EXHIBIT A

CONFIDENTIAL INVESTIGATORY REPORT

To:	Melinda Stoops, Associate Vice President for Student Affairs and Student Title IX Coordinato 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 Report by Jane Roe (BC') of Sexual Misconduct by John Doe (BC')	
I.	Scope of Investigation	
Jane a room in incapaci standing his roon	tation due to alcohol. ¹ In summary, Jane alleged that John approached her while she was in line at John , put his arm around her waist and pulled her towards him, asked her back to an and subsequently engaged in kissing, touching of intimate body parts, and then penetrated her with his penis, all while she was incapacitated and therefore unable to consent to sexual	
any indi includin his roon	cation that Jane was incapacitated due to alcohol while he was with her on g while they were at was, walking to g, or in his suite, or when the parties were in h. John admitted that he and Jane had a sexual interaction (and that he penetrated her vagina 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	
appear i 4.4.6 of miscond violence whether commun	academic year. Accordingly, the definitions that n the Sexual Misconduct Policy (the "Policy") are applicable in this matter. Section the Boston College Student Guide sets forth the Policy, which prohibits all forms of sexual fluct, including but not limited to, sexual harassment, sexual assault, stalking, and intimate partner e, whether perpetrated by a stranger or acquaintance, whether occurring on or off campus, and directed against a member of the Boston College community or someone outside that nity. At the time of the Alleged Incident, Section III of the Policy defined prohibited conduct to the following, in pertinent part:	
1 "		

- **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.
 - O **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.
 - O **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.

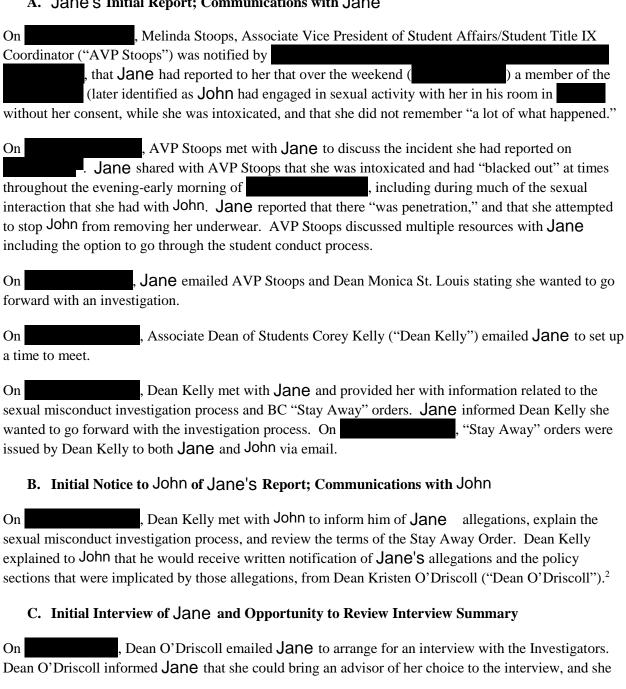
Consent cannot be obtained from an individual who is incapable of giving consent because the person:

- o Has a mental, intellectual, or physical disability;
- o Is under the legal age to give consent;
- o Is asleep, "blacked out" unconscious, or physically helpless; or
- o 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.

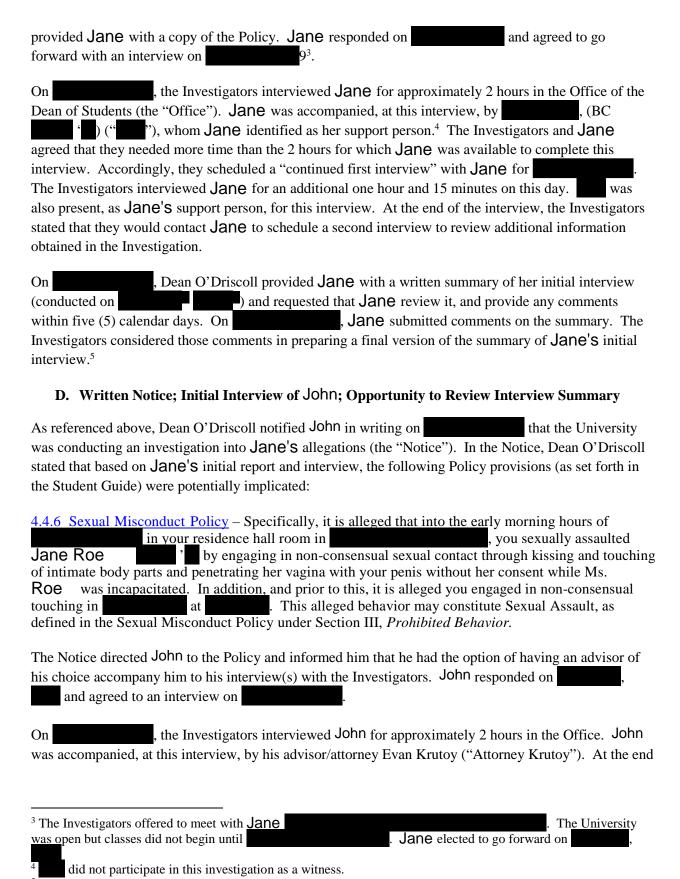
Section VI of the College's Student Sexual Misconduct Policy () sets forth the process by which the College responds to reports of alleged sexual misconduct, including the investigation that may ensue. The Investigators investigated the Incident pursuant to that policy and process, applying the requisite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

III. **Process**

A. Jane's Initial Report; Communications with Jane



² This Notice was sent to John on a described below.



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. , 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 Dean O'Driscoll (who had not heard from John) emailed John confirming that he had no , John replied, submitting a photo and Uber receipts.⁶ On comments. Later on , 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 the Investigators conducted a second interview of Jane.8 On 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 . Jane submitted comments on the summary. The Investigators considered those comments in preparing a final summary of Jane's second interview.9 , the Investigators conducted a third interview of Jane. 10 On 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 comments on the summary. The Investigators considered those comments in preparing a final summary of Jane's third interview.11 John , the Investigators conducted a second interview of John¹² On 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 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 <u>Tab 2</u>. ⁸ Jane's support person, , 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. , was present for this third interview, but remained outside the ¹⁰ Jane's support person, 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.

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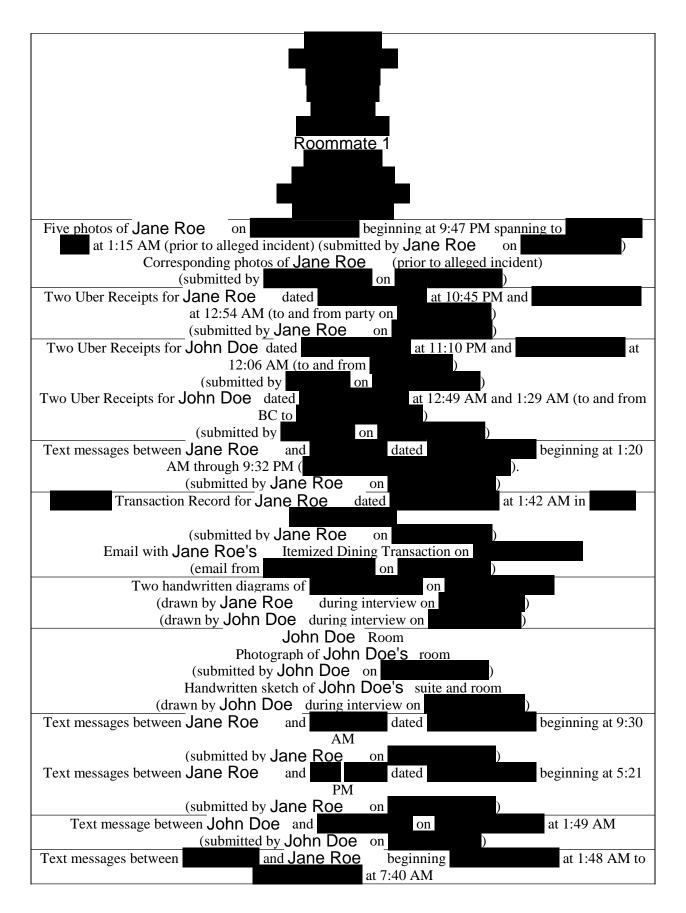
F. Witness Interviews and Tangible Evidence

