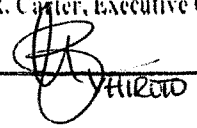


SEP 15 2017

Sherri R. Carter, Executive Officer/Clerk

By  Deputy

**STATEMENT OF DECISION GRANTING
PETITION FOR WRIT OF MANDATE**

**JOHN DOE v. AINSLEY CARRY, Ed.D., Vice Provost for Student Affairs,
UNIVERSITY OF SOUTHERN CALIFORNIA, Case No. BS 161569**

John Doe was accused in a university disciplinary proceeding of having violated provisions of the Student Conduct Code in having sex with two female students who were too intoxicated to consent.¹

The Office of Student Judicial Affairs and Community Standards ("SJACS") of the University of Southern California ("USC") investigated the student complaints and found John Doe to be responsible for committing sexual assaults against USC students Jane Roe and Jane Roe2. SJACS, in its decision on April 29, 2013 in the Jane Roe2 matter, found John Doe violated the Student Code and imposed the sanction of a two-year suspension from the University. SJACS, in its later decision on May 31, 2013 in the Jane Roe matter, found Doe violated the Student Code and imposed the sanction of permanent expulsion from the University. The Student Behavior Appeals Panel upheld the SJACS decision. John Doe was expelled from USC on September 20, 2013.

John Doe filed this petition for administrative writ of mandate against USC and its vice provost for student affairs (together "respondents") to challenge the suspension and the expulsion sanctions. He brings the action under Code of Civil Procedure section 1094.5. He specifically argues that USC's disciplinary process violated section 1094.5, subd. (b) in failing to provide a "fair trial" to him. Under the circumstances of this case a "fair trial" requires that the disciplinary process be conducted in a manner so that an accused person is provided an adequate opportunity to present his position to the decision-maker. (This notion is sometimes referred to as a "fair procedure" or a "fair

¹ John Doe is a pseudonym that is used to protect his privacy. The two students who filed complaints against John Doe ("complainants") are identified as Jane Roe and Jane Roe2 to protect their privacy. Other witnesses who were interviewed by the university investigators are identified by a letter. The Court issued its order under CRC 2.551 to place under seal pleadings filed in this action that disclose the names of the students who were identified in the course of the disciplinary process.

hearing.”) The procedures that may be required for a fair hearing depend on the circumstances.

John Doe argues that the disciplinary process conducted by the USC failed to provide a fair hearing to him because it did not provide a means by which he (with advice of counsel) could test the credibility of the witnesses against him on the central issue: whether the sexual activity was consensual.

On the issue of whether a student disciplinary proceeding must provide a means to test the credibility of adverse witnesses, the Court relies, in part, on the recent decision of *John Doe v. University of Southern California* (2016) 246 Cal.App.4th 221, in which the appellate court discussed but did not decide this issue.

John Doe also challenges the sanction on the other grounds permitted under section 1094.5—that USC failed to proceed in the manner required by law, that its decision is not supported by the findings and that its findings are not supported by the evidence.

The Court will GRANT the petition and, thus, will set aside the expulsion order and the earlier suspension order (and the notation of such orders on Doe’s transcript) and will remand the matter for appropriate further proceedings.

OVERVIEW OF COMPLAINTS INVESTIGATED IN DISCIPLINARY PROCEEDING:

Admissions of Sex; Denials of Consent.

John Doe admits he had sex with Jane Roe in his hotel room in Las Vegas after midnight on the night of March 31-April 1, 2012. (Doe’s fraternity was hosting a Las Vegas weekend.) Jane Roe does not remember having sex with John Doe, and she denies that she consented to having sex with him.

John Doe admits he had sex with Jane Roe² in his apartment near the USC campus after 10 p.m. on the night of August 20-21, 2012. Jane Roe² does not remember having sex with John Doe, and she denies that she consented to having sex with him.

USC’s Allegations of Sexual Assault.

Respondents in their Answer to the Petition provide this summary of the incidents that resulted in the disciplinary proceedings against John Doe.

As to Jane Roe’s complaint of sexual assault, the Answer alleges:

[O]n April 1, 2012, Petitioner engaged in non-consensual sexual activity with USC student Jane Roe during a fraternity party in Las Vegas—first in the kitchen of a suite at The Palms Hotel, and then again in Petitioner’s hotel room....On February 7, 2013, Jane Roe reported the incident to USC personnel.

