzzo 01:13

The next text is from Jane to [REDACTED] at 1:38 AM (28 minutes after her last text above), and after the alleged sexual interaction between the parties. *See* Section IV(E), below.

2. John’s Account

John stated that he saw Jane when he came up the stairs to [REDACTED]. He recalled that she was waiting in line to get food, at or “near the end” of the line, and that he and his friends joined her. John stated that Jane either waved or smiled at him. He stated that he was “excited to see her” and that she appeared to be “excited to see [him] as well.” John stated that it was “possible” that he hugged Jane or “put his arm around her,” but that he did not recall having done so, and did not recall “pulling” Jane to him by her waist.

John said that he asked Jane why she was wearing [REDACTED] and she told him that she had been to [REDACTED]. He said that he and Jane had a “normal” conversation as they stood in line, but he could not

⁵³ In her interview, Jane stated that this was an autocorrect word, and that she meant to type, “Wish I wasn’t.”

remember the content of it. John stated that he did not observe any “obvious” indication that Jane was intoxicated.⁵⁴ She offered to buy food for both him and for [REDACTED]. (who did not have a meal plan), and they accepted. John stated that he “thought” he got chicken fingers, and did not recall what Jane purchased for herself.⁵⁵ He said that he typically takes food from [REDACTED] back to his room (because it is so close), and that there was a “mutual understanding” with Jane that she would join them in his suite to eat.

John described the interaction between him and Jane at [REDACTED] as having a flirtatious quality to it; he thought that she was flirting with him. John described the flirtation as consisting of Jane appearing to focus her attention on him, as opposed to his friends, as they talked and stood in line together. He did not recall Jane touching him in any manner while they were at [REDACTED].

John said that the five of them (John Jane [REDACTED].) walked back to his suite, and he recalled Jane talking to [REDACTED] about her former boyfriend [REDACTED] during this brief walk.⁵⁶ John said that he and Jane did not hold hands, have any “one on one” conversation, or walk apart from the others. He stated that after they got to the suite, [REDACTED] went to his room and the remaining four of them sat in the common area for a while, talking and eating.⁵⁷ John described the atmosphere as “comfortable,” with “some excitement” between him and Jane. John said that he did not recall what the content of the group conversation was.

In response to questions from the Investigators, John stated that he had no memory of seeing Jane texting or looking at her phone while she was at [REDACTED] or in his suite. In his second interview, John stated that he had found a text on his phone that he recalled Jane asking him to send, when they were back at his suite, to a BC student named “[REDACTED].”⁵⁸ John sent this text at 1:49 AM; it said “Where you at.”⁵⁹ [REDACTED] did not respond to this text. John said that he was sure he had asked Jane why she wanted him to text [REDACTED], but he could not remember what she said in response. He said he “thought it was strange.”

In response to questions from the Investigators about his observations, if any, of Jane's level of alertness and functionality during their interactions on the walk and in his suite, John stated that he “knew Jane had been at a party,” but that nothing about her “seemed abnormal,” and she did not appear to him to be “not in control.” In response to questions about his own level of intoxication, John stated

⁵⁴ In response to a question from the Investigators, John stated that he had not made any observations prior to this night as to how alcohol affected Jane and did not know anything about her alcohol tolerance.

⁵⁵ John stated that Jane told him, later, that she had bought a pizza and had dropped it (staining [REDACTED]), while they were at [REDACTED]. He said that he did not remember Jane buying or dropping the pizza.

⁵⁶ John stated that he did not recall the specifics of this conversation.

⁵⁷ John stated that he did not have any actual memory of seeing Jane with food or of her eating anything.

⁵⁸ John did not know [REDACTED] last name. In her third interview, Jane identified this student at [REDACTED], a member of the [REDACTED] with whom Jane recalled she was studying when she first met John and others on the [REDACTED]. Jane stated that [REDACTED] was friends with [REDACTED]. Jane stated that [REDACTED] was the only girl she knew that “used to be friends with John.”

⁵⁹ Jane stated that she did not recall asking John to send this text. The timestamp of 1:49 AM indicates that this text was sent after Jane purchased food at [REDACTED] and prior to her sexual interaction with John (at 1:49 AM [REDACTED]). This is because her subsequent texts to [REDACTED] (see Section IV(E), below) reflect that the sexual interaction occurred prior to 1:38 AM [REDACTED]), when Jane texted [REDACTED], “The worst part is I ended up just like those [REDACTED] WHORES.”

that he did not feel impaired by alcohol at this point; he had not had any alcohol after the ½ bottle of rosé that he drank between 9-10:30 PM before going out. John stated that he believed it was simply the passage of time that caused him not to recall all the details about his interaction with Jane

John stated that “about 5 minutes” after they got to the suite, ██████ went into ██████ room and ██████ left the suite not long after that. John said that he and Jane were sitting next to each other, and it was “possible that [their] hands touched,” but he had no recollection of having any physical interaction with her while they were in the common area of the suite. John stated that there “was something in the air” between him and Jane however, and he noted that she was not “making any motion to leave” once the others had left. John stated that he believed Jane was “staying” with him, and so he asked her if she wanted to go into his room. He stated that Jane said, “Yes.”

3. Witness Accounts

█████ stated that he, ██████ and John went to ██████ at about 1:30 AM, after returning to campus from ██████.⁶⁰ ██████ described himself as being at a “2-3” on an intoxication scale of 1-10, with “10” being the “most intoxicated.” He stated that his recollection was that John was “pretty sober” as well. ██████ recalled walking into ██████ and seeing Jane sitting by herself, wearing a ██████. He thought that she was at the first table when they came in. ██████ stated that John knew Jane and that he and ██████ did not. He recalled that he, ██████ and John went up to talk to Jane and that the three of them (not including Jane then got in line to get food. ██████ did not recall seeing John hug Jane ██████ did not remember what he bought or ate, and did not remember whether they ate at ██████ or back in the suite.

█████ stated that he did recall Jane walking back to the suite with John ██████ and him. He said he did not recall any conversation about going back to the suite, or whether John invited Jane to do so. ██████ said that he did not have any conversation with Jane during this walk; he thought the conversation “flowed through” John because he and ██████ did not know Jane. He described ██████ and himself as “hanging back.” ██████ stated that there was “some flirtatious action” in the conversation between John and Jane. Initially, ██████ stated that he thought that John and Jane had their arms around each other as they walked back; he then stated that he “thought they would hook up” because there was “something between them,” although he “did not recall seeing them touch or hold hands.”

█████ stated that once they got to the suite, they all sat in the common area for 5-10 minutes, talking. He said that, for the most part, he and ██████ were talking, and John and Jane were having a separate conversation. ██████ said that they did not put on music, because their other suitemates were sleeping, and they did not drink alcohol. ██████ said that John and Jane then went into John's room, after which he and ██████ went back to his (█████ room). ██████ stated that he did not hear John ask Jane to go to his room, and did not observe whether they touched each other at all before doing so. He stated that John came into his room, about 20-30 minutes later, and told him that he had “had sex” with Jane. They did not discuss this in detail; ██████ stated that John appeared “happy.”

⁶⁰ ██████ did not recall ██████ being there. ██████ stated that he was part of this group, and went to ██████ with them. ██████ did not know either ██████ at the time, and did not know their names at the time of his interview.

In response to questions from the Investigators, ██████ stated that he did not observe any signs that Jane was intoxicated when they were at ██████. He said that she was “talking clearly” and “not stumbling” as they walked back to the suite. He stated that she also did not seem to be “drunk” or “crazy drunk” while they were in the common room. He stated that he did not see Jane leave the suite later.

██████ stated that he recalled going to ██████ with ██████ and John and “thought” John met or saw Jane there. He did not recall how Jane came to be with them, but remembered her standing in line with them. ██████ did not remember what he or the others got to eat. ██████ stated that he recalled walking from ██████ back to the suite, with food, and that John and Jane were walking back at the same time, talking to each other. ██████ recalled that he and ██████ walked behind John and Jane. ██████ said that he “had a feeling” that “a flirtation” was going on between John and Jane they “seemed like a couple.” ██████ did not recall Jane talking to him about her former boyfriend.

In response to questions from the Investigators, ██████ stated that he did not observe any signs that Jane was intoxicated when they were at ██████. He said that she was “walking straight” and “could stand.” ██████ also stated that it looked to him as though John and Jane were “having a conversation,” although he could not hear what they were saying.

██████ stated that he recalled sitting in the common room, talking with ██████, while sitting on one couch, about the night. He described John and Jane as sitting together on the other couch, in the common room, talking to each other. ██████ did not see them touch or kiss or have any other physical interaction. ██████ stated that after 5-10 minutes, John and Jane went into John's room. ██████ did not recall John saying anything to them when he and Jane left the common area, and did not recall hearing John ask Jane if she wanted to go to his room. ██████ stated that, after this, he went into ██████ room to “hang out” until John rejoined them; he did not know how much time passed. ██████ said that John told them that he had “had sex” with Jane they did not discuss specifics. ██████ stated that John just said, “we had sex,” and that he was “not sad.” ██████ stated that he did not see Jane leave the suite.

██████ stated that when he got to ██████ (with John and two of John's roommates), a girl whom he did not know came “running up” to John. ██████ stated that she gave John a hug, and seemed excited to see him. ██████ recalled that this girl was wearing ██████ and stated that she had a ██████. He said that John seemed “excited” to see the girl, and hugged her back, after which they all got in line for food. ██████ stated that he asked John to buy him food, because he did not have a meal plan, and that the girl offered to buy it for him.⁶¹ ██████ stated that his recollection was that he got chicken tenders and was “pretty sure” that John got a pizza. ██████ stated that he did not notice what, if anything, the girl got to eat.

██████ stated that he recalled being at ██████ for about 20 minutes (during which John and the girl talked), getting the food and then taking it back to John's suite. He said that John asked the girl if she wanted to go back to his suite, and that she “just kind of came with [them].” In response to questions from the Investigators, ██████ stated that he could not tell, while they were at ██████, whether the girl was intoxicated. He did not observe anything that made him think, “Wow, she’s really drunk.” ██████

⁶¹ ██████ stated that John did not introduce him to the girl, but said he was “not surprised” that she offered to buy his food because girls at BC often buy food for their male friends.

█ said that he assumed that everyone at █ was at “some level of intoxication.” █ stated that he had been “drinking throughout the night,” and would put himself at a “4” on a 1-10 scale of intoxication, with “10” being the “most intoxicated.”

█ stated that he and John's roommates walked behind John and the girl on the way back to the suite. █ described John and the girl as “flirting back and forth,” and appearing to be “coupled up.” █ did not observe them touching, but they were “going off by themselves, talking a lot and laughing a lot.” █ said that when they got to the suite, John and the girl sat together on one of the couches, talking. █ stated that he stayed for “15 minutes at the most,” during which he ate part of his food, while sitting at the table in the common area, then got bored, wanted to go to bed, and left.⁶² He said that he did not recall where the two roommates were when he left. He added that he assumed, from what he had observed, that John and the girl would have “some sexual interaction” because they were “cuddled up” and she had come back to his room “later in the night.”

D. Findings Regarding Jane's Level of Intoxication and John's Awareness of Same (at █ and in Suite Common Area) and John's Touching of Jane at █

1. Jane's Level of Intoxication While at █ and Common Area of John's Suite

The Investigators find, by a preponderance of the evidence, that Jane was highly intoxicated to the point of being unable to make informed, rational judgments and decisions (*i.e.*, incapacitated) starting at some point during the █, and including when she encountered John at █ and then accompanied him to his suite and room on █. This finding is based on the evidence outlined below.

- The Investigators credited the statements made by Jane █, regarding the amount of vodka Jane drank between 9:00-10:45 PM before going to the █ (5-7 shots in a large shot glass that held about 1.25 times the volume of a standard size shot glass),⁶³ as well as Jane and █ estimates as to what Jane drank while at the party (some portion of the ½ 16 oz. Solo cup of undiluted vodka). They also credited Jane's statements that she started drinking approximately 2 hours after dinner, and did not eat, or drink anything non-alcoholic, during the 3-4 hours over which she consumed this alcohol.
- The Investigators credited Jane's statements, as well as those of her suitemates, that Jane drank more vodka than was “typical” for her to drink, on the night of █.

⁶² BC records indicated that █ swiped back into his residence hall at 1:26 AM (t █).

⁶³ According to Wikipedia, shot glasses in the United States typically hold 1.25-1.5 ounces of alcohol. If the 1.5 oz. volume is used (due to the larger size of the glasses), based on the consistent statements of Jane █ and █, it is more likely than not that Jane drank 7.5-10.5 ounces (5-7 shots) of vodka while pre-gaming, and something between 1-6 ounces (accounting for the spill of some amount that was not large enough to warrant having to clean up) while at the party. In sum, it was more likely than not that Jane drank 8.5-16.5 ounces of undiluted vodka over a period of 4 hours, during which she neither ate nor drank non-alcoholic beverages.

- The Investigators credited **Jane** statements that she did not recall large passages of time, beginning at some point during the [REDACTED] (where Lyft receipts indicated she was from approximately 11:00 PM to approximately 1:00 AM). [REDACTED] provided accounts that corroborated **Jane's** on this point. They each stated that **Jane** told them, on or shortly after [REDACTED], that she did not remember much of what had happened, both at the [REDACTED] and afterwards.
- **Jane's** texts to [REDACTED] (sent within 8 hours of the Alleged Incident) were further corroboration of her professed lack of memory (“I don’t know how I ended up somewhere;” “I don’t know how I got to his room.”)
- **Jane** produced texts between her and [REDACTED] on [REDACTED], in which she asked, repeatedly, that he meet with her because she could not remember what had happened and wanted to “piece things together.” These texts corroborated **Jane's** statement that she could not recall much of what had transpired between her and **John** due to her level of intoxication at the time.
- [REDACTED] provided consistent accounts of sitting in their suite on [REDACTED], hearing **Jane** talk (after she returned from work) about how she could not remember so much of the night, including walking to [REDACTED] or ending up in **John's** bedroom.⁶⁴ Each of these witnesses stated that **Jane** appeared unable to recall most of the details of her interaction with **John** and that this inability was upsetting to her. The Investigators credited [REDACTED] statement that she believed it was necessary that they review texts and other records in order to help **Jane** “put the pieces together,” with respect to what happened. She stated, repeatedly, “**Jane** was trying, with obvious difficulty, to understand what had happened.” [REDACTED] described observing **Jane** read her text exchange with [REDACTED] and stated that it was “hard” to watch her do this; it was clear to her that **Jane** did not remember having had this exchange.
- The texts **Jane** sent to [REDACTED] and to her (non-BC) friend [REDACTED] (“[REDACTED]”) later on [REDACTED] contained various statements reflecting that she did not remember how she got from the [REDACTED] back to campus or how she ended up in **John's** room.⁶⁵ These corroborated the Investigators’ finding that **Jane** was highly intoxicated during this period of time.
- The Investigators credited the consistent observations of certain witnesses that **Jane** was highly intoxicated while at the [REDACTED]. [REDACTED] (who was not identified as having a bias towards either party) placed **Jane** as a “7-8” on a 1-10 scale of intoxication, with “10” being the highest. He stated that this rating was based, in part, on how uncharacteristically “touchy” **Jane** was being;

⁶⁴ [REDACTED] stated that after **Jane** looked at her [REDACTED] receipt, she had a “triggered” memory of buying food for **John** and of walking across the street from [REDACTED] to [REDACTED] (**John's** residential hall). The Investigators credited **Jane** statement, as well as [REDACTED] that these were “triggered” memories, corroborating their finding that **Jane** was highly intoxicated when she was at [REDACTED] and walked back to **John's** suite.