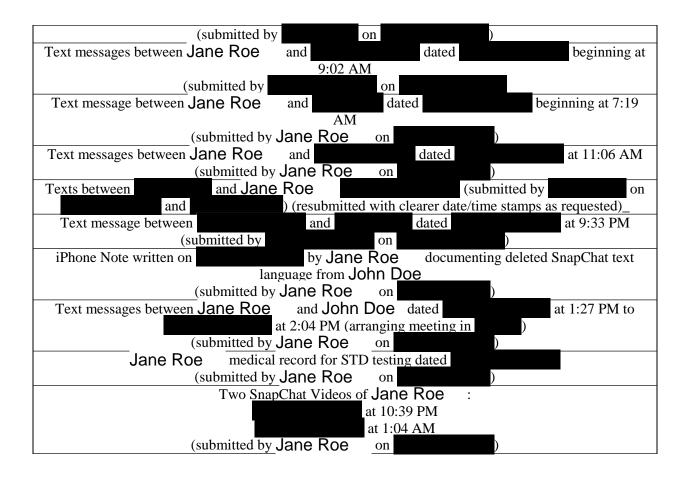
In addition to the interviews of the parties, the Investigators conducted interviews of the following witnesses during the course of the investigation, all of whom were identified either by the Investigators, a party, or a witness, as reasonably likely to have made relevant observations based on personal knowledge.

Witness	Date of Interview(s)
Roommate 1 ^{-("Rm. 1")}	

The Investigators obtained and reviewed the following documentary evidence (the "Evidence"):

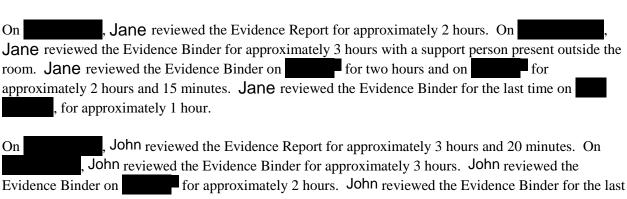
Boston College Sexual Misconduct Reporting Form		
(su	bmitted)
Card Swipe records from	to	for the following students:
	Jane Roe	
	_John Doe	



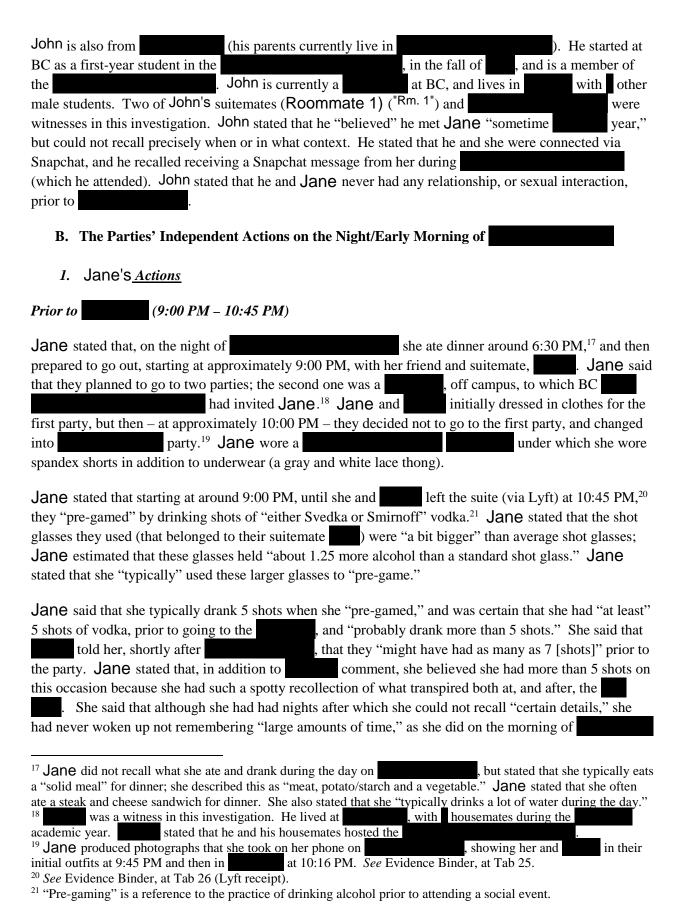


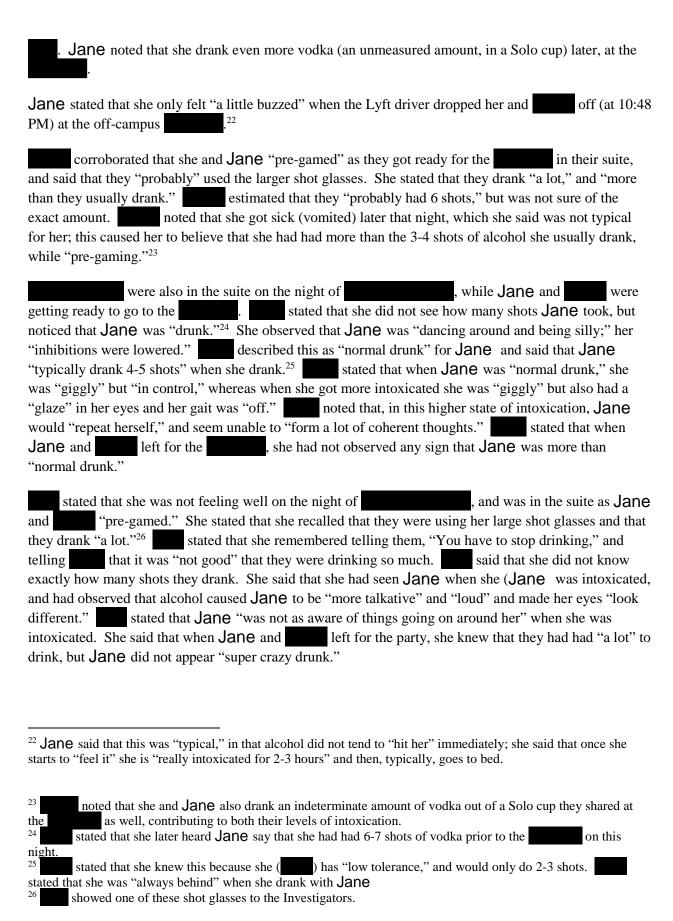
G. Evidence Binder; Parties' Opportunity to Review; Submission of Comments

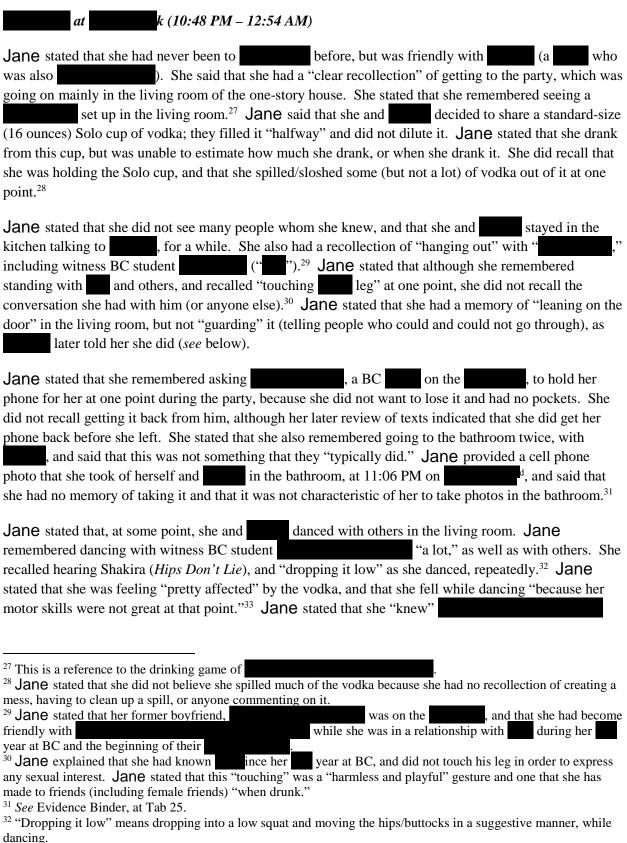
After the interviews were complete and the parties had submitted any comments on their interview summaries, the Investigators prepared the Evidence Binder. The Evidence Binder included all summaries of the interviews of the parties and witnesses conducted as of that date, as well as the tangible evidence described above. On 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.