Jane Roe stated to USC that she had been under the influence of alcohol and cocaine on the night in issue, that she “blacked out,” and that she did not know where she was, and that Petitioner was naked in bed next to her. She reported that she did not recall having sexual intercourse with Petitioner, although that fact was [admitted] by Petitioner in the course of the investigation.

As to Jane Roe2’s complaint of sexual assault, the Answer alleges:

[O]n August 20, 2012, Petitioner and Jane Roe2 met at an apartment party. Jane Roe2 had reportedly been drinking alcohol and using cocaine in Petitioner’s presence. Jane Roe2 reported blacking out after several drinks and has no recollection of the rest of the night. According to Petitioner, Jane Roe2 and he went to his apartment. There, Petitioner engaged in sexual intercourse with Jane Roe2. According to witnesses, Petitioner later called Jane Roe2’s friend to report that she was ill and to “come and get her,” but did not say where. Jane Roe2 was found outside her locked apartment without her bra, underwear, keys or identification.²

USC’S GOVERNANCE STRUCTURE FOR ADMINISTRATIVE PROCEEDINGS TO DECIDE STUDENT COMPLAINTS OF SEXUAL MISCONDUCT OR ASSAULT:

USC has adopted administrative procedures to enforce its Student Conduct Codes. These procedures are published in the University Governance Manual. See, AR 793-836 (for 2011-2012) and AR 839-951 (for 2012-2013).

Student complaints of sexual misconduct are referred to the Office of Student Judicial Affairs and Community Standards (“SJACS”). SJACS through its personnel “may conduct such fact-finding as they see fit to determine whether a particular complaint has merit.” AR 849, Student Conduct Manual section 12.05. The investigation is an “adjudicatory process,” and any accused student is entitled to “[a] fair and impartial review of the incident.” *Id.*, section 12.30D. An accused student is entitled to have an advisor, and, if the sanction may include a serious sanction including expulsion, the advisor may be an attorney. The accused student is entitled “to inspect all evidence” and to present witnesses and evidence. “[T]he procedural protections in the adjudicatory process ... does not include the right to confront accusers.” *Id.*, section 12.30.

SJACS, if it deems a student complaint to have merit, commences a “Summary Administrative Review.” SJACS in conducting a Summary Administrative Review exercises broad powers: it investigates; it makes factual findings; it determines responsibility; and it imposes sanctions against students found to have violated the Student Conduct Code.

²The record reflects that Jane Roe2’s roommate, “R,” had her keys and identification. AR 583, 541, 566.

SJACS' powers include "to render determinations concerning relevance of testimony and evidence to be presented as part of the review." SJACS is to apply the following evidentiary standard: "The standard of proof for deciding against the accused student shall be such evidence that, when weighed against that opposed to it, has the more convincing force and the greater probability of truth." *Id.*, section 12.30D.

Both the accused student and the complainant student may appeal the SJACS decision to the Student Behavior Appeals Panel. The rules do not permit oral testimony to the Appeals Panel. "The appellant should be aware that all appeals are documentary reviews in which no oral testimony is taken." Nor do the rules provide for oral argument to the Appeals Panel. "Generally appeals are determined solely on the merits of the documents submitted and do not proceed to oral hearing." AR 853, Appeals Process, section 15.01. The grounds for appeal are limited to:

A. That new evidence has become available which is sufficient to alter the decision and which the appellant was not aware of or could not have been reasonably obtained at the time of the original review.

B. That the sanction imposed is excessive or inappropriate.

C. That the review panel or review officer failed to follow university rules or regulations while reviewing the cited behavior. (Id. section 15.02.)

The decision of the Appeals Panel is "final and binding on all parties." "There is not further appeal in any of these cases." AR 853, Student Conduct Manual, Appeals Process, section 15.04. Another section states, however, that the "recommendations of the Student Behavior Appeals Panel are reviewed by the Vice President for Student Affairs at his sole discretion and, once approved, are final and binding upon all parties." *Id.*, section 15.10B. The letter USC sent to Doe after the Appeals Panel upheld the expulsion order said: "The decision of the Student Behavior Appeals panel is final and binding upon all involved parties and there is no further avenue of appeal." AR 783.

USC has adopted policies to define "sexual misconduct" and "sexual assault" to apply to complaints by a USC student against another USC student. These are set forth in the Policy and Procedures on Sexual Misconduct and Sexual Assault. AR 011-020.³ Those policies provide that any sexual conduct between students must be based on mutual consent.