⁶⁵ See Evidence Binder, at Tabs 35, 36. **Jane** made such comments as, “I don’t remember how we got back;” “Something bad happened and I don’t know how I ended up somewhere;” and “I don’t even know” in response to “Where were you?” She wrote to [REDACTED] from [REDACTED] at 8:29 AM, saying that that she was “still drunk” and that she did not know “how I got to [**John's**] room or how [the sexual interaction] started happening.”

he stated that she hugged him and this was something she did not typically do. In addition, [REDACTED] description of Jane was consistent with the observations made by [REDACTED], who placed her at an “8” on this intoxication scale. The Investigators credited [REDACTED] detailed description of Jane “guarding” the door to the room, looking at him with eyes that were “far” and “distant,” “wobbling,” and then falling as she danced, causing him to “pick her up.” Although [REDACTED] acknowledged having some bias towards Jane due to his friendship with her, his account was not inconsistent with those of other witnesses at this party.⁶⁶

- Jane stated that the photographs from the evening indicated that she was likely wearing [REDACTED], meaning that her footwear would not have contributed to her lack of balance. In addition, Jane and [REDACTED] each stated that Jane was typically “very coordinated.” The fact that Jane fell while dancing (and possibly fell more than once; [REDACTED] saw her get up herself and [REDACTED] recalled picking her up) corroborated a finding that she was highly intoxicated at the time.
- [REDACTED] stated that Jane “got flirty” when she was intoxicated, and Jane stated that she had been flirtatious with people (whom she knew) in the past, while intoxicated. [REDACTED] described Jane as acting “uncharacteristically flirtatious” with him at the [REDACTED], and stated that she also danced in a sexual manner (“grinding” and “twerking”). [REDACTED] description was consistent with [REDACTED] observation that Jane was more “outgoing” and “touchy” than normal, and that this was due to her high level of intoxication.
- [REDACTED] stated that he recalled observing Jane with [REDACTED] outside as he left the party. [REDACTED] stated that he noticed that Jane was not “walking straight” and was “bumping into her friend.” This supported a finding that Jane was intoxicated at a high level.
- The Investigators credited the statements of [REDACTED] Jane's suitemate, that Jane had the ability to function (and to be [REDACTED] Jane even when she was highly intoxicated. [REDACTED] observed, from Jane's gait as well as her speech, that she was intoxicated in the early morning hours of [REDACTED]. [REDACTED] also stated that she knew, from having observed Jane and [REDACTED] drink alcohol on prior occasions, that they typically had a similar tolerance for alcohol. [REDACTED] stated that the fact that [REDACTED] and Jane had been drinking together on this night, and that [REDACTED] was “so far gone,” contributed to [REDACTED] belief that Jane although functional, was also highly intoxicated. This belief caused [REDACTED] to ask Jane if she wanted [REDACTED] to accompany her on the short walk to [REDACTED] and [REDACTED] residence hall, to think about the fact that she could locate Jane on her “Find My Friends” app, to reach out to Jane 30 minutes after she left, and to set her alarm for 2 hours in order to get up and make sure that Jane was safe. [REDACTED] stated that the reason she felt that it was okay for Jane to go by herself to see [REDACTED] and [REDACTED] was because it was a short walk, [REDACTED] and [REDACTED] were close friends, and she thought Jane could “crash” there.

⁶⁶ The Investigators also noted that Jane was no closer to [REDACTED] than she was to multiple other witnesses, or than John was to certain other witnesses. The Investigators determined that there was no basis upon which to find it more likely than not that [REDACTED] account was materially distorted as a result of bias.

- The evidence was insufficient to support a finding that **Jane** took any action in connection with helping ██████ get to bed that required fine motor coordination, coherent speech, or any exercise of judgment. It was just as likely that ██████ (who was completely sober, and from whom **Jane** had sought help) took the lead in getting ██████ to the bathroom to vomit and then into bed. The fact that **Jane** took a video of ██████ while she vomited, and does not appear to be doing anything to help ██████ in that video, provides further support for a finding that **Jane** was also highly intoxicated at this point in time. The Investigators also credited **Jane's** statement that she did not remember taking this video, or the contemporaneous photo of her and ██████. *See* Evidence binder, at Tab 25.⁶⁷ This lack of recollection supported a finding that **Jane** was highly intoxicated when these things occurred, and so not forming a memory of them.
- The texts that **Jane** sent to ██████, from outside his residence hall and then later, from ██████, further corroborated the Investigators' finding that **Jane** was highly intoxicated. Although she was able to send and read these texts, and to formulate some sentences, the texts were full of spelling mistakes and incomplete sentences and their overall tenor was disjointed, repetitive, and very emotional (they contained dramatic statements and statements of feeling such as, "I'm terrified;" "love you ██████;" "██████ where are you;" "bro I'm not Trynna be raped") and she referred to herself as "sloshed." **Jane** showed ██████ (her roommate) these texts, and ██████ told the Investigators that they "did not sound like **Jane** they were not coherent." This lack of coherence was apparent from a comparison of these texts to the texts that **Jane** sent ██████ on ██████, when she was sober.
- **Jane's** stated inability to recall having engaged in this text exchange with ██████ (which the Investigators credited) also reflected that **Jane** was highly intoxicated. ██████ corroborated **Jane's** lack of memory of these texts; ██████ stated that she and **Jane's** other suitemates told **Jane** to look and see if she had any texts that would help her piece the events of the night together, and that this was when **Jane** found the texts that she had sent to ██████.
- The texts that were exchanged between **Jane** and ██████ prior to her walking to ██████ indicated that she was asking ██████ to tell ██████ (who broke up with her, and to whom she was not speaking) to "come get her." ██████ decision not to involve ██████ reflected ██████ awareness that **Jane** was not thinking clearly about the situation; the weight of the evidence supported a finding that ██████ told **Jane** to go back to her room, multiple times, because he observed that she was very intoxicated and not making rational decisions or exercising judgment (he commented to her, "You just faded").
- The texts between ██████ and **Jane** at 1:45 AM (when **Jane** was in ██████) indicated that **Jane** was functioning in the sense of being able to read and respond to texts but they were very brief and not inconsistent with a finding that **Jane** was highly intoxicated, albeit functional, as described above. *See* Evidence Binder, at Tab 34.

⁶⁷ The quality of this photo is poor, in part because the lighting is dim, rendering it impossible to draw any conclusion about **Jane's** state of intoxication from it. The Investigators noted that nothing about the photo contradicts, or is inconsistent, with a finding that **Jane** was highly intoxicated at the time it was taken.

- The Investigators credited [REDACTED] statement that, based on her observations of Jane it was not characteristic of Jane to reach out to [REDACTED], rather than her suitemates, in the way that she did via text in the early morning of [REDACTED], and that this was an indication to her that Jane's judgment was impaired by alcohol.
- The Investigators credited Jane's statements that she had virtually no recollection of being at [REDACTED], other than some memory of John pulling her towards him by the waist. Her reference to John being "handsy" in the texts to [REDACTED] reflected that this particular physical contact caused her anxiety, making it plausible that she would remember it.
- The Investigators credited Jane's statement that, when she woke up later on [REDACTED], she observed a circular stain on [REDACTED], triggering a memory of having dropped her entire pizza on herself. The fact that John stated that he did not recall seeing Jane drop her pizza, and that neither [REDACTED], nor either one of his roommates recalled seeing this, did not preclude a finding that it happened. None of them recalled seeing Jane buy any food, and the dining hall records indicate that she did. In addition, [REDACTED] and [REDACTED] both stated that Jane showed them the [REDACTED] with the stain, later on [REDACTED]. A preponderance of the evidence supported a finding that there were moments when neither John nor any of these witnesses was watching Jane and that she dropped the pizza (which may not have fallen all the way to the floor) in one of these moments. Jane [REDACTED] and [REDACTED] each stated that a lack of coordination on Jane part was uncharacteristic; [REDACTED] noted that she "was not clumsy." These facts supported a finding that Jane dropped her pizza because she was highly intoxicated, while at [REDACTED].
- Jane asked John to send a text to [REDACTED], after she had met up with John Jane stated that she did not recall doing this, but that [REDACTED] was the only girl she knew at the time who was "friends with John." Jane stated that she believed she was attempting, in her intoxicated state, to figure out a way not to be alone with John. The Investigators found this plausible, and noted that John stated that he had no memory as to why Jane wanted him to text [REDACTED].
- Jane stated that her normal practice was to remove her make up and take her earring out before going to bed. The Investigators credited her statement that she did neither of these things upon returning to her dorm after the encounter with John and that she slept on the couch in the common area of her suite, in [REDACTED] with the pizza stain, rather than in her own bed. Jane's roommates [REDACTED] and [REDACTED] corroborated this; [REDACTED] saw Jane in the morning and said she was "in shambles." They stated that this conduct was not typical of Jane and it tended to corroborate her statements that she was highly intoxicated throughout this period of time.

2. John's Awareness of Jane's Level of Intoxication ([REDACTED] Suite Common Area)

The Investigators find, by a preponderance of the evidence, that John was aware that Jane was intoxicated when he met her at [REDACTED] and during their interaction in the common room of his suite as well as during the walk from [REDACTED] to the suite, but that he was not aware that she was intoxicated to

the point of being unable to make informed, rational judgments and decisions (*i.e.*, incapacitated) during this period of time. This finding is based on the following:

- It was undisputed that the parties had no history of spending time together, either while sober or while intoxicated, prior to [REDACTED]. Accordingly, John did not have a basis for knowing what behavior was and was not characteristic of Jane either when sober or when under the influence of alcohol. This having been said, John stated that he “knew Jane had been to a [REDACTED],” and “assumed she had been drinking.” The Investigators found it more likely than not that John was aware that Jane was intoxicated at some level when she interacted with him “excitedly” at [REDACTED] and went back to his suite, accompanied by three male students whom she did not know, despite having such minimal acquaintance with him. The evidence was insufficient, however, to support a finding that John knew Jane was incapacitated as that term is defined in the Policy (“unable to make informed, rational judgments and decisions due to her level of intoxication”).
- The Investigators credited John's statements that he assumed that Jane had been drinking alcohol at the [REDACTED] she told him she had attended, but that he did not observe signs that indicated to him that Jane was highly intoxicated when he interacted with her at [REDACTED], or when they walked back to his suite and sat and talked in the common room there.
- [REDACTED] stated that Jane did not typically stumble or slur her speech when intoxicated. [REDACTED] stated that the reason she believed that Jane was highly intoxicated when she saw her after the [REDACTED] was because she knew what Jane's gait and speech were like when she was sober, and that these became “different” when Jane had had a lot to drink. The Investigators credited [REDACTED] statement that she observed these differences in Jane's gait and speech when she interacted with Jane before Jane left to see [REDACTED] and [REDACTED]. It was plausible that John would not notice these differences, based upon the parties' minimal interaction prior to [REDACTED].
- Similarly, [REDACTED] stated that her observation of Jane when Jane was the “most drunk” was that she had a “glaze” in her eyes, “repeated herself,” and was “giggly.” [REDACTED] also stated that Jane would “not form a lot of coherent thoughts,” her “gait was off,” and you could “tell in her face” that she was intoxicated. The Investigators found it plausible that John would not notice any of these things, because they did not constitute “obvious” signs of a high level of intoxication in someone whom he did not know well. The one possible exception to this was [REDACTED] observation that Jane would “not form a lot of coherent thoughts” while highly intoxicated. The Investigators noted John's statement, however, that he had no recollection of what he and Jane talked about before they went into his room. This lack of recollection on his part was consistent with a finding that the parties did not engage in the type of conversation that would necessarily reflect how coherently Jane was thinking.
- The Investigators credited the statements of [REDACTED], [REDACTED] and [REDACTED] that Jane and John talked primarily to each other, and walked ahead of the three of them, back to the suite. Although none of these witnesses had a highly detailed memory of events, they provided consistent accounts of John and Jane as seeming to be “a couple” during this brief walk as well as later,

when they sat together on one of the couches in the common area. John agreed that his interaction with Jane had a flirtatious quality; he said that there was “something in the air” between them, although he did not recall what he and Jane spoke about. The Investigators found it more likely than not that John believed that Jane had been drinking, but not that she was intoxicated at a level that would preclude her ability to consent to sexual interaction.

- John and Jane were consistently engaged with each other for approximately 40 minutes between the time of meeting in [REDACTED] and going into John's bedroom. During this time period, John met up with Jane in line, purchased food, walked back to his residence hall room, engaged in conversation, ate in the common area there, and then invited Jane to his bedroom. During this passage of time, there was no reported evidence that Jane displayed obvious signs of incapacitation (e.g. stumbling, inability to converse, vomiting, passing out). This supports that it was more likely than not that John was unaware that Jane was intoxicated to the point of incapacitation.
- None of the witnesses who were with the parties at [REDACTED], or in the common area of John's suite ([REDACTED]), stated that they observed any sign (stumbling, slurred speech, etc.) that Jane was highly intoxicated.⁶⁸ None of these witnesses knew Jane or had spent time with her so, like John they did not notice the signs of intoxication that [REDACTED] had witnessed earlier, and they did not know what conduct would be characteristic or uncharacteristic of Jane. Each of these witnesses stated that they observed Jane interact with John in a way that struck them as “normal.” [REDACTED] noted that he “assumed” Jane was intoxicated, because she had been to a party and then gone to [REDACTED], but that he did not observe her do anything that reflected that she was incapacitated by alcohol.