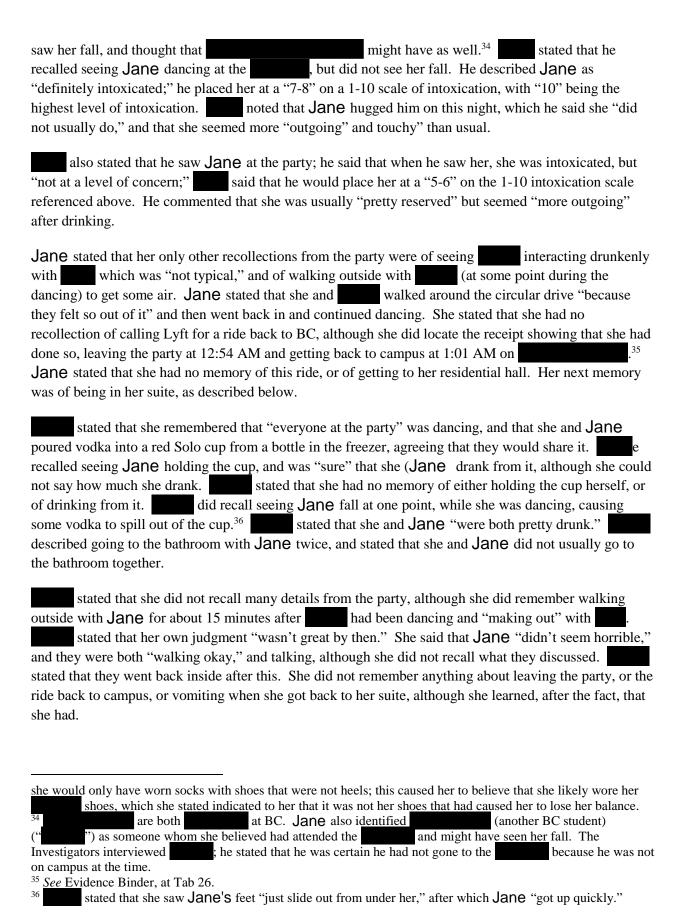
time on for approximately 3 hours with his father, Mr. Doe sent to John's advisor/attorney (Attorney Krutoy) in New York City. 14
On, Attorney Krutoy asked for the 10-day evidence review period to begin upon his receipt of the Evidence Binder. Dean O'Driscoll granted the requested extension, and informed John and Jane of the extension and revised due date of On, Jane submitted her written comments on the Evidence Report ("Jane's Comments"). On, John also submitted his written comments on the Evidence Report ("John's Comments").
IV. <u>Allegations, Responses, Witness Observations and Findings</u>
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 In the fall of the fall semester of the fall semeste
John
14 On 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 is also one of Jane's suitemates. As noted above, served as Jane's support person during this investigation, and was not a witness. 16 Jane stated that she liked and that she sent John a brief message in which she told him that she was "jealous" of him for being at a mand wished him Happy Birthday.

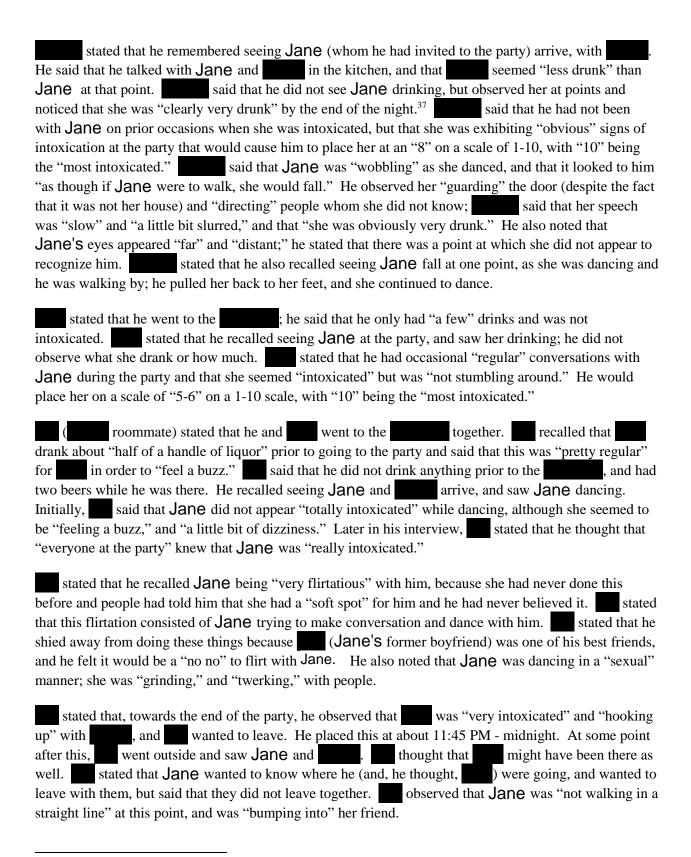




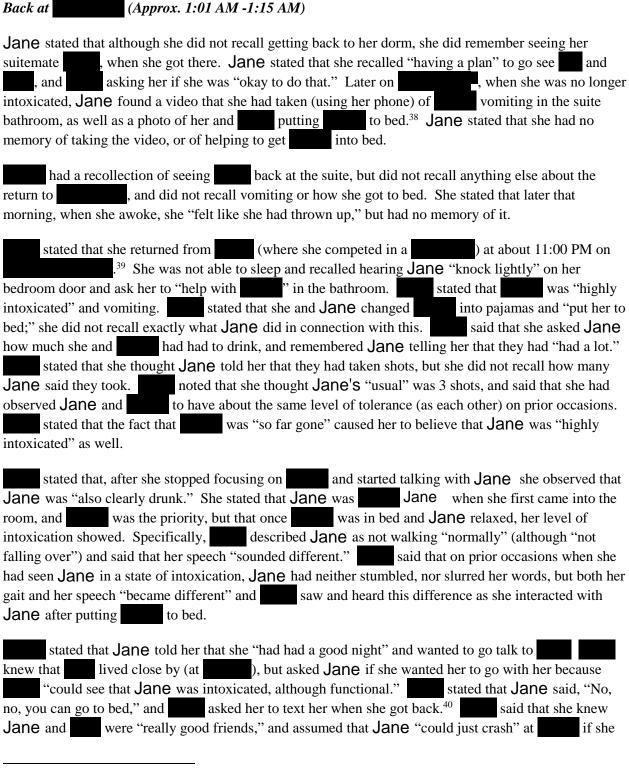


³³ In response to a question from the Investigators as to what shoes she was wearing, **Jane** stated that she was not certain, but that she had noticed that one of the photos she produced showed her wearing socks. **Jane** stated that





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.



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

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.