Because the central issue in the John Doe disciplinary proceeding is whether the sex was based on mutual consent, the Court shall quote at length

³ There are minor differences in the language of the policies that defined sexual misconduct in effect during the 2011-2012 academic year compared to the 2012-2013 academic year. The excerpts quoted by the Court are from the policies for 2012-2013.

from USC's published policies to provide context for the issue of "consent." AR 012-013. The Court has bolded those parts relating to incapacitation due to alcohol and/or drug use.

Sexual misconduct is defined as "any sexual act perpetrated upon a person

1) without his or her consent,... []

4) where the survivor has an impaired ability to give or withhold consent due to the influence of alcohol or other drugs; ...

Consent is defined as positive cooperation. Consent is informed, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. When people consent to sexual activity, they will have indicated, verbally or otherwise, that they are participating willing, freely and voluntarily. Consent is an on-going process in any sexual interaction. ... [] If you have sexual activity with someone you know to be—or should know to be—mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or passed out) you are in violation of this policy. Incapacitation is a state where one cannot make a rational, reasonable decision because they lack the ability to understand the who, what, when, where, why or how of their sexual interaction.

The Student Conduct Code (Section 11.53) list three categories of sexual violence.

- A. Sexual Misconduct. Engaging in non-consensual sexual conduct ... within the university community or at university-sponsored activities.*
- B. Sexual Assault. Non-consensual actual or attempted intercourse, sexual touching, fondling and/or groping.*
- C. Rape....*

Students should understand that the following circumstances apply to any of the above listed standards or any other kind of sexual misconduct ...:

Forced Sexual activity and behavior which is not consensual is defined as sexual misconduct or assault whether the assailant is a stranger or an acquaintance ...;

Intoxication of the accused does not diminish his/her responsibility ...;

In situations where the complainant is incapacitated or incapable of giving consent which includes but is not limited to when the complainant is unable to consent due to consumption of alcohol or drugs, the accused is responsible for misconduct if the accused sexually violates the complainant.

USC' S DISCIPLINARY PROCEEDINGS IN THE JOHN DOE MATTER:

John Doe appeals USC's disciplinary proceedings on both substantive and procedural grounds. The disciplinary proceedings under review had both an investigatory level conducted by SJACS and a review level before an Appeals Panel. The Petition challenges USC's decisions in two separate cases, that of Jane Roe and that of Jane Roe2. An understanding of the progression of the procedural steps is necessary to an analysis of the legal issues.

Complaints filed by Jane Roe and Jane Roe2.

Jane Roe and Jane Roe2 in February, 2013 made verbal complaints to SJACS against John Doe. Jane Roe2 visited SJACS on February 5 (AR 541), the date on which SJACS prepared a written complaint form for her (AR 538). She told SAJACS to expect a second complaint to be filed by Jane Roe. AR 541. Jane Roe visited SJACS on February 7 (AR 022), the date SJACS prepared a written complaint form (AR 004). Jane Roe and Jane Roe2 before filing their complaints discussed with each other their interactions with John Doe, and they encouraged each other to make complaints to SJACS. AR 307-08 (Roe); AR 750, 541, 546 (Roe2); and AR 509 (SJACS).

Both Jane Roe and Jane Roe2 emailed complaint letters against Doe to the USC Interfraternity Council. Jane Roe2 in her letter wrote: "Neither of us recall the incident and therefore were not capable of giving proper consent." AR 546. The letter Jane Roe sent to the IFC is not in the record, but she informed SJACS she had sent it: "I also sent a letter regarding the event to IFC yesterday as well." AR 026. The record does not reflect whether SJACS recommended the complainants send complaint letters to the IFC.

Roe and Roe2 remained in communication with each other over the course of the disciplinary proceedings. AR 082. Roe asked SJACS to send a copy of its decision in Roe2, emailing the SJACS director on May 7: "If it is at all possible to receive it this morning it would be greatly appreciated." AR 072. It is not improper for two complainants to remain in touch and to encourage SJACS in its investigation of their claims. However, the fact that accusing witnesses are collaborating would expectably be raised if there was an opportunity to examine the witnesses in an evidentiary hearing.

SJACS Notice to John Doe and Investigation of the Complaints.