3. John's Alleged Non-Consensual Touching of Jane While at [REDACTED]

The Investigators find, by a preponderance of the evidence, that John put his arm around Jane's waist and pulled her towards him, when he said hello and came to stand beside her in line at [REDACTED]. Jane spoke about this conduct consistently in her interviews, and John acknowledged that it “might have happened,” although he said he did not recall putting his arm around Jane. Neither [REDACTED] nor [REDACTED] recalled seeing John put his arm around Jane but the Investigators found it plausible that they would not consider the gesture significant and that they might have forgotten it, due to the passage of time. The Investigators did not credit [REDACTED] statement that Jane initiated the hug, because [REDACTED] account was inconsistent with the other witnesses' accounts in several respects. Specifically, [REDACTED] described Jane (whom he did not know, and so referred to as, “the girl”) as “running up” to John; the parties agreed that this did not occur. [REDACTED] also stated that Jane was not in line when they got there; the parties agreed that she was.

⁶⁸ The weight of the evidence supported a finding that these witnesses, while somewhat intoxicated, were not so intoxicated themselves as to preclude their ability to make relevant observations. They described events consistently and in reasonable detail, given the passage of time, and none of them described any other member of this group as appearing highly intoxicated.

The Investigators found it more likely than not that John's touching/hugging of Jane was brief, and that John did not touch any part of Jane's body other than her waist while they were at [REDACTED].

The weight of the evidence supported a finding that Jane did not give consent to John's touching of her. The Investigators credited Jane's recollection of John putting his arm around her waist when he came up to say hello, and John acknowledged that if he hugged Jane it would have been in the nature of a greeting (as they had hugged in the past), as opposed to a romantic or sexual hug. Accordingly, the Investigators found it more likely than not that John did not seek Jane's consent to this touching and that she did not form, much less express, her consent to it. In addition, Jane's contemporaneous texts to [REDACTED] indicated that Jane did not welcome John's touching of her. When [REDACTED] texted, "He's not going to touch [you]," Jane responded that his "hands [were] saying another thing" and that John was "going to try to do something."⁶⁹ She conveyed apprehension to [REDACTED] as opposed to comfort or interest.

Despite these findings, the Investigators also find that it was more likely than not that John did not know that Jane neither consented to, nor welcomed, his touching of her at [REDACTED]. This was because: (1) Jane looked as though she was happy to see him at [REDACTED]; and (2) John did not observe any indication that Jane was so intoxicated that she did not have the capacity to consent. The weight of the evidence supported a finding that Jane did not express discomfort to John when he touched her in this manner. None of the witnesses observed any negativity between the parties as they interacted after this touching; in fact, the opposite was true. Jane bought food for John and joined him and his friends in John's suite.

In sum, the Investigators found it more likely than not that: (1) Jane did not consent to the touching or welcome it, but did not express this to John (although she did express this, in texts, to [REDACTED]); and (2) John believed that Jane consented to his touching of her while they stood in line at [REDACTED].

E. Alleged Incident (Approximately 1:10 – 1:38 AM [REDACTED]) and Later on [REDACTED]⁷⁰

1. Jane's Account

Jane stated that her memory of what transpired between her and John once they were in his bedroom was fragmented; she recalled certain things and not others. She stated that she and John were standing up at first, and then got onto his bed. Jane stated that she recalled noticing that the bed was higher than normal height; she did not recall if John helped her get onto it. The first sexual interaction she said she remembered happening was John "starting to kiss her," while they were standing. Jane stated that she also recalled seeing that John was naked, standing in front of her, and that she was still wearing [REDACTED]. She said that she did not remember seeing him take his clothes off, and did not know what underwear he was wearing; in her second interview Jane stated that she believed John was wearing boxers.

⁶⁹ See Evidence Binder, at Tab 28.

⁷⁰ Jane sent a text to [REDACTED] saying, "I'm not in my room" at 1:10 AM. Her next text to [REDACTED] was at 1:38 AM, in which she stated, "The worst part is I ended up just like those [REDACTED] WHORES." The Investigators found it more likely than not that the sexual interaction that occurred between the parties in John's room took place for some portion of these 28 minutes.

Jane stated that she had no recollection of sitting and talking to **John** on the bed, or of “grinding” against him once they were lying down (as he alleged). She stated that she remembered leaning back on the bed, while **John** kissed her on the mouth and the neck. She said that she had no memory of telling or asking him to kiss her on the neck. She stated that **John** told her, later, that she had said, “Kiss my neck.” In her interview, **Jane** stated that it was “probably true” that she had said this to him because she has said this during sexual encounters with other people.

Jane recalled **John** kneeling at the end of the bed and reaching under [REDACTED] to pull her spandex shorts off. She stated that she thought she lifted up her back so that he could do this. **Jane** said that it was after this, as he was kissing her, that she felt **John** reach to remove her underwear (a thong). **Jane** stated that she had a specific memory of “scooching up” the bed and saying, “No, you don’t get to take those off,” or “No, you don’t get to take my underwear off.” **Jane** stated that she said this because she did not want to have sexual intercourse with **John**. The Investigators told **Jane** that **John** had stated, in his interview, that he believed **Jane's** comment, “No you don’t get to take those off” meant that she was self-conscious about him seeing her pubic area because she had not shaved recently, not that she did not want to have sex (*see* Section IV(E)(2) below). **Jane** responded to this by saying, “If I had wanted to have sex, I would not have been shy about **John** seeing my pubic area.”

Jane stated that her memory was “spotty” with respect to what happened immediately after she told **John** not to remove her underwear, but that she had a distinct recollection of **John** on top of her (she was on her back), penetrating her vagina with his penis. She said that he must have pushed her thong to the side in order to do this (although she had no memory of this), because her underwear was still on. **Jane** stated that she had never had sexual intercourse while wearing her underwear, and did not believe she would have held her thong to the side, as **John** alleged she did. **Jane** said that she thought **John** was kissing her neck and that she had one or both of her arms around him when this happened.

Jane stated that she did not recall whether **John** was wearing a condom. In response to hearing that **John** stated, in his interview, that she had asked him to get a condom, **Jane** stated that while she had a “vague memory of some conversation about condoms,” she had no recollection of asking **John** to get or wear one. She said that this part of their interaction was “all fuzzy.” **Jane** stated that **John** told her, a month after their sexual interaction (when they met, at **John's** request, to talk about it), that she had asked him “about” a condom while they were on his bed, and that this led him to believe that she “knew what was going on.” **Jane** stated that she asked **John** during this subsequent conversation (in [REDACTED]), whether she had either “instructed” or “ordered” him to “put a condom on,” or to use one. **Jane** stated that **John** told her that she had done neither of these things. **Jane** stated that **John** did not tell her (when they talked in [REDACTED]) that she had asked him why the condom was “not on,” nor did he tell her that she had said anything about other people having had sex with her without using a condom. **Jane** said that she had never had sex without a condom, and “would not have told **John** that people had had sex with her without using one,” as he alleged.⁷¹

⁷¹ **Jane** stated that **John's** emphasis, when they spoke in [REDACTED], was on telling her that she “must have known what was going on,” (*i.e.*, that they were about to have sex) because she “asked for a condom.” The Investigators told **Jane** that **John** stated, in his interview, that when he communicated this to **Jane** in [REDACTED], she responded by saying, “Well, I’m not blind.” **Jane** said that she had no memory of having said this to **John** but that if she

Jane stated that she got tested for sexually transmitted diseases (“STDs”) on [REDACTED], because she did not know whether John had been wearing a condom when he penetrated her. Jane attributed this lack of recollection to her level of intoxication. She produced her medical record, showing that she was tested for STDs on [REDACTED].⁷²

Jane stated that she recalled that shortly after penetrating her vagina, John told her to “flip over” onto her stomach.⁷³ She stated (in her interview) that she did not like being in “that position,” and told this to John. Jane stated that she did not remember whether she actually flipped over or not; she did not recall being “face down.” Jane said that what she recalled next was that her head was turned to the side (she thought John was on top of her, facing her) and she was saying, “Stop,” or “Stop, stop, can we stop?” Jane described feeling as though she was “in slow motion,” thinking, “What is going on?” right before she said, “Stop.” Jane stated that she remembered “looking around and realizing what was happening, and that [she] didn’t want it to be happening, and that things were moving too fast ... and that [she] was too drunk,” and telling John to “stop.” She stated that she realized she was “too drunk to consent to anything that was occurring.” Jane stated that John then said, “Oh no, something’s wrong,” stopped penetrating her, and “jumped off the bed.”

In response to a question from the Investigators, Jane stated that she had no memory of having any conversation with John about going to his room, or wanting to have any sexual interaction with him. She stated that she did not recall John asking her whether she wanted, or consented, to engage in: (1) sexual interaction generally; or (2) any particular sexual act, prior to their sexual interaction. Jane also stated that she never told John explicitly, “I do not want to have sex with you,” but that this was what she meant when she told him that he did “not get to take [her] underwear off.”

The Investigators told Jane that John had stated, in his second interview, that she said, “Do it,” after she pulled her own underwear to the side.⁷⁴ Jane stated that she had no memory of saying this and did

did, she would have meant that although she was too drunk to consent to sexual intercourse, she might have seen that John wasn’t wearing a condom and commented on it.

⁷² See Evidence Binder, at Tab 42.

⁷³ Jane stated that John said this in a tone that was more like an instruction than a request.

⁷⁴ The Investigators’ notes from John’s initial interview reflected that John stated that Jane told him, “I know you want to do it,” during the initial part of their sexual interaction in his room, but not that she told him “Do it,” either early in their interaction or immediately prior to his penetration of her vagina. Accordingly, the summary of John’s initial interview did not contain any reference to Jane telling him to, “Do it.” John submitted comments on that summary and did not state that the summary had omitted the fact that Jane had told him to, “Do it.” In his second interview, however, John stated that Jane told him “Do it,” as she held her thong to the side, and stated that he only penetrated her after she said this. John’s advisor/attorney then stated that his notes from John’s initial interview included a reference to “Pulls to side/Do it;” he showed these notes to the Investigators. Upon subsequent review of their notes, the Investigators determined that they asked John a question along the lines of what Jane did or said, if anything, in addition to pulling her underwear to the side (as he alleged) and saying, “I know you want to do it,” that caused him to believe she wanted him to penetrate her. The Investigators find it more likely than not that John’s advisor made a note of the question and then misinterpreted it as John’s answer. This finding is based upon the fact that – as the following section describing John’s Account reflects – he provided an unambiguous response to the Investigators’ question on this point in his initial interview; specifically, when asked if Jane instructed him to penetrate her vagina, John said that he did not recall her having done so, and did not recall having “any conversation” with Jane immediately prior to penetrating her vagina.

not believe that she had, in part because John did not tell her that she had said this (or that she had held her underwear to the side) when they met to talk about the interaction in early [REDACTED].

Jane stated that she was crying, and left the room quickly, leaving her spandex shorts (a fact that she only realized later). She stated that, at the time, she believed John saw that she was upset and crying. She said that she did not recall seeing, or saying goodbye to, anyone in the common area of the suite as she left. Jane stated that although she did not recall whether she took the stairs or the elevator to [REDACTED] room ([REDACTED] P [REDACTED]), she did recall “running in the hallway” and standing outside the door to [REDACTED] suite, crying “hysterically.” Jane stated that she did not recall calling or texting [REDACTED] before going to see him, but stated that she found texts on her phone later that day that reflected that she had texted him.⁷⁵ She produced these texts (*see* Evidence Binder, at Tab 28). Jane stated that, based on content, she was certain that the following ones (a continuation of the text conversation quoted above) were sent and received after her sexual interaction with John in his room and prior to her in-person conversation with [REDACTED] outside the door to his suite:

JANE:	<i>The worst part</i>	01:38
	<i>Is I ended up just like those</i>	
	[REDACTED] WHORES ⁷⁶	01:39
[REDACTED]:	<i>Chill you're a good person</i>	
	Jane	
	<i>You're just living yours life</i>	01:41
JANE:	<i>Yeah but no</i>	01:41
[REDACTED]:	<i>Stop it</i>	01:41
JANE:	<i>nahh</i>	01:41
	<i>That's not me</i>	01:41
	<i>And I let it happen</i>	01:41
[REDACTED]:	<i>Imma be pissed</i>	01:41
JANE:	<i>It's fine</i> ⁷⁷	01:41
	<i>Fuck it</i>	01:45
	<i>I miss you and [REDACTED]</i>	01:45
	<i>And [REDACTED]</i>	01:46

⁷⁵ Jane stated that she saw these texts when she went to text [REDACTED] about going to church later on Sunday, [REDACTED]; this was something they typically did together in the evening. Jane stated that she also saw that she had made multiple attempts to reach [REDACTED] and [REDACTED] by phone; she said that she was embarrassed by the number of times she had reached out in this manner and deleted her call log because of this embarrassment. Jane stated that [REDACTED] later told her that she had called him at 1:50 AM.

⁷⁶ Jane explained that this was a reference to the fact that the [REDACTED] team had a reputation for being “sleazy with girls,” and she knew of one rumor that a girl on the [REDACTED] had “hooked up” with someone on the [REDACTED].

⁷⁷ Jane stated, in her interview, that when she said, “It’s fine” she did not mean that having sex with John was fine. Rather, she meant that she would be “fine;” she had “no other choice.”

*And I'm blacker but wtf cares*⁷⁸ 01:46

█: *Jane you're good just chill out and
Get some sleep* 01:51

JANE: *There's no service in here* 01:51
I'm trying 01:51

Jane stated that █ came out and they talked in the hall. She said that she remembered telling █ that she and John had “just had sex;” that she “did not want to;” and that John had “taken advantage of her.” Jane stated that she also told █, “My vagina hurts.” She said that █ responded by saying, “That didn’t happen,” and mentioned that he (█) and she had “just been texting.” Jane stated that she told █, “No, it just happened.”

Jane stated that she did not remember how the conversation with █ ended.⁷⁹ She said that she recalled being back on the first floor of █ in a lounge area, sitting and crying by herself. Jane stated that the next thing she remembered was waking up on a couch in the common area of her suite in █ at approximately 6:30 AM. She said that she never got into her bed. Jane stated that she also had not removed her big hoop earring or taken her makeup off, things she described herself as “always doing” upon return from a night out, “drunk or not.”

Jane stated that she was still wearing █, and noticed a large pizza stain on it. She said that this caused her to remember that she had dropped her pizza on herself at █. She said she also realized that her shorts weren’t on and that her underwear still was. Jane stated that she took everything off, got dressed, and went to work her shift at █. She stated that she felt as though she was in a “haze;” she said that she “might still have been intoxicated.”⁸⁰

After Jane got to work, she texted █, one of her closest friends.⁸¹ Both Jane and █ produced this text exchange, which started with Jane saying, “I’m drunk at █.” Jane went on to tell █ that “some boy started to have sex with [her],” and that she “[didn’t] know how [she] got to his room or how that started happening.” She told █ that she “panicked,” and that the boy “stopped when [she] said so.” Jane also told █ that she did not remember leaving, but ended up on her couch. █ asked if Jane had “blacked,” to which Jane responded, “very blacked.”

