

Exhibit C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN SECTION

Docket No.
16-CV-30184

JOHN DOE,
Plaintiff

vs.

WILLIAMS COLLEGE,
Defendant

DEPOSITION OF: ALLYSON KURKER, taken before
Kathleen M. Houghton, Notary Public
Stenographer, pursuant to the Massachusetts
Rules of Civil Procedure, at the offices of
Philbin & Associates, Inc., 75 Market Place,
Springfield, Massachusetts, on November 15,
2017, commencing at 10:02 a.m.

APPEARANCES:

(Please see Page 2.)

Kathleen M. Houghton
Court Reporter

1 the form of the question.

2 Q. (By Ms. Rossi) Do you recall
3 receiving any written documentation of college
4 policies from anyone at the college?

5 A. Well, the first thing is that the
6 2015-2016 policies would have been online so I
7 would not have needed to receive those to the
8 best of my recollection.

9 If you're asking me sitting here
10 today whether I remember someone emailing me
11 policies, I don't recall you emailing me
12 policies and I don't remember anyone else
13 emailing me policies but I have no reason to
14 doubt that at some time those things occurred.

15 Q. Okay. Since the policies that were
16 in effect prior to October 2014 were only
17 available in hard copy, how would you have
18 been able to -- or how were you able to draft
19 this footnote?

20 MR. LAPP: Objection.

21 MS. ROSSI: I'm trying to
22 rethink the question.

23 THE WITNESS: I think what

1 you said is inaccurate.

2 Q. (By Ms. Rossi) Okay. I will repeat
3 the question.

4 Is it correct that you would have had
5 to have received written confirmation of the
6 policies in effect before October 2014 in
7 order to write this footnote?

8 A. Can you break that up into pieces?
9 I'm not -- I'm not trying to be difficult.
10 I'm really not following what you're saying.

11 I would say generally I was in
12 receipt of some -- I had some policies because
13 I had done work for the college over different
14 periods of time. There are some policies I'm
15 sure I had and other policies I needed to get.
16 That's generally what happened.

17 Q. Okay. So since you had been doing
18 investigations for the college as early as
19 2014, it's possible that you had copies of the
20 policy that was in effect prior to October
21 2014 from your previous work for the college?

22 A. Not necessarily.

23 Q. Okay.

1 A. Would you like to know why?

2 Q. Yes, please.

3 A. Because I would only probably have
4 the policies that would have been applicable
5 to whatever investigation I was doing. So it
6 is possible that I had, you know, a policy on
7 X violation but not on Y.

8 Q. Okay. And because at the time the
9 policies were only available in hard copy,
10 then those policies would have been delivered
11 to you prior to October 2014? The policies
12 were only available online -- I'm sorry -- in
13 hard copy so they would have had to have been
14 delivered to you manually from the college?

15 MR. LAPP: Objection.

16 THE WITNESS: That's
17 incorrect.

18 Q. (By Ms. Rossi) What is incorrect?

19 A. What you've just said.

20 Would you like me to explain?

21 Q. Yes, please.

22 A. So if, for example, I was doing an
23 investigation in 2015 then a policy would have

1 been on the website in 2015.

2 Q. That's not what I was referring to.
3 I was referring to policies prior to October
4 2014.

5 A. Didn't I say that I started doing
6 work at some point in 2014?

7 Q. Yes.

8 A. Okay. And you just identified
9 anything that happened prior to October 2014.

10 Q. Yes.

11 A. And my response was I may have had
12 them from another report, I may not have.

13 Q. Okay. Is it correct that the
14 footnote in Exhibit 8 was removed and then
15 replaced on August 17th at 1:12 p.m. in a
16 draft that was produced subsequent to an email
17 dated August 17th, 2016 at 1:12 p.m.?

18 MR. LAPP: I'm going to make
19 a suggestion, which is, that rather than you
20 asking the witness whether she recalls what
21 changes to footnotes were made in drafts
22 produced at certain hours of certain days,
23 which it's clear she's not going to be able to

1 recall, that -- that, coupled with the fact
2 that you have a complete set of all of her
3 drafts which speak for themselves, we don't
4 need to be trying to examine the witness as to
5 changes from one draft to another.

6 MS. ROSSI: That is actually
7 exactly what I want to ask.

8 Q. (By Ms. Rossi) How is it that the
9 footnote was in there, then replaced with a
10 heading that states: The statement of sexual
11 assault and other sexual misconduct that was
12 in effect during month 2013 until October
13 2014, and then was changed again to reflect
14 the footnote, can you explain why it was in
15 there, taken out, and then replaced?

