

Exhibit F



BROWN

Report of Investigation of Complaint of AD Against BE

I. Parties

- [REDACTED] '18 – **Complainant**
 - Interviewed on November 13, 2015 in person and on January 8, 2016 and February 17, 2016 via video call
- [REDACTED] '17 -- **Respondent**
 - Interviewed on November 19, 2015 and February 2 in person

II. Background

- The Complainant brought this Complaint on October 30, 2015. The Complaint arises out of an incident that both parties agree took place on November 10, 2014 in a third floor locker room in Faunce Hall. The University received the Respondent's Response on November 10, 2015.
- The University retained Djuna Perkins of DP Law in Dedham, Massachusetts to conduct the investigation.

III. Relevant Policy Sections

- **2014-15 Code of Student Conduct. Offenses III. Sexual Misconduct.**

IV. Investigation

A. Witnesses

1. **Witness 1**, identified by Respondent. Friend of both parties. Interviewed 2/12/16 via Facetime video call.
2. **Witness 2**, identified by Complainant. Close friend of Complainant. Interviewed in person 12/11/15.
3. **Witness 3**, identified by the Respondent. Close friend of Complainant, mock trial teammate and friend of Respondent. Interviewed 12/3/15 in person.
4. **Witness 4**, identified by the Respondent. Close friend of Respondent, mock trial teammate of Complainant. Interviewed 12/3/15 in person
5. **Witness 5**, identified by both parties. Friend of Respondent and mock trial teammate of both parties. Interviewed in person 12/3/15.
6. **Witness 6**, identified by Investigator. Mock trial teammate of both parties. Interviewed via Skype 1/5/16.
7. **Witness 7**, identified by the Complainant. Mock trial teammate of both parties. Interviewed by phone 1/4/16.
8. **Witness 8**, identified by Complainant. Interviewed in person 12/3/15. Descriptions of the Respondent's interactions with Witness 8 are included only to the extent they corroborate the nature of the Complainant's relationship with the Respondent after

November 10, 2015. Such information should not be considered as proof of any material fact in this complaint, because the alleged interactions between Witness 8 and the Respondent are not substantially similar¹ to those between the Complainant and the Respondent on the night of November 9-10, and evidence of these interactions would be more prejudicial than informative.

9. **Witness 9**, identified by Complainant. Close friend of Complainant and mock trial teammate of Respondent. Interviewed in person 12/22/15. Information from Witness 9 related to her interactions with the Respondent are included only to the extent they are relevant to the Respondent's claim that Witness 9 and the Complainant conspired against him to present fabricated charges. They should not be considered for any other purpose because they are not substantially similar to the alleged interactions between the Complainant and the Respondent on the night of November 9-10 and evidence of these interactions would be more prejudicial than informative.
10. **Witness 10**, identified by Complainant. Former mock trial teammate of both parties. Interviewed in person 12/11/15. Information received from Witness 10 about her interactions with the Respondent are not included because they are not substantially similar to those between the Respondent and the Complainant on the night of November 9-10, and evidence of these interactions would be more prejudicial than informative. Information about the Complainant's disclosure to Witness 10 about her experience with the Respondent is not included because it was duplicative of that provided by others.
11. **Witness 11**, identified by Respondent. Friend and fraternity brother of Respondent. Interviewed 2/12/16 via phone.
12. **Witness 12**, identified by Complainant. Mock trial teammate of both parties. No response to request for interview.
13. **Witness 13** (alumnus), identified by Complainant. Former mock trial teammate of both parties. No response to request for interview.
14. **Witness 14**, identified by Complainant. Dorm-mate of Respondent. Declined interview request.

B. Information Submitted

1. **Appendix A**: Complaint and Exhibits
2. **Appendix B**: Response (without exhibits)
3. **Appendix C**: Text messages between Complainant and Respondent submitted by Complainant
4. **Appendix D**: Text messages between Complainant and Respondent submitted by Respondent
5. **Appendix E**: Photographs of locker room in Faunce Hall taken by Djuna Perkins
6. **Appendix F**: Excerpt of text messages between Respondent and Witness 8 submitted by Witness 8. These text messages (the first 9 pages of a set of 21 pages of text messages) were considered for a limited purpose: to corroborate the claim that, after their

¹ The Complainant states that the Respondent's conduct with Witness 8, Witness 10 and Witness 9 demonstrates that the Respondent has a pattern of engaging in unwanted conduct with women that corroborates her claim that he coerced her into sexual activity, and/or that the Respondent sexually harassed the Complainant, but they do not. The Complainant argues that the Respondent's actions with these other women in locating their phone numbers without consent and sending them sexually aggressive text messages demonstrates that the Respondent has a pattern of targeting young female mock trial members new to the team. Even if this is true, such behaviors do not demonstrate that the Respondent has a pattern of engaging in non-consensual sexual acts, or that the the Complainant in this case found the Respondent's communications unwelcome. Moreover, it is undisputed that text messages formed the sole basis of communication between the parties until the events that took place in Faunce, and a complete set of these messages is attached as Appendix D. The pattern evidence adds nothing that the text messages themselves do not already provide.

encounter, the Complainant put in a “good word” for the Respondent to her friend, Witness 8; and to corroborate the claim that the Complainant signed the Respondent up for dating websites in early December, 2014, both of which are relevant to the relationship between the Complainant and Respondent after November 10. For the reasons stated above in footnote 1, these text messages should not be considered as proof of the allegations in the Complaint.

7. **Appendix G:** Excerpt from text messages between Respondent and Witness 9 (redacted). These text messages were considered only to the extent they may shed light on the Respondent’s state of mind on the night of November 10, 2015, and to the extent they may shed light on the Respondent’s claim that the Complainant conspired with Witness 9 to fabricate the allegations.

C. Information Provided, But Not Considered, and Investigator’s Rationale

1. Text messages between the Respondent and Witness 10 submitted by Witness 10. As discussed in footnote 1, I did not consider these because they were not substantially similar to the communications between the Complainant and Respondent and therefore do not tend to prove or disprove any material fact in this matter.
2. Text messages between the Respondent and Witness 9 submitted by Respondent and Witness 9, as discussed in footnote 1, aside from the excerpt contained in Appendix G, because their potential prejudicial impact outweighs their probative value.
3. Email written by the Respondent to Mock Trial members in the summer of 2015 and the Respondent’s statements of interest in becoming an Eboard member in the spring and summer of 2015, submitted by the Complainant, because they did not tend to prove or disprove any material fact in this matter.
4. Facebook post provided by Witness 9, because it is not directly relevant to the allegations in this complaint.

D. Relationship between Complainant and Respondent from September 1 – November 9, 2014

During the 2014-15 academic year, both parties were members of the mock trial team, whose activities formally begin at the end of September. It was the Respondent’s second year on the team and the Complainant’s first. The mock trial team is divided into three smaller teams. The parties were not on the same team, but the Complainant states that she respected the Respondent because he was an upperclassman and because of his reputation as a strong mock trial member. The parties agree that their first significant social interaction took place around September 26, 2014, when both attended Mock Trial’s annual “Sake Bombing” event at a local restaurant, and that they talked while walking to the event. It is further undisputed that the parties interacted when the Respondent cross-examined the Complainant as she played the role of a witness in a mock trial case, and that they spent some time together talking during the weekend of a tournament at Brandeis on November 1-2, 2014.²

It is undisputed that a few days later, the Respondent located the Complainant’s phone number in the mock trial member directory and sent the Complainant a text message after he inadvertently “friended” her mother on Facebook. The Complainant states that the Respondent sent the first text message on November 5, but it appears that she is mistaken, because Appendix D shows that the Respondent first texted the Complainant on November 6. **Appendix D.**³

² These interactions are not included in the Complaint, however.

³ Both parties submitted a set of the text messages between them. The Complainant stated that she did not have all of their texts because she had deleted those written prior to November 7 at the Respondent’s suggestion, **Appendix D at 42** to prevent her boyfriend, whom she was visiting that weekend, from seeing them. **Appendix D at 42.** That the Complainant may have deleted the messages to prevent detection by her boyfriend played no role in any credibility assessment. The information is included here only

1. Complainant's version of events

The Complainant states that after the initial exchange about “friending” her mother, the Respondent “proceeded to be flirtatious by text message...I realized his interest and informed him that I already had a boyfriend [but he] continued to sen[d] pushy text messages. I tried to be polite to avoid it becoming an awkward situation given that we were teammates.” **Appendix A—Complaint, p. 1.** The Complainant further states that between November 7 and November 9, the text messages continued, “and while I engaged in some banter, [the Respondent] escalated [them] in sexual aggressiveness.” **Appendix A—Complaint, p. 1.** She states that she tried to steer the conversation toward more neutral topics, but the Respondent kept returning to sexual topics. **Appendix A—Complaint, p. 1.** The Complainant states, “Looking back now, these messages were part of a cycle of his sexual aggression and sexual harassment, but at the time I tried to indulge some of it while steering it towards a friendship to avoid it becoming awkward between us on trial.” **Appendix A—Complaint, p. 1.** The Complainant further states that she only allowed herself to make the conversation sexual after he assured her it was all “just talk.” The Complainant states that she engaged in the texting with the Respondent because her boyfriend was not treating her well and she “just needed support at that moment,” so she decided to trust the Respondent.

2. Respondent's version of events

The Respondent states that he first met the Complainant at the first mock trial meeting of 2014-15. At this meeting, he was introduced to new members as one of the team captains. After this meeting, the Complainant approached him and talked with him as a large group of mock trial members walked to the annual mock trial “Sake Bombing” event on September 29, 2014. The Respondent thought the Complainant was interested in him. Their next memorable interaction was during a practice, when the Respondent was asked to cross-examine the Complainant as she played the role of “Jesse,” a witness in one of their cases. The Respondent states that the next time he had any significant social interaction with the Complainant was at the Brandeis mock trial tournament the weekend of November 1, 2014. The Respondent recalled speaking with the Complainant while playing Mafia in a group after the tournament and speaking with her at dinner. The Respondent states that she was laughing at his jokes and talking about having trouble with her boyfriend. The Respondent interpreted the Complainant's actions as a signal that she might be interested in him. A few days later, the Respondent states that he tried to “friend” the Complainant on Facebook, but accidentally “friended” her mother, who accepted the request. The Respondent states that he then located the Complainant's phone number in the mock trial directory, and sent her the text message that began their more intense conversations on November 6.

The Respondent states that the Complainant mutually participated in the flirtation, and that the Complainant was the one who escalated the conversation to include explicit discussion of sex, and to hint that she would be interested in having sex with him. He states that he was interested in her and had no problem with that and was “eagerly welcoming it.”

3. Documentary evidence

Between November 6 and November 10, the Complainant and Respondent generated 134 pages worth of communication by text. **Appendix D.** A significant portion of the messages are comprised of explicit

to the extent it may explain why she did not include the pre-November 7 messages between them. The Complainant did not explain the absence of the text messages between the parties after November 14, however. Because the Respondent's set of text messages was complete and unredacted, and because the Complainant acknowledged their authenticity, this report refers exclusively to the text messages submitted by the Respondent and contained in Appendix D. The material redacted from Appendix A and included in Appendix B played no role in any credibility assessment.

discussions about sex with other people and each other initiated by both parties. After an hour or so of benign chatter, on the late morning of November 6, the Complainant initiated a discussion about an incident in which she inadvertently showed her breasts to some young men while she was intoxicated. **Appendix D, pp. 4-5.** In their interviews, the Respondent said he understood this as a signal that the Complainant was open to talking about, and possibly engaging in, sex; the Complainant said she just thought this was a funny story and did not intend it to imply that she was interested in sexual activity with the Respondent.