SJACS gave letter notice to John Doe of each complaint. SJACS' letter identified the complaining party (by name), the incident date and the Student Conduct Code sections allegedly violated. AR 008-021 (Roe), 547-560 (Roe2). The Notice Letter included USC's "Policy and Procedures on Sexual Misconduct and Sexual Assault" (the version for the 2012-2013 academic year), the

"Guidelines for Student's Advisor" and a one page description of SJACS' procedures.

The Notice Letters provided no additional facts about the complaints. John Doe was orally informed about the facts alleged by the complainants when he visited SJACS' office for his first interview on February 20, 2013. AR 033 (Roe2) and 561(Roe). After SJACS completed that interview SJACS emailed to Doe its initial interviews with Jane Roe2 and Jane Roe. AR 36. The deputy director for SJACS at the beginning of that February 20 interview explained to Doe "SJACS process and procedures and sexual assault policy." AR 033 (also 561). SJACS did not verbally tell John Doe that he was entitled to hire legal counsel to assist him. However, that right is included in the "Policy and Procedures on Sexual Misconduct and Sexual Assault" that was included with the Notice Letter. (The right to counsel is provided in the Student Conduct Code if the possible sanction includes suspension or expulsion. AR 848, Rule 12.05.) SJACS provided John Doe with the Governance Manual containing detailed information about the disciplinary procedures on May 10, 2013. AR 085.

John Doe, in his interviews with SJACS, asserted his sex with Jane Roe and with Jane Roe 2 was with each's consent. As the evidence of consent "was not conclusive on its face," SJACS had an option: SJACS could investigate the two complaints against John Doe itself or could assign one or both investigations to a University Review Panel. See, Student Conduct Manual section 12.10B. SJACS proceeded with its investigation.⁴

SJACS' investigation consisted of interviews conducted with individual students by Raquel Torres-Retana, Ed. D., the SJACS director, and Lesley Goldberg, the assistant director. (Both were present at every interview.) As Dr. Torres-Retana told John Doe: "As information is collected SJACS weighs it and matches it with other statements." AR 568. (The Court has provided in the Appendix the dates and AR references for each witness that SJACS interviewed in the two investigations.) The interviews were not recorded. Each meeting with a student was memorialized in a note composed on a computer either during or shortly after the interviews. The notes did not summarize of the interviews. They collect, in note-taking fashion, information received in the flow of the interview. Some parts of an interview may not be reported in the note. For instance, SJACS' note for its initial interview with John Doe (on the Jane Roe2

⁴ The Review Panel procedure would have provided John Doe with a 3-person panel hearing at which witnesses would testify. SJACS did not note its reason for deciding against the Review Panel procedure. However, the "Hearing Format" for a Review Panel requires the complainant to present evidence. AR 850, Conduct Review, section 12.50H. It may be that in a sexual assault case USC does not want to require the complainant to prove her case. But, on the other hand, the Review Panel is given the power to revise its procedures to fit the circumstances.

matter) says "SJACS shared concerns:" but the note ends with the colon. AR 561. There may be more than one version of a note, either because a note was supplemented by a paste in from a later email or because SJACS' two investigators prepared separate notes. For instance, two notes were prepared from the interview with "B" (Jane Roe's date in Las Vegas) with slight but significant differences. See, AR 045 and 046 (quoted later). If the same witness was interviewed at one sitting in both the Jane Roe investigation and the Jane Roe2 investigation, a separate note was prepared for each investigation. (That is probably why the Appeals Panel states that John Doe was interviewed six times in the two investigations (AR 785) when in actuality he was interviewed on four occasions. See, Appendix for the dates and AR citations.) SJACS sometimes reviewed its note with one of the complainants, but the complainants were not asked to confirm that the notes were a complete and accurate report of the incidents.

With respect to the right of an accused student to review the evidence assembled by SJACS, the Court quotes the following rule (AR 849, Student Procedural Protection, Rule 12.30F) with bolding added:

The accused student may inspect documents and/or relevant information on file prior to the review. A request to inspect documentation or evidence should be directed to the staff member in charge of the review at any time during the process.

John Doe did request SJACS to provide copies of the evidence that it was collecting. He did this in a handwritten Note that he submitted to SJACS in his first meeting on February 20, 2013. The Note dated "2/10/13" reads in its entirety: "I, John Doe, would like a copy of the written report for 201201017 & 2012010039. John Doe" AR 035; see also AR 079.