16 A. I can tell you generally that
17 different policies are in effect in different
18 times and it is sometimes my practice to put
19 in a placeholder while I get confirmation or
20 in other times where they say, no, in fact,
21 that isn't the policy that was in effect at
22 the time, in which case -- and I guess I would
23 also say that sometimes I will use as a draft

1 template a prior report. So it is possible
2 that I was using the same template, meaning
3 that, you know, the heading at the top, the
4 introduction, the procedure, the applicable
5 policies, the witness statements, the
6 analysis, and the conclusion. And that it is
7 possible, although I cannot say for sure, that
8 whatever I was using as a template had one
9 particular policy in and that as I got to the
10 point where I was going to be finalizing my
11 report, I would focus then on including the
12 applicable policy.

13 MS. ROSSI: Okay. Can we
14 enter these as exhibits? May I have your
15 approval to enter these as exhibits to show
16 that the footnote was placed in, removed, and
17 then placed back in?

18 MR. LAPP: We're not entering
19 anything into evidence. All right. What
20 we're doing today -- we're not trying a case
21 today. We're taking a deposition today.

22 MS. ROSSI: I know.

23 MR. LAPP: We've produced all

1 the drafts to you. You have all the drafts.
2 The drafts speak for themselves.

3 MS. ROSSI: Okay.

4 MR. LAPP: It's also the case
5 that you have the final report, which went to
6 the panel. The panel made its decision,
7 having the final report in front of it. There
8 was an appeal. The appeal was resolved. All
9 of these facts are known and not disputed.
10 What we're doing now is wasting a lot of time
11 talking about drafts of a report that the
12 panel never saw and never took into account.

13 If you want to mark something as an
14 exhibit because you want to show it to the
15 witness, knock yourself out.

16 MS. ROSSI: Okay. We'll just
17 move on.

18 MR. LAPP: Super.

19 MS. ROSSI: Yes.

20 Q. (By Ms. Rossi) So in September of
21 2016, is it correct that you received an email
22 from Ms. Camacho stating that Jeff Jones
23 stated that the college's code of conduct for

1 students would apply for the policy section of
2 the investigative reports since the college
3 did not have a sexual misconduct policy until
4 October 2014?

5 A. If your question is whether I recall
6 sitting at my desk or being on my phone
7 somewhere and receiving an email from Toya
8 about something, then I can tell you for sure
9 I do not recall where I was standing or
10 sitting, what sort of a device I was using, or
11 what any particular email I received from a
12 year and a half ago said.

13 Q. Okay. Does this document refresh
14 your recollection? (Indicating)

15 A. I have no reason to dispute this
16 document says what you read.

17 Q. Okay.

18 MR. LAPP: So why don't we
19 mark that as the next exhibit, please.

20 (Exhibit No. 9, marked.)

21 Q. (By Ms. Rossi) Okay. Ms. Kurker, as
22 you've been conducting Title IX investigations
23 for at least five years, are you familiar --

1 A. Did I say that?

2 Q. Yes. That's since 2012.

3 A. Okay.

4 Q. Are you familiar with the OCR
5 regulations under the statute?

6 MR. LAPP: Objection.

7 THE WITNESS: By familiar --
8 I don't believe that OCR issues regulations.

9 Q. (By Ms. Rossi) Are you familiar with
10 OCR guidance under the statute? Like, you've
11 testified that you're familiar with the Dear
12 Colleague Letter. I believe you mentioned it.

13 A. I am familiar with that document.

14 Q. Okay. So is it correct that since
15 2000 --

16 A. '11.

17 Q. -- actually since 2012, I'm sorry,
18 2001 the OCR has required all schools
19 receiving federal assistance to have clear
20 guidelines regarding sexual harassment of
21 students by school employees?

22 A. I could not tell you today what any
23 particular OCR guidance said so, would it

1 surprise me? No. Do I know for sure? No.

2 Q. And is it correct or your
3 understanding that from April 2011 until
4 recently OCR further required all recipients
5 to have policies and procedures for
6 fact-finding investigations to resolve sexual
7 misconduct complaints?

8 A. If your question is whether I know
9 that to be a fact, I would say I'm not
10 prepared here today to say that I know that to
11 be a fact but, again, it would not surprise me
12 if that were guidance that OCR issued.