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 sent a text to **Jane** at 1:45 AM on saying "How r ya doin? Jane responded, "I'm ok."⁴¹ then texted, "Hmm okay text me when you're back puggerino." Jane texted, "Ok love you." responded, "[love you] too girly." They had no further text exchange until much later in the morning.⁴² went to bed, and stated that she thought she set an alarm for "a couple of hours later," but slept through it. Walk from $(Approximately 1:15 AM - 1:31 AM)^{43}$ In both of her interviews, **Jane** stated that she had no memory of walking from although she had a "vague memory" of leaving her own dorm. She stated that she later saw that she had texted during this period of time (when she was attempting to get into as well as later, from , 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 , nor did they see her as she to stood outside that dorm, attempting to get in. The texts that Jane produced were as follows:⁴⁵ 01:20 AM JANE: I'm not okay 01:20 Deadass I'm terrified 01:20 What's wrong 01:25 JANE: I'm alone 01:25 What? 01:25 JANE: I'm doing to you guys room 01:25 up there? 01:25 Bad plan but it's happening 01:25 The Investigators found it more likely than not that sent this text at 1:45 AM because this would have been about 45 minutes after Jane and returned to the dorm from opposed to one hour and 45 minutes). ⁴²The next text between and Jane was at 9:38 AM, when texted, "baby giirrrlll I heard you were crying." ⁴³ This section also covers a period of time during which Jane stood outside texting 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 and and by phone "a number of times" during this period of time. <u>Jane</u>

Evidence Binder, at Tab 37.

at 11:06 AM in which she apologized for having "called [him] a million times last night." See

stated that she deleted this call history because she felt embarrassed about it. She produced a text she sent to

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

•	Yeah I think he's here	01:26
JANE:	Ok love you	01:26
:	Is everything good?	01:26
JANE:	No ones letting me into the elevator	01:26
:	Where	01:27
JANE:	And I'm sloshed	01:27 01:27
:	here I think	01:27
JANE:	② Tell him to come get me	01:27 01:27
:	You're good homie you just got to. Hill out Just chill out	01:27 01:27
JANE:	Here where??? I'm chicken Oh boy	01:27 01:27 01:27
<i>:</i>	Just go back to your room and chill.	01:27
JANE:	Chillen** guy That's not an option no more where are you where r u	01:27 01:28 01:28 01:29 01:29
:	Lol Jane just go to sleep	01:31
JANE:		01:31
:	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 did not let her in because was there, and she and 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 to let her into and went to (in an analysis). Jane stated that she had no recollection of this walk to analysis of the witnesses (other than an open observed her wellking to		

no one observed her walking to

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 test saying that she was going to and a later one saying that she was "going back with John" if "didn't really want to go back with him." said that he sent Jane a text telling her that she show just go back to her room, and that he "didn't hear back from her [by text] after that."	ext but
2. John's <u>Actions</u>	
Prior to	
John stated that he and some of his friends were "pre-gaming" in his room on the night of and as being among this group, in addition to his suitemates placed by 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 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 playing music in Boston. John said that the half-bottle of rosé did cause him to feel impaired; he "felt fine."	nat I out
John produced an Uber receipt showing that he took an Uber to PM. He stated that everyone who had been pre-gaming went into Boston, to this bar. John stated 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 John and the others waited in line at which point they decided to Uber back to BC. John stated that he did not drink any alcohol during these drives to and from the group (including John decided to go with and to an off-campus party that BC student (""") had told him about, on and they Ubered there. He was a cover charge, at the product of the group (including John decided to go with and to an off-campus party that BC student and the product of the group (including John decided to go with and to an off-campus party that BC student and the product of the group (including John decided to go with and to an off-campus party that BC student and the group (including John decided to go with and to an off-campus party that BC student (""") had told him about, on group (including John decided to go with and to an off-campus party that BC student "") had told him about, on group (including John decided to go with and to an off-campus party that BC student "") had told him about, on group (including John decided to go with and the others was a cover charge, at the group (including John decided to go with and the others was a cover charge, at the group (including John decided to go with and the others was a cover charge, at the group (including John decided to go with a group (including John decided to go with group (including John dec	hat con. t
John stated that they only stayed at this party for 30 minutes to an hour, after which they took anothe Uber back to campus and went to alcohol at the party. John produced an Uber receipt showing that he got back to campus at 1:31 AM on	
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 former boyfriend) whom one of his best friends, and that he met Jane during their first year when she was dating also typically with Jane on Sundays. Said that he saw less of Jane when their relationship, and that things had become "awkward" between them after the Alleged Incident. In the "always kind of knew" John but became friendlier with him during together. Stated that he would describe John as a "close friend" now. 147 See Evidence Binder, at Tab 27. The stated that he got back to BC at 12:49 AM on Evidence Binder, at Tab 27. 148 John produced this Uber receipt as well; it showed that he arrived at stated that he had distanced himself from the himself from the had distanced himself from the hot had distanced that he had distanced himself from the hot had distanced that he had distanced himself from the hot had distanced that he had distanced himself from the hot had distanced that he had distanced that he had distanced that he had distanced that he had distanced himself from hims	as at he off d that

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 "around 1:30 AM."
stated that he did not recall exactly where he went on the night of "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
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 <u>Account</u>
Jane stated, in both of her interviews, that she recalled being in line at during the early morning hours of and a not 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 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 a She stated that she then also had a "triggered" memory of buying food for John and his friend at
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

The records reflected that Jane used her BC Eagle One Card at 1:42 AM on to purchase a flatbread pizza, chicken tenders, milk and chips. <i>See</i> Evidence Binder, at Tab 29.			
Jane stated that she did not recall John inviting her back to his suite, or walking from (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 was of being with John in his room.			
Jane stated that later in the day on the saw that she had texted the while she was at the saw that she had texted the saw while she was at the saw that she had texted the saw while she was at the saw that she had texted the saw while she was at the saw that she had texted the saw while she was at the saw that she had texted the saw while she was at the saw that she had texted the saw that she had texted the saw while she was at the saw that she had texted the saw that she h			
	, 01:20	AM	
JANE:	I'm relaxed and alone Bro I'm not Trynna be raped ⁵² That was aggressive but true r u still at the house	01:31 01:32 01:32 01:34	
·	What are you talking about You're good	01:39	
	If anyone try's you I'm Beating their ass	01:39	
JANE:	John Doe Doe ***	01:39 01:39	
:	That's my boy he's not Going to touch you	01:39	
JANE:	In. where are you	01:39	
:	Where is he	01:40	
JANE:	He already tried to	01:40	
:	Jane just go to your room He's not going to touch you	01:40	
JANE:	We are at	01:41 01:41	
:	You're good Jane	01:41	
JANE:	And his hands are saying another thing	01:41	

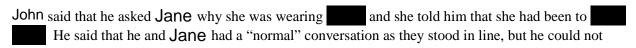
⁵² **Jane** stated, in her interview, that she believed this reference was to the fact that **John** had "pulled her close to him by her waist," and she felt that he was "getting handsy." She stated that she felt as though she did not know **John** well enough for him to be touching her in this way.

:	You just eating (plate and utensils emoji) (3 "thumb's up" emojis)	01:41 01:47
JANE:	John's Is going to try to do something	01:47 01:47 01:47 01:47
:	Jane nobody is doing nothing	01:47
JANE:	You're good homie You just faded	01:50 01:50
The next text is	s from , at "1:00."	
The following	texts occurred after the t	
	You good?	01:00
JANE:	Not exactly I'm in John Doe's room And I s	01:00
	Wish I was in	01:01
:	Jane chillll Just go back to your room	01:03 01:03
JANE:	I'm not in my room	01:10
æ	Lmao go back You good cuzzo	01:13 01:13

The next text is from **Jane** to 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 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.