SJACS provided John Doe with its initial interviews with Roe2 and Roe on February 20, and later on May 10 it provided him with notes from its April 30, 2013 interview with Jane Roe (and parts of her May 1 email to SJACS). AR 036 (also 562), 086. Dr. Torres-Retana in her May 10 email to Doe said: As per your request, I'm attaching my notes from my most recent meeting with Jane Roe." 086. (This appears to be in response to a second request from Doe. AR 079.)

SJACS did not provide John Doe with its evidence, apart from its interview notes with the complainants.

SJACS did not provide John Doe with its interview notes with witnesses other than Jane Roe and Jane Roe2. John Doe, therefore, did not receive copies of SJACS' notes from witnesses identified as R, M, B, N or H. SJACS's notes suggest that the investigators sometimes orally described to John Doe what another witness had said in order to stimulate a response from him. AR 055, 086, 088. However, John Doe (and his counsel) were not provided with the

interview notes that constituted the evidence SJACS used in preparing its findings and decisions.

SJACS interviewed the witnesses that John Doe identified. He identified N as a witness to the Jane Roe incident and M as a witness to the Jane Roe2 incident. AR 037. Later, on April 12, he emailed SJACS that he thought M and R were the best witnesses to the Jane Roe2 incident. AR 056. R was the roommate of Jane Roe2. M, B and N were fraternity brothers of Doe. (Witness R told SJACS that Doe's fraternity brothers likely would cover up for Doe because the fraternity was seeking house approval from USC. AR 038, 050, 565, 566. SJACS did not disclose to John Doe that R had told SJACS that the witnesses from Doe's fraternity were, in her opinion, likely to be untruthful.)

The Summary Administrative Reviews rendered by SJACS.

SJACS issued its Summary Administrative Review decision on the Jane Roe2 complaint on April 29, 2013. AR 640-648. SJACS found John Doe responsible for violating Student Conduct Code sections 11.32, 11.38 and 11.53B. Those sections prohibit a student from:

11.32 – Conducting oneself in a manner that endangers the health and safety of oneself, other members within the community ...

11.38 – Behavior which disrupts or interferes with normal university or university-sponsored activities, including but not limited to study

11.53B – Non-consensual actual or attempted intercourse, sexual touching, fondling and/or groping.

The SJACS Notice Letter to John Doe had identified those sections as a basis for possible disciplinary action on the Jane Roe2 matter. (The Notice Letter on the Jane Roe2 matter had also identified other sections as a basis for disciplinary action, namely sections 11.36A, 11.40, 11.41, 11.44A, 11.52, and 11.53A, but the SJACS decision did not find Doe responsible for violating those sections.)

Having found John Doe responsible for having non-consensual sex with Jane Roe2, SJACS imposed suspension from USC for two years commencing on May 16, 2013. SJACS also imposed a stay away order (as to Roe2), a counseling requirement, administrator review before any re-enrollment and a deferred expulsion order for any further violation after any re-enrollment.

John Doe retained counsel on about May 8. AR 073. Doe requested a two week postponement of his scheduled interview with SJACS so that his counsel could prepare but this request was refused. AR 077. John Doe without counsel met with SJACS on May 10 to obtain updated information but not to answer questions (AR 085) and then with counsel met again with SJACS on May 20 to

respond to its further questions (AR 088-089). That was Doe's final interview with SJACS.

SJACS issued its Summary Administrative Review on the Jane Roe complaint on May 31, 2013. AR 114-123; 093-102. SJACS found John Doe responsible for violating Student Conduct Code sections 11.32, 11.36B, 11.38, 11.44A, 11.52 and 11.53B (although it did not make specific findings on any specific section). The SJACS Notice Letter to Doe on the Jane Roe matter had identified each of those sections as a basis for the disciplinary hearing. These provisions, in addition to those quoted above for the Jane Roe2 decision, provide as follows:

11.36A – Causing physical harm to any person in the university community ...

11.44A – Engaging in disorderly conduct or lewd, indecent or obscene behavior in the university community or at university sponsored events.

11.52 – Any act chargeable as a violation of local, state or federal law may be cited as a violation of the University Student Conduct Code, whether or not charges are brought by civil authorities, when such act(s) occur on university premises, or at university sponsored activities or events, or when such conduct adversely affects the university community and/or the pursuit of its objectives.

11.53C – A sexual assault is classified as rape when vaginal, anal or oral penetration takes place without the consent of the person penetrated.