Shortly after 1 p.m. that day, the conversation turned toward a discussion of casual sex in general. During this conversation, the Complainant said, “Being unattached doesn’t seem to[o] bad though. You can like just hook up with someone for fun and not worry about it. I’ve never done that so I don’t know if I’d be able to keep feelings out of it,” and, “I love my boyfriend but part of me just wants to go fuck someone I just met like everyone else is doing.” **Appendix D at 8.** Referring to hookups, the Complainant said, “I’ve heard people say [sex without emotion] is not the same [as sex with emotion] but it just sounds like a thrill is all.” **Appendix D at 8.** The Complainant then states, “I know you’re not supposed to fuck sleep with your friends but idk it’s something I’d want to try but who knows if I’ll ever get that opportunity.” **Appendix D at 9.** She further stated, “I’ve just been really ‘frustrated’ lately because I haven’t seen my boyfriend in like almost 2 months so I’m like dying for some sort of human contact haha. And I’m talking like [penis in vagina] haha.” **Appendix D at 10.**

The Respondent states that he interpreted this discussion to be a signal that the Complainant was interested in possibly engaging in no-strings-attached sex with him.⁴ The Complainant also said, “with someone new I’d imagine there’s less technical talk [during sex] and you’ve just gotta figure it out which sounds fun too, do you know what I mean?” **Appendix D at 9.** The Complainant states that she did not mean to suggest in this discussion that she was interested in having sex with the Respondent. She states that she is a very open person and thought it was not an abnormal conversation to have with a friend and that it was “interesting to have a guy’s perspective.” At this point, though they had known each other for such a short time, the Complainant states that the intensity of their conversation made her feel like the Respondent was a close friend.

The text messages show conflicting evidence about whether the Complainant was interested in pursuing a sexual relationship with the Respondent. For example, the Complainant tells the Respondent she is “taken.” **Appendix D at 11.** However, in the same comment, she also tells the Respondent, “I will deny having said this but you’re somewhat cute yourself.” She also says, “Am not!!! XD” when he suggests she is “hitting on” him, and then when he jokingly says he is not hitting on her, she says, “Good to know this conversation is completely innocent. Haha.” **Appendix D at 11.** The Respondent then baits the Complainant by suggesting their sexual innuendo is “just talk,” and the Complainant responds, “Well maybe you’ll see, maybe you won’t!” **Appendix D at 12.** Nonetheless, this conversation concludes with the Complainant saying, “Just to be clear, this is all just for fun. On the same page?” **Appendix D at 12.**⁵ And then, “It’s just that I may be a sucky girlfriend right now but I still do have a boyfriend. Who I am seeing later today.” **Appendix D at 13.**⁶

After a break in the conversation while the Complainant had mock trial practice, it was the Complainant who initiated a new conversation later the day of November 6, however. **Appendix D at 25.** The flirtation quickly resumed and became explicitly sexual. When the Respondent suggests he is going to share explicit sexual fantasies, the Complainant says, “Do I have to respond accordingly? Remember I’ve got some moral dilemmas. You can say whatever but I can only say so much.” **Appendix D at 28.** The Complainant expresses some

⁴ The Respondent states that the Complainant’s disclosure regarding her sexual history is evidence that she wanted to have sex with him on the night of November 10. The Respondent’s interpretation of this disclosure is relevant to the defendant’s state of mind on the night of November 10. The panel may also consider the Complainant’s disclosure to the extent it finds the disclosure relevant to the Complainant’s state of mind on the night of November 10, keeping in mind that the panel must evaluate whether consent existed at the moment a sexual act occurs, and that consent may be withdrawn at any time. The Complainant’s sexual history itself is not relevant to whether the Complainant consented to sexual acts with the Respondent on the night of November 10 and should not be considered in evaluating whether the Complainant consented to sexual acts with the Respondent.

⁵ This text also includes a reference to a witness in a mock trial case.

⁶ The Complainant was planning to spend the weekend in New York visiting her family and her boyfriend.

initial hesitation in participating in sexually explicit discussion, but she ultimately actively participates in describing sexual fantasies herself, even requesting a short break while she finishes packing and takes a cab to the train station, where she resumes the conversation. **Appendix D at 28-30.**⁷ However, when the Respondent asks her if she would have sex with him while dating her boyfriend, the Complainant says, “I don’t think so, unless I got a ‘hall pass’ or something. I’ve always been so against cheating idk it doesn’t seem right,” to which the Respondent replies, “Understandable,” but asks if she would ever break up with her boyfriend. **Appendix D at 36.** The Complainant says she doesn’t want to talk about it then, and changes the subject. **Appendix D at 37-38.** Later, the flirtatious conversation picks up again, but the Complainant tells the Respondent it’s all “[t]heoretical[], [s]trictly theoretical[].” **Appendix D at 47.**⁸

The next day, November 7, 2014, the Complainant, referring to herself as Jesse, a role she played in mock trial, tells the Respondent she is “extremely confused about what she wants,” from the Respondent. **Appendix D at 51.** She then asks the Respondent why he is interested in her. He replies, “[B]ecause I think you’re cute[.] And because the first time I met you I thought about bending you over in a court room.” **Appendix D at 52.** The Complainant replies:

Fair enough...just wanted to know! And now another question[.] I need you to pinky promise you’re gonna let me take the time I need to figure everything out. Because if I feel pressured at all that will definitely ruin this friendship and make the next 2.5 years very uncomfortable on mock trial[.]

Appendix D at 52. The Respondent agrees to give her the time she needs, and the Complainant then says, “Good, [a]m I still invited to watch a movie if I don’t want to have sex with you?” **Appendix D at 52.** The Respondent says she is, but “[B]e warned[.] You’re going to be turned on,” to which the Complainant replies, “I’m sure I will be[.] But it’ll be my choice if I want to act on that?” **Appendix D at 52.** The Respondent replies, “Of course.” **Appendix D at 52.** The two then resume their sexually explicit banter.

At one point, the Complainant says, referring to the Respondent:

It’s just weird, we literally started out barely knowing each other and in a couple hours I like trusted you without having any real reason to, felt like mind control[.]...Feels like a good thing, also feels a little wrong...but not necessarily bad.

Appendix D at 62. The Complainant also accuses the Respondent of interpreting what she says as he wants to hear it, i.e., in a sexual way. **Appendix D at 65.** Then, after the Respondent suggests the Complainant “really do[es] want to be turned on,” the following exchange took place:

Complainant: Maybe I’m not sure because [their “sexting” the day before] was really fun but now it’s sinking in and a lot to handle and kind of scary

Respondent: Maybe I should leave you alone then...

Complainant: I’m just so fucking confused GAH.

....

Complainant: Well yesterday was great and I knew it was wrong but it was such a thrill and it was fun...Anyways yesterday everything felt right all around. Today my relationship feels wrong and this feels wrong and I just feel like dirty...

Appendix D at 66. The parties then discuss whether the two of them should “sneak around” on her boyfriend. **Appendix D at 67.** The Complainant expresses interest in doing this but also guilt, and tells the Respondent

⁷ The Complainant went home to New York for the weekend, where she visited her family and her boyfriend.

⁸ The Respondent also suggests that their relationship might be more than merely sexual by saying, “Gotta get on good terms with [Complainant’s mother].” **Appendix D at 47.**

“It’s hard to talk to you when I feel like you’re controlling me.” They continue to discuss the issue, however. Ultimately, the Respondent says, “If you’re happy [with your boyfriend], and [being with him is] what you want[, t]hen I’ll leave you alone.” **Appendix B at 69.**

The Complainant says she thinks she is happy with her boyfriend, so the Respondent says “maybe I should go then,” to which the Complainant replies, “Are we still friends?” **Appendix D at 69.** The Complainant apologizes for the flirtation and asks if she can do anything to make up for it. **Appendix D at 70.** The Respondent replies, “Watch a movie with me.” Immediately after asking her to watch a movie with him, the Respondent turns the subject back to sex, saying, “And if you get turned on I’m not taking responsibility.” **Appendix D at 70.** The Respondent states that by inviting the Complainant to watch a movie, he was “hoping for the best [i.e., a sexual interaction], but preparing for the worst [i.e., that she would refuse sex and they would just platonically watch a movie together].”

This time, the Complainant avoids the subject of sex and then begins making plans with the Respondent to watch a movie and play video games together. Eventually, the Respondent again steers the conversation back to sex by saying, “You pick the game. If you win, you get to make me do anything you want. If I win, I get a kiss. A real kiss.” **Appendix D at 74.** The Complainant asks, “Wouldn’t that still be cheating[?]” and “I’ll think about it.” **Appendix D at 75.** The Respondent then tries to escalate the conversation sexually, over the Complainant’s objections. **Appendix D at 75.** The Complainant states, “I...don’t want to lead you on [y]a feel?” to which the Respondent replies, “I understand completely,” but continues the sexual banter by saying, “And I don’t want to be unfair to you and make you wet when there’s nothing I can do about it.” **Appendix D at 75-76.** The Respondent states that by making this comment, he was trying to make it clear he wanted a sexual relationship. The Complainant again changes the subject, asking the Respondent what his favorite color is. **Appendix D at 76.** The Respondent then steers the conversation back to flirtation by saying, “When did you first decide you were attracted to me[?]” to which the Complainant responds, “Probably at the sake bomb but I didn’t think much about it.” **Appendix D at 78.**

When the Respondent comments that the Complainant is “passionate [a]nd funny [a]nd quirky [a]nd sexual,” the Complainant replies, “I would agree with those haha.” **Appendix D at 79.** However, when the Respondent says, “I like a woman who isn’t afraid to show when she’s interested,” the Complainant does not specifically respond to this comment. **Appendix D at 80.** Nonetheless, when the Respondent then resumes explicitly sexual conversation by saying, “Have you ever wanted to fuck in a classroom[?]” the Complainant replies, “I’ve never really thought about it in college. That was a fantasy of mine in high school though. I had a really hot gym teacher.” **Appendix D at 81.** The parties continue their sexually explicit conversation until the Respondent says, “I think we both know what should happen [between us]” and the Complainant says, “I’m doing what is best for me right now.” **Appendix D at 85.** When the Respondent suggests she is making the wrong decision, the Complainant replies, “I will keep that in mind, but I think I’m happy with [keeping our relationship platonic].” When he reminds her of his suggestion that they play video games for a kiss, she says, “I haven’t even agreed to that...I’m not so sure it’s a good idea.” **Appendix D at 85.** The Complainant replies, “If that’s how ya feel it’ll just be your loss,” to which the Complainant replies, “Then I guess I lose either way right?”

After a break on the 7th, the parties resumed their conversation, speaking platonically about mock trial events, until the Respondent says, “Stop doing that again...Turning me on without even saying sexual things.” **Appendix D at 87.** The Complainant replies, “God dammit [I]’m just being friendly[.]” **Appendix D at 87.** Mildly sexual banter proceeds again from that point, with the parties discussing what would happen if they wrestled and the Respondent saying he might want to “hold [the Complainant] down,” and then suggesting they should try to watch the movie somewhere no one will notice them. **Appendix D at 87-92.** The Complainant then says, “All right. This seems very sneaky just to watch a movie as friends though...” **Appendix B at 92.** The Respondent replies, “It does,” to which the Complainant responds, “Well that’s really all this is,” and the Respondent replies, “Mhm.” **Appendix D at 92.**

The Complainant suggests they can go to either of their rooms to watch the movie. After the Respondent sends the Complainant a suggestive Snapchat and asks her to comment on it, the Complainant says, “[Respondent] cmon I can’t keep doing this,” and the Respondent replies, “I just want you to admit already,” that she was attracted to him. **Appendix D at 94.** She says, “I really do think you’re awesome and I’d love to be friends and hang out more and stuff, I just can’t always say what you want to hear.” **Appendix D at 94.** When he then reminds her about their earlier sexually explicit conversation, she says, “That was lots of fun to talk about. But if I come over that can’t happen.” **Appendix D at 95.** The Respondent replies, “I understand[.] It’s just going through my head.” **Appendix D at 95.** The parties continue to debate whether they should actually watch the movie together because the Respondent says perhaps they shouldn’t if she doesn’t want a sexual relationship with him, because a sexual relationship with her is “something I very much desire.” **Appendix D at 95.** She replies, “If that’s what you think is best.” **Appendix D at 95.** The Respondent then says, “It’s not[.] I just don’t want to upset ya,” by “putting my arm around you.” **Appendix D at 96.** The Complainant then states, “I mean that wouldn’t be a big deal it just couldn’t go past that,” and the Respondent says, “Okay fair[.] Let’s do it.” **Appendix D at 96.** The Complainant replies, “Deal? Platonic cuddling is the max you’re allowed haha... Unless I clearly express to you in words that my mind is changed[.] Fair?” to which the Respondent states, “Of course. Unless you change your mind.”⁹