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 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 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 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
John said that the five of them (John Jane about her former boyfriend during this brief walk. 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, went to his room and the remaining four of them sat in the common area for a while, talking and eating. 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 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 "John sent this text at 1:49 AM; it said "Where you at." did not respond to this text. John said that he was sure he had asked Jane why she wanted him to text, 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
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 they were at the 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 last name. In her third interview, Jane identified this student at a member of the last name. In her third interview, Jane identified this student at was friends with last name was friends with last name. In her third interview. 59 Jane stated that last was friends with last name was friends with last name and others on the last name was friends with last name. In her third interview, Jane stated that last name was friends with last name and others on the last name and prior to her sexual interaction with John (at 1:49 AM land). This is because her subsequent texts to last of the seculon IV(E), below) reflect that the sexual interaction occurred prior to 1:38 AM last on the last name and prior to 1:38 AM last on the last name and prior to 1:38 AM last on the last name and prior to 1:38 AM last on the last name and prior to 1:38 AM last on the last name and prior to 1:38 AM last on the last name and the la
"The worst part is Lended up just like those WHORES"

that he did not feel impaired by alcohol at this point; he had not had any alcohol after the $\frac{1}{2}$ 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**

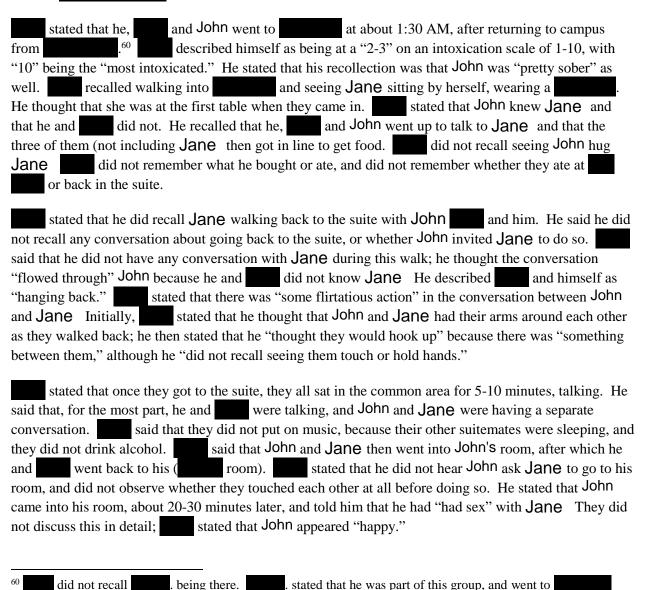
John stated that "about 5 minutes" after they got to the suite, went into room and left the suite not long after that. John said that he and Jane were sitting next to each other, and it was "possible that [their] hands touched," but he had no recollection of having any physical interaction with her while 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

with them.

interview.

. did not know either

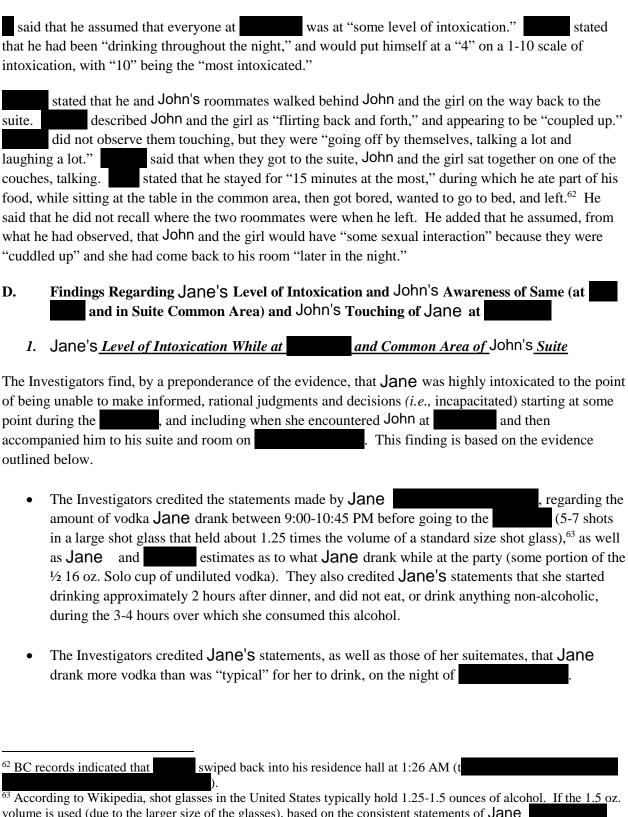


at the time, and did not know their names at the time of his

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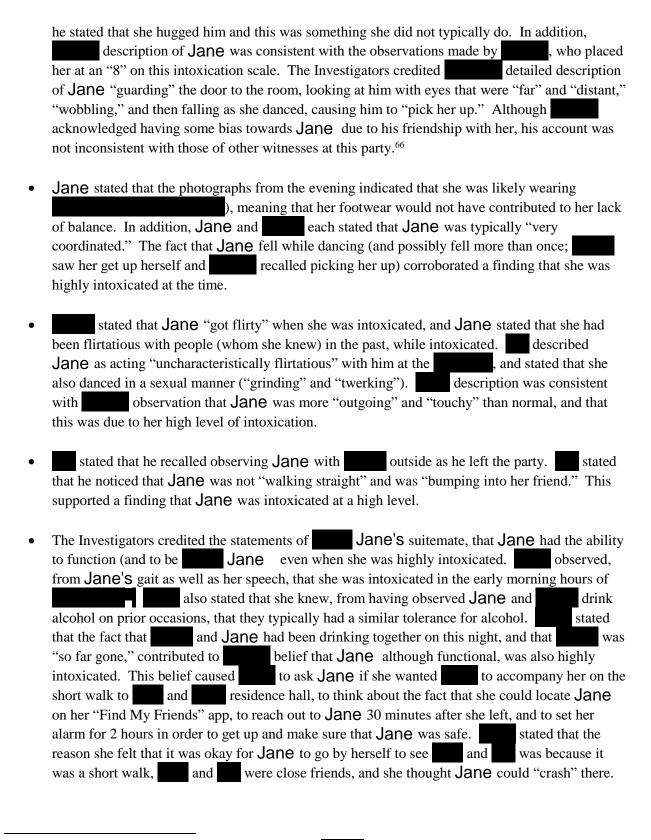
In response to questions from the Investigators, stated that he did not observe any signs that Jane was intoxicated when they were at the stated that she was "talking clearly" and "not stumbling as they walked back to the suite. He stated that she also did not seem to be "drunk" or "crazy drunk" while 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. It did not remember what he or the others got to eat. It 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. It 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." It 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 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 about the night. He described John and Jane as sitting together on the other couch, in the common room, talking to each other. It did not see them touch or kiss or have any other physical interaction. It stated that after 5-10 minutes, John and Jane went into John's room. It 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. It stated that, after this, he went into a room to "hang out" until John rejoined them; he did not know how much time passed. It said that John told them that he had "had sex" with Jane they did not discuss specifics. It stated that John just said, "we had sex," and that he was "not sad."
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 was 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. 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 girl was intoxicated. He did not observe anything that made him think, "Wow, she's really drunk."

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.



volume is used (due to the larger size of the glasses), based on the consistent statements of **Jane** and **Jane**, 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 approximately 11:00 PM to approximately 1:00 AM). provided accounts that corroborated Jane's on this point. They each stated that Jane told them, on or shortly after that the and afterwards.
• Jane's texts to (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 on, in which she asked, repeatedly, that he meet with her because she could not remember what had happened and want 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.
provided consistent accounts of sitting in their suite on hearing Jane talk (after she returned from work) about how she could not remember so much of the night, including walking to or ending up in John's bedroom. 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 Investigated credited 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 described observing Jane read her text exchange with 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 and to her (non-BC) friend (""") later on contained various statements reflecting that she did not remember how she g back to campus or how she ended up in John's room. 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 highle intoxicated while at the was located (who was not identified as having a bias towards eith 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
stated that after Jane looked at her John and of walking across the street from to (John's residential hall). The Investigators credited Jane statement, as well as that these were "triggered" memories, corroborating their finding that Jane was highly intoxicated when she was at 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 from 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."



⁶⁶ The Investigators also noted that **Jane** was no closer to 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 account was materially distorted as a result of bias.

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•	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 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 Investigators credited) also reflected that Jane was highly intoxicated. Corroborated corroborated 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 be 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 Jane was in 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. <i>See</i> 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.