SJACS did not find John Doe responsible for violating other sections of the Student Conduct Code that were cited in the Notice Letter for the Jane Roe matter. The sections for which John Doe was not found responsible included 11.40 (unauthorized use, possession or dissemination of alcohol), 11.41 (unauthorized use, possession or dissemination of illegal drugs) and 11.53A (engaging in non-consensual sexual conduct or lewd, indecent or obscene behavior which is sexual in nature ... at university sponsored activities).

SJACS, for the violations of the Student Conduct Code that it found, imposed expulsion from the University as a sanction, explaining:

Mr. John Doe was recently found responsible for a violation of sexual assault in an April 29, 2013 decision. The sanctions assigned in regards to his previous incident (Case #201201017) were taken into consideration when assigning the following.

EXPULSION – *Permanent termination of student status. A permanent notation will appear on the student's transcript. The student will be excluded from all classes, seminars and programs; will not be allowed to*

participate in any university-sponsored activity; may not receive a USC degree; and is barred from university premises. (see SCampus 11.81).

SJACS added a proviso to its decision in the Jane Roe case that is outside the provisions of the Student Conduct Code. In a last paragraph drafted by SJACS' director the decision states:

This office is not confident that Mr. John Doe will be able to return to the University prepared to meet the expectations set forth in the Student Conduct Code. Therefore, the sanction of Expulsion is the only appropriate remedy. However, this office supports personal development and growth. Should Mr. John Doe be able to demonstrate effective, long-term, rehabilitation and is no longer a threat to the University, this office will not oppose an appeal, as deemed appropriate by the Vice President for Student Affairs, or designee.

This promise from SJACS to not "oppose an appeal" by John Doe to the Vice President is contrary to the Governance Manual, Appeals Process, section 15.10B (AR 853) which reads:

No student has the right to make a direct appeal to the Vice President for Student Affairs.

The reason SJACS made this promise to John Doe is not explained in the record.

John Doe's Appeal. AR 124-200

John Doe filed an appeal in each case to the Student Behavior Appeals Panel on June 18, 2013. He requested that the two cases be consolidated for appeal. AR 108. His appeal form checked all three grounds permitted under USC' rules for an appeal: that there was new evidence that was unavailable previously; that the sanction imposed was excessive; and that the review officer "failed to follow university rules or regulations while reviewing the cited behavior."

Doe's appeal included a 27-page legal brief and copies of news articles and an academic article that were mentioned in his legal brief.

His appeal also included a lengthy John Doe declaration and shorter declarations from his fraternity brothers, B, N and M. The declarants B and N testified that complainant Jane Roe did not appear to be incapacitated when she left the Las Vegas party with John Doe. Declarant M testified that complainant Jane Roe² did not appear to be incapacitated when she left the party with John Doe on the night of August 20, 2012.

The Court will not identify every legal argument raised in Doe's brief to the Appeals Panel. He, significantly for this writ petition, argued that SJACS rather than assigning the complaints to itself for investigation should have

submitted them to a Review Panel. The Student Conduct Manual provides for use of a Review Panel at the discretion of SJACS. "In the event that SJACS determines that a Review Panel is warranted, the University Review Panel may review cases ... in which expulsion, suspension ... are recommended for nonacademic violations." Id., section 12.12. Section 12.12 describes procedures before a Review Panel as follows:

University Review Panels are composed of three members including two faculty or staff members and a student chairperson. ... [] In the event that [SJACS] determines that a Review Panel is warranted, the University Review Panels may review cases involving ... expulsions. [] All University Review Panels are advised by the director, SJACS, or designee, who shall be a non-voting member of every review panel. [] Both the accused student and complainant may have an advisor of his/her choice present at the review....In all reviews, whether or not an advisor or attorney is present, the primary conversation will be with the student.

The Student Conduct Manual in section 12.50 describes procedures for panel reviews in general.

Jane Roe2 Appeal from SJACS April 29, 2013 Decision. AR 649-652.

Jane Roe2, on June 2, 2013, filed an appeal from the SJACS decision in her case arguing that SJACS two-year suspension was inappropriate. AR 650. Roe2 in her letter to the Appeals Panel states "John Doe raped me" and urges USC to expel Doe to protect its students from a rapist. AR 651-652.

