



14734718

FILED
ALAMEDA COUNTY

NOV 15 2017

By *[Signature]*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

JOHN DOE,

Plaintiff,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al,

Defendants.

No. RG16-843940

ORDER GRANTING PETITION FOR WRIT
OF MANDATE

Date: 11/15/17

Time: 9:00 a.m.

Dept.: 514

The Petition of petitioner Doe for a writ of mandate came on for hearing on 10/12/17 and again on 11/15/17, in Department 514 of this Court, the Honorable Thomas Rogers presiding. Counsel appeared on behalf of Petitioner Doe and on behalf of Respondent The Regents of the University of California ("The Regents"). After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The Petition of petitioner Doe for a writ of mandate directing the Regents to set aside and vacate the decision of the University of California, Santa Barbara's Interpersonal Violence Appeal Review Committee ("IPVARC") decision in Doe v. Roe (Title IX Case # 2016-0036) is GRANTED.

1 ADMINISTRATIVE RECORD

2 The administrative record submitted to the court was not indexed and was difficult to use.
3 After this was brought to its attention, the Regents submitted an index.

4 In the briefing, the parties frequently did not provide useful citations to the record. Doe
5 cites to his own information and downplayed contradictory info. The Regents frequently cited to
6 the investigator's report at AR 175-222 as evidence instead of citing to the underlying evidence.

7 A citation to the factual summary in a report is not particularly useful in establishing that there is
8 substantial evidence for the factual summary in the report. The only exception is where the
9 investigator's report contains a summary of an unrecorded and unwritten witness statement.

10
11 FACTS

12 Doe and Roe were both students at the University of California, Santa Barbara. Doe and
13 Roe were friends. Roe was in a long term same sex relationship with R. (AR178)

14 In November 2015, Roe expressed interest in a heterosexual encounter with Doe. (AR
15 179, 189)

16 On 11/5/15, Doe and Roe had the sexual encounter that is the subject of this case. Roe
17 invited Doe to her residence to "make out." (AR 27:16-18, 29:8-10; 179.) The went to
18 Roe's room and had some wine. Other than Roe and Doe, there were no witnesses to the
19 encounter. (AR 30:15-20, 65:25-66:2.)

20 On 11/6/15, the following day, Roe has a text conversation with another student (A.S.):

21 Roe – Let's say this is my first business of hands. ...

22 A.S. – and did you enjoy. How was it.

23 Roe – he was going to come. But someone was coming. / But it was a false alarm
24 / But then we continued / But I'm not sure if I enjoyed the hand job, because I was
nervous, because I never done one to anybody

25 A.S. – Ha Ha Ha. But very very good

26 Roe – Yes / Finally, I killed my curiosity." (AR 260)

...

1 Roe - The truth is, if I had been waxed, and more prepared, it would have gone
2 further, but I would have felt bad for R.

3 A.S. - Waxed, you mean drugs?

4 Roe - You mutt, waxed means shaved, you idiot

5 ...

6 A.S. - I'm glad it was what you were expecting.

7 Roe - Wide grin emoticon

8 A.S. - Solidarity emoticon

9 Roe - And then he asked me if I wanted a blow job. I said Nope.

10 (AR 261-262)

11 On or about 11/7/15 (2-3 days after the encounter), Doe and Roe had another sexual
12 encounter in which Roe again gave Doe a hand job. Roe said that this was consensual, but that
13 this second event was part of her denial. (AR 29, 67, 180, 187.) This second event is not at issue
14 in this case. (AR 67.)

15 On 11/8/15 (3 days after the encounter), Roe and Doe had the following text
16 conversation¹:

17 Roe - "I know ive asked you many times no but are you sure youre not just trying
18 to fuck me."

19 Doe - "No I turned down a hand job last night, I'm clearly not in it solely for the
20 sex."

21 Roe - "oooh that's why you did that / I was confused."

22 Doe - Also this is happening too fast for me rn lets talk later today I'm gonna do
23 my work today

24 Roe - I was gonna say that too / glad we're on the same page.

25 (AR 324-325.)

26 On 11/10/15 (5 days after the encounter), Roe has a text conversation with another student
(A.S.):

Roe - And to be honest, I like Mr. Doe. I also like his company, but it is like
you've been here over x time, please leave / I should've fucking made out with
you and not him. (AR 271.)

¹ Many of the text conversations were originally in Spanish and Roe states that the
translations were incorrect. (AR 189) The court relies on the translations in the administrative
record.

1 ...
2 Roe – He’s an asshole. I’ll call whatever this is off / But I fucking like him / But
3 he is an asshole / I’ll stop my rant now. (AR 272)

4 ...
5 Roe – Mr. A.S., I’m impatient / And compulsive / I’m going to call whatever this
6 fling is off. (AR 274)

7 Roe wrote in her journal “yes I liked it.” (AR 189, 216.)

8 On 11/13/15, Roe texted A.S. “well, ive been going through hell in many ways .. and not
9 because of him ... my life was already difficult ... ive been through a lot ... not only my dad.”
10 (AR 407-408)

11 Roe stated in the investigation that after the 11/5/15 incident she went into denial and
12 convinced herself she enjoyed what happened. (AR 180.)