█ asked Jane “wtf [did the boy] think that was okay,” to which Jane responded, “He was drunk too but like [I don’t know] I was making out so I mean...” █ said, “I guess sketchy situation when ur both drunk.” Jane responded, “Very; I’m sad.” Later, on █, Jane texted, “I barely remember anything. The whole situation is so fucked. Sorry that’s a lot to share.” In subsequent texts on

⁷⁸ Jane stated that her reference to “blacker” meant “blackout drunk.”

⁷⁹ Jane stated that █ told her, later, that she took the elevator after she left the door to his suite.

⁸⁰ Jane confirmed that she did not drink any alcohol or take any drugs after drinking vodka at the █.

⁸¹ See Evidence Binder, at Tab 36. █ met Jane in █. She stated that she and Jane “talk about everything,” despite the fact that █ attends college in █.

that day, **Jane** stated, “I literally remember 0 besides making out with him and then him being on top of me and then me freaking out and him saying oh no oh no something’s wrong.”

Jane also told [REDACTED] (via text) something about her interaction with **John** after [REDACTED] reached out to her on [REDACTED], at 9:02 AM.⁸² In this text exchange, **Jane** noted that she did not remember how she and [REDACTED] got back from the [REDACTED]. She then stated, “Something bad happened and I don’t know how I ended up somewhere and then I ended up at [REDACTED] door crying, Rougggggh.” In response to [REDACTED] questions, **Jane** stated, “I don’t even know. **John Doe** took me back to his room.” She asked [REDACTED] not to tell anyone, and then said, “We made out and then he kept trying to take my pants off or thong at least.” [REDACTED] texted that she, [REDACTED], [REDACTED] and another roommate ([REDACTED]) “knew” that **Jane** was crying; [REDACTED] asked her why she had been crying. **Jane** stated:

Wait

Were you awake

When I came back

Because he started to have sex with me

And I kept being like wait

Wait wait

And then he started to

*And it was fine*⁸³

But I was so upset because I didn’t really wanna

And he stopped when I said stop

And he was like something wrong somethings wrong

And I was like panicked and crying

And I don’t remember leaving

[REDACTED] asked **Jane** when “this all [went] down,” to which **Jane** replied that she did not really remember. She stated, “I was just so upset that I let myself have that happen.” When [REDACTED] asked her what it was that she “let happen,” **Jane** said, “let **John Doe** fuck meeee.” [REDACTED] texted, “You said stop though, right?” **Jane** answered, “Yeah, and he did.” She then said, “I just like let him start; Like he didn’t know I didn’t want it at all [I don’t know] I’m just mad.” Later in the conversation **Jane** reiterated, “I’m just mad at myself.”

At 9:38 AM that morning, [REDACTED] texted **Jane** saying, “I heard you were crying.”⁸⁴ **Jane** responded, “How are you; Sorry I woke you up.” [REDACTED] responded that she was fine, and said “I don’t know if u

⁸² See Evidence Binder, at Tab. 35.

⁸³ **Jane** stated that this was her way of trying to suppress her emotions while she was at work. She stated, “Saying “It’s fine” is a way for me to try to suppress something that’s bothering me, or to act like it didn’t happen when deep down it is really affecting me.... When something traumatizing like this happens, or even anything out of the ordinary, it takes me a while to process things or even believe that something happened, so me saying this to one of my closest friends was me trying to come to terms with something that I had not fully processed yet.”

⁸⁴ See Evidence Binder, at Tab 34.

remember but I was actually already awake.” Jane said, “You were close to sleeping tho.” Later on this day, Jane sent [REDACTED] the photo she had taken of the two of them in the suite, before leaving for [REDACTED] and [REDACTED] dorm, with the caption, “Didn’t remember this.” [REDACTED] told Jane that she (Jane had taken the photo to “document” [REDACTED] still being awake; [REDACTED] told Jane that Jane had said, “We need this documented.” Jane texted back, “I didn’t remember you telling me that; so funny ... I don’t really know why I was crying.” She then texted that she was “much better,” and stated, “Well I do remember why I was slightly sad but I’ll tell you and [REDACTED] in person because I’m still trying to put the pieces back together.”

Jane stated that later, when she got back from work, she spoke with [REDACTED] one on one, and also had a group conversation at which [REDACTED], [REDACTED], [REDACTED] and [REDACTED] were present, in which she disclosed to them that she could not recall much about what had happened the night before, because she had had so much to drink. Jane stated that she told her suitemates that she did not recall how she had come to be in John’s room, but that she had ended up there and that he had had sex with her, without her consent. Jane stated that [REDACTED] and she looked at her [REDACTED] receipts, and that she also looked back at her texts, which “triggered” some snippets of memory (e.g., dropping her pizza). She stated that she was with these suitemates when she started looking back through her texts to understand what had happened, and when.

2. John’s Account

John stated that he and Jane walked into his room, and that it was “pretty messy.” He said that the overhead light was off, and a color-changing desk lamp was on; the lighting was dim. In his initial interview, John stated that he assumed that he closed the door, although he did not recall doing so. In his second interview, John stated that he did not know where his roommate^{Rm. 1} was, so he locked the door. John said that he did not recall sending any message to^{Rm. 1} about the fact that he “had a girl in [his] room.”⁸⁵

John stated that he did not recall touching Jane when they first entered the room, and thought that he got up onto his bed before she did and that she joined him, within a minute or so.⁸⁶ He said that they both stood on a desk chair in order to get up to the bed. He said that he could not recall any conversation with Jane at this point; he did not remember if he asked her to get on the bed with him. John stated that after he and Jane sat and talked for a couple of minutes, they started to kiss.⁸⁷ He said that they then lay down, and continued kissing, as well as “grinding” against, each other. He stated that Jane was on her back, and he was on top of her while this was occurring, and that Jane asked him to kiss her neck, which he did. John stated that Jane also said, “I know you want to do it.” John said that he did not respond to this comment, but assumed that Jane was saying that she knew he wanted to have sexual intercourse with her.

⁸⁵ Rm. 1 told the Investigators that he recalled receiving such a message, but said he could not find it and that it might have been over Snapchat (and so, not saved). The Investigators asked John to look at his messages to determine whether he had sent^{Rm. 1} a message about the fact that Jane was in his room. John emailed Dean O’Driscoll on [REDACTED], and stated that he did not have any message of that nature.

⁸⁶ John drew a map of his room and also provided a photo of it, reflecting that his bed was raised off the floor.

⁸⁷ John stated that he and Jane had a “normal” conversation; he did not remember what they talked about. In response to a question from the Investigators, John stated that they did not talk about whether to have sex, or to engage in sexual interaction, and that he did not ask her if she wanted to do so.

John stated that he thought Jane [REDACTED] was off, at this point in their encounter.⁸⁸ He said she “might have been wearing” a bra, or a “bralette,” but that he did not recall this. John stated that he did not recall touching (or attempting to touch) Jane's breasts at any point. He stated that, at some point, he reached to pull her spandex shorts down. John said that Jane arched her back to assist him in doing this. They did not talk about what would “happen next,” but John stated that Jane said, “Get a condom.”⁸⁹ He said that this instruction was one of the reasons why he believed that she was fully aware of what was happening; *i.e.*, that they were about to have sexual intercourse. John stated that he got off the bed at this point, and got a condom out of his wallet. In his initial interview, John stated that he was “pretty sure and very confident” that the condom was in his wallet, either in or on his desk. In his second interview, John stated that he got the condom from his wardrobe.

John said that he got back onto the bed, holding the condom in his hand, and was “fairly confident” that he remembered “ripping the condom [package] open.” When the Investigators asked John if he had a specific recollection of this, John stated that “something Jane said later” made him think that he held the condom in his hand for a moment, after getting back onto the bed, before putting it on. Specifically, John said that Jane asked him why the condom was not on, and he told her that he had not put it on yet. In his second interview John elaborated on this, and said that Jane “confronted” him about whether he had put the condom on, after which he immediately put it on. John stated that he recalled Jane saying something along the lines of, “Other people have done that [had sex with me without using a condom],” and that he responded by saying, “I wouldn’t do that.”

John said that before Jane asked the question about why the condom was not on, he “went to take her underwear off.” He stated that he was fully naked at this point.⁹⁰ John stated that Jane did not move away from him in any manner when he did this. He said that she did, however, instruct him not to remove her underwear. In his initial interview, John stated that Jane said something along the lines of, “You don’t get to take my underwear off,” or “No, I don’t want you to take it off.” He stated that Jane then “pulled [her underwear] to the side,” using one hand. John said that he saw Jane move her underwear, but did not recall what it looked like. He said that he did not touch her pubic or vaginal area himself, or touch her underwear.

In this initial interview, John stated that he interpreted Jane instruction not to remove her underwear as her communicating to him that she was “uncomfortable with [him] touching her,” and embarrassed because her pubic area was “not shaved.” In his comments to the summary of this interview, John stated that he wanted to clarify that he had never thought Jane was uncomfortable with him touching her pubic area, and only thought she was uncomfortable with him seeing that she had not shaved there.⁹¹ John stated that he believed that this was why Jane did not take her underwear off, and moved it to the side,

⁸⁸ John stated that he thought Jane took [REDACTED] off, but said that he was “not 100% sure.” He stated that he did not recall taking, or attempting to take, [REDACTED] off, and thought it “would have been hard for him” to do this.

⁸⁹ In his second interview, John stated that Jane might have said, “Do you have a condom?” as opposed to, “Get a condom.” In his comments to the summary of this second interview, John stated that Jane asked him to get a condom.

⁹⁰ John stated that he did not recall exactly how or when he took his clothes off, but thought he was fully naked by the time he had the exchange with Jane about the condom, and that there was a period of time before this during which he was wearing only his boxers. He did not recall when or how his boxers came off. John stated that he did not remember Jane removing any of his clothes.

⁹¹ John stated that he did not touch Jane pubic area.

instead. John also commented that he had been “confused” by Jane telling him not to take her underwear off. In response to a question from the Investigators, John stated that he did not recall making eye contact with Jane when she made this comment, nor could he see the expression on her face, due to the dim light in the room. He stated that there was nothing about the tone of Jane's voice that “raised a red flag.”

In his initial interview, John stated that he put the condom on, while on his knees, near the end of the bed. He clarified that this was after Jane had pulled her underwear to the side. John stated that he then penetrated Jane's vagina with his penis; she was still on her back. In response to questions from the Investigators (in this same interview) as to whether John had any conversation with Jane immediately prior to penetrating her, and whether Jane instructed him to penetrate her, John stated that they had no conversation immediately prior to his penetration of her vagina. He said that he did not recall Jane telling him to penetrate her vagina. John did not revise his responses to this question in the comments he submitted regarding the summary of his initial interview.

In his second interview, John stated that right before he penetrated Jane's vagina, she said, “Do it.” He and his advisor both stated that they believed John had disclosed this fact in his initial interview.⁹² The Investigators asked John if he told Jane when the parties got together to discuss their sexual interaction in [REDACTED], that she had pulled her underwear to the side, while saying, “Do it.” John stated that he never told Jane that she had made this comment or gesture because he did not want to “challenge” her or upset her any more than she already was at the point when they discussed their interaction in [REDACTED].

John stated that he did not recall where Jane's hands were, while he was penetrating her. He said that he had no memory of her touching his penis, or genitals, in any manner. John stated that Jane was on her back, and that she told him to kiss her neck, while he penetrated her vagina. John estimated that they were in this “missionary position” for 5-7 minutes, during which Jane “gave him verbal instructions.” In his initial interview, John stated that Jane told him, shortly after he penetrated her, “It's been a while ... Go slow.” John stated that Jane's “It's been a while” comment, combined with her prior statement that she did not want him to take her underwear off, caused him to believe that she was embarrassed about how long it had been since she had shaved her pubic area; not that she did not want to have sexual intercourse or was apprehensive about it. He stated that when Jane said, “Go slow,” she was talking about the pacing of his penetration, not about whether she consented to his penetration of her. John said that Jane said, “Go slow” twice. He stated that she also said, “Keep it there,” when his penis was fully inserted in her vagina, and that he did this.

John said that he asked Jane to “flip over” onto her stomach, and that she told him that she did not want to do that because she “did not want [him] to cum too fast.” John stated that this struck him as an “arrogant” comment; he thought she was saying that she had such nice legs that he would not be able to stop himself from “cumming.”⁹³ John stated that he told her he would not do that, and that she then turned over, lying flat on her stomach. John stated that he then penetrated Jane from behind for about 2-3 minutes, with his hands on the bed on either side of her. In response to a question from the

⁹² See above, at n. 74.

⁹³ John denied that Jane told him that she did not like this position, or did not want to “flip” over.

Investigators, John stated that he did not recall whether Jane's underwear was still on at this point, but thought that it “must have been” because it “was never taken off.” He did not recall seeing her hold her underwear to the side, when she was on her stomach. John stated that Jane had not made any noise indicating that she was in pain, but that shortly after they were in this position, she said that her back hurt and so they stopped having sex. He said it “seemed like a good place to stop,” and that he “did not want to have any more sex.” John said that Jane never asked him to stop; he said that he stopped penetrating her because she said her back hurt. In response to a question from the Investigators, John stated that he did not “finish” during the sex because they stopped “before that could happen.” He said that the parties did not talk about the fact that Jane's back hurt, or attempt to change positions; they “just stopped.”

The Investigators told John in his second interview, that Jane had alleged that she asked John to stop penetrating her and that he had immediately stopped, and said, “Oh no, something’s wrong.” John denied that this occurred; he said that this “absolutely did not happen,” and that it “[blew] his mind” that Jane was alleging these things. John stated that Jane “never asked [him] to stop and that [he] never said that anything was wrong.” In his interview, John stated that “nothing could be farther from the truth.” John stated that Jane did tell him that she had asked him to stop (when they spoke in [REDACTED]), and that he told her he did not remember her asking him this. He said that Jane did not tell him that he made the comment, “Oh no, something’s wrong,” when they spoke (in [REDACTED]) about their interaction.

John stated that once he and Jane stopped having sex, they got off the bed. John stated that he got dressed and believed that Jane did too, although he did not recall seeing her do this. John said that he heard from Jane later, that she had left her shorts in his room.