The Respondent then turns the discussion toward explicit sex again. The Complainant says, “What if you were sure there was no chance I would ever have sex with you? Where would you go from here?” **Appendix D at 97.** The Respondent says, “I’d be friends,” to which the Complainant replies, “And would you watch a movie with me?” to which the Respondent replies, “No.” **Appendix D at 97.** The Complainant then says, “Hmmm so what’s the goal of this really then[?]” to which the Respondent says, “I’ll let you figure it out counsellor.” **Appendix D at 97.** When the Complainant accuses the Respondent of trying to manipulate her, the Respondent says, “I’m trying to manipulate you a lot.” **Appendix D at 97.** When she replies that she just wants to be friends, the Respondent says, “So do I. I just want you to be a friend I fuck the shit out of.” **Appendix D at 98.** When she replies that she doesn’t know how to make herself more clear, he says, “I get it. Just not accepting.” **Appendix D at 98.** When the Complainant repeats that she does not want to engage in a sexual relationship with him, the Respondent says, “Alright[.] Well, I’m sorry for wasting your time.” **Appendix D at 98.** The Complainant states that she thought the Respondent was angry at this point, so she said, “Are we ok?” and then apologizes for flirting with him. The Respondent eventually says they should stop texting each other, but two hours later, he resumes the conversation by apologizing to the Complainant for texting her in the first place. **Appendix D at 100-01.**

By the following afternoon, November 8, the two had resumed their conversation. While it was the Respondent who again turned the discussion toward sex, the Complainant participated, though not as explicitly as she had in the earlier conversation. **Appendix D at 101-105.** At one point, after the conversation turned to more benign topics, the Complainant asks the Respondent a question related to mock trial, and the Respondent says, “Thinkin you can just friendzone me and then ask for mock trial advice I see.” **Appendix D at 110.** Later that night, the Complainant again reminded the Respondent, at **Appendix D at 116**, that they had to keep the relationship platonic. Immediately thereafter, however, the parties resumed “sexting” for the remainder of that day and through the afternoon of November 9, when the Complainant was returning to Brown after visiting her boyfriend and family for the weekend. **Appendix D at 117-124.** At one point during this exchange, the Complainant says that during sex, she would like, “Just instead of always getting asked what makes me feel good, the other person doing whatever the fuck they want with me because it makes them feel that good. Like they can’t control themselves.” **Appendix D at 123.** The Respondent replied, “You want that person to have their way with you,” and the Complainant replied, “You could say that.” **Appendix D at 123.** The Respondent then said, “You want that person to treat you like a piece of meat during sex is what it sounds like,” to which the Complainant replied, “Basically.” **Appendix D at 123.** When the Respondent suggests that “we,” referring

⁹ This conversation is quoted out of order because it appears that both were texting at the same time, so it has been reordered in a logical sequence.

to he and the Complainant, would be doing this with each other, the Complainant corrected him, in an apparent effort to again state that she did not intend to have sex with him.

The Complainant states that her active participation in the “sexting” notwithstanding, she genuinely believed that it was all just talk, because she had made it clear to the Respondent that she did not want to pursue any sexual relationship with him and just wanted to be friends. She states that she thought sexting was “just a thing people did in college,” and she did not take it seriously.

The Respondent states that, despite the Complainant’s statements that she did not want a sexual relationship with him, her active participation in the sexting, her compliments and flirtatious banter with him, her re-initiation of conversations after he accepted her decision and stopped communicating with her, all in the face of his clearly stated sexual interest in her, made him believe that the Complainant liked his attention and was in fact interested in a sexual relationship with him.

E. November 9-10, 2014

1. Planning to watch a movie together

On the evening of November 9, as the Complainant rode the train back to Providence, the Respondent raised the idea of watching a movie together again, despite their earlier agreement that it would be a bad idea if the Complainant really did not want a sexual relationship with the Respondent. The Complainant states that because the Respondent was only sexually suggestive once during this conversation, when he said, “I’ll do more than protect ya,” (**Appendix D at 129**),¹⁰ and promised that he just meant he would “keep her safe,” after she asked, “What’s that suppose to mean!” she felt reassured that nothing sexual would occur. **Appendix A--Complaint p. 2.** However, Appendix D suggests that the Complainant may not only have known that the Respondent was still interested in engaging in sexual acts with her, but also that she may have been interested in engaging in some kind of sexual activity with him that night. When the Respondent first suggested they reconsider watching a movie, the Complainant said, “I would be 100% up for that,” to which the Respondent replied, “Even if you knew what would be on my mind?” **Appendix D at 126.** The Complainant responded, “I’m no better.” **Appendix D at 126.** As they make their plans to watch the movie, the Complainant says, “I feel like a fifth grader with a crush...I have no fucking idea what’s gotten into me haha[.]”¹¹ **Appendix D at 127.** The Complainant states that her “I’m no better,” remark “was just meant to let [the Respondent] know that it was ok that we knew we were attracted to each other and that didn’t have to get in the way of our hanging out,” and she did not intend to imply that she wanted to act on this attraction.

The Complainant said they should not go to her room to watch the movie because her roommate would likely be asleep since her train would not arrive until 12:30 a.m. **Appendix D at 128.** The Respondent could not use his room because he lived in his fraternity’s dorm and a fraternity event, the “week of silence,” forbid him from

¹⁰ Because of an additional page, 115A, inserted between pages 115 and 116 of Exhibit D, all pages after page 115 appear to be incorrectly marked when viewing the exhibit in a PDF reader. All page references to Exhibit D are to the number marked on the bottom of the page.

¹¹ Another statement the Complainant made provides some context for her seeming change of heart about wanting to see the movie with the Respondent. She states that she and her boyfriend “got in a fight ... today but I shouldn’t tell you about that,” presumably because telling the Respondent more about the argument would fuel his hopes that she would cheat on her boyfriend with him. **Appendix D at 128.** Later, the Complainant tells the Respondent she and her boyfriend argued about the fact that he was laughing about something and then refused to explain what he was laughing about, apparently because it violated fraternity rules, and this made her angry. **Appendix D at 130.** The Respondent then said, “LOL that’s stupid, can’t keep secrets from your partner,” to which the Complainant replied, “That’s how I see it, but he said we should get our own secrets. Fine by me.” **Appendix D at 130.** The Complainant states that her “secret” was not that she wanted to sexually engage with the Respondent, but that she had been talking to and planning to hang out and “platonically cuddle” with the Respondent at all, because her boyfriend would have been upset about even this contact.

speaking to anyone. The two agreed to bring a laptop to a campus building to watch the movie. **Appendix D at 128.** The Respondent said, “Faunce is open all night and I know the perfect spot there.” **Appendix D at 128.** When the Complainant asked where, the Respondent said, “Well there’s a few I’ve got in mind, we can feel it out once we’re there.” **Appendix D at 129.** The Complainant states she agreed to go to Faunce because she thought other people would be around and she would be safe. I did not ask the Respondent what “perfect spot” he referred to in his earlier message.

At 1:24 a.m. on November 10, the Complainant texted the Respondent to tell him that she had finally arrived in her room. **Appendix D at 133.** Although the Complainant states, in Appendix A, that they met around 2 am, text messages indicate that the two met shortly after 1:30 a.m. **Appendix D at 134.** The Complainant states that she thought they were going to watch the movie in a public lounge and there would be others around. She states that she thought they might “platonically cuddle,” because that is what she agreed to in their text messages and she had no reason not to believe him when he agreed to those limits. She states that she did not anticipate anything else because she had clearly stated she did not want anymore than that. She states that she agreed to watch the movie despite the lateness of the hour because he was about to begin a fraternity-imposed week of silence.

2. In Faunce Hall

The parties agree that in the locker room of Faunce Hall, they sat with their backs against the bank of lockers facing the door as they began the movie, and that the Complainant sat to the Respondent’s left. **Appendix E.** The Respondent states that he sat roughly in the location of the trash bag pictured in the photo, though of course the trash bag was not in the room at the time. They further agree that the following sexual activities took place in the room: kissing, touching of the Complainant’s breast, penetration of the Complainant’s vagina with the Respondent’s fingers, and performance of oral sex on the Respondent. The parties further agree that the Complainant’s performance of oral sex was interrupted once when the light, which was activated by a motion sensor, turned on in the room and the Complainant got up to turn it off.¹² The parties further agree that for at least some of the time, the Complainant performed oral sex on the Respondent while the Respondent was standing and the Complainant was kneeling; and that the Respondent ejaculated in the Complainant’s mouth.

a. Complainant’s version of events

The Complainant states that once they arrived in Faunce, she let the Respondent take the lead in finding a location because, as a freshman, she was not yet familiar with this building. She states that she and the Respondent first went to the blue room, but there were people there, so they talked about watching it on the roof, but it was too cold, so the Respondent brought her to the locker room on the third floor of Faunce. The Complainant states she was “kind of nervous,” when they got to the locker room because it was not a public room, but she “didn’t want to be dramatic,” so she didn’t insist on a more public location or simply decide to leave. Once in the room, the Complainant states that she took off her jacket and shoes and Respondent opened his laptop, set up the movie, “The Silence of the Lambs,” and started it. **Appendix A at 2.** The Complainant states that the lights were off at this time.

The Complainant states that the Respondent put his arm around her as they sat next to each other. No sooner had the movie begun, however, than the Respondent “physically grabbed [her] face” to kiss her on the mouth. **Appendix A at 2.** The Complainant states that she immediately turned her head away and prevented him from kissing her. **Appendix A at 2.** The Complainant states that the Respondent said, “No?” and she verbally told

¹² The Respondent states that that light went on after his pants had been pulled down but before the Complainant began performing oral sex; the Complainant states that she had already begun performing oral sex when the light went on. The Respondent states that the light also interrupted them once before this, when the Complainant pushed him onto his back and got on top of him. The Complainant denies that she pushed the Respondent onto his back and got on top of him, and denies that the light went on more than once.

him she didn't want to kiss him by saying, "No, I'm sorry." The Complainant states that she also intended this statement to apply to any other sexual activity. **Appendix A at 2.** The Complainant states that the Respondent ignored her wishes and then started kissing her on the cheek. **Appendix A at 2.** In between kisses, the Complainant states that the Respondent asked, "Can I at least kiss you on the cheek then?" Because he was already kissing her cheek, she states that she said, "I guess, but I can't do anything else." The Respondent replied, "Oh, so I can do whatever I want as long as you don't do anything back?"¹³ The Complainant states that she replied, "I'm just trying to watch the movie" and kept staring straight ahead. At that point the Complainant states that the Respondent put his hand on her breasts over her shirt. Shortly after that, she states that he said "May I?" The Complainant states that she was confused and upset, so she replied, "May [you] what?" **Appendix A at 2.**

The Complainant states that the Respondent didn't reply. Instead, she states that the Respondent "forced his fingers" into her vagina, **Appendix A at 2,** and began "fingering" her roughly, which was painful.¹⁴ The Complainant states that she was very uncomfortable, so she "froze" and did not respond, and just wanted it to be over with. **Appendix A at 2.** The Complainant states about fifteen seconds later, the Respondent leaned over to kiss her on the lips. She states that she did not resist because she "just wanted it to be over with." However, she states she did not open her mouth and just passively accepted the kisses. She states that the Respondent made some joke about being stronger than she was. The Complainant states that the Respondent then pushed her onto her back and got on top of her and kept kissing her, and then rolled onto his back and pulled her on top of him. She states that the Respondent then said, "I know you want to fuck me right now." The Complainant states that she said she really couldn't, and he replied, "Well, at least give me a blowjob then." **Appendix A at 2.**¹⁵ The Complainant states that she said, "I really shouldn't," and, "[I'm not] sure," but in truth, she did not want it to happen at all and wanted to leave. **Appendix A at 2.**

The Complainant states that the Respondent kept saying, "I know you want to," and she felt she would not be able to leave unless she complied. **Appendix A at 2.** In her interview, she stated that she thought performing oral sex on him would be the easiest way to leave. The Complainant states that the Respondent then pulled his pants down, and she performed oral sex on him. She states that at first he was standing and she was sitting. In her interview, the Complainant states that he had his hands on the back of her head and was pushing it down. She states that at one point she was gagging so she stopped and he said, "Put my dick back in your mouth." At this point, the Complainant states that the light came on and she asked if she should turn it off. He said, "Yeah," so she walked over to the light switch to try to turn it off but couldn't.