Roe2 later on July 15 submitted a 6-page letter that responded at length to the statements made by John Doe in his appeal. AR 746-752. Roe2 in that letter made two statements that are at variance from the SJACS findings: she denies that she "ingested cocaine on the night of August 20"; and states it was "confirmed to me" that her medications did not contribute to the "loss of consciousness I had experienced."

John Doe filed a reply to Jane Roe2's appeal on July 1. The reply consisted of a 15-page legal brief to address the issues raised by Roe2. AR 730-745. The legal brief repeats the argument that SJACS should have referred the complaints to a Review Panel.

Jane Roe2 filed a rebuttal to John Doe's reply. Her rebuttal consisted of her 6 page, single spaced statement about the incident and aftermath and contained internal citations to Doe's declaration and the Student Conduct Rules.

Jane Roe Response to John Doe's Appeal. AR 242-326.

Jane Roe filed a response to John Doe's Appeal on July 16, 2013. It consisted of a statement by Jane Roe (73 pages long) concerning her

interactions with John Doe and others who were witnesses to the Las Vegas party and subsequent events. Jane Roe includes “screenshots” from her cell phone for texts she sent or received from others about the Las Vegas weekend and its aftermath; and she includes 2 pages of phone billing records. Jane Roe submitted, in addition, signed “To Whom It May Concern” letters from R, H, and F (F was not interviewed by SJACS) and a psychologist who reported she had been treating Jane Roe since January, 2013.

Significantly, Jane Roe’s statement to the Appeals Panel identifies 37 phone calls that she placed on April 1, 2012 between 2:13 and 7:07 a.m. from the hotel room she was sharing with John Doe (covering most of the time SJACS found Jane Roe to have been blacked out). The telephone records would qualify as new evidence that had not been discovered nor discussed during the SJACS investigation.

SJACS’ Response to John Doe’s Appeal. AR 507-511.

The Appeals Panel on August 2 asked SJACS to file a response (AR 507), and SJACS filed a 4-page response. The SJACS brief opens with this statement (bolding added):

*[SJACS] concluded that, on two occasions, John Doe had sexual relations with women who so impaired by alcohol **and cocaine** that they were incapable of giving consent.*

SJACS concedes that its conclusions are based on its determinations of credibility:

As the Panel recognizes, cases of this nature very often turn on the credibility of the parties and witnesses. Mr. John Doe, while admitting the sex, contends that it was entirely consensual in both instances. SJACS does not believe him. Over the course of several interviews SJACS conducted with Mr. John Doe, he withheld information and gave it up grudgingly, if at all, only when confronted with information SJACS already knew from other sources. For example, SJACS found Mr. John Doe less than forthcoming about the extensive drinking and cocaine use that occurred at the parties that preceded the sex. SJACS also found his demeanor in the face of serious accusations to be disturbingly cavalier. “These girls get emotional,” he said in his April 8 interview.

The SJACS brief responded to some of the criticism raised in the Doe appeal concerning the SJACS investigation, namely his criticism, as described by SJACS, about the “parsing” of differences in the conduct standards over the two academic years, the alleged “Political Climate” that biased SJACS’ investigation, SJACS’ conducting an investigation of the two cases together, and its failure to adequately notify John Doe of his right to counsel.

SJACS did not respond to all points raised in the John Doe appeal, however. Doe had argued that the complaints should have been referred to a Review Panel—with the result the decision would have been made by a three-person panel after conducting a hearing. SJACS said of this criticism: “Referrals to Review Panels are discretionary with SJACS, and there has been no showing of abuse of discretion.” SJACS did not respond to the argument that, if the decision turns on witness credibility as to whether the complainants at the time had the competence to consent to sex, fairness would require that the witnesses make their accusations at a hearing in which their credibility could be evaluated.

SJACS did not respond to Jane Roe’s extensive statement filed with the Appeals Board nor her first-time disclosure that she placed 37 calls (or call attempts) during the period SJACS had described her in Doe’s hotel room with no knowledge of why she was there.

Decision by the Appeals Panel.

What materials does the Appeals Panel receive? And when? Dr. Torres-Retana on July 10 emailed this information to Jane Roe (AR 236, **bolding added**):

The appeal committee will receive A) SJACS Decision, B) Appeal and C) Response to appeal about 3-5 days before their scheduled hearing. On the day of the actual meeting of the committee, the entire file will be available to them. The file contains all the notes/witness statements/emails etc.