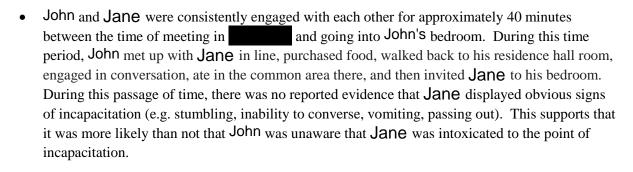
• The Investigators credited statement that, based on her observations of Jane it was not characteristic of Jane to reach out to rather than her suitemates, in the way that she did via text in the early morning of h, and that this was an indication to her that Jane's judgment was impaired by alcohol.
• The Investigators credited Jane's statements that she had virtually no recollection of being at other than some memory of John pulling her towards him by the waist. Her reference to John being "handsy" in the texts to 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 observed a circular stain on the pizza, 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 no no 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, and both stated that Jane showed them the with the stain, later on 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 and each stated that a lack of coordination on Jane part was uncharacteristic; noted that she "was not clumsy." These facts supported a finding that Jane dropped her pizza because she was highly intoxicated, while at
• Jane asked John to send a text to she did not recall doing this, but that 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.
• 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 with the pizza stain, rather than in her own bed. Jane's roommates and corroborated this; 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 <u>Awareness of Jane's Level of Intoxication (</u> <u>Suite Common Area)</u>
The Investigators find, by a preponderance of the evidence, that John was aware that Jane was intoxicated when he met her at well as during the walk from to the suite, but that he was not aware that she was intoxicated to

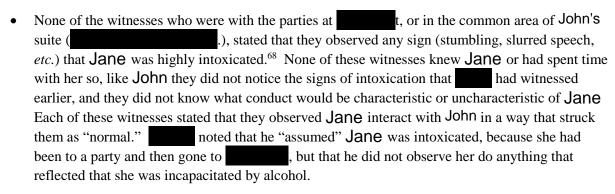
the point of being unable to make informed, rational judgments and decisions (*i.e.*, incapacitated) during this period of time. This finding is based on the following:

• It was undisputed that the parties had no history of spending time together, either while sober or

	while intoxicated, prior to . 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 "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 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 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 when they walked back to his suite and sat and talked in the common room there.
•	stated that Jane did not typically stumble or slur her speech when intoxicated. stated that the reason she believed that Jane was highly intoxicated when she saw her after the 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 statement that she observed these differences in Jane's gait and speech when she interacted with Jane before Jane left to see and and it. It was plausible that John would not notice these differences, based upon the parties' minimal interaction prior to
•	Similarly, 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." 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 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 and and and 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 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.





3. John's <u>Alleged Non-Consensual Touching of</u> Jane <u>While at</u>

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 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 nor 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 statement that Jane initiated the hug, because account was inconsistent with the other witnesses' accounts in several respects. Specifically, 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. 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 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 indicated that **Jane** did not welcome **John's** touching of her. When 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 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 . This was because: (1) Jane looked as though she was happy to see him at grant 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); and (2) John believed that Jane consented to his touching of her while they stood in line at E. Alleged Incident (Approximately 1:10 – 1:38 AM) and Later on 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

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 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.

ext text to was at 1:38 AM, in 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.

⁶⁹ See Evidence Binder, at Tab 28.

⁷⁰ Jane sent a text to saying, "I'm not in my room" at 1:10 AM. Her next text to which she stated, "The worst part is I ended up just like those WHORES."

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 of 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.

The stated that John's emphasis, when they spoke in 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 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 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

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 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), she did recall "running in the hallway" and standing outside the door to suite, crying "hysterically." Jane stated that she did not recall calling or texting 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 outside the door to his suite: JANE: The worst part 01:38 Is I ended up just like those WHORES⁷⁶ 01:39 Chill you're a good person Jane You're just living yours life 01:41 JANE: Yeah but no 01:41 01:41 Stop it JANE: nahh 01:41 That's not me 01:41 And I let it happen 01:41 *Imma be pissed* 01:41 JANE: It's fine 77 01:41 Fuck it 01:45 I miss you and 01:45 And 01:46

about going to church later on Sunday, this was something they typically did together in the evening. Jane stated that she also saw that she had made multiple attempts to reach and 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 later told her that she had called him at 1:50 AM.

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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 I'm trying	01:51 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. 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. 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 remember anything. The whole situation is so fucked. Sorry that's a lot to share." In subsequent texts on			
	hat her reference to "blacker" meant "blackout drunk." hat told her, later, that she took the elevator after		

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

No Jane confirmed that she did not drink any alcohol or take any drugs after drinking vodka at the left she left the door to his suite.

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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." (via text) something about her interaction with John after reached out to Jane also told , at 9:02 AM. 82 In this text exchange, Jane noted that she did not remember how her on she and know how I ended up somewhere and then I ended up at door crying, Rougggggh." In response to questions, Jane stated, "I don't even know. John Doe took me back to his room." She not to tell anyone, and then said, "We made out and then he kept trying to take my pants off or thong at least." texted that she, and another roommate (asked her why she had been crying. **Jane** stated: Jane was crying; 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 fine⁸³ 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 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 what it was that she "let happen," Jane said, "let John Doe fuck meeee." 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." texted Jane saying, "I heard you were crying." Jane responded, At 9:38 AM that morning, "How are you; Sorry I woke you up." 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 the photo she had taken of the two of them in the suite, before leaving for
and dorm, with the caption, "Didn't remember this." told Jane that she (Jane had
taken the photo to "document" still being awake; 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 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 one on one, and also had a group conversation at which one, and also had a group conversation at which one on one, and also had a group conversation at which one on one, and also had a group conversation at which one on one, and also had a group conversation at which one on one, and also had a group conversation at which one on one, and also had a group conversation at which of the original or one on one, and also had a group conversation at which of the original or one on one, and also had a group conversation at which of the original or one on one, and also had a group conversation at which of the original or one on one, and also had a group conversation at which of the original or one on one, and also had a group conversation at which or one or one, and also had a group conversation at which or one or one, and also had a group conversation at which or one or one, and also had a group conversation at which or one or one, and also had a group conversation at which or one or one, and also had a group conversation at which or one or one, and also had a group conversation at which or one or one, and also had a group conversation at which or one or one, and also had a group conversation at which or one or one or one, and also had a group conversation at which or one o
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
and she looked at her 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."

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 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 was off, at this point in their encounter. 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." 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. 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 off, but said that he was "not 100% sure." He stated that he did not recall taking, or attempting to take, 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.

⁹⁰John 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. The Investigators asked John if he told Jane when the parties got together to discuss their sexual interaction in 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

John stated that he did not recall where Jane 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." 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

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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), 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 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.

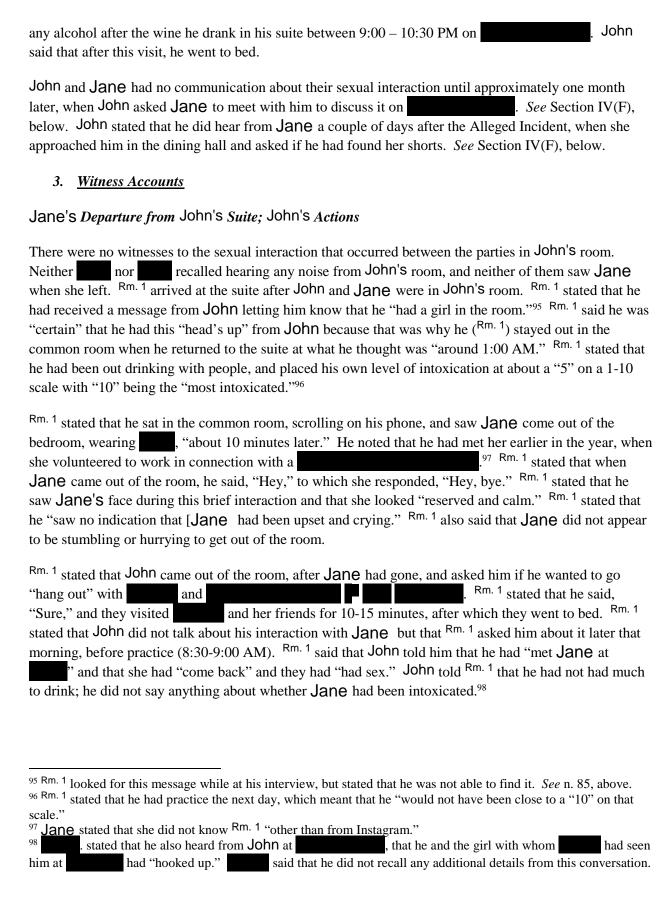
In his initial interview, John stated that he walked **Jane** to the common room and then to the door, and recalled that she said goodbye to Rm. 1 who was sitting in the common room, and then to him. 94 **John** stated that **Jane** did not look upset or express anything negative to him about their sexual 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 Kill. I in the common area of the suite, and thought
he also "hung out" in and 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 students in the dorm at this point in time, John stated that he thought that he and Rm. 1 went up to the
to see ("" and another female student named "" 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

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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.