The Complainant states that the Respondent then walked over with his pants around his ankles and stood up against her, grinding, and then turned the light off, after which they both walked back to the middle of the room. The Complainant said, "I figured I was supposed to continue [performing oral sex] with him standing," so she knelt in front of him and resumed oral sex. This time, she states that he said, "No, I want you to make me come on your own," so he put his hands on her neck, but did not place any pressure on her head. She said he said things during this time like, "Oh, you're really good at that." The Complainant states that the Respondent asked if he could come in her mouth, and she said okay, because she didn't want to leave a mess on the carpeted floor. She further states that at one point when she stopped performing oral sex briefly, he said, "Put my dick back in your mouth." **Appendix A at 2.**¹⁶ After he ejaculated, the Complainant states that the Respondent said

¹³ This statement is similar to a text message from the Complainant to the Respondent in which she said, "Remember I've got some moral dilemmas. You can say whatever but I can only say so much." **Appendix D at 28.**

¹⁴ The Complaint describes this sequence of events slightly differently. It states that after she told him she didn't want him to kiss her, the Respondent "kissed me on the cheek and then asked, 'may I?' I was upset and confused, so [I] asked, 'may I what?' [The Respondent] then forced his fingers into my vagina to sexually assault me." **Appendix A at 2.**

¹⁵ In her interview, the Complainant clarified that the Respondent said, "Then at least you have to give me one of those blowjobs you were talking about."

¹⁶ The Complainant did not state when this comment was made in relation to the other events described.

something like, "I'd love to stick around but it's getting late." The Complainant states that until this time, she did not leave because, "He kept guiltting me."

The Complainant also said she did not feel free to reject the Respondent's sexual advances and requests because they were both on mock trial and she would have to be around him for the next two and a half years until he graduated. She states that she didn't want to seem dramatic and didn't want to be the one to "storm out of a place." She states she thought performing oral sex on him was the best way to avoid having intercourse with him, and that if she refused to do that, it would be awkward having to sit there and watch the movie.

The Complainant states that at about 3 a.m., she "finally could leave," and on her way out, she told the Respondent he was the kind of person who made people do things they don't want to do. **Appendix A at 2.**¹⁷ The Respondent replied, "I know you wanted to." The Complainant states that she then went home "in shock and upset about what happened and just wanted to sleep." She states that when she arrived back in her room, she "went to sleep and decided to [deal with what happened] later." **Appendix A at 2.**

The Complainant states that the next day, she did not know what to make of what happened, and told her friends only that she had "hooked up" with the Respondent. She states she "kept trying to justify his behavior, thinking maybe he just misinterpreted" what she wanted. She also thought, "Maybe we'll end up dating and this will all be okay." She was also confused about the impact this incident would have on her relationship with her boyfriend, and wanted to talk to the Respondent about it, but could not until he had completed his week of silence. The Complainant acknowledges that when the Respondent completed his week of silence, she was "kind of flirting with him again." She states that she wanted to believe it had all been in her imagination and that he genuinely liked her.

A few days after November 10, the Complainant states that there was a lecture on campus about consent and someone mentioned coercion. The Complainant could not recall the specific circumstances of this lecture, but said that it was this lecture that made her realize that what happened between them was not consensual, and that the Respondent had coerced her into engaging in sexual acts with him. It was then, she states, that she told some of her friends that what happened that night was "not exactly consensual." The Complainant states that the first people she told about what happened that night were Witness 8 and Witness 2. She states that while she was at the UCI tournament in California, she also told Witness 9. She states that she was standing with Witness 9 when the Respondent walked by. She states that she told Witness 9, "He's pretty much a jerk because I told him I didn't want to do anything at the movie and as soon as we got there he was grabbing me," but states she did not provide explicit detail at that time. She states that a few weeks later, she disclosed more details to Witness 9 by text and Facebook. She states she did not report the incident to the University at the time because she did not want to get the Respondent into trouble, thought they would have to continue to interact on mock trial, and did not realize the University had mechanisms such as no-contact orders because she had been sick during the Title IX trainings for her dorm. The Complainant believed her best option at this time was to try to remain civil to keep the peace while also continuing to pursue mock trial, because mock trial was very important to her.

b. Respondent's version of events

The Respondent states that when he and the Complainant met at the J. Walter Wilson building, their cards would not allow them to get past the main lobby, so they swiped into Faunce. In Faunce, they looked in the blue room, but someone was there, so they went to the lounge downstairs, but someone was there playing pool, so the Respondent suggested the mock trial locker room. The Complainant was not familiar with this room, but the Respondent told her it had no chairs, but had carpet they could sit on. The Respondent states that the

¹⁷ In her interview, the Complainant states that she said, "You're like that guy my parents warned me about who will make you do things you don't want to do."

Complainant did not suggest staying in either the blue room or the lounge, and did not seem uncomfortable staying in the Faunce locker room. The Respondent states that when they got into the room, they set up the movie and they wanted to turn the light off to reduce screen glare, but it took them some time to figure out how to turn the light off because it was a motion-activated light. He states they did turn the light off, however, and started watching the movie. He states that they were both sitting on the floor, leaning back against a bank of lockers opposite the door to the room, with the laptop on the floor in front of them.

The Respondent disputes that he placed any pressure on the Complainant at all to participate in sexual acts with him, and states that she initiated some of the acts. The Respondent states that “within minutes” of beginning the movie, he told the Complainant she looked pretty even in her sweat pants. **Appendix B at 3-5.** He states that he then moved his head toward hers and she moved her head toward his and “[w]e started to make out.” **Appendix B at 3-5.** The Respondent denies asking, “May I?” denies that the Complainant said, “May I what?” and denies grabbing the Complainant’s face. The Respondent states they “squeezed each other tightly and vigorously kissed,” and then the Complainant pushed him on his back and got on top of him with her legs straddling him. **Appendix B at 3-5.** In his interview, asked what he meant by “vigorously kissed,” the Respondent elaborated that “she was moving her arms around me, and moving her tongue around in my mouth.” The Respondent states that the Complainant never said she was just trying to watch the movie, because they weren’t even looking at it.

The Respondent states that the movement of their bodies when the Complainant straddled him apparently caused the light, which had turned off while they were relatively still, to turn on again. The Respondent states that the Complainant got up to turn the light off while the Respondent remained lying on the floor. **Appendix B at 3-5.** The Respondent said the Complainant then returned and they continued to “make out.” **Appendix B at 3-5.**¹⁸ At this point, they were sitting next to each other. The Respondent states that he placed his hand over her breast on top of her shirt, and they continued to kiss. **Appendix B at 3-5.** He states that he told her that the texts we exchanged were hot, and she agreed.¹⁹ **Appendix B at 3-5.** He states that he then began to rub her vagina over her sweatpants as while they continued to kiss. **Appendix B at 3-5.**

At some point, the Respondent states that he reached his hand into the Complainant’s pants after she told him that he could. **Appendix B at 3-5.** Asked in his first interview for more specific details about how she told him he could, the Respondent states that he “asked her if I could finger her because I wasn’t sure where we were,” and she said, “Yes.” He states that she subsequently lifted her butt up and pulled her sweatpants down while he helped her, and then he “fingered” her for five to six minutes. **Appendix B at 3-5.** He denies “forcing” his fingers inside her. **Appendix B at 3-5.** The Respondent states that during this time, he was sitting with his back against the lockers and she was lying across his lap with her head to his left. He states that he unhooked her bra and took off her shirt and sweatshirt.

During his interview, the Respondent said that at some point while he was penetrating her vagina with his fingers, he asked the Complainant “if it felt good,” and she said, “Yes.” The Respondent did not mention this verbal exchange in his written response, however. The Respondent also stated in his interview, in response to a question about any other indications the Complainant consented to digital penetration, that she “moaned.” The Respondent states that he eventually stopped penetrating the Complainant’s vagina with his fingers because his arm was tired, and she pulled up her pants and said it was “her turn.” The Respondent thought the Complainant put her bra and shirt back on at this time. The Respondent states that he never told her she had to perform oral sex. Rather, he states she seemed happy to do it.

¹⁸ The Respondent states, in Appendix B, that the Complainant got up “two or three times” to turn off the lights, but in his interview, he stated that was incorrect and that she had only gotten up twice to turn off the light—once after she had straddled him, and once immediately prior to performing oral sex on him.

¹⁹ In his first interview, however, the Respondent states that he made this comment before the Complainant pushed him onto his back.

The Respondent states that he was wearing khakis with a button and zipper, and that the Complainant unzipped his pants and together they pulled his pants, along with the boxer shorts he was wearing, down to his ankles. **Appendix B at 3-5.**²⁰ He states that both he and the Complainant were standing at this point. The Respondent states that the light then went on. The Respondent states that the Complainant went to turn the light off, and he went to help her. When they got the light off, the Complainant then began to perform oral sex on him. He states that the Complainant initiated oral sex by putting his penis in her mouth. **Appendix B at 3-5.** The Respondent states that he stood with his back toward the lockers while she kneeled. He further stated in his interview that she “seemed enthusiastic and eager to please” while performing oral sex, and that his hands were at his sides when she began performing oral sex. Asked to elaborate on “enthusiastic and eager to please,” the Respondent said at one point he asked her if she could fit his whole penis into her mouth and she took his penis out of her mouth and said she would try. He states that he asked her if he could put his hands on her head to get his whole penis into her mouth and she said, “Okay.” He states that he only had his hands on her head “for a second,” because as soon as she put his whole penis in her mouth, he let go and she resumed “normal” fellatio. The Respondent states that at some point, he asked if he could “come” in her mouth, and the Complainant took his penis out of her mouth, said that he could, and then resumed oral sex. **Appendix B at 3-5.**²¹ The Respondent states that he ejaculated shortly after that. **Appendix B at 3-5.** He states that the two then sat down, cuddled, and started making out again for another ten minutes until they decided to leave. **Appendix B at 3-5.**²² He states that the Complainant also seemed “enthusiastic” during this time. By this time, he said, his laptop had died.²³

The Respondent states that he did not coerce, force or threaten the Complainant, and denies pressuring her in any way to engage in sexual acts. Throughout the encounter, the Respondent states that the Complainant rubbed and touched his body all over, and “cuddled with him” after she performed oral sex on him. **Appendix B at 3-5.** The Respondent states that the Complainant gave no indication that she did not like what he was doing, whether verbal or non-verbal, and did not attempt to leave when she got up to turn off the light or at any other time.

The Respondent states that they got up after about ten to fifteen minutes and chatted briefly about whether their encounter would make things awkward when they went to the UCI tournament in late November. He states that they said goodbye under the arch of Faunce and then went their separate ways.

c. Complainant’s Response to Respondent’s Statement

The Complainant denied that she actively participated in the sexual activity. She states that as they sat leaning against the lockers watching the laptop on the floor, the Respondent had his arm around her but she was not leaning against him. She states she was “clearly staring at the movie on purpose,” and was trying not to make eye contact with him. She states she was stiff when they sat there and stiff when he grabbed her face to kiss her. She denies that she moved her face toward his, and denies that she was participating in making out, “squeezed [him] tightly,” or rubbed his body. She denies “vigorously kissing” the Respondent. She states that at most, she passively accepted his kisses, but did not open her own mouth or use her tongue, and states that he did not kiss her on the mouth at all until he was penetrating her vagina with his fingers. The Complainant

²⁰ In his interview, the Respondent stated that his pants were only pulled halfway down.

²¹ In his interview, the Respondent said that she either said yes or “something more like ‘Please.’” The Complainant denies that she said, “Please.” She states that she said, “Sure,” when he asked if he could ejaculate in her mouth.

²² In his interview, the Respondent stated that he waited a few minutes before kissing the Complainant because she had just performed oral sex on him.

²³ The Respondent states that the movie was playing on his laptop for at least a half hour, which was most of the time they were in the locker room. He states he recalled it playing while they were kissing and before the Complainant performed oral sex on him. The Respondent did not bring a charger with him and the locker room has no electrical outlets.

further states that she did not push the Respondent on his back and straddle him; he pushed her onto her back. The Complainant denies that the Respondent asked her if he could penetrate her vagina, denies that she “lifted her butt up and pulled her sweatpants down,”²⁴ or asked her if his penetration of her vagina felt good. The Complainant states that when the Respondent penetrated her vagina with his fingers, it was “very painful. He was being rough and I wasn’t expecting it and was not interested in that, so it was extra uncomfortable. I winced in pain.” The Complainant states that the Respondent penetrated her vagina with his fingers for about two minutes. The Complainant states that she may have made some noises during the sexual acts, but denies making any sounds that would indicate pleasure. The Complainant denies that there was any cuddling after she performed oral sex on him, or at any time after she had gotten up to turn off the light. The Complainant denies that she pulled her pants up and telling him it was “her turn” before performing oral sex on him. The Complainant did not recall how the Respondent’s pants came off, but said he stood and she kneeled as she performed oral sex on him. She states that she only performed oral sex after he said she “had to.” The Complainant did not include this remark in the Complaint.