13 A.S. said that after the incident Roe frequently stayed near Doe’s residence and it
14 appeared that Roe wanted a romantic relationship with Doe. (AR 200.) There is evidence that
15 Roe broke off her three year relationship with R from 11/5 through about 11/15/15. Roe
16 elsewhere states she never broke up with R, but rather “took a break to explore.” (AR 31-32,
17 190.)

18 On or about 11/17/15, Roe told Doe that she had not consented to the sexual activity on
19 11/5/15. (AR 288.)

20 Around Thanksgiving 2015, Roe posted letters on campus regarding sexual assault.
21 (AR 180, 280-282.)

22 On 2/22/16, Roe filed a complaint against Doe. (AR 16, 175) The Regents appointed
23 Quillen as investigator.

24 On 3/2/16, Quillen sent a letter to Doe that notified Doe of the investigation. (AR 503-
25 504.) Doe requested a copy of the complaint. Quillen stated that consistent with policy he would
26 provide only the information in the letter and that he would provide the allegations at a meeting.
(AR 354-355.) Quillen thereafter interviewed witnesses. (AR 19)

1 Roe told Quillen that she she withdrew consent during the encounter and it became non-
2 consensual. Roe said that she said “no” when Doe touched her breasts and “no” when Doe
3 placed her hand on his penis. She said that she said “no” eight times. (AR 28, 179.) Roe told
4 Quillen that about five days after the encounter she realized it was sexual assault. (AR180.)

5 On 3/18/16, Quillen met with Doe. Quillen did not provide Doe with the written
6 allegations against him. (AR 356-358.) Quillen asked Doe questions about the incident.
7 Quillen later stated that the questions effectively disclosed the charges because the witness
8 statements and the complainants report were embedded in the questions. (AR 19.)

9 Doe told Quillen that the encounter was consensual. Doe said he asked permission before
10 he touched Roe’s buttocks and breasts and asked her what she wanted to do. Doe said that Roe
11 asked him what he wanted to do, he suggested a “hand job,” and then Doe put his hands around
12 hers to perform the sexual act. (AR 29-30, 183.)

13 On 4/1/16, Quillen sent a letter to Doe that confirmed that Quillen did not provide Doe
14 with the written allegations against him. (AR 356-358) Quillen explained that under the UCSB
15 procedure he provided Doe only with the general information in the initial letter so that Doe had
16 “an open ended, unrestricted opportunity to present any and all information you believe is
17 relevant, rather than being constricted by your considerations of what my office has indicated as
18 relevant.” (AR 356)

19 On 4/13/16 Doe submitted a lengthy written statement. (AR 365, 368) The written
20 statement is dated 3/31/16, but Doe’s email of 4/13/16 states the report was ready on 3/31/17 and
21 Doe delayed the submission in the hopes of getting assistance from the Office of Respondent
22 Services. (AR 365.)

23 Between 4/13/17 and 4/26/17, Doe and Quillen exchanged email regarding Doe’s
24 concerns with the process and disappointment that UCSB provided no support in preparing his
25 statement.

26

1 On 4/29/16, Quillen again interviewed Doe. (AR 21-22, 40.) Quillen asked Doe about
2 the incident. Doe objected to the suggestive lines of questioning, but Quillen stated it was the
3 normal method of eliciting information. (AR unknown [Cited in Doe's brief as Prelim AR 344-
4 345). Doe emailed Quillen Doe's notes from the interview, but Quillen stated that his notes and
5 pre-prepared questions were the official record and that he would use those in his analysis. (AR
6 23:1-5.) Quillen later stated that the questions in some measure disclosed the nature of the
7 charges because the charges were embedded in the questions. (AR 45.) Quillen's subsequent
8 report states his summary of the interview. (AR 181-186.)

9 On 4/29/16, Doe reported to Quillen evidence of possible stalking by Roe. Quillen
10 evaluated the information, decided that it was not sexual harassment and that it was not a matter
11 for his office. (AR 22.) Quillen did not pursue the stalking allegations as part of his
12 investigation and stated he would close his file. (AR 387-388.) Doe and Quillen exchanged a
13 series of lengthy emails on the subject. (AR 375-388.)

14 On 5/8/17, Doe submitted information that Roe was reporting him to the Office of
15 Judicial Affairs because she saw him on campus. (AR 370-371.)

16 On 5/11/17, Doe submitted additional information regarding Roe's interest in Doe dating
17 back to May 2015. (AR 372-374.)

18 On 5/17/16, Doe sought assistance from the UCSB Office of the Dean of Students
19 regarding an extension on a paper and Doe's frustration with Quillen and what Doe perceived as
20 a lack of due process in the investigation process. The Dean's Office redirected Doe to Quillen.
21 (AR 390-396.)

22 On 5/23/16, Quillen asked for a final debriefing interview with Roe and with Doe. Roe
23 accepted. Doe deferred the interview until after final exams. (AR 24-25.)

24 On 5/25 and 5/27/16, Quillen provided Doe with information about how to file a
25 complaint if Doe felt that he was being treated unfairly in the investigation process. (AR 22.)
26