In his initial interview, John stated that he walked Jane to the common room and then to the door, and recalled that she said goodbye to Rm. 1 who was sitting in the common room, and then to him.⁹⁴ John stated that Jane did not look upset or express anything negative to him about their sexual interaction. He stated that he would recall it if she had been upset, especially if she had been crying, and that she was not. John said that he did not remember having any conversation with Jane (or kissing her) when they parted. He said that he did not walk her back to her dorm; he wanted to “hang out” with his roommates.

John stated that after Jane left, he “hung out” with Rm. 1 in the common area of the suite, and thought he also “hung out” in [REDACTED] and [REDACTED] room, with [REDACTED] as well. John stated that he was sure he “would have had said something about having had sex,” and that his roommates asked him about it, but he did not recall these specifics.

In response to a question from the Investigators about whether John also “hung out” with [REDACTED] students in the dorm at this point in time, John stated that he thought that he and Rm. 1 went up to the [REDACTED] to see [REDACTED] (“[REDACTED]”) and another female student named “[REDACTED]” for a brief (approximately 10 minutes) visit. John stated that he did not remember this part of the early morning all that well; he attributed his lack of recollection to the passage of time, and reiterated that he had not had

⁹⁴ John later commented that he did not have a memory of walking Jane all the way to the door of the suite, and might have simply said good-bye to her at the door to his bedroom.

any alcohol after the wine he drank in his suite between 9:00 – 10:30 PM on [REDACTED]. John said that after this visit, he went to bed.

John and Jane had no communication about their sexual interaction until approximately one month later, when John asked Jane to meet with him to discuss it on [REDACTED]. See Section IV(F), below. John stated that he did hear from Jane a couple of days after the Alleged Incident, when she approached him in the dining hall and asked if he had found her shorts. See Section IV(F), below.

3. Witness Accounts

Jane's Departure from John's Suite; John's Actions

There were no witnesses to the sexual interaction that occurred between the parties in John's room. Neither [REDACTED] nor [REDACTED] recalled hearing any noise from John's room, and neither of them saw Jane when she left. Rm. 1 arrived at the suite after John and Jane were in John's room. Rm. 1 stated that he had received a message from John letting him know that he “had a girl in the room.”⁹⁵ Rm. 1 said he was “certain” that he had this “head’s up” from John because that was why he (Rm. 1) stayed out in the common room when he returned to the suite at what he thought was “around 1:00 AM.” Rm. 1 stated that he had been out drinking with people, and placed his own level of intoxication at about a “5” on a 1-10 scale with “10” being the “most intoxicated.”⁹⁶

Rm. 1 stated that he sat in the common room, scrolling on his phone, and saw Jane come out of the bedroom, wearing [REDACTED], “about 10 minutes later.” He noted that he had met her earlier in the year, when she volunteered to work in connection with a [REDACTED].⁹⁷ Rm. 1 stated that when Jane came out of the room, he said, “Hey,” to which she responded, “Hey, bye.” Rm. 1 stated that he saw Jane's face during this brief interaction and that she looked “reserved and calm.” Rm. 1 stated that he “saw no indication that [Jane had been upset and crying.” Rm. 1 also said that Jane did not appear to be stumbling or hurrying to get out of the room.

Rm. 1 stated that John came out of the room, after Jane had gone, and asked him if he wanted to go “hang out” with [REDACTED] and [REDACTED]. Rm. 1 stated that he said, “Sure,” and they visited [REDACTED] and her friends for 10-15 minutes, after which they went to bed. Rm. 1 stated that John did not talk about his interaction with Jane but that Rm. 1 asked him about it later that morning, before practice (8:30-9:00 AM). Rm. 1 said that John told him that he had “met Jane at [REDACTED]” and that she had “come back” and they had “had sex.” John told Rm. 1 that he had not had much to drink; he did not say anything about whether Jane had been intoxicated.⁹⁸

⁹⁵ Rm. 1 looked for this message while at his interview, but stated that he was not able to find it. See n. 85, above.

⁹⁶ Rm. 1 stated that he had practice the next day, which meant that he “would not have been close to a “10” on that scale.”

⁹⁷ Jane stated that she did not know Rm. 1 “other than from Instagram.”

⁹⁸ [REDACTED] stated that he also heard from John at [REDACTED], that he and the girl with whom [REDACTED] had seen him at [REDACTED] had “hooked up.” [REDACTED] said that he did not recall any additional details from this conversation.

█ stated that John rejoined him and █, as well as some of the other suitemates, about 20-30 minutes after he (John) and Jane had gone into John's room. █ did not see Jane leave; he was not in the common area when she left. █ stated that John seemed "happy," and said that he and Jane had "hooked up" and had "sexual intercourse." █ did not ask John for details, and John did not provide them.

Similarly, █ stated that he did not see Jane leave, but did have some conversation with John who came out to "hang out" with him and others after she left. █ stated that John "mentioned" that he and Jane had had sex, and that █ and he responded by saying something like, "Wow." █ stated that John did not "spill the beans" with respect to providing details about his sexual interaction with Jane. He stated that John told him, later, that he had asked Jane if "it" was fine, and that she had said, "Yeah." █ stated that he thought John told him that Jane made "some of the first moves." █ stated that after he, █ and John talked, █ went upstairs to the █ to go to bed.

█ stated that he went to see John later on █; he said that they usually "hung out" in John's suite on the weekend. █ recalled asking John what he had done the night before. He said that John told him that he was at █ with █, and that Jane was there and offered to buy him food. █ stated that John told him that they walked "back to █," and that he asked Jane if she wanted to come to his room. █ said that John told him that Jane responded, "Yeah, sure." █ stated that he thought Jane "asked if she could buy the food," and that John then "asked her to come over." █ recalled John saying that Jane was "hot," and that she had been "flirtatious" with him at █. █ stated that he did not recall what John said, if anything, about his sexual interaction with Jane other than he said that Jane did not want him to "hit it from the back" because he would "cum too quick."

Jane's Conversation with █

█ stated that he and █ walked back from the █ and were watching a movie when he heard a knock on the door (at around 1:00 or 2:00 AM) and went to answer it. He stated that he felt completely sober at this point, although he had been drinking alcohol earlier at the █. █ said that he saw Jane was standing there, "crying and all over the place." In response to questions from the Investigators, █ acknowledged that Jane had texted him earlier, telling him that she was "going to █," and later that she was "going to go back with John," but "didn't really want to go back with him." █ stated that he had texted her back, telling her to go back to her room, and had not heard from her after that. He stated that Jane might have called him at one point as well, asking where he was, and that he had told her to "just go to sleep."⁹⁹

█ stated that when Jane came to his door she was "crying a lot." He described her as "hysterical" and with "makeup all over her face." █ stated that he was not able to tell whether Jane was drunk or whether "some trauma" had just happened. She told him that she had had sex with John. █ recalled Jane saying, repeatedly, that she did not feel good about herself; she referred to herself as a "whore." █ stated that he and Jane talked for 5-10 minutes. He said he wasn't sure if she was "completely intoxicated," so "tried to get her to go back to her room." He said that they "kept going back and forth."

⁹⁹ █ stated that he no longer had these texts.

█ did not remember “specific dialogue,” and said he did not recall Jane saying “how she felt physically.” █ said that the conversation “eased down,” and Jane walked to the elevator. █ said he did not go with her because he did not think she was “so intoxicated” that she needed his assistance.

Jane produced texts reflecting her subsequent conversation with █ later on █:¹⁰⁰

JANE: *hi █ do you remember any of our conversation last night in the hall, I'm trying to piece some shit together (I didn't remember all those messages I sent you and just found em all now)* 10:48 PM
I really don't remember a lot 10:48 PM

█: *You said you got with John last night* 11:46 PM

JANE: *was I crying??* 11:49 PM

█: *Yeah* 11:49 PM

JANE: *Do you know what time that was* 11:51 PM
Sorry for bothering you 11:51 PM
Did you reread the shit I was texting you??? 11:51 PM

█: *Like around 1:30 I think* 11:54 PM
You're good but I'm about to get some sleep 11:55 PM

JANE: *aight if you get a chance tomorrow can you screenshot your call History to see when I called you last, I cleared mine* 11:57 PM

Maybe we could get dinner or something so I can chat with ya Because there's a lotta holes I'm trying to fill in, I know you were drunk too. Night █ 11:58 PM

█: *You called at 1:50. Goodnight* 11:58 PM

Jane asked █ to meet with her on █; he told her he was busy. When she asked again (and after █ also asked him to meet with Jane █ agreed to talk to her at 10:30 PM on █^h, outside her dorm. *See* Section IV(F), below.

█ Observations (P █)

█ stated that he took an Uber back from the █, and that █ might have been with him; he did not recall.¹⁰¹ He stated that his next memory was of being back in his suite, with █, watching TV. █ said that █ was “in a good mood,” and was on his phone. █ recalled █ saying, “Jane is at █.” █ said that, at some point, █ got a text from Jane and went to the door and then out into the hall. He later told █ that he went out to talk to Jane she never came into the suite.

¹⁰⁰ *See* Evidence Binder, at Tab 32.

¹⁰¹ █ looked to see if he had an Uber receipt; he did not. █ said he was certain that he took an Uber back from the party and that the only person he would have done this with would have been █.

█ stated that he and █ knew that Jane had taken █ breaking up with her “pretty hard,” in part because she had sent them both text messages, wanting to talk with them. █ stated that when Jane came to their suite on this night, he did not “really want her to come into the room” because he felt that she was “trying to get at █ through his friends.” When █ came back from talking with Jane █ observed that he “looked solemn.” He asked █ what Jane had said; █ did not tell him.

Later on █, █ told █ that Jane was “with John the night before,” and that she “believed that John had raped her.” █ stated that █ told him that John and Jane had run into each other a █, and had “both been intoxicated.”

Jane's Suitemates' Observations of Jane (█)

█ stated that she saw Jane briefly, before Jane went to work on Sunday morning. █ noted that Jane had slept on the couch in the common room of the suite, instead of in her bed in the room that she and Jane shared. █ stated that Jane came into their room quickly, was “fumbling around,” and looked like she was “in a shambles.” Jane then left for work.

█ had the text exchange with Jane (starting at 9:02 AM, while Jane was at work), referenced above in Section IV(E)(1). █ also had a brief text exchange with Jane shortly after this, as referenced in Section IV(E)(1).

Later, when Jane returned from work, she spoke to █, █ and █ about what had happened.¹⁰² █ said that she “did not hear the whole story,” but remembered Jane telling them “mostly about what she didn’t remember.” █ said that Jane told them that she had gotten “really drunk” and did not remember the whole night. █ recollection was that Jane said she came back to their suite with █ and then went back out to go to “█,” where she “tried to get in.” █ said that Jane told them that she had been in █ and had dropped her pizza on █; she showed them █ and the stain. █ recalled Jane saying that she was in John's room and was “unsure if they had sex,” and that she had gone, “upset and crying” to █ door.

█ stated that Jane looked at texts that she had sent and received from █, and that these caused a “few things” to “come back to her.” █ stated that Jane initially thought that “something had happened” because she had been in John's room but that she was not sure what “it” was. Then, when Jane read the texts, some “things” came back to her. █ stated that she watched Jane read the texts, and described Jane as looking “hurt” and “heartbroken.” She said that Jane was also upset that █ had responded by telling her that she was “okay.”

█ said that Jane was “blaming herself,” as she talked about the encounter with John █ said that Jane was worried that she had been “flirty,” and had “given off the wrong vibe.” █ stated that Jane “was never worried about whether she had consented,” because she told them that she knew that

¹⁰² █ was Jane's advisor during this process; accordingly, she was not interviewed as a witness. The Investigators informed Jane at her initial interview, that her selection of █ as her advisor would preclude █ from being a witness. Jane and █ conferred, and informed the Investigators that █ did not have any “substantive information” or any information that other witnesses did not have, and had been “less involved” than Jane's other suitemates.

she had said “no.” Rather, she was upset that she had gone to John's room and possibly said something that “allowed it to happen.” Jane told her suitemates that she allowed John to take her shorts off, but recalled telling him that he could not take her underwear off. She said that Jane also told them that she remembered being in the “missionary position” and telling John to “stop,” and that she was crying and John said, “Oh no, something's wrong.”

█ also recalled this conversation in which Jane told her and the other suitemates what had happened. She stated that Jane was “really blaming herself,” and saying that she was “too flirty when she was drunk.” █ stated that Jane told them about dropping her pizza on █, and said that “somehow” she ended up in John's room, where he and she were “making out.” █ recalled Jane saying that she told John not to take off her underwear, but that he did. █ said that she did not remember Jane saying that she and John had “had sex,” but did recall Jane telling them that John had told her to “roll over,” which had “really upset” her. █ stated that Jane threw out █.

█ stated that she and Jane had a one on one conversation when Jane got back to the dorm after her work shift on █, prior to the group conversation described above. Jane told her that she had wanted to go to “█” and had ended up at █ and then in John's room. █ said that Jane told her that she had “made out” with John and could remember “bits of that,” as well as “crying and going to █ room.” █ suggested to Jane that they look at texts, and try to piece together a timeline of what had happened. █ stated that they looked at Jane's █ receipts and her texts to and from █, attempting to do this. █ stated that Jane was getting “triggered memories” while they did this; she said that she remembered walking across the street to “█” after █, and dropping pizza █ after she and █ looked at █ and saw the stain. █ described Jane as “blaming” herself; Jane was saying that she “did this to [herself] by drinking too much.”

█ stated that she also recalled Jane telling her – either in a conversation on this day or shortly thereafter – that John “[went] for her underwear,” and that she had said, “No.”¹⁰³ She said that Jane also said that John told her to “flip over,” and “pulled her underwear to the side,” and that she “said no and burst into tears.” █ stated that Jane described feeling helpless during the interaction with John as though she “couldn't do anything.” █ stated that she asked Jane if John stopped having sex with her when she said, “No,” and Jane told her that he did.

█ stated that she recalled sitting with Jane and other suitemates on the evening of █, so that Jane could tell them what had happened. █ recalled Jane saying that she could not remember much of what had what happened. █ stated that Jane did remember certain “pieces” of it, however, which included “making out” with John in his room, and John trying to take her underwear off, and doing so, even after she had told him not to, by saying, “Don't, no.” █ stated that she remembered Jane telling them that John “started to have sex” with her and she said, “Stop,” and he said, “Oh no, something's wrong.” █ said that Jane told them that she went to █ “door” after this, “crying and upset,” and ended up back in █, where she slept on the couch without changing her clothes.

¹⁰³ █ stated that “[m]ost of [her] conversations with Jane about the alleged incident were on █ [█] night and the next day or so after.”