13 Q. Isn't nonconsensual sex sexual
14 misconduct whatever a college wants to title
15 the policy?

16 MR. LAPP: Objection.

17 THE WITNESS: I don't know
18 what you've asked. Or I should say I don't
19 understand what you've asked.

20 Q. (By Ms. Rossi) Is it your
21 understanding that nonconsensual sexual
22 misconduct is contained in a -- excuse me --
23 let me restart.

1 Is it your understanding that
2 nonconsensual sex is a charge that would be
3 contained in an umbrella of the term "sexual
4 misconduct"?

5 MR. LAPP: Are you asking her
6 what her understanding of the Williams College
7 policy is that has relevance to this case?

8 MS. ROSSI: I'm getting to
9 it.

10 MS. LAPP: So you're not
11 asking her that now. You're just asking her
12 generally what she thinks about whether
13 certain things fall within the umbrella of
14 something else that has nothing to do with
15 Williams?

16 MS. ROSSI: Does Ms. Kurker
17 consider nonconsensual sex to be sexual
18 misconduct?

19 MR. LAPP: Objection.

20 THE WITNESS: I would say
21 that nonconsensual sex is a violation of a
22 policy in most institutions of higher
23 education. Whatever that institution calls

1 sexual misconduct certainly varies.

2 Q. (By Ms. Rossi) And since 2011 --
3 strike that.

4 What did you think when you received
5 the email from Ms. Camacho saying that college
6 counsel claimed that the college did not have
7 a sexual misconduct policy until October 2014?

8 MR. LAPP: Objection.

9 THE WITNESS: I do not recall
10 that I thought anything other than that I had
11 asked a question and had received an answer.
12 And, further, that an honor code often times
13 includes information about sexual misconduct.

14 Q. (By Ms. Rossi) Right. So did you
15 believe it to be true that the college had no
16 nonconsensual sex policy prior to October
17 2014?

18 A. I understood whatever I was told to
19 be the case. If I was told that it was in the
20 honor code -- is that what you said? I'm not
21 sure --

22 Q. It's the code of conduct.

23 A. Code of conduct. If I was told that

1 it was in the code of conduct then I believed
2 it was in the code of conduct because that's
3 what was reflected on my report.

4 Q. But you did not have a copy of that
5 code of conduct; is that correct?

6 A. Not that I recall.

7 And I was not a decision maker so I
8 was not in a position of applying facts to
9 policy.

10 Q. On September 12th did you produce the
11 final draft that inaccurately acknowledged
12 that the -- hang on. Sorry.

13 Is it correct that the policy that
14 you produced in your report on September 12th,
15 2016 did not exactly match any of the
16 college's written policies?

17 MR. LAPP: Objection.

18 THE WITNESS: My report
19 reflected the information that was provided to
20 me and I believe you would be in a better
21 position than I am to know whether the report
22 reflected what was in effect at that time.

23 Q. (By Ms. Rossi) Okay. Would it

1 what you mean by "recused herself." I don't
2 -- I don't know both -- I understand generally
3 what recused means.

4 I don't think -- sitting here today I
5 don't recall what role, if any, Dean Bolton
6 played in the school's practice of helping to
7 administer the Title IX policy.

8 Q. (By Ms. Rossi) Were you aware at any
9 time that the college planned on using the
10 statement, "The policy in effect prior to
11 October 2014 defined sexual misconduct in
12 substantially the same manner" afterwards when
13 John was found guilty and appealed?

14 MR. LAPP: Objection.

15 THE WITNESS: I don't
16 understand your question.

17 Q. (By Ms. Rossi) Were you aware that
18 the college planned on using the statement
19 made in your footnote in the appeal that John
20 possibly could have and ended up having?

21 MR. LAPP: Objection.

22 THE WITNESS: I don't know
23 what footnote you're referring to. I don't

1 know if it was in a final draft and I am not
2 part of the deliberation.

3 Q. (By Ms. Rossi) I'm just asking if
4 you were aware that the college planned on
5 using the footnote that appears in Exhibit 8
6 from your draft report in any potential appeal
7 of the case?

8 MR. LAPP: Objection.

9 THE WITNESS: Are you
10 referring to my final report?

11 Q. (By Ms. Rossi) No. I'm referring to
12 the footnote that it is in Exhibit --

13 A. This is a draft report. (Indicating)

14 Q. Yes.

15 MR. LAPP: So now we're
16 looking at Exhibit 8.

17 THE WITNESS: Okay. And the
18 reason generally -- and I'm going to speak
19 generally because, as I said, I am not part of
20 any deliberation. Generally, the reason why
21 drafts are revised and updated is to reflect
22 changes that are going to be made. So I would
23 not suspect that they would have relied upon