The Complainant acknowledges that she did not try to push the Respondent’s hand away when he put his hand on her breast. She states that she did not push his hand away because she did not want to hurt his feelings or make him angry. Instead, she tried to demonstrate that she was not interested by just staring at the screen and not actively participating. The Complainant states that she only got up to turn the lights off once, after the Respondent “fingered” her and after she began performing oral sex on him. She states that she did not leave at that time because he was on the mock trial team and they were going to have to continue seeing each other in that context for a long time. In any event, she states that he also came over to turn the light off, albeit with his pants down around his ankles, when she seemed to be struggling to figure out the control, and this made her feel that she could not leave.²⁵ The Complainant acknowledges that the Respondent asked her if she would try to put his whole penis in her mouth and that she tried to comply. She denies that he removed his penis from her mouth before asking her this, and she denies that she gave any verbal response. She acknowledges that he put his hands on her head while his penis was in her mouth for about thirty seconds, and then stopped. She denies that he said, “I want you to do this yourself.” The Complainant denies that she helped the Respondent remove his pants in any way.

d. Documentary evidence

The following weekend, the Complainant attended a mock trial tournament at Tufts University. The weekend after that, the Complainant and Respondent attended a mock trial tournament at the University of California at Irvine (“UCI”). Thanksgiving break began shortly after the team returned to campus. On November 26, 2014 (Thanksgiving Day), the Complainant sent a Facebook message to her friend, Witness 9, in which she wrote, referring to the incident with the Respondent, “[L]iterally as soon as we get [to Faunce] he’s grabbing me.” **Appendix A, Exhibit D.** On December 26, 2014, the Complainant sent Witness 9 another series of text messages in which she discussed the incident with the Respondent. **Appendix A, Exhibit E.**²⁶ The

²⁴ The Complainant states that her sweatpants, which the parties agree had an elastic waistband, were so loose that the Respondent was able to penetrate her vagina without pulling them down.

²⁵ In the first interview, the Complainant also said she felt she could not leave because the Respondent kept “guilting” her.

²⁶ The messages in this document are not dated, but Witness 9 recalled receiving a series of text messages along these lines on December 29, 2014. The Respondent requested a complete set of electronic communications between the Complainant and Witness 9 to support his claim that the two conspired to fabricate claims against him. As discussed further below, Witness 9 and the Complainant freely admit that the Respondent’s behavior was a frequent subject of discussion, and both freely admit that they harbor significant animus toward him. **Neither is enough to suggest that the Complainant fabricated the facts** underlying the allegations of the Complaint, as the Complainant’s reaction is a typical response to perceived inappropriate behavior. More importantly, asking the Complainant and Witness 9 to disclose all their communications is overly burdensome where the central issue in this case is not whether certain sexual acts occurred or even whether the Complainant literally consented to them, but **whether the consent was obtained through coercion.** The 2014 Code of Student Conduct forbids “non-consensual physical contact

Complainant wrote, “Funny story us hooking up doesn’t even count as consensual. He said we were just gonna watch a movie as friends and he went to kiss me and I said no like 3 times and eventually I gave up.”

Appendix A, Exhibit E. Witness 9 replied, “OMG STOP[.] [W]ait that is not a funny story at all that makes me so mad[.] Like he essentially assaulted U[.]” **Appendix A, Exhibit E.** The Complainant said, “[H]e literally hit play on the movie and turned my face and went to kiss me and I turned away and he was like no? And I was like I can’t do that im sorry[.] And he was like can I kiss your cheek (as he was already doing it) and I was like I guess? So then he was like doing shit and he went to kiss me again and I was like fine and just kissed him[.] And then he was like I bet you wanna fuck me right now and I was like I really can’t do that[.] And he was like ok so then how about you give me a blowjob and I was like I don’t know...And he was like cmon I know you want to and I was like idkkkkkkkkk and he like convinced me. And I guess I kind of got attached because I just cheated on my boyfriend with this kid like I might as well stick with it[.] So then I wanted to hook up with him again but at the time I didn’t really want to[.] Moral of the story: [the Respondent] is an asshole.” **Appendix A, Exhibit E.**

e. Witnesses

i. Witness 1

Witness 1 states that she is the best friend of the Complainant’s freshman year roommate, Maya [REDACTED] and frequently slept over in their room freshman year beginning in the fall semester. Witness 1 states that she became good friends with the Complainant through their conversations about the day’s events in the evenings when Witness 1 slept over, but this year they are not as close. She states that she heard about the Respondent through the Complainant, but did not meet him until around February, 2015. Text messages between the Complainant and Respondent corroborate Witness 1’s account but suggest the Respondent met Witness 1 shortly before March 5. **Appendix D at 154.**

Witness 1 said that the Complainant would tell Witness 1 and the Complainant’s roommate “all her boy drama,” i.e., who she was interested in, who she was seeing, etc. Witness 1 recalled the Complainant showing her a photo of the Respondent sometime in the fall and telling Witness 1 that she thought he was cute. Witness 1 said the Complainant would tell them about what was happening with mock trial and was “girly gushy,” when she talked about the Respondent.

Witness 1 recalled that one night she was staying in the Complainant’s room and was up until 4 am watching the show, “New Girl” on Netflix when the Complainant came in.²⁷ Witness 1 said she told the Complainant about her day, and then the Complainant said, “Oh my God, I have to tell you something. Do you guys remember that guy [the Respondent] I’ve been telling you about?” When Witness 1 and the Complainant’s roommate said they did, Witness 1 said the Complainant said, “I just **hooked up** with him. It was like really weird because we were just in Faunce and hooked up.” The Complainant told them she and the Respondent had gone to some out-of-the-way room in Faunce and turned the lights off. Witness 1 said the Complainant made the whole thing sound “sexy and cool.” Witness 1 said [REDACTED] asked if they had sex and the Complainant said, “No, but it was really hot. I mean, you know it wasn’t recipocal because he only fingered me--he didn’t eat me out—but we might hook up again, I don’t know.” **Witness 1 said the Complainant made it sound as if she wished they had done more.** The Complainant also said she had given the Respondent a “blowjob.” Witness 1 could not recall if the Complainant provided any other details of their encounter. Witness 1 said

of a sexual nature.” Implicit in any common understanding of consent is that it is freely and voluntarily given. Thus, consent obtained by coercion does not constitute consent. Given the number of interviews and documents reviewed in this case, the complete communications between Witness 9 and the Complainant are unlikely to lead to the discovery of any non-duplicative evidence that tends to undermine the Complainant’s claim that she was coerced.

²⁷ The Complainant states that [REDACTED] was asleep when she dropped her suitcase off in her room before going to meet the Respondent. She did not recall seeing Witness 1 at that time, but said she and [REDACTED] usually left their door unlocked, so Witness 1 could have come in by herself.

when the Complainant told the story, she was her typical “happy, bubbly” self. Witness 1 did not recall the Complainant saying she did not want any of the sexual activity to occur, and never mentioned that the Respondent had pressured her into hooking up or doing any of the things they did.

The Complainant acknowledged that this conversation took place and that she told Witness 1 about what happened with the Respondent. However, the Complainant states that she would definitely not describe herself as “excited” when she described what happened, but just felt like she really needed to tell someone because it was a “really weird” experience. She also did not specifically recall telling Witness 1 the sexual acts were not “reciprocal,” although that was true. She also states that she did not describe the encounter as “really hot.” The Complainant states that she did not know whether she said they might hook up again, but at the time, there were no plans to do so. The Complainant states that at the time, she had not fully processed what had happened and did not realize that what had happened constituted a sexual assault. She further states that by the time she did realize it, she and Witness 1 were no longer close enough that she would have confided in Witness 1.²⁸ Finally, the Complainant said her memory was that [REDACTED] was asleep throughout this conversation and that she did not tell [REDACTED] what happened until the following morning.

ii. Witness 8 and Witness 2

Witness 8 is close friends with the Complainant. The two met through the Complainant’s best friend, Witness 2, and this year they are in the same housing group. Witness 8 states that shortly after they arrived back at Brown after Thanksgiving break, the Complainant told her and Witness 2 in Witness 2’s room what had happened between herself and the Respondent. Witness 8 states that the Complainant said they had been texting and he wanted to watch a movie with her and she said yes. She said she didn’t want to hook up with him but it just sort of happened. Witness 8 states the Complainant kept saying she didn’t know why it happened, but his computer was dead and that was kind of weird. She told them she had given him a “blowjob” and they had teased her, saying, “That’s so random, who is this guy?” Witness 8 states that the Complainant “seemed embarrassed.” At the time, Witness 8 states that she thought the Complainant was embarrassed because she had a boyfriend at the time and she, Witness 2, and the Complainant’s boyfriend were from the same hometown as the Complainant, and Witness 2 knew her boyfriend.

Witness 2, a sophomore, is the Complainant’s current roommate and best friend from high school. She states that she first learned about the Respondent when the Complainant and Respondent began texting in the fall of 2014, and the Complainant seemed excited about the attention from an upperclassman. The Monday after the Complainant returned from a visit home to see her boyfriend and family before Thanksgiving 2014, the Complainant told Witness 2 that she had “hooked up” with the Respondent in Faunce. The Complainant described the Respondent as having been very aggressive and “bad boy” in his behavior compared to her previous boyfriends, but did not suggest that anything that took place was not consensual, and did not provide explicit details about what happened. The Complainant did not seem particularly happy about the encounter, but not particularly upset either. At the time, Witness 2 interpreted the Complainant’s neutral demeanor as a reaction to the possibility that Witness 2 would judge the Complainant for cheating on her boyfriend. Witness 2 states the Complainant did not tell her that she felt the Respondent had coerced her into sexual activity until the fall of 2015. She states she and the Complainant talked about the Respondent a lot during the rest of the fall semester, but by the second semester, if the Complainant brought up his name at all, it was only to say that he was creepy.

Witness 8 states that it wasn’t until this academic year that the Complainant told her the incident with the Respondent was not consensual and that she was pursuing an investigation because she felt he had coerced her into it and it took her awhile to come to terms with the fact that that was the truth. She said she had been trying to make sense of it in a consensual way but now realized she was really upset by it because it had been coercive.

²⁸ Witness 1 confirmed that she and the Complainant were never extremely close and grew less close as time went on.

The Complainant said she didn't want to see the Respondent on mock trial, felt threatened by him, and feared he would do the same thing to others and get away with it because he had gotten away with it with her for so long. At this time, the Complainant told Witness 8 the Respondent had "kept trying to kiss her and she kept saying no and then he grabbed her face and she felt like she couldn't say no and he fingered her and when she gave him a blowjob she didn't enjoy it but felt like she couldn't really leave." Witness 8 said the Complainant did not say why she felt she could not leave. The Complainant also said afterward she told him he was the kind of person who makes people do things they don't want to do and he played it off as a joke.

iii. Witness 3 and Witness 9

Witness 9 is a sophomore, a member of the mock trial team and good friends with the Complainant. The Respondent was the captain of her mock trial team last year. Witness 9 states that she did not get to know the Complainant until late November, 2014 when they both attended the UCI tournament in California, which took place the weekend before Thanksgiving, November 22-23, 2014. Witness 9 stated that in the bathroom in the airport on the way home, the Complainant said she had hooked up with the Respondent. Witness 9 was surprised because the Respondent had been pursuing her, even though she was not interested in him. Witness 9 said the Complainant told her the Respondent had told the Complainant that he was interested in Witness 9 but she did not like him.

On December 15, the Respondent sent Witness 9 a text message referring to his encounter with the Complainant that said, "[T]rust me, [the Complainant] didn't want respect. She just wanted to feel slutty and liberated from her boyfriend.....And I wasn't saying slutty in like a male centric way or whatever, like, that's how she wanted to be treated lol[.]" **Appendix G**. Later in that conversation, the Respondent said, "The [Complainant] thing was literally just for the sake of hooking up with someone on mock trial I promise you[.]" **Appendix G**. The following week, on December 21, the Respondent again spoke about the Complainant with Witness 9 by text. "I hooked up with [the Complainant] because it was easy and I was horny and I knew I could. And also a little part of me wanted to be the guy someone cheated with because [my ex-girlfriend] cheated on me and I wanted to be on the other side of things..." **Appendix G**.