The Court does not know whether the Appeals Panel received SJACS’ interview notes with the witnesses. The record does not contain an identification of the documents that SJACS transmitted to the Appeals Panel. The Court, therefore, does not know what parts of SJACS’ file the Appeals Panel received. The University’s “Guidelines for Written Appeals” states the primary documents reviewed by the appeals panel are the SJACS decision, the appeals request sheet and the materials submitted by the party appealing and any written rebuttal material. AR 586. There is no indication in the Appeals Panel decision that it had received or reviewed SJACS interview notes, even though SJACS’ findings were based on its interviews and other communications with witnesses to one or both incidents.

Even if SJACS’ interview notes were available so the Appeals Panel could have asked to review them, probably the Review Panel did not ask SJACS to submit them for review. The Court draws this conclusion (the record being silent) for two reasons. If the Appeals Panel had received SJACS’ interview notes, that would have required the notes be provided to John Doe (and to Jane Roe², as she was also an appellant) because it is a fundamental tenet of a fair hearing that appellants are entitled to see all of the materials that the appeal tribunal

must review. Since the SJACS' interview notes were not provided to John Doe, it follows they were not provided to and were not reviewed by the Appeals Panel. Secondly, the Governance Manual provides only three grounds for appeal, AR 853, Appeals Process, section 15.02, and those grounds do not include a claim that SJACS' decisional findings are not supported by substantial evidence. An appellant could not raise as a ground for an appeal the insufficiency of the evidence, both because it is not a ground permitted for appeal and because the appellant was not given access to SJACS' complete file to support such a claim. If the Appeals Panel is not called upon to review the sufficiency of the underlying evidence to support SJACS' findings, it would have no need to request SJACS' file so it could review the interview notes.

The members of the Appeals Panel that decided the John Doe case are not identified in the record. If John Doe did not know who the members of the Appeals Panel were, he had no ability to object to any of its members as biased. (However, if the complaints had been assigned initially to a Review Panel, Doe would have had the opportunity to object to a panel member as biased. AR 850, Review by Panels, section 12.50C.) The Appeals Panel's rules of procedure are not specified beyond the following provision:

After receiving all appellate documents, the appropriate appeals panel will convene and review the submitted appellate documents, the written decision from the initial review and supporting documents relevant to the initial review decision. AR 853. Appeals Process, section 15.03.

The Appeals Panel apparently met on August 16, 2013. AR 512. The Appeal Panel issued its five-page decision on September 20, 2013. AR 519-523. The Decision stated:

This Panel has carefully reviewed the record in light of Mr. John Doe's appeal, and upholds SJACS decision.

The Appeals Panel excluded Doe's declaration and the other declarations as "none of this constitutes 'new evidence' under the University's rules." The Panel noted that SJACS had given John Doe "ample opportunity to tell his side of the story to SJACS" and concluded the topic saying "[i]n sum, Mr. John Doe has presented no evidence that was both unavailable at the time of the SJACS investigation and sufficient to alter the decision."

The decision of the Appeals Panel summarized the evidence that SJACS found determinative. It upheld SJACS because witness credibility determinations were the province of SJACS, saying (at AR 520-521):

This Panel concludes that SJACS reasonably found, based on a preponderance of the evidence, that Mr. John Doe committed two sexual assaults. []

It is the job of SJACS to gather the evidence, and to make credibility resolutions based on the evidence and the demeanor of the witnesses. In crediting the complainants and Ms. [R], and discrediting Mr. John Doe, SJACS reasonably concluded that a preponderance of the evidence did demonstrate that Mr. John Doe knew or clearly should have known that Ms. Roe2 and Ms. Jane Roe were too impaired to consent to sexual relations.

Once John Doe's appeal was decided, USC notified him he was expelled from USC on September 20, 2013. AR 525.

The Appeals Panel in its decision made no reference to the declaration and exhibits that Jane Roe and Jane Roe2 had submitted in the appeal process.

The Appeals Panel did not announce any decision of Jane Roe2's appeal from SJACS' Summary Administrative Review decision of April 29, 2013 (that suspended John Doe for two years) nor even mention Jane Roe2's appeal.

And the Appeals Panel did not mention Jane Roe's response to John Doe's appeal that contained new evidence that had not been submitted to or considered by SJACS when it rendered its May 31 decision on Jane Roe.

Tolling Agreement. AR 976-978.

John Doe's attorneys, by letter sent to USC on December 6, 2013, threatened to file litigation to overturn the