F. Additional Relevant Actions and Communications Within One Week of Alleged Incident

1. Jane's Shorts; Communications Between Parties

Jane's *Shorts*

Jane stated that, when she realized she had left her spandex shorts in John's room, she decided to ask him for them back. She sent him a message via Snapchat, in which she asked him if he had “the shorts that he had taken from her.” John stated that he recalled getting this message from Jane¹⁰⁴ He said that he had not found her shorts at the time, and told her that he did not know where they were.

Jane stated that she approached John in the [REDACTED], the next day ([REDACTED], [REDACTED]), to inquire about her shorts. She stated that she was walking with friends (including [REDACTED]), and went up to John. She said that she asked him, in a “stern tone,” whether he had “even looked for [her] shorts.” She stated that he said, “no,” and she told him to look for them “because [she] was going to come get them.” Jane stated that she felt “shaken up” when she did this, and noticed that John looked “uncomfortable.”¹⁰⁵

John agreed that Jane approached him in the dining hall to ask about her shorts “one or two days” after their sexual interaction. John stated that Jane asked him if he had found her shorts, and “seemed upset.” John stated that when he told her he had not, Jane said, “You haven’t looked for them yet.” John stated that he was confused as to why she was so upset about the shorts.

[REDACTED] recalled being with Jane in the dining hall, when she had this interaction with John. He stated that he did not hear the conversation, but observed that Jane was very agitated after she returned to the table where they were eating, and ate almost nothing. She told him that she had seen “the kid” with whom something “happened;” she did not identify John by name to [REDACTED] or tell him what had happened.

John stated that he found Jane's shorts later that day, and sent her a Snapchat message. Jane stated that when John messaged her to say that he had found the shorts, she asked him to meet her at his room so that she could retrieve them. John stated that his recollection was that Jane demanded that he return the shorts “right now.” John stated that he told Jane that he was at the gym, but told Jane that she could get the shorts from his roommates. Jane agreed that John told her to do this. She stated that she then went to his suite, with three of her suitemates ([REDACTED]). Jane said that one of John's roommates (she did not who he was) let her in, and she asked him and the other roommates who were there if John had told them that “something of hers” was in his room. Jane stated that the roommates then Face Timed John (she was not part of this call). Jane stated that she heard John's

¹⁰⁴ The messages referenced in this section (Section IV(F)) were all via Snapchat, and neither party had a copy or screenshot of any of them. Jane stated that she took a screenshot of one, as referenced below, but then inadvertently deleted it.

¹⁰⁵ Jane stated that she also saw John when she and [REDACTED] were at [REDACTED] later on [REDACTED] and that he waved at her; she said that she was “so upset” she “turned away.”

voice and that he sounded “jovial” until he understood why they were calling, at which point he said, “In the dresser on the top shelf,” and hung up.

Jane stated that later that week (on [REDACTED]), John “Snapchatted” her again, saying that he had “found her Banana Republic shorts.” She messaged him back, telling him that he had already found her shorts, which she had retrieved, and that the Banana Republic ones did not belong to her.

Alleged Message from John to Jane

John stated that he recalled Jane sending him a message, after she had retrieved her shorts, in which she said, “Thanks for nothing.” He stated that he “Snapped” back, “Why are you being such an asshole?”

Jane agreed that John sent her a Snapchat message in which he said she was being “an asshole,” but she said that he did this after she “confronted” him in the dining hall. Jane stated that John said more in this message. Specifically, Jane stated that John said something along the lines of, “I know we were both very drunk and I wish last night didn’t happen, but you don’t have to be an ass to me about it.”

Jane stated that she took a screenshot of this message, but then deleted it, inadvertently. She said that when she discovered (on [REDACTED]) that she had deleted this message, she wrote down, that same day, what she recalled it saying, in the Notes application on her phone. Jane then took out her phone, located the notation, and showed it to the Investigators.¹⁰⁶ John denied telling Jane at any point, that he had been intoxicated during their sexual encounter; he stated that he was not intoxicated during this interaction.

[REDACTED] stated that she recalled seeing a Snapchat from John to Jane in which he said, “Something that shouldn’t have happened, happened last night.”¹⁰⁷ She said that John sent this to Jane after Jane asked him about getting her shorts back. [REDACTED] was not sure if it was the same message, but she also recalled seeing a message from John to Jane (or possibly a screenshot of it) in which he said something about both of them being drunk at the time [of the sexual interaction] and told Jane “You don’t have to be an ass to me about it.” [REDACTED] recalled Jane talking about the inconsistency between John’s message and what he said to her in their subsequent conversation at [REDACTED] (*see* Section IV(G)(3)).

[REDACTED] Game ([REDACTED])

On [REDACTED], Jane and John both attended the [REDACTED] between BC and [REDACTED]. John stated that he did not recall seeing Jane at this game, but that she told him later (when they spoke in [REDACTED], at [REDACTED]) that he had “walked right by her” at this game,

¹⁰⁶ *See* Evidence Binder, at Tab 40. Jane stated that when she and John spoke later, in early [REDACTED] (at his request), she asked him about his level of intoxication on the night of their sexual interaction. Jane stated that she “knew that [she] had been very drunk,” and that he had Snapchat messaged her saying that they were both “drunk,” and wanted to know more about this. John told her that he was not “that drunk” during their sexual interaction. Jane stated that she did not confront John about the inconsistency between what he had said earlier, via Snapchat, and later, in this subsequent conversation, but she did mention to John that he had told her that he was “really drunk” and he responded that he had “not been that drunk.” She pointed out that he did not deny having sent her the text in which he stated that he had been “really drunk.”

¹⁰⁷ [REDACTED] also stated that when he and Jane talked, on [REDACTED], she mentioned something about John having texted her something about wishing that they “hadn’t had sex.”

without saying anything to her. John stated that he believed that Jane was upset with him because he had had a “one-night stand” with her, and had “basically ignored her” afterwards.

Jane stated that she recalled being at a [REDACTED] and seeing John and his friends walk by, and thinking that they were looking and laughing at her. She stated that she was upset, and might have communicated this to John in some non-verbal way, but that it was not because he was “ignoring” her, or because they had had a “one-night stand.” Rather, Jane explained that she was upset because she believed that their sexual interaction “had not been consensual.”

2. Jane's Communication with [REDACTED]

Jane stated that initially, she did not want to report John's conduct, but did want him to understand that “he had done something wrong” by having sex with her while she was “so intoxicated,” and without her consent. She decided to schedule a meeting with [REDACTED], within a day or so of her sexual interaction with John

Jane met with [REDACTED] and AD Gates. Jane stated that, at this meeting, she told [REDACTED] that someone [REDACTED] had “done something wrong involving alcohol and consent,” and asked that he “speak to [REDACTED], generally [about this topic].” She stated that he agreed to do this.

3. Communications Between Jane and [REDACTED]

Jane reached out to [REDACTED] on Monday, [REDACTED] (at 1:29 PM), asking to talk to him. [REDACTED] did not respond until 5:21 PM, telling Jane that he had been busy and would “probably be in [REDACTED] [REDACTED]” for the rest of the night. Jane texted [REDACTED] again, later that evening, asking to talk to him if he had a “free minute at any point this week.” [REDACTED] stated that he would “let her know.” When he did not set a time, Jane texted him again, expressing frustration.¹⁰⁸ She stated that she was “wicked upset about the situation,” “just [didn't] remember” what had happened and wanted [REDACTED] to tell her “what the heck [she] had told him” when they talked on [REDACTED]. [REDACTED] told Jane (via text) that the “only thing” Jane “kept telling [him]” when she came to his suite was that she “had sex with [John].” Jane responded that she remembered telling [REDACTED] that John had “[taken] advantage of [her] but like nothing else.” She asked, again, to meet with [REDACTED]. They met on [REDACTED], outside [REDACTED], at 10:30 PM.¹⁰⁹ Jane stated that she was “very upset” and crying during this conversation. In his interview, [REDACTED] described Jane as “sad,” “tearing up,” and “wanting his advice.” They agreed that they spoke for 10 minutes.

Jane stated that she told [REDACTED] that John had had sex with her and that she had not wanted to have sex with him. She said that [REDACTED] “kept asking [her] what [she] remembered,” and she wondered why he wanted that information because she “had never known [REDACTED] to be good friends with John.” Jane stated that she also told [REDACTED] that she remembered telling him (when she was upset, outside [REDACTED] suite) that “her vagina hurt.” She stated that [REDACTED] responded by saying, “Oh, so you remember that.” Jane

¹⁰⁸ Jane produced these texts. See Evidence Binder, at Tab 32. [REDACTED] stated that he no longer had them. Jane stated that [REDACTED] told her, when they spoke on [REDACTED], that he did not have these texts anymore.

¹⁰⁹ [REDACTED] stated that she also texted [REDACTED], on [REDACTED], urging him to meet with Jane. [REDACTED] produced the text exchange she had with [REDACTED] about this. See Evidence Binder, at Tab 39.

asked [REDACTED] if he was drunk, when they spoke outside his suite. She said that [REDACTED] said he was “not even drunk” that night.

[REDACTED] described this [REDACTED] conversation somewhat differently. He stated that Jane told him that she did not remember if she had had sex with John but that John had texted her saying that he “wished [they] hadn’t done it” (implying that they had had sex). He stated that he “would guess” that Jane’s lack of memory was “due to the fact that she was very drunk.” [REDACTED] stated that he was “pretty sure” Jane told him (on [REDACTED]^h) that she had not wanted to have sex with John and “said something about a condom;” he did not recall what she said. [REDACTED] stated that he did not recall Jane making any comment, either outside his suite or on [REDACTED], about any physical impact that her sexual interaction with John had had upon her (*i.e.*, the “my vagina hurts” comment). [REDACTED] also said that he told Jane on [REDACTED], that she had “kept calling herself a whore” outside his suite.

G. Relevant Communications in [REDACTED] (Jane [REDACTED]; John/[REDACTED]; Jane John)

1. *Communications Between Jane and [REDACTED]*

On [REDACTED], Jane texted [REDACTED], telling him that she was “going to do something” about “the whole John Doe thing,” and wanted to make sure that [REDACTED] was “okay with [her] doing that.” [REDACTED] responded by telling Jane that he thought she should talk to John before “moving forward.” After more texts on [REDACTED], in which [REDACTED] stated that he “hoped everything work[ed] out for the best,” and told Jane to tell him if she needed anything from him, [REDACTED] had the conversation with John described below in Section IV(G)(2). [REDACTED] then texted Jane and told her that he had talked to John and thought John “just want[ed] to clarify everything.” When Jane responded, “Yeah I bet,” [REDACTED] texted back, saying that the “scenario” was “serious” and that John was a friend of his. [REDACTED] told Jane that he had wanted to hear what John had to say, and thought that “clarification” was “needed” before “proceeding forward.” [REDACTED] then told Jane that he could not “keep playing the middle man” and that whether to move forward was “her choice.” [REDACTED] and Jane agreed to talk later that afternoon, in Jane’s room.¹¹⁰

[REDACTED] described Jane as “tearing up” during this meeting, and saying that she did not know what to do. He stated that Jane had told him that she had spoken to [REDACTED] without identifying John by name, and that she was afraid of the “social situation” if she were to go through with filing a complaint. [REDACTED] stated that he told Jane that she might have to get a lawyer if she did file a complaint, but that if she did nothing, she might regret it later. [REDACTED] said, “I explained to her the pros and cons; she thanked me and I left.”¹¹¹ Jane stated that [REDACTED] “did not tell her the specifics” of John’s account, but told her

¹¹⁰ See Evidence Binder, at Tab 32. The texts reflected that this meeting in Jane’s room occurred after [REDACTED] spoke to John and “heard his side of the story.”

¹¹¹ [REDACTED] also told the Investigators that “a weird thing” happened after he left Jane’s room on [REDACTED], in that she texted him asking him to come back to her room. He stated that he did, and that when he returned, Jane said that she “knew it was a weird question,” but wondered whether he ([REDACTED]) thought that there was “anything more” than a friendship between them. [REDACTED] said that he told Jane that there was not anything more than a friendship (he told the Investigators that he had thought of Jane as his “best friend”), and that he was “sorry,” and left. Jane acknowledged having this subsequent conversation with [REDACTED], when the Investigators told her what [REDACTED] had described. She stated that she asked [REDACTED] this question because she noticed the degree to which she had been “leaning” on him for support after the sexual interaction with John was aware that he was her former

that it “did not line up” with what she was telling him. **Jane** said that she was undecided about what to do after speaking with [REDACTED]; she “felt confused.”

2. John's Conversation with [REDACTED] ([REDACTED])

In his interview, **John** stated that he had gotten a text from [REDACTED] earlier on [REDACTED], telling him that [REDACTED] “needed to tell him something.” [REDACTED] stated that he recalled sending **John** a Snapchat message to tell him that [REDACTED] had said **Jane** might be “pressing charges” against **John**.¹¹² [REDACTED] stated that **John** responded by saying something along the lines of, “Wtf, are you serious? Holy shit.” [REDACTED] told **John** to come to his and [REDACTED] room, to talk about it. [REDACTED] stated that **John** texted him on [REDACTED], “panicking.”

John said that he went to talk to [REDACTED], in [REDACTED] suite, after class on [REDACTED]. [REDACTED] said he thought that [REDACTED] was in the room when **John** came to their suite, but that [REDACTED] did not participate in their conversation. [REDACTED] corroborated that he was “napping,” and so did not hear most of the conversation. He stated that he “came out” towards the end of it and observed that **John** looked “super shocked” and “so scared.”

John stated that [REDACTED] informed him that **Jane** was “thinking of coming forward with sexual charges” against **John**. **John** stated that [REDACTED] said that **Jane** had told [REDACTED] that she had “blacked out” and that “the only thing she recalled specifically was asking **John** to get a condom.” **John** said that this “blindsided” him, and that he texted **Jane** asking her to talk.

[REDACTED] said that **John** came to his room, and that [REDACTED] “sat [him] down, told him what might happen, and that he might have to get a lawyer.” He said that **John** “told him the opposite of what **Jane** had said,” in that he said that: (1) **Jane** had not looked drunk; (2) he had not been drunk; (3) **Jane** had told him to “grab a condom” while they were “making out;” and (4) **Jane** had told him to do “specific things during their interaction, *i.e.*, to bite her ear (or something like that).” In his interview, [REDACTED] stated that “the biggest part” of **John**'s description, that he remembered, was that **Jane** had asked **John** to “grab a condom.” [REDACTED] described **John** as looking “shocked,” as though “someone had died.” [REDACTED] stated that he did not ask **John** any questions; he said that he ([REDACTED]) “didn’t know what to do.”