On December 29, 2014, Witness 9 states that she and the Complainant were texting because they learned they would be on the same mock trial team. She states that they started talking about the Respondent and she asked the Complainant if she had gone to Faunce wanting to hook up with the Respondent, and the Complainant said she told him in advance she didn't want to **hook up**, but when she got there he grabbed her face and she turned away but he still kissed her. **See Appendix A, Exhibit E**. The Complainant replied that she said no to the Respondent three times but he eventually he convinced her to give him oral sex. **See Appendix A, Exhibit E**. Witness 9 said she told the Complainant, "Oh, my God, that's essentially assault," and the Complainant said, "I know." **Appendix A, Exhibit E**.

Witness 9 states that she and the Complainant talked more about the Respondent at the end of January after practice one day, when Witness 10 reported that she had received unwanted text messages from the Respondent. The Complainant then started talking more about her experience with the Respondent, and Witness 9 suggested the Complainant speak to a peer counselor.

Witness 3 is a friend of the Complainant and teammate on mock trial. Witness 3 states that she first heard that the Complainant and Respondent had "**hooked up**" the weekend they went to California for the UCI tournament, which was the weekend before Thanksgiving. As they were in the airport in California on their way home, Witness 3, the Complainant and Witness 9 went to the ladies' room. While there, they were talking about how Witness 3 and Witness 4 had been flirting. The group was wondering where that flirtation would lead and "wondering if people on mock trial hook up." The Complainant said she was annoyed with the Respondent because they had **hooked up** but he had not talked to her at all while they were at the tournament in California. Witness 3 states that she asked the Complainant if she and the Respondent had sex and she said no.

Witness 3 said that the way the Complainant described the event, it seemed “normal”—it did not seem like the Complainant did not want it to happen.

At the Yale tournament, which took place December 6, Witness 3 recalled the Complainant saying, “[The Respondent] still hasn’t talked to me. Is that what he’s going to do after me giving him head?” The Complainant denies making this comment, saying she would not use that phrase. Witness 3 recalled the Complainant making jokes about sex in the mock trial locker room. Witness 3 states that, based on her observation of the Complainant, these jokes were the Complainant’s way of trying to pretend she was not hurt by the Respondent’s rejection of her, when in fact she did seem quite hurt. Witness 3 states that she did not hear anything else about the Respondent from the Complainant until he decided to run for E-Board in the spring of 2015.

Witness 3 states that in January, 2015, she attended a mock trial competition at Cornell.²⁹ That weekend, while they were in their hotel room, the Complainant told Witness 3 for the first time that the Respondent had coerced her into hooking up with him. Witness 3 states that the Complainant told her the Respondent said, “If she didn’t put in a good word with [Witness 8] they [meaning the Complainant and Respondent] couldn’t finish what they started.” The Complainant was upset about this. The Complainant said she had told the Respondent she had a boyfriend and didn’t want to cheat on him, and that they could hang out but she didn’t want to do anything. The Complainant said she either had already talked to, or was going to talk to Witness 5, who was a member of E-Board.

iv.iv. Witness 4

Witness 4 is a senior and a member of mock trial’s E-Board. He is a fraternity brother of the Respondent, the intimate partner of Witness 3, and also a friend and teammate of the Complainant. Witness 4 states that prior to the mock trial Christmas party, which was around December 10 or 11, 2014, he had heard the Complainant and the Respondent had hooked up in the Faunce locker room. At the Christmas party, Witness 4 states that a group including both the Complainant and the Respondent was playing a truth-telling game. Witness 4 states that he was sitting next to the Respondent and asked the Respondent about whether he had hooked up with the Complainant in Faunce. Witness 4 said the Respondent seemed nonchalant about it and said it had happened a month before. Witness 4 states that the Complainant also seemed nonchalant about it and did not say anything. At some point, Witness 4 learned the basic details of what occurred from the Respondent—that they had been texting, that they had gone to the locker room to watch a movie and then hooked up and the Complainant had performed oral sex on him.

v. Witness 6

Witness 6 is a senior and member of the mock trial team’s E-Board. She states that she is friendly with both parties, though slightly closer with the Complainant. In the fall of 2014, Witness 6 states that the Complainant told her about having **hooked up** with the Respondent. Witness 6 could not specifically recall when the Complainant spoke to her and did not recall many details, but said the Complainant said she had told the Respondent she didn’t want to hook up but he kept trying to make out with her and eventually they just started hooking up. Witness 6 states that it was clear that the Complainant felt pressured and wished she hadn’t done it, but she did not seem particularly upset about it and asked Witness 6 not to tell the E-Board about it.

vi. Witness 5

Witness 5 states that he is a member of mock trial team and has been on the E-Board since last year. He states he knows both parties but is not particular friends with either one. He states that in January, 2015, he and other

²⁹ The Cornell University Mock Trial team Facebook page indicates that this competition took place the weekend of January 23-25, 2015. Other Cornell University website posts indicate that Brown University’s mock trial team attended this competition.

members of the mock trial team went to Cornell for a tournament. He states that on the way to the tournament, the Complainant was sitting in the driver's seat of one of the cars they drove to the tournament speaking to Witness 12. Witness 12 was sitting in the back seat while Witness 5 was standing outside the car coordinating travel plans with other team members. When he got in the passenger's seat of the car, Witness 5 said he began to listen to the conversation. The Complainant said she and the Respondent had been texting and that he had asked her if she wanted to watch a movie in the mock trial locker room which was odd because there were no electrical outlets in the room.³⁰ The Complainant said they went up to the locker room and the Respondent's laptop only had two percent battery, so she wondered, "How are we going to watch a movie?" Witness 5 said the Complainant also said that she had told the Respondent, "I can't really do anything but if you want to do something [to me] you can."³¹ Witness 5 knew the Complainant had a boyfriend, so Witness 5 thought the Complainant meant it would not be cheating on her part if she did not initiate any sexual act.

Witness 5 stated that the Complainant did not say anything that suggested her interaction with the Respondent was not consensual, and did not provide details about what exactly happened.³² Witness 5 further stated that the Complainant joked "a lot" about what happened with the Respondent. He states she would say things like, "Remember that time in the locker room?" Witness 5 recalled that the Complainant once made a joke along these lines at a tournament in March, 2015 in Washington, D.C. in the presence of [REDACTED] and other members of the team. When the group was talking about past sexual encounters, Witness 5 said the Complainant joked about having had sex in a locker room. The Complainant acknowledged making jokes along these lines, but said the context was more like, "Ugh. Not the locker room again." The Complainant states that she has a dark sense of humor, and that it is her way of coping with difficult topics. She states that she also jokes about the death of her father, who died in a car accident when she was a young child.

vii. Witness 7

Witness 7 states that he is a member of the Mock Trial team. In the spring semester of 2014-15, he states that his team consisted of himself, Witness 9, the Complainant, [REDACTED], [REDACTED], [REDACTED], and Witness 10. He states that he likes both parties but is not particularly close to either one. He states that he did not notice any significant interactions between the Complainant and the Respondent at any time. He did recall the Complainant speaking to him about the Respondent, however. He states that before their last mock trial tournament of the season, which was approximately February 21, 2015, the Complainant told him the Respondent had looked up her number in the mock trial directory and started texting her. She said she thought it was a little creepy and then she talked about how they were texting a lot and said something about him kissing her at some point. Witness 7 did not recall any further details of what the Complainant told him, including whether or not she said the kissing or any other acts were consensual, other than that she said the Respondent kept texting her after she made it clear she wanted him to stop.³³ Witness 7 states that the Complainant gave him the impression that she had felt "pressured" in the situation, and clearly did not want any involvement with the Respondent whatsoever.

³⁰ The photographs attached as Appendix E show that there are no electrical outlets in the Faunce locker room.

³¹ The Complainant states that she never made this comment and did not say she had. She states it was the Respondent who suggested she wouldn't be "cheating" if he initiated sexual acts on her. She states that Witness 5 must have misunderstood her.

³² This statement is inconsistent with that of Witness 9. Witness 9 states that when they all arrived at the hotel, the Complainant told her that she had told Witness 5 about what happened with the Respondent and he said he would handle it. Witness 9 says that Witness 5 approached her at the Cornell tournament and said he wanted to talk to her sometime. Although Witness 5 did not say what he wanted to talk to Witness 9 about and did not follow up, she assumed that he wanted to talk to her about the Respondent. Also, Witness 9 said Witness 4 told her that Witness 5 told E-Board and that E-Board would "take care of it."

³³ As discussed above, however, the Complainant does not claim that she wanted the Respondent to stop texting her altogether. Rather, she claims that there were times during their texting when his texts made her uncomfortable.

viii. Witness 10

Witness 10 is a former member of mock trial. She is friends with the Complainant and does not like the Respondent. During the spring semester of 2015, Witness 10 attended a mock trial tournament at Brandeis. During the tournament, Witness 10 saw one of her close friends from home who attends Tufts, who is on the Tufts mock trial team along with her boyfriend, [REDACTED] and the Complainant went to high school together. During the Brandeis tournament, [REDACTED] told his girlfriend, who told Witness 10, that he and the Complainant were chatting. At some point, the Respondent walked by, and the Complainant looked toward the Respondent and said, "Oh, yeah, I sucked that guy's dick." The Complainant states that she saw a friend from high school, [REDACTED] at the Tufts tournament the following weekend, at the UCI tournament the weekend after that, and in March at another tournament. The Complainant said that she might have told [REDACTED] she had hooked up with the Respondent, but said she would not have been so explicit with [REDACTED] as to make the comment described by Witness 10.

3. Relationship between Complainant and Respondent after November 10, 2014
 - a. Complainant's version of events

As discussed above, the Complainant acknowledges that despite the events of November 10, she was interested in having a relationship with the Respondent, especially because a relationship might help her view the events of that night as just a mistake. The Complainant states, "I was ready to forgive him for our nonconsensual encounter if we could build something," but it became clear fairly quickly that the Respondent was not interested. When she texted him, he would ignore her, or "sext" her briefly and then stop, and he ignored her at mock trial events. The Complainant further states that she blamed herself for what happened because she was not more assertive.

The Complainant states that during the UCI tournament in California, which was the weekend before Thanksgiving, the Respondent ignored her, which she found rude and upsetting. Finally, the Respondent told the Complainant he was not interested in her because he was interested in someone else. Nonetheless, she states she still "tried to act as if [they] still had a friendship to avoid creating a worse situation between us on the team." **Appendix A at 2.** She even agreed to put in a "good word" for him with a friend of hers, Witness 8, whom the Respondent was interested in pursuing.³⁴

In early December, the Complainant states that mock trial held a Christmas party. During a game of Paranoia, the Complainant states that someone asked the Respondent who "was most likely to mockcest," i.e., "hook up" with someone else on Mock Trial, and the Respondent named the Complainant. The Complainant heard Witness 4 say, "with [*the Complainant*]?" to the Respondent. The Complainant believed that the Respondent told Witness 4 at this time that the two of them had hooked up, even though they had agreed not to discuss the incident. During this party, the Complainant signed the Respondent up on various dating websites as a joke.

The Complainant states that by the end of November, she knew what happened with the Respondent was serious, but states that at the time, she felt she could not live with herself "if she got someone expelled." She and the Respondent continued to text occasionally, and for the most part, their conversation was cordial. In January, the Respondent suggested that he had "talked shit" about her after she had done the same about him, and that she seemed to have given Witness 9 a bad impression of him. They both apologized to each other. In March, 2015, however, the Complainant states that the Respondent sent her a text saying she was giving people a bad impression of him and that she was the reason he couldn't hook up with anyone else. **Appendix A at 3.**

³⁴ The Complainant states she knew Witness 8 was not interested in the Respondent so no good word would help his cause.

At the end of April, 2015, the Complainant states that she and Witness 9 became frustrated at E-Board's failure to take action against the Respondent. At a general body meeting (GBM) to discuss plans for the next year, the Complainant implied there was something she needed to discuss with E-Board. The Complainant then wrote an email describing the alleged assault, the Respondent's alleged behavior with Witness 9, and their frustrations about E-Board's allegedly inadequate response. **Appendix A, Exhibit B of Respondent's Complaint.** E-Board members then told her they met with the Respondent.

b. Respondent's version of events

The Respondent states that he felt "underwhelmed" from a sexual perspective after his encounter with the Complainant, and was not interested in the Complainant after that night. However, he states that the Complainant continued to send him text messages, and became angry with him when he did not seem to reciprocate her interest. However, the Complainant eventually did agree to put in a good word for him when he was interested in another student, Witness 8.