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 John's suite on the weekend. It recalled asking John what he had done the night before. He said that John told him that he was at with with Jane was there and offered to buy him food. It stated that John told him that they walked "back to provide to come to his room. It said that John told him that Jane responded, "Yeah, sure." It stated that he thought Jane "asked if she could buy the food," and that John then "asked her to come over." It 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 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."
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. 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."

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 produce	ed texts reflecting her subsequent conversation with	: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) I really don't remember a lot	10:48 PM 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 Sorry for bothering you Did you reread the shit I was texting you???	11:51 PM 11:51 PM 11:51 PM	
;	Like around 1:30 I think You're good but I'm about to get some sleep	11:54 PM 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 also asked him to meet with Jane agreed to talk to her at 10:30 PM on h, outside her dorm. <i>See</i> Section IV(F), below.			
Observations (P			
stated that he took an Uber back from the not recall. He stated that his next memory was of being back in his suite, with said that was "in a good mood," and was on his phone. The recalled saying, "Jane is at said that, at some point, said that he went out to talk to Jane she never came into the suite.			

Evidence Binder, at Tab 32.

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 said.

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 had "both been intoxicated."
Jane's Suitemates' Observations of Jane (
stated that she saw Jane briefly, before Jane went to work on Sunday morning. In 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. It is 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 had happened. Had happened had 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. It recollection was that Jane said she came back to their suite with had and then went back out to go to "have tried to get in." It said that Jane told them that she had been in had dropped her pizza on had showed them the had sex," and that she had gone, "upset and crying" to have door.
stated that Jane looked at texts that she had sent and received from "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 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

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 prior to the group conversation described above. Jane told her that she her work shift on " and had ended up at t and then in John's room. said had wanted to go to " 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 and her texts to and from a stated that Jane was getting "triggered", attempting to do this. memories" while they did this; she said that she remembered walking across the street to " after she and looked at , and dropping pizza 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." 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 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

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, where she slept on the couch without changing her clothes.

tated 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

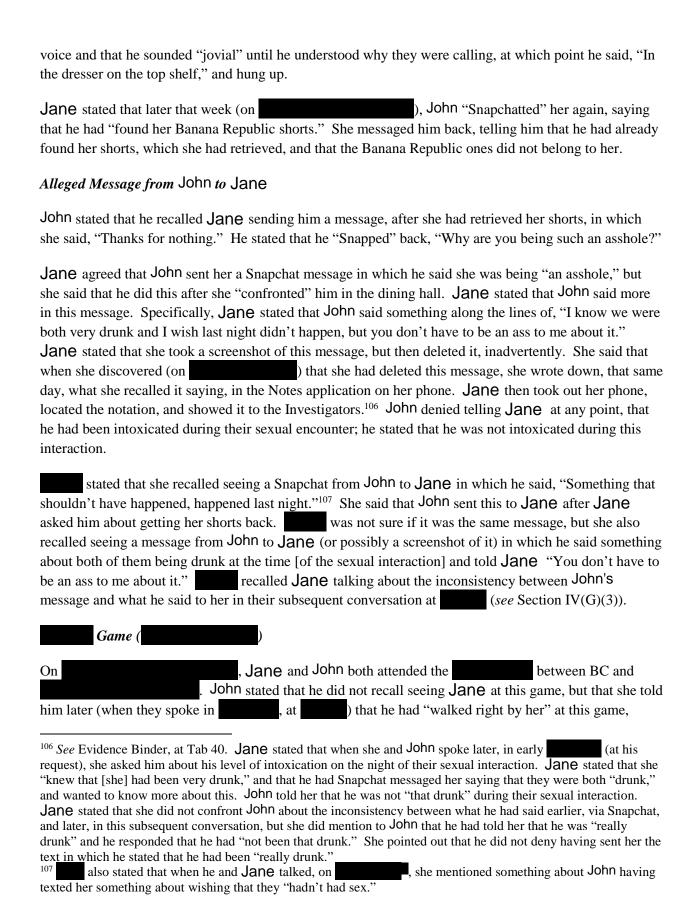
Jane stated that, when she realized she had left her spandex shorts in John's room, she decided to ask him for them back. She sent him a message via Snapchat, in which she asked him if he had "the shorts that he had taken from her." John stated that he recalled getting this message from Jane ¹⁰⁴ He said 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 , the next day (), to inquire about her shorts. She stated that she was walking with friends (including 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. 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 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 (). **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

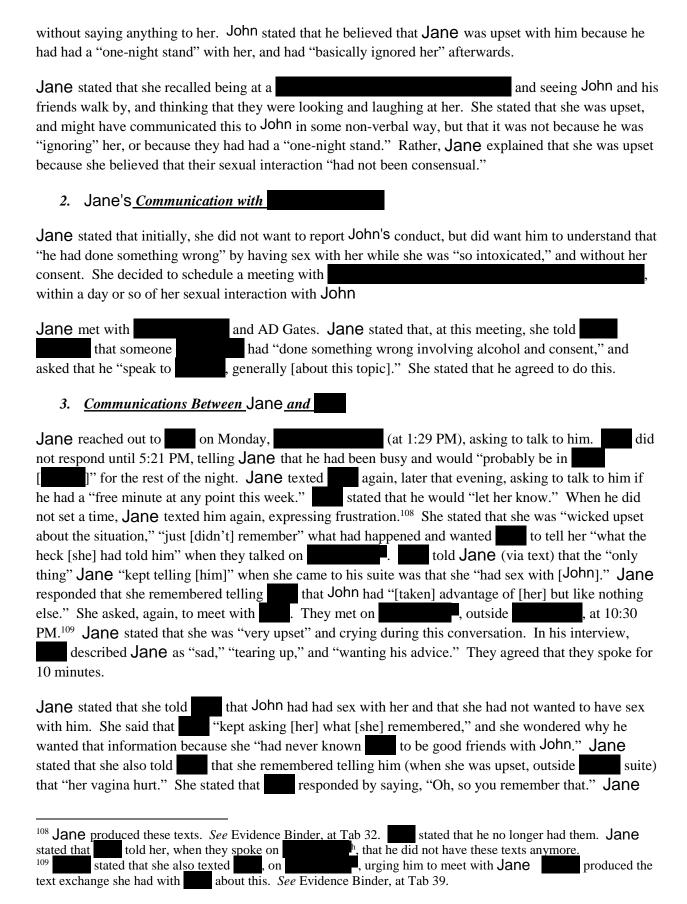
were there if John had told them that "something of hers" was in his room. Jane stated that the roommates then Face Timed John (she was not part of this call). Jane stated that she heard John's