3. The Parties' Conversation at [REDACTED] ([REDACTED])

At 1:27 PM on [REDACTED], after his conversation with [REDACTED], **John** texted **Jane** asking if she would meet with him to talk about “that night about a month ago.” He said, in the text, that he had heard that **Jane** had been having a “hard time,” and “just wanted to clear things up.” He stated that he thought it

boyfriend’s best friend, and thought that they should talk about their obvious “closeness.” **Jane** stated that [REDACTED] responded to her question by saying that he thought that they were “only good friends.” **Jane** stated that it was not a “significant factor” to her, and that she was “relieved” at [REDACTED] response. **Jane** also said that her question had not seemed like a “big deal” in their subsequent interactions.

¹¹² [REDACTED] stated that [REDACTED] (not [REDACTED]) told him that **Jane** “might have told [REDACTED] something and that she was considering “pressing charges” (or something like that) against **John**.” [REDACTED] corroborated that he told [REDACTED] about this, and that [REDACTED] told [REDACTED] about it.

was “fair to him” that he and **Jane** “at least get the chance to talk.”¹¹³ **Jane** responded to **John** on the following day, at 2:09 PM, saying that she “would give him a chance even if [he] didn’t deserve it.”¹¹⁴

After some back and forth, the parties agreed to meet at [REDACTED]” (in the [REDACTED]) at 2:00 PM on [REDACTED] (about 4 weeks after the Alleged Incident). **Jane** stated that she had spoken to AVP Stoops at this point, as well as someone in the BC Women’s Center, but thought that a conversation with **John** would “make [her] feel more in control of the situation.” **John** stated that he wanted to have this conversation with **Jane** because he had been shocked to hear that she was alleging he had non-consensual sex with her, and “wanted to understand how she felt.”

Some of **Jane's** suitemates accompanied her to [REDACTED] and sat together at a table not far from where the parties sat to talk, but none of them overheard any part of the parties’ conversation. No one other than the parties participated in this conversation.

Jane's Account

Jane stated that when she met with **John** at [REDACTED], they sat at a table and he started by telling her that he wanted her to know “his take” on their sexual interaction. **Jane** said that she wanted to keep the conversation “broad,” and did not really want to hear “all the details.” **Jane** added that **John** appeared “not to know that he had done anything wrong;” she stated that he kept saying, “I’m sorry you feel this way,” but did not apologize for his conduct. **Jane** stated that **John** then told her the following, and that she responded as noted.

- **John** and some friends saw **Jane** standing alone in [REDACTED]; he went up behind her and said, “hey.” She then offered to buy his food, as well as food “for two of his friends” (he did not name them). **John** accepted her offer, and asked if she wanted to come back to his room to eat pizza with them. She agreed, and went back to the suite and ate pizza with them.
- In response to **Jane** telling **John** that she was “blacked out,” **John** stated that he had no idea that she was “blacked out” during their interaction.
- It “ended up” being just the two of them, and **John** asked if **Jane** wanted to go to his room and she said that she did. They went into his room and “started kissing.” He took his shirt off. **John** told **Jane** that she told him to kiss her neck, and said, “I know you want to do it.”

Jane stated that she had no memory of saying these things to John in his room, and told him that. She also told him that she had been “really drunk” and did not remember things he was describing. Jane stated that she told John (during the conversation at [REDACTED]) that the fact that he did not know her well meant that he had not known how drunk she was when they had the sexual interaction.

¹¹³ See Evidence Binder, at Tab 41.

¹¹⁴ In his interview, **John** stated that **Jane** did not respond to him for “several days.” The contemporaneous texts that **Jane** produced (see Tab 41) contradicted **John's** statement.

- John told Jane that she was on his bed, and that he then got onto it. He said that she asked him if he had a condom. John told her that this question indicated to him that she “clearly knew what was going on in the situation,” and “was not drunk enough to just let it happen.”

Jane stated that she asked John (at this point in their conversation at [REDACTED]), “But did I tell you to get a condom, or ask you to use a condom?” She stated that John told her no, that she had not done this. Jane also stated that John did not tell her (at any point during this conversation at [REDACTED]) that she commented, after he had gotten the condom, on the fact that he had not yet put it on his penis. Jane stated that the first time she heard that John was saying this was when the Investigators told her that he had said this in his interview.

The Investigators told Jane that John stated that after he told Jane (at [REDACTED]s) that she had asked about a condom, causing him to believe she “knew what was going on,” she said, “Well, I am not blind.” The Investigators asked if she had made this comment and what she had meant by it.

Jane stated that what she meant by this comment was that she believed that she had not been so intoxicated that she could not see. She said that while she might have commented on the fact that she saw John was not wearing a condom; that did not change the fact that she was too drunk to consent.

- In response to Jane telling John during the conversation at [REDACTED], that she remembered him taking her spandex shorts off and her then saying, “No, you don’t get to take my underwear off,” John acknowledged that Jane said this to him.
- In response to Jane asking why he thought it would be okay to have sex with her after she had made this comment to him, John told Jane that he inferred from the comment that she was “insecure about [him] seeing her private area,” not that she did not want to have sexual intercourse. Jane stated that John also told her (at [REDACTED]) that she had said something along the lines of, “It’s been a while.” Jane stated that she did not remember saying this, and did not interpret it to confer consent.
- John told Jane that they “started to have sex,” and that he asked her to turn onto her stomach. He said that when he did this, she told him she “did not like that.”

Jane stated that John did not tell her (at [REDACTED]) that she said she did not want to have sex in this position because he would “cum too quick.” She acknowledged, however, that this comment sounded like “something she might say.” Jane said that John told her that she was only on her back for “about a minute.”

- In response to Jane telling John (during the conversation at [REDACTED]) that she remembered telling him to “stop,” John said that he did not recall her asking him to stop. Jane stated that she asked John how their sexual interaction stopped; he told her, “Well, it just stopped.”

- In response to **Jane** telling **John** (during the conversation at [REDACTED]) that she recalled him saying, “Oh no, something’s wrong,” after she said, “stop,” **John** denied that he said that anything was “wrong.”
- **John** told **Jane** that he did not notice that **Jane** was upset, when she was in his room, or that she had left her shorts.

Jane responded that it was not normal to “just stop sex and just leave without clothing and leave hysterical,” and said that John agreed that that “wasn’t normal,” and he “wished he’d realized it sooner.” John told her that he “didn’t remember if she was crying.”

- In response to **Jane** asking **John** why he looked uncomfortable when she approached him in the dining hall, asking for her shorts, **John** said that she “looked like a crazy girl just asking for [her] shorts,” and told her that she had been “yelling” and that he “had not known what was going on.”
- In response to **Jane** asking **John** if he was drunk at the time of their interaction, **John** stated that he had not been “that drunk.” He also told **Jane** that, when they were in his room, he had told her that he “didn’t get off when he was drunk.”

Jane stated, in her interviews, that **John** did not tell her the following additional things, during the conversation in [REDACTED], that he stated in his interviews during this investigation:

- **John** did not tell **Jane** that she said, during their sexual interaction, that other people had had sex, or tried to have sex, with her, without using a condom.
- **John** did not tell **Jane** that she said, “Do it” at any point during their sexual encounter, other than as part of the phrase, “I know you want to do it.”
- **John** did not tell **Jane** that she had pulled her underwear to the side.
- **John** did not tell **Jane** that she had told him to “Go slow,” or to “hold [his penis] inside of her.” (**John** alleged that **Jane** said these things after he had penetrated her vagina.)
- **John** did not tell **Jane** that they had had sex in the “missionary position” for 5-7 minutes before he told her to “flip over;” he told her that she was only on her back “for a minute.” **Jane** stated that **John** did not tell her that she said her back hurt, or that this caused the sex to stop.
- **John** did not say or ask **Jane** anything about the text that he stated, in his interview, she had asked him to send to [REDACTED] on [REDACTED].
- **John** did not say that he had walked **Jane** to the door of either his room or his suite after their sexual interaction; he just told her that she “left the room.”

Jane stated that she told John that she was thinking about moving forward with a complaint, and that talking with him would not change what she was going to do. She stated that John was “very nice,” and told her, “You have to do what you have to do.” She said that he did not apologize for his actions, but told her again that he was sorry that she felt the way she did.

John's Account

John stated that when he met with Jane in [REDACTED] he was “trying to be nice,” and to understand how she felt. He stated that when he told Jane that he was sorry about how she felt, she became “extremely frustrated.” John said it was as though she wanted him “to apologize for sexually assaulting her, which [he] didn’t do.” John stated that he tried to give Jane his perspective as to what had occurred between them, but also did not want to upset her.

John stated that he told Jane that he had thought that she had wanted “everything that had happened between them” that night (in other words, their sexual interaction) to happen. He told her that she had “even given him instructions” during it, at times. In his initial interview, John stated that Jane told him, at [REDACTED] that she had been “blacked out,” but remembered “seeing a condom in his hand.” He stated that he commented on the fact that she recalled this, to which Jane responded by saying “I’m not blind!” In his second interview, John clarified that he told Jane (at [REDACTED]) that she had “confronted him” and that her response to his telling her this was to say, “Well, I am not blind!” John pointed to this as an indication that Jane was not “blacked out” during their sexual encounter. He stated that “she must have known what was going on,” or, “at least he thought she did.”

John stated that Jane kept stating, during the conversation at [REDACTED] that she had been “blacked out” during their sexual interaction. He stated that his observation was that Jane had not been “blacked out;” he said, “Not to say that I wanted to laugh, but that just isn’t what occurred.” John said that he did not challenge Jane during their talk, however, because he “did not want to upset her.” He noted that she also told him that she had dropped her pizza on [REDACTED], and asked him if he had seen this. He told her that he had not, and stated (in his interview) that he did not remember seeing her buy any food for herself, or eat anything, at any point during their interaction with each other.

In response to a question from the Investigators, John stated that he had heard from [REDACTED] that Jane was “saying she was blacked out,” but had not spoken with [REDACTED] about this further.

In response to the Investigators’ question as to whether Jane had talked to him about whether she had made a comment (at [REDACTED]) about whether he could take her underwear off, John said that he thought she told him that she “had tried to say no.” John stated that he was sure that “in Jane’s head,” she was “trying to frame what she had told him about not taking her underwear off to be consistent with her believing that she had said, “No.”” He stated that, from his perspective, it was obvious that she pulled her underwear over to enable him to penetrate her vagina, but that he did not say this to her at [REDACTED].

In response to a question from the Investigators, John stated that he did not tell Jane that she had said, “Do it,” while pulling her underwear to the side because he didn’t want to challenge her. He said that she had gotten very upset when he told her about the condom, so he didn’t want to go into more details or “press her.” He stated that he “was not trying to give her an entire recap.” John denied saying that

Jane had only been on her back for “a minute,” because he said that he “would not have wanted to bring up those details.” John noted that Jane was squeezing a stress ball throughout their entire conversation.

John denied that Jane told him to “stop” at any point during their encounter, and said that he told Jane that he did not recall her telling him to “stop” when they talked about it at [REDACTED]. John also denied that that he ever said, “Oh no, something’s wrong.” John stated that he had never heard (prior to the Investigators telling him) that Jane alleging that he had said this, and that if he had, it “would have freaked him out.” He stated that her allegation that he made this comment “blew his mind,” and that it “absolutely didn’t happen.”

John stated that Jane also mentioned (during their conversation at [REDACTED]) the fact that he had not spoken to her at the [REDACTED]; he stated that she was “very upset” about this, as well as about how he had ignored her when she was trying to get her shorts back. In addition, John stated that Jane said she wished that he had apologized sooner. She asked him not to talk about the matter with anyone else, and told him that she had to report it to the University. John said that he did not argue with Jane and told her she should just “do what she needed to do.”

The parties agreed that this conversation on [REDACTED] lasted 45 minutes to one hour. This was their last communication.

H. Findings Regarding the Parties’ Sexual Encounter in John’s Room

1. Jane’s Level of Intoxication During the Sexual Encounter

The Investigators find, by a preponderance of the evidence, that Jane was unable to make informed, rational judgments and decisions (*i.e.*, was incapacitated), because of her level of intoxication throughout the parties’ sexual interaction in John’s room on [REDACTED]. This finding is based in part on the evidence set forth in Section IV(D)(1), which supported the Investigators’ finding that it was more likely than not that Jane was incapacitated by alcohol during her interactions with John on [REDACTED], [REDACTED], prior to going into his bedroom. The finding that Jane continued to be in an incapacitated state while in John’s room, during the Alleged Incident, is also based on the following evidence:

- The Investigators credited Jane statements that she could not recall much of what transpired in John’s room, and that her memory of the Alleged Incident was “spotty” due to her consumption of a large quantity of vodka both prior to and at the [REDACTED];
- Jane’s texts to [REDACTED] immediately after the Alleged Incident reflected that she was in a semi-incoherent (not simply emotional) state; the Investigators found it plausible that Jane’s level of intoxication cause this incoherence;
- Jane’s texts to her childhood friend ([REDACTED]) and her BC suitemates, which she sent later in the morning on which the Alleged Incident occurred, contained numerous references by her to being “blacked out” and not recalling exactly what happened between her and John in his room;

- [REDACTED] and [REDACTED] all observed that **Jane** did not remember much of what happened during the sexual interaction with **John** and that viewing texts and [REDACTED] receipts, as well as the pizza stain on [REDACTED], caused her to have “triggered” memories of events. They provided consistent descriptions of **Jane** struggling to “piece together” what had happened; how she had ended up in **John’s** room, and what had happened there. Their consistent statements supported a finding that **Jane** was “blacked out” (and therefore, incapacitated) during the Alleged Incident.
- The Investigators credited **Jane’s** description of realizing, as she lay on **John’s** bed, that he had penetrated her vagina only after he had done so; the weight of the evidence (including **John’s** own statements) supported a finding that **John** (who was sober) performed each sexual act of a physical nature during the parties’ interaction in his room. **John** stated that **Jane** did not touch him in a sexual manner at any point and did not touch his penis or genitals. He stated that he had no recollection of her taking any of his (or her own) clothes off, and that although he was completely naked, [REDACTED] and thong remained on. Although **John** stated that **Jane** told him to kiss her neck, and allegedly gave him other “instructions” such as to “do it” and to “go slow,” he did not state that **Jane** initiated any physical sexual conduct towards him. This evidence was consistent with the Investigators’ finding that **Jane** was incapacitated by alcohol during the encounter.
- **Jane** left **John’s** room in an [REDACTED], without the spandex shorts she had worn all evening. She went “running” to talk to [REDACTED] (who observed that she was “crying” and “hysterical”), then sat in the lounge area of [REDACTED] (crying by herself), and ended up back in her dorm on the couch in the common room of her suite where she fell asleep without removing her [REDACTED], her makeup or her “big hoop earring.” [REDACTED] saw her “fumbling around” and looking in “shambles” a few hours later. This conduct supported a finding that **Jane** was more likely than not incapacitated by alcohol during the Alleged Incident.
- **Jane** requested testing for STDs on [REDACTED], because she did not know whether **John** had worn a condom during the Alleged Incident. **Jane** produced this medical record, which supported a finding that **Jane** was highly intoxicated during the Alleged Incident, to the point of not recalling this fact.