The Respondent states that the weekend of December 6-7, 2014, he learned at the Mock Trial Christmas party, which was at Witness 6's off-campus apartment, that the Complainant had told people they had hooked up, which he didn't want, because he was interested in Witness 8. At the Christmas party, the Respondent said he received an email on his phone from a dating website. He states that the Complainant was sitting there at the party, "giggling" about something, so he asked her if she signed him up for it, and she said she had. **Appendix F.** He states that she did not seem angry at him. After the mock trial Christmas party, she explained that she told other people because she felt he had treated her badly. The Respondent states he thought the Complainant's discussion of what happened between them "went a little too far," because it seemed as if she was trying to make other people hate him.

Nonetheless, the Respondent states that the Complainant continued to contact him by text occasionally throughout the spring semester, even sending him birthday greetings, although they never had any substantial conversations after that. In addition, during the spring semester, the Respondent states that he and the Complainant had a class together, a section of American Legal and Constitutional History. The Respondent states the section, consisting of fifteen students, met once a week for fifty minutes. He states that students sat around a large rectangular table and that the Complainant sometimes sat within one or two seats from him. The Respondent states that the Complainant seemed fine in class and never changed her seat to be farther away from him.

The Respondent states that in the spring of 2015, he ran for election as an E-Board member, but did not win. He believed it was because the Complainant "was spreading rumors about me," such as that he "was not nice" to her. He also believed that the Complainant wrongly caused other women, particularly Witness 9, to be less receptive to his overtures.³⁵ The Respondent said he met with E-Board, and they told him he was making the Complainant and Witness 9 uncomfortable. The Respondent states he was surprised by this because he had so little contact with the Complainant that spring and because he didn't do anything to make either one of them uncomfortable on purpose.

³⁵ As discussed further below, since the Respondent admits that he "was not nice" to the Complainant, telling others he was not nice to her does not constitute "spreading rumors." Upon hearing that the Respondent did not treat one woman well, it would not be unreasonable for other women to be less receptive to the Respondent's overtures.

c. Documentary support

After no communication for several days during the Respondent's week of silence, the following exchange took place as the two were on their way to a mock trial tournament:

- Respondent: Remember to pretend like you didn't give me a mind blowing blowjob.
- Complainant: Only if you remember to pretend you're not imagining fucking the shit out of me the whole time...
- Respondent: Only if I pretend like you don't want me to fuck you until you orgasm the whole time
- Complainant: Good. So no one will suspect how much you want to cum inside me in Cali
- Respondent: And no one will suspect how much you want me to make you my little slut for a night
- Complainant: Perfect, sounds like we've got a plan. Im super pumped for the drunk scrimmage but more excited to see you finally! Haha

Appendix D at 134-35. The parties continued to engage in friendly, non-sexual banter over the weekend and through November 19, when the Complainant wrote, "So boyfriend and I may or may not be taking a break. I'm holding you responsible for cheerin me up this weekend, just so ya know." **Appendix D at 141.** The Respondent rebuffed this overture, replying, "I'm going to be dealing with some personal shit of my own this weekend, so I might not be able to be there in the way you want me to be." **Appendix D at 141.**

There is little communication between them after this until November 25, when the Respondent says, "I could tell you wanted me to fuck you the whole time," referring to their mock trial trip in California the previous weekend. **Appendix D at 142.** The Complainant responds, "Oops was that obvious... On the other hand you were very good at acting like you didn't know me... Think you can torture me and then no answer me do ya?" to which the Respondent replied, "Yup." **Appendix D at 142.** When the Complainant seemed to be complaining about the Respondent's lack of interest in her, the Respondent said, "Look I think you need to reevaluate where we are." **Appendix D at 142.** The Complainant replied, "If this was just a one time thing, I just want you to be upfront with me." **Appendix D at 143.** The Respondent replied, "Yea it was. There's someone else I'm waiting on. Sorry..." **Appendix D at 143.**

On December 5, when the Complainant learned that the Respondent is interested in Witness 8, she refers to the sexual interaction between the parties as a "hookup." **Appendix D at 143.** When the Respondent says, "[Y]ou know you had fun with me," the Complainant replied, "I also know you're manipulative as fuck haha." **Appendix D at 144.** When the Respondent asks the Complainant to put in a good word for him with her friend, since it doesn't affect her, she replies, "It affects her if she falls for your magic haha." **Appendix D at 144.** The Complainant later says, "I would totally put in a good word for a friend but you act like you don't know me." **Appendix D at 145.** Even after the Respondent bluntly rejected the Complainant, saying, "We're friends. Move past it," the Complainant ultimately agreed to "put a good word in," however. **Appendix D at 145.** Text messages between the Respondent and Witness 8 on December 5 indicate that the Complainant told Witness 8 the Respondent was "really cool." **Appendix F at 1.** The Complainant continued to initiate conversation with the Respondent after December 5.

On January 25, 2015, at the end of the Cornell tournament, the Respondent sent the Complainant a text message apologizing for the way he treated her. **Appendix D at 146.** She replied, "Thank you!! Apology accepted, I really appreciate that. I would love to move past it, I think we have a class together now. Safe travels home!"

Appendix D at 146.³⁶ The Complainant also apologized for signing the Respondent up for dating websites. **Appendix D at 146.**

The Complainant also expressed regret for speaking ill of the Respondent, writing, “I should probably tell people I take that stuff back but I don’t know about that, I definitely overreacted.” **Appendix D at 146.** The Complainant asked the Respondent to add her back to his Snapchat account. **Appendix D at 147.** She also says, “I was just being a bitch because I was hurt,” **Appendix D at 149,** and agreed to intervene for him in a situation with Witness 9, whom he had also been pursuing, because Witness 9 did not like him. **Appendix D at 149-51.** The Complainant continued to exchange benign text messages with the Complainant into March, and sent him birthday greetings. **Appendix B at 154-155.** By that time, the Respondent states that he had deleted her text messages from his phone (although they were still on his computer), so he had to ask her to identify herself. **Appendix B at 154-55.**

d. Witnesses

i. Witness 1

Witness 1 states that after the Complainant first told her about hooking up with the Respondent, the Complainant didn’t talk about the Respondent for a few days, and then began complaining that he was not responding to her texts, saying things like, “It’s been two days and he still hasn’t texted me back.” Witness 1 said the Complainant seemed “kind of mad” at him. Witness 1 recalled the Complainant saying that the Respondent “acted like we didn’t know each other,” and that this was “really rude.” Witness 1 said the Complainant began to feel as if the Respondent had used her as a “rebound” because he was still getting over another relationship. Eventually, Witness 1 said, the Complainant stopped talking about the Respondent altogether, until Witness 1 met him by chance, and then told the Complainant about their meeting.

ii. Witness 8

As discussed in Appendix D, in December, 2014, the Respondent made overtures to Witness 8, and the Complainant even promised to “put in a good word” for the Respondent. Witness 8 states that it began when she accidentally “swiped right” on the Respondent’s profile and he “swiped” her back. She states that she then showed the Respondent’s photo to the Complainant and asked if he was the guy she had hooked up with from mock trial. The Complainant seemed upset that the Respondent was interested in her.³⁷ Witness 8 states that at the time the Complainant had not told her that her encounter with the Respondent was not consensual. Witness 8 states she only knew “they had hooked up and that he was just mean to her and ignored her and that she didn’t like being around him on mock trial.” Witness 8 said, “I just knew she didn’t like him--he just seemed like a jerk.” Witness 8 said that, to get back at the Respondent, the Complainant orchestrated Witness 8’s communications with him, telling her what to say and to keep flirting with him so that Witness 8 could then reject him, which she ultimately did.

In late January/early February, Witness 8 states that the Complainant seemed embarrassed that people on mock trial knew she had hooked up with the Respondent.

³⁶ **It is not known what triggered the Respondent’s apology.** However, January 25, the day the Respondent sent this text, was the last day of the Cornell tournament. Witness 5 confirmed that he spoke to the Complainant about the incident with the Respondent on the way to the Cornell tournament. The Complainant states that during this conversation, Witness 5 said he would “take care of it.” Witness 9 also said Witness 4 told her that Witness 5 had told E-Board and that E-Board would “take care of it.”

³⁷ The Complainant stated that she was not jealous, but just annoyed that of all the women on campus, the Respondent would pursue her friend.

iii. Witness 4 and Witness 5

After winter break, Witness 4 states that Witness 6 approached him and told him that the Complainant was “not comfortable” with the hookup. Witness 4 states that he then told the Complainant to come to him as a friend, rather than as an E-Board member, if she had any problems with the Respondent, but he took no further action himself.

In May, at a mock trial meeting, as the group was discussing plans for the next year, the Complainant said she had something to say, but then said, “Never mind.” Later, the Complainant emailed members of E-Board and told them that she was uncomfortable with the Respondent. As a result of this email, Witness 4 said the E-Board met with the Respondent and told him he was making members of mock trial uncomfortable. The Respondent then ran for E-Board and lost. Over the summer, mock trial held a special election to replace an E-Board member who resigned. The Respondent ran again and lost. The Complainant also ran, and won a spot as an E-Board member.

Witness 5 also said that the E-Board decides on the membership of each sub-team for the second semester in December. He states that the Complainant could have requested not to be placed on the same team as the Respondent, but did not. She also never asked not to be seated near the Respondent during a tournament, and did not ask the E-Board to take any other action toward the Respondent until May, 2015. At that time, Witness 5 heard the Complainant and Witness 9 asked E-Board to “talk” to the Respondent. Witness 5 was aware that members of the E-Board did speak to the Respondent, but he did not participate in this process.

Witness 5 said that over the summer, mock trial distributes a preference form asking members to indicate what positions they are interested in filling, including whether they wish to be captains. E-Board generally decides on the membership of each team and designates the captains. Witness 5 said the Respondent said he was interested in being a captain, but the Complainant, Witness 9, and Witness 3 threatened to quit if the Respondent was made a captain because they said he made them uncomfortable. Witness 5 states that the Respondent was very upset about this, and that “If it weren’t for this we would have put him as a captain in a heartbeat.” Witness 5 states that the E-Board decided that making the Respondent captain was not worth the loss of several members, so they did not make him captain. Witness 5 states that the Respondent initially said he would quit mock trial, but he did not.

iv. iv. Witness 7

Witness 7, the Complainant’s teammate in the spring of 2015, said the Complainant expressed concern about being placed on the same team as the Respondent the following year. She was also concerned about his influence on the team because he was close friends with Witness 4, who was a member of the Executive Board (“E-Board”). Witness 7 said he told the Complainant she should raise the issue with the E-Board.³⁸

Witness 7 also recalled the Complainant, who by this time was one of the team captains, nicknaming their team the “[Respondent] Sucks” team as a joke. The Complainant denies that this was the team name, but says they did refer to the team as the “Down with [Respondent]” team.

³⁸ Text messages between the Complainant and Witness 9 indicate that this conversation likely took place on or before January 22, 2015. **Appendix A, Exhibit F.**

v. Witness 6

Witness 6 recalled the team playing Paranoia at the UCI competition in November, 2014. She states that one of the questions was something along the lines of, “Who is most likely to make out with [the Complainant or the Respondent]?” and someone suggested the Complainant and Respondent had been hooking up.³⁹

Witness 6 states that after the Complainant told her about her encounter with the Respondent, she did not hear anything about the incident until May, when the Complainant and Witness 9 asked the E-Board to speak to the Respondent. Witness 6 states that the E-Board told the Respondent that two members of the team had complained that he was making them uncomfortable and that if he didn’t stop what he was doing, it might be harder to make him a captain in the fall. Witness 6 said the Respondent said something like, “Ok, what if I came to E-Board and said [Witness 9] was making me uncomfortable?” Witness 6 states that the Respondent’s tone of voice suggested he did not take their concerns seriously.

4. The Respondent’s claim of conspiracy to fabricate allegations against him

The Respondent claims that the Complainant has a vendetta against him, and that her allegations that he sexually harassed and assaulted her are the product of a conspiracy between the Complainant and Witness 9 to bring false allegations against him. He bases his claim in part on negative consequences he experienced on Mock Trial that he attributes to the Complainant and Witness 9, in part on the timing of the Complaint, which was brought nearly one year after the event, and in part on the statement of Witness 11.⁴⁰ The Complainant believes that the Complainant is motivated by jealousy and anger because he rejected her, but does not identify what Witness 9’s motive might be. The Respondent believes that the Complainant and Witness 9 are “out to get him.”