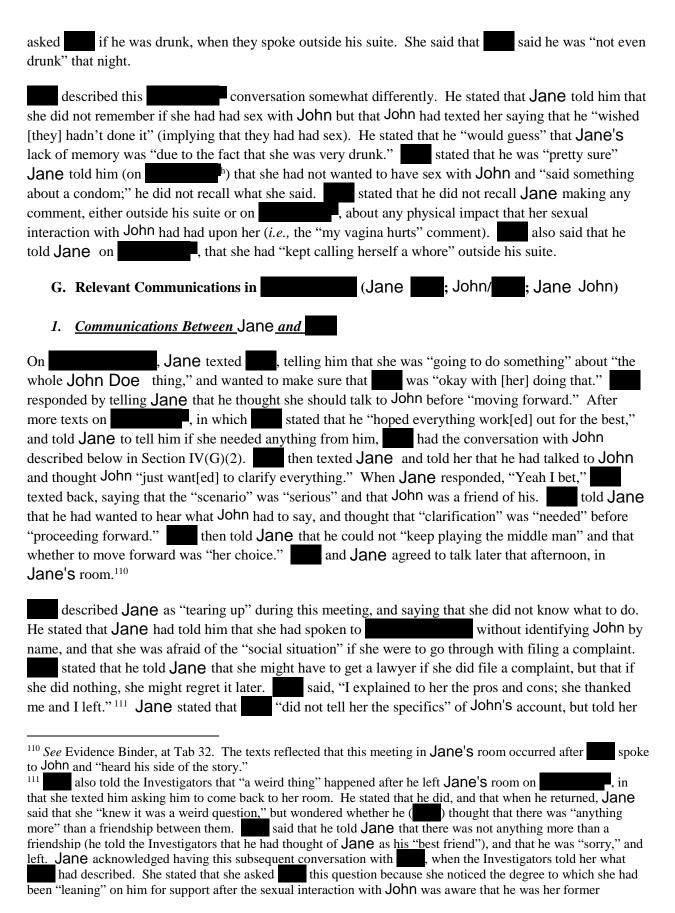
¹⁰⁵ Jane stated that she also saw John when she and were at waved at her; she said that she was "so upset" she "turned away."

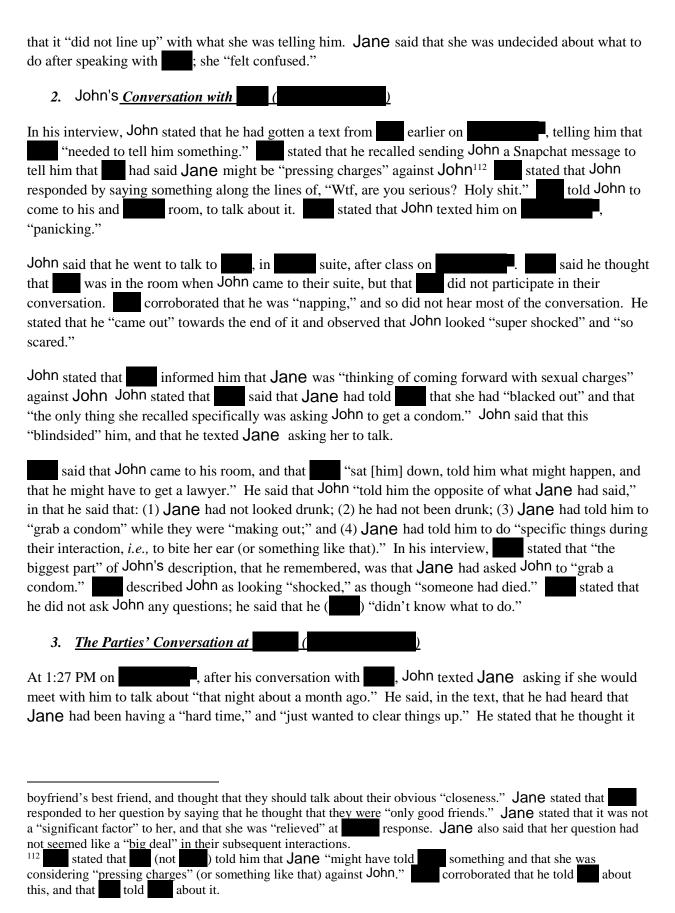
 $^{^{104}}$ The messages referenced in this section (Section IV(F)) were all via Snapchat, and neither party had a copy or screenshot of any of them. **Jane** stated that she took a screenshot of one, as referenced below, but then inadvertently deleted it.

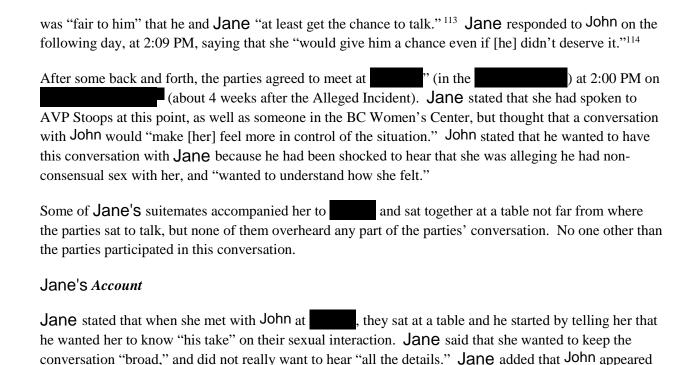


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John and some friends saw Jane standing alone in "they." She then offered to buy his food, as well as food "for two of his friends" (he did not name them). John accepted her offer, and asked if she wanted to come back to his room to eat pizza

"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

• 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.

with them. She agreed, and went back to the suite and ate pizza with them.

• 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 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.

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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 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 you to 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 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 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 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 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 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 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."

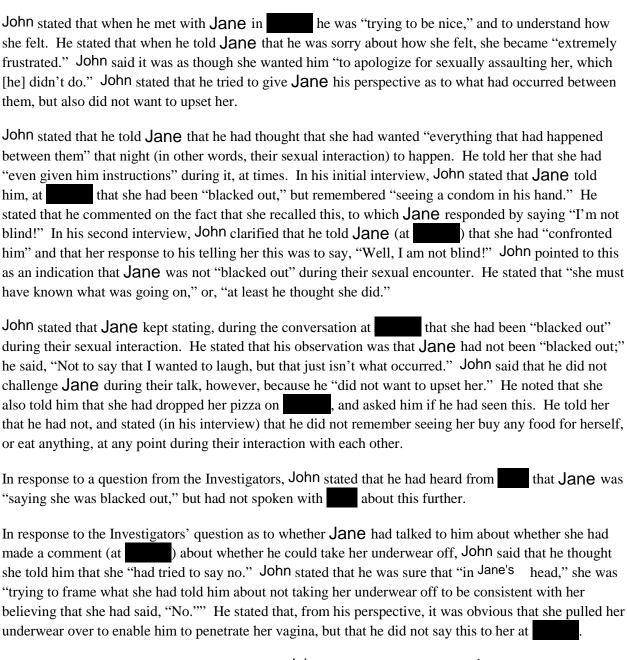
- In response to Jane asking John why he looked uncomfortable when she approached him in the dining hall, asking for her shorts, John said that she "looked like a crazy girl just asking for [her] shorts," and told her that she had been "yelling" and that he "had not known what was going on."
- In response 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 <u>not</u> tell her the following additional things, during the conversation in that the 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 on ...
- 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



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 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 spoken to her at the 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 the last data and a second 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>i.e.</i> , was incapacitated), because of her level of intoxication throughout the parties' sexual interaction in John's room on . 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 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 ;
• Jane's texts to 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 () 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;

•	and all observed that Jane did not remember much of what
	happened during the sexual interaction with John and that viewing texts and
	as well as the pizza stain on , 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, 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 evening. She went "running" to talk to who observed that she was "crying" and "hysterical"), then sat in the lounge area of dorm on the couch in the common room of her suite where she fell asleep without removing her her makeup or her "big hoop earring." 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 ______, 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 <u>Awareness of Jane's Level of Intoxication During the Sexual Encounter;</u> 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 . 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 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 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 his, 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 () 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 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 and and (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, <u>prior to telling</u> John <u>not to take her</u> <u>underwear off</u>, **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.

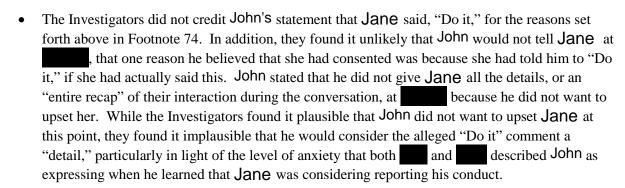
John's Kissing of Jane Removal of Her Shorts; Initial Flirtatious Comments

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.

<u>The Underwear Comment</u>, Jane's <u>Alleged Holding of Her Underwear to the Side</u>; <u>Alleged "Do it"</u> 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 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 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 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 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 that Jane) 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 ______. 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 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. 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 , 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