2. **John’s Awareness of Jane’s Level of Intoxication During the Sexual Encounter; Reasonableness of Same**

The Investigators find, by a preponderance of the evidence, that **John** knew **Jane** was intoxicated, but did not know that she was incapacitated by alcohol (as defined by the Policy) at the time that he engaged in conduct of a sexual nature towards her on [REDACTED]. The Investigators find further, that the weight of the evidence was insufficient to support a finding that **John** should “reasonably have known,” under the circumstances, that **Jane** was incapacitated due to alcohol during his interaction with her.

These findings are based in part on the evidence set forth in Section IV(D)(2), which supported the Investigators’ finding that it was more likely than not that **John** neither knew, nor reasonably should have

known, that **Jane** was incapacitated by alcohol – as opposed to intoxicated to a lesser degree – prior to going with her into his room. These findings are also based on the following evidence:

- The investigators credited **John's** statements that he did not realize that **Jane** was incapacitated by alcohol when he engaged in sexual interaction with her in his room, because she functioned, and conversed with him, in a way that he did not associate with being incapacitated by alcohol. There was no evidence that **Jane** stumbled, needed help getting onto **John's** bed, slurred her speech, vomited, or passed out. In the absence of these “obvious” indicia of incapacitation, and because he did not know **Jane** **John** did not know, nor reasonably should have known, that **Jane** was incapacitated by alcohol when he engaged in sexual interaction with her.
- None of the witnesses who observed **Jane** interact with **John** at [REDACTED] or in his suite stated that they observed that **Jane** was highly intoxicated.
- **Jane** and certain witnesses stated that it was uncharacteristic of **Jane** to be clumsy, and pointed to the fact that she dropped her pizza on [REDACTED] as an “obvious sign” of her high level of intoxication. The evidence was insufficient to support a finding that **John** observed **Jane** drop her pizza. Even if **John** had observed this, however, there was insufficient evidence to support a finding that he reasonably should have understood, at that point, that **Jane** was incapacitated. It was undisputed that the parties had never spent time together, and thus did not have an awareness of what was characteristic or uncharacteristic of the other.
- **John** described **Jane** as continuing to be flirty with him while they were in his room. **Jane** as well as her childhood friend ([REDACTED]) and her BC suitemates provided consistent statements that **Jane** was typically flirty, when she was intoxicated. **John** did not know **Jane** and so did not know the degree to which the flirtation he observed was the result of her intoxication. When **John's** lack of familiarity of **Jane** was combined with her apparent functionality, there was no reason for **John** to know that the flirty comments **Jane** made (*i.e.*, “I know you want to do it”), or her willingness to let him kiss her and take her shorts off, were indications that she was highly intoxicated.
- There was no evidence that **John** believed that **Jane** had been incapacitated by alcohol during their sexual interaction. When **John** and **Jane** spoke at [REDACTED], **John** told **Jane** that he had not observed her to be highly intoxicated, to which she responded by telling him that he did not know her well enough to make that observation.

3. Whether Jane Consented to the Sexual Encounter

As detailed above, the Investigators find, by a preponderance of the evidence, that **Jane** was incapacitated by alcohol during the Alleged Incident, but that **John** neither knew nor reasonably should have known, that she was incapacitated. The Investigators separately considered whether, despite her state of incapacitation, **Jane** conveyed consent, as that term is defined by the Policy, to **John** to engage in sexual activity with him. As set forth in Section II, the Policy defines “consent” as “*the clear and voluntary agreement to engage in particular sexual activity, communicated through mutually*

understandable words or actions.” The Policy also specifies that consent must be “actively given,” and cannot be inferred from silence or a “lack of resistance.” Consent “must be ongoing,” and can be withdrawn at any time; “consent for one sexual act does not imply consent for subsequent sexual activity.” The fact that John did not understand that Jane was incapacitated by alcohol did not lessen the requirement that he obtain consent from her (through words or actions) before engaging in sexual activity.¹¹⁵

Whether Jane Consented to the First Part of the Parties’ Sexual Interaction

As detailed above, the weight of the evidence supported a finding that Jane went willingly into John's room with him, and conveyed, through both her words and actions, consent to “make out” with him. Jane acknowledged that she likely agreed to go into John's room (although she could not recall it), told him to “kiss her neck,” and had her arms around him as they lay on his bed, kissing. The Investigators also credited John's statement that she was “flirtatious” with him, told him that she knew that he “want[ed] to do it,” and helped him remove her shorts by arching her back. Jane did not dispute this, and stated that she had some memory of kissing John and allowing him to remove her shorts.¹¹⁶

In addition, Jane's texts to [REDACTED] and [REDACTED] (within hours of the Alleged Incident) communicated to them her own belief that John had not realized how drunk she was and that they had been “making out.” In these texts, Jane did not describe any conduct on her part that would have communicated to John that she did not want to engage in this first portion of their sexual interaction (*i.e.*, the kissing, and his taking off of her shorts).

In sum, the weight of the evidence supported a finding that, *prior to telling John not to take her underwear off*, Jane communicated consent to John to “make out” (*i.e.*, kiss, lie in close proximity to each other on the bed, while touching, partially undressed) through “mutually understandable words and actions.”

Whether Jane Consented to John's Penetration of Her Vagina

In contrast, the weight of the evidence supported a finding that Jane did not give “clear and voluntary agreement” to John for his penetration of her vagina. This finding is based on the undisputed fact that Jane made it clear to John verbally, that she did not want him to remove her underwear. The Investigators found it more likely than not that Jane intended to communicate, by denying John this access to that area of her body, that she did not want John to penetrate her vagina. The Investigators credited Jane's statement that although she was “in and out of it” during the Alleged Incident, due to her level of intoxication, she had a specific recollection of telling John that he did not “get to” take off her underwear, and of intending to set a physical boundary to the sexual interaction by telling him this.

¹¹⁵ The Investigators reiterate that Jane could not give consent to sexual activity, because she was incapacitated by alcohol. Their finding that John was not, and reasonably should not have been, aware of Jane's incapacitation, meant that the Investigators had to consider whether Jane provided John with the consent that the Policy requires to be present in every sexual interaction between individuals within its scope.

¹¹⁶ Jane also told her suitemates that she let John take off her shorts.

The Investigators gave careful consideration, in arriving at this finding, to what John identified as his reasons for believing that Jane consented to his penetration of her vagina. John identified the following as the bases for his belief: (1) Jane's apparent consenting to his kissing of her and removal of her spandex shorts; (2) Jane's stating, "I know you want to do it," and telling him to kiss her neck; (3) Jane asking John to get a condom, after she had told him that he did not "get to" take off her underwear, and asking him why he had not put the condom on yet; (4) Jane holding her underwear to the side, and saying, "Do it;" (5) Jane giving him "instructions" after he had penetrated her, including "Go slow ... It's been awhile," and "Hold it there;" and (6) Jane agreeing to turn over onto her stomach after 5-7 minutes in the "missionary" position, once he had assured her that he would "not cum too fast." The Investigators address each of these points below.

John's Kissing of Jane Removal of Her Shorts; Initial Flirtatious Comments

As described above, the weight of the evidence supported a finding that Jane communicated, through her words and actions, consent to "make out" with John Under the Policy, however, consent to one sexual act cannot imply consent for a subsequent one. Accordingly, Jane's apparent consent to the initial part of the parties' sexual interaction is irrelevant to whether Jane gave consent to John to penetrate her vagina.

The Underwear Comment, Jane's Alleged Holding of Her Underwear to the Side; Alleged "Do it" Comment and Alleged Condom Conversation

As detailed above, the parties did not dispute that Jane told John not to remove her underwear. They did dispute what this comment meant. They also disputed whether Jane held her underwear to the side and said, "Do it," as well as whether Jane gave John an instruction to get a condom that communicated an intent to have sexual intercourse.

The Investigators find it more likely than not that Jane did not hold her underwear to the side, and did not tell John to, "Do it." The Investigators find further that whatever conversation the parties had about a condom was not sufficient to counter the fact that Jane expressed a lack of consent to John for penetration of her vagina by telling him not to remove her underwear. These findings are based on the following:

- The Investigators did not credit John's statement that Jane said, "Do it," for the reasons set forth above in Footnote 74. In addition, they found it unlikely that John would not tell Jane at [REDACTED], that one reason he believed that she had consented was because she had told him to "Do it," if she had actually said this. John stated that he did not give Jane all the details, or an "entire recap" of their interaction during the conversation, at [REDACTED] because he did not want to upset her. While the Investigators found it plausible that John did not want to upset Jane at this point, they found it implausible that he would consider the alleged "Do it" comment a "detail," particularly in light of the level of anxiety that both [REDACTED] and [REDACTED] described John as expressing when he learned that Jane was considering reporting his conduct.

- The Investigators did not credit John's interpretation of Jane's instruction not to remove her underwear as simply a communication to him that she felt self-conscious about him seeing that part of her body.
- As with the “Do it” comment, the Investigators found it implausible that John would not tell Jane at [REDACTED], that she had held her underwear to the side (after telling him that he could not take it off), if she had actually done this. It was not plausible that John would consider this non-verbal conduct to be less significant than the “kiss my neck” comment he told her she had made, in explaining to her why he believed she knew what was going on and wanted to be doing it.
- The Investigators credited Jane's statement that she had never had sex while keeping her underwear on, and had no recollection of pulling her underwear to the side during the Alleged Incident. John's statement that Jane's thong was still on when he penetrated her from behind, but that he did not see her holding it to the side at that point, indicated that he was physically able to penetrate her vagina with his penis without anyone holding her thong to the side, and the weight of the evidence supported a finding that this is what occurred.
- John's statements about the condom were inconsistent, as was his recollection of where the condom was when he retrieved it (desk as opposed to wardrobe), and Jane's statements about what John told her at [REDACTED] about the condom comments were not consistent with what John said in his interviews. On this record, the Investigators found it more likely than not that the parties had some conversation about a condom, but that it did not consist of Jane giving John an unambiguous instruction to put a condom on in order to have sex with her. The evidence concerning the conversation about a condom did not outweigh the evidence supporting a finding that Jane did not give John “clear and voluntary agreement,” “through mutually understandable words or actions,” to his penetration of her vagina.

Jane's Alleged Post-Penetration Instructions, Comments, Actions

As noted above, John alleged that Jane made certain comments to him after he penetrated her vagina with his penis, which caused him to believe she consented to the penetration. Jane stated that she had no recollection of saying any of these things. The Investigators noted that, even if Jane did say these things, she said them after John penetrated her, so that they could not constitute a communication of “clear and voluntary” consent to John to penetrate her vagina.

4. The End of the Parties' Sexual Encounter

The Investigators credited Jane's statement that she told John to “stop” the penetration, at some point after it began, when she became aware of what was happening. Jane contemporaneous texts to [REDACTED] and [REDACTED] both contained statements about this, and Jane's suitemates all described hearing Jane say that she did this, and that John stopped, and then said “Oh no, something's wrong.”

The Investigators did not find John's conflicting description as plausible; he stated (in his interview) that Jane said that her back hurt, that it “seemed like a good time to stop,” and that he “did not want to have

sex anymore.” John denied that Jane ever told him to “stop,” and he denied that he said that something was “wrong,” as well as that Jane had told him (when they spoke at [REDACTED]) that he had said this.

The weight of the evidence supported a finding that Jane did not tell John that her back hurt. Not only did the Investigators credit Jane's statement that she does not have back problems and would not likely have said this, but they also credited her statement (undisputed by John) that John did not tell her she had complained about her back, when they spoke at [REDACTED]. The Investigators did not credit John's statement that he omitted this information because he was trying not to upset Jane

The Investigators found it more likely than not that Jane told John to stop penetrating her when – despite her level of intoxication – she grasped what was happening, and that she sounded upset when she did this, and that this caused John to stop and to make the comment that Jane alleged he made. It was more plausible that the sexual interaction ended this way than in the abrupt manner described by John and Jane's description was consistent with [REDACTED] account of how Jane appeared (“crying” and “hysterical”) when he opened the door to speak to her, immediately after she had been with John

Rm. 1 stated that he observed Jane leave the room (and their suite), and that she was not rushing out or crying. The Investigators found it more likely than not that the fleeting opportunity^{Rm. 1} had to observe Jane (with whom he was not well-acquainted) did not enable him to know with any certainty whether Jane was upset at the time. [REDACTED] observations of Jane shortly after she left John's suite, as well as those of her suitemates later that day, were inconsistent with Rm. 1 and more deserving of weight, based on these circumstances.

V. Policy Violation Determinations

As set forth above in Section II, the College's Sexual Misconduct Policy states that BC prohibits all forms of sexual misconduct, and sets forth specific definitions of sexual assault, consent and incapacity. The Investigators find, based upon a preponderance of the evidence as outlined above in Section IV, that:

- Jane was incapacitated by alcohol during her entire sexual interaction with John on [REDACTED], and was therefore unable to consent to that interaction;
- John neither knew, nor reasonably should have known, that Jane was incapacitated by alcohol during his sexual interaction with her;
- Jane's words and actions during the first part of the parties' sexual interaction conveyed clear and voluntary consent to John to engage in kissing, lying on his bed with bodies touching, and his removal of her shorts;
- Jane communicated to John that she did not want him to remove her underwear, at which point John did not have her “clear and voluntary agreement” to penetrate her vagina with his penis; rather, Jane communicated that she did not give consent to John to do so;
- Jane did not say or do anything after this point in the parties' sexual interaction that constituted “clear and voluntary” agreement for John to penetrate her vagina with his penis;
- John penetrated Jane's vagina with his penis without having obtained her consent to do so.

VI. Conclusion

In conclusion, the Investigators find, based upon a preponderance of the evidence, that **John Doe** violated Section III of BC's Student Sexual Misconduct Policy by engaging in conduct (non-consensual penile/vaginal penetration) towards **Jane Roe** in his room in [REDACTED] [REDACTED] on [REDACTED] that constituted Sexual Assault, as defined by the Policy.