The Complainant denies fabricating any allegations. She states that after she confided in Witness 9 and learned that Witness 9 also had a negative experience with the Respondent, Witness 9 became a kind of “support system” for her, and the two spoke frequently about how to manage the situation given their interest in remaining on mock trial and their discomfort about having to interact with the Respondent.

The Complainant states that when she and Witness 9 first began talking about the situation with the Respondent, they did not want to get him into “too much trouble.” Sometime around January 22, 2015, the Complainant wrote to Witness 9, “[S]ome part of me really doesn’t want to get him into too much trouble, I just want him to be either off mock or like spoken to by Eboard about his behavior.” **Appendix A, Exhibit F at 2.** Witness 9 replied, “I know[,] like I don’t wanna ruin his life yk? But at the same time if we don’t do anything it’s just gonna continue[.]” **Appendix A, Exhibit F at 2.** At one point, the Respondent apologized to the Complainant via text⁴¹, and the Complainant and Witness 9 wondered whether the Complainant should trust the apology. Witness 9 warned, “Yeah girl I wouldn’t trust him...Like he’s apologized to me so many times and then the second that I’ve forgiven him he’s just acted inappropriately again. So just be careful but of course it’s your decision[.]” **Appendix A, Exhibit G at 1.**

The Complainant and Witness 9 state that they ultimately decided to speak to E-Board about their experiences with the Respondent. As discussed above, the Complainant states that in January, 2015, she told Witness 5,

³⁹ The Complainant, Respondent and Witness 4 all stated that this game took place at the Christmas party, which was in early December at Witness 6’s apartment.

⁴⁰ The Respondent states that he was subject to a number of negative consequences on Mock Trial that he attributes to the Complainant and Witness 9, e.g., that he was “spoken to” in May, 2015 by the E-Board because he made the Complainant and Witness 9 uncomfortable; that he lost his campaigns for E-Board in the spring and summer of 2015; and that he was not made a captain in the fall of 2015.

⁴¹ As discussed above, in January 25, 2015, the Respondent wrote, “I do owe you an apology for how I treated you before. I hope we can move past it. Glad to hear you killed it this weekend [at a mock trial tournament].” **Appendix D at 146.**

whom she trusted because they had attended a free speech conference together, what had happened with the Respondent on a car ride to a tournament at Cornell. She states that Witness 5 said, “We’ll talk to him,” and she told Witness 9 that Witness 5 said E-Board would take action.

Later that spring, texts between the Complainant and Witness 9 demonstrate their increasing frustration that E-Board had failed to take any significant action against the Respondent, and that the Respondent was running for E-Board—a position in which he would have substantial influence over the organization, which they found disturbing. **Appendix A, Exhibit J.** Nonetheless, after bringing their concerns to the E-Board, the Complainant and Witness 9 seemed satisfied with E-Board’s response. The Complainant wrote to E-Board members, “[Witness 9] and I want to make it clear that we don’t expect nor want the future eboard to take this into consideration at all when making teams, planning events, etc. Since eboard has addressed this, we’re plenty capable of coexisting peacefully and we’d rather eboard use whatever other criteria they usually do in deciding teams and such. Thanks again!!” **Appendix A, Exhibit N.**⁴²

In September, the E-Board (consisting of Witness 4, Witness 6, [REDACTED], and the Complainant) collectively decided not to make the Respondent a team captain, even though he wanted to be a captain and had the technical skill to be a captain, because they collectively decided that he should not be in a position of leadership given his prior conduct with the Complainant and Witness 9. Witness 6 said neither Witness 9 nor the Complainant requested the Respondent not be a captain. Even though the Complainant was on E-Board by this time, Witness 6 said the Complainant was the most junior member and did not have significant influence. In addition, although the Respondent was not formally made a captain, his team had only one E-Board member where others had two, so he still had informal influence as a seasoned member of the team. Witness 6 also said she was unaware of any “anti-[Respondent]” campaign when he ran for E-Board in either the spring or fall. Witness 6 suspected the Respondent didn’t win a position on E-Board primarily because the freshman class had the most members and wanted to elect a member of their class to E-Board.

Witness 4 states that he did not think the Respondent should be a captain either but advocated for the Respondent after the Respondent promised that he was a changed person since the previous year. Nonetheless, the E-Board still declined to make the Respondent a captain, and the Respondent got very upset. Witness 4 states the other captains, including Witness 3, who confirmed Witness 4’s account, then got upset because the Respondent was “throwing a tantrum” about how he deserved to be a captain, and were even more convinced that he should not be a captain.

The incidents on the following pages (through the second to last paragraph before the Conclusion on the last page) are relevant only to the extent they provide context for the Complainant’s and Witness 9’s state of mind toward the Respondent and the Complainant’s motives in bringing the Complaint. They are not relevant for any other purpose and should not be considered as evidence that the Respondent committed the acts alleged in the Complaint.

Not long after E-board’s decision not to make the Respondent a captain, Witness 4 hosted a party at his apartment at which numerous members of Mock Trial, including the Respondent, Witness 9, Witness 4 and Witness 3, but not the Complainant, were present.⁴³ Witness 3 states that this party took place the day of the September 26th Harvard-Brown football game.⁴⁴ At the party, Witness 9, Witness 4 and Witness 3 all state that the Respondent confronted Witness 9 in a hostile manner and mocked her for reporting him to E-Board. To Witness 4, it was clear that the Respondent was still angry about the decision not to make him a captain, and angry at Witness 9 for complaining about him. Witness 9 states that she told her parents and the Complainant

⁴² The Complainant did not become a member of Eboard herself until later that summer.

⁴³ This incident is relevant to the extent it provides context for the Complainant’s and Witness 9’s state of mind toward the Respondent and the Complainant’s motives in bringing the Complaint. It is not relevant for any other purpose and should not be considered evidence that the Respondent committed the acts alleged in the Complaint.

⁴⁴ <http://www.brownbears.com/sports/m-footbl/2015-16/schedule>

about what happened the next day, and all were very upset. Witness 5 confirmed that after the incident at the party, the Complainant seemed very shaken, even though she had not even attended the party and it did not directly impact her. Witness 9 said her parents told her to seek help from the University, so she called Brown's Department of Public Safety (DPS). DPS referred her to the Title IX Program Officer.

The Complainant states that by September, 2015, her own contact with the Respondent was minimal, but Witness 9 continued to tell her about the Respondent's ongoing attempts to communicate with Witness 9. The behavior Witness 9 reported made the Complainant fear for her own safety. Witness 6 recalled the Complainant and Witness 9 approaching her one day after practice in September, 2015. The two wanted to discuss their options with Witness 6 because they were very concerned about disrupting the team, but they were considering getting no-contact orders against him. Witness 6 said she told them the team had already done everything it could, but they should pursue any options they had.

The Complainant states that she raised her safety concerns with a dean in the Office of Student Life. The Office of Student Life issued No-Contact Orders between both the Complainant and Witness 9 and the Respondent on October 2, 2015. The Complainant states that she did not file a complaint at this time because she feared retaliation from the Respondent.

On October 3, Witness 4 recalled tailgating with members of the mock trial team before a football game.⁴⁵ He states he was talking to a group of people standing in a circle that included Witness 9 and Witness 3 when the Respondent, who had not been part of the circle, came up to Witness 4 out of the blue, took Witness 4's glasses off, and put them back on upside down. The Respondent also said, "Hi, [Witness 3]," in an exaggerated tone. Witness 4 and Witness 3 were standing very close to Witness 9 at the time, and it appeared to Witness 4 that the Respondent's actions were intended to intimidate Witness 9. Witness 9 and Witness 3 told the Complainant what happened.

Also in October, 2015, after the the No-Contact Orders issued, Witness 5 recalled holding a mock trial meeting at which they viewed a Powerpoint on the rules of evidence. Witness 5 saw that the Complainant was sitting with [REDACTED] far away from the Powerpoint, so he suggested they move up so they could see. Witness 5 said the Complainant "gave him a death glare." Midway through the presentation, Witness 5 states that the Complainant started crying. The Complainant recalled this incident. She states she was upset, but did not cry.

Witness 3 states that in the fall of 2015, she met Sasha Witness 14 at a party Witness 3 attended with a friend, [REDACTED], who is also Witness 9's roommate. Neither the Complainant nor Witness 9 were there. Witness 14 told Witness 3 about some interactions she had with the Respondent that made Witness 14 uncomfortable. Witness 3 states that she and her roommate told the Complainant and Witness 9 about the conversation with Witness 14 the next day. Witness 9 recalled that Witness 3 told her about her meeting with Witness 14 sometime between October 16 and October 30, 2015.⁴⁶

Witness 11 is a fraternity brother of the Respondent. He does not know the Complainant except by sight. On October 30, 2015, he states that he was in the Ratty in line to get food when he recognized the Complainant directly ahead of him in line. The Complainant was talking to a female friend. The friend was crying and the Complainant was comforting her. The friend said, "We failed. We messed up. It didn't work. Every time we

⁴⁵ Witness 4 recalled the date because he had taken the LSAT exam that morning. The LSAT was administered on October 3, 2015. <http://www.lsac.org/jd/lsat/test-dates-deadlines/2015-2016/us-canada-oct>

⁴⁶ Witness 9 recalled this occurring shortly after October 16, when she received notice that the Respondent had been found responsible for violating the no-contact order on October 3. It must have occurred before October 30, because that is the day that, as discussed further below, Witness 11 overheard Witness 9 and the Complainant speaking about Witness 14, and the day the Complaint, which includes information related to Witness 14, was filed. Witness 9 states that she did not communicate directly with Witness 14 until after October 30.

try and get him on something it doesn't work." Witness 11 states that several times he heard the Complainant and her friend say the Respondent's name. He also recalled the Complainant saying, "We'll get him. My uncle is an important lawyer in New York and [the Respondent] can't keep countersuing us." Witness 11 also heard one of them say, "We'll figure this out, we'll get [Witness 14] to do something."⁴⁷

The Complainant recalled being in the Ratty one day when Witness 9 was very upset and having a conversation with Witness 9 along the lines described by Witness 11. The Complainant states that she and Witness 9 were concerned that the Respondent would pursue legal action against them because of a recent article the Complainant had read about a perpetrator at the University suing a victim after having been found responsible for sexual misconduct by the University.⁴⁸ The Complainant also recalled some discussion about whether the University could disclose to Witness 9 any sanctions the Respondent received for violating the no-contact order. The Complainant states that she and Witness 9 were worried about what actions the Respondent might take against them if they filed a complaint, not because filing a complaint would be unjustified, but because they were afraid of him and thought he might do something intentionally to cause them harm if they filed a complaint.

By the Respondent's own admission, he treated the Complainant poorly, regardless of whether their sexual activity was consensual or not.⁴⁹ The Complainant's dislike of him is therefore reasonable even if he didn't assault her, as is her desire to seek support from other like-minded individuals. The Complainant's and Witness 9's negative feelings toward the Respondent do not assist the panel in evaluating whether the Complainant's claims are fabricated. Neither does the conversation overheard by Witness 11, because there is no evidence that their reasons for "wanting to get him" were unfounded, or that they wanted to take any action other than that to which they were entitled. Moreover, fabricating allegations requires a person to make statements knowing them to be false. Thus, if the panel concludes that the Complainant genuinely believed she was coerced into sexual activity, her claims would not amount to fabrication even if the panel concludes that no sexual misconduct occurred.

V. Conclusion

The foregoing is a summary of significant facts learned during on interviews and reviews of documents during the investigation, and is not intended to be a complete recitation of every fact. Nor is it intended to be a comprehensive analysis of all the evidence. While great effort has been made to include any and all material facts, and to analyze evidence, some material facts and analysis may not be included. Please feel free to contact me if any issue needs further clarification.

⁴⁷ Witness 11 states that he told the Respondent what he had heard. The Respondent told him the Complainant and Witness 9 had "sued" him and then the University had breached some kind of confidentiality so the Respondent had "countersued" the University. The University is unaware of any legal action by the Respondent against it for breach of confidentiality or privacy.

⁴⁸ On October 19, 2015, *The Brown Daily Herald* published an article about a lawsuit filed by a member of the class of 2017 against a female student who had filed a sexual misconduct complaint against him. <http://www.browndailyherald.com/2015/10/19/former-student-sues-u-for-gender-based-discrimination/>.

⁴⁹ "Perhaps I should have spent more time getting to know her beforehand or been nicer after our encounter. That I regret, and I'm sorry I hurt [the Complainant's] feelings. **Appendix B at 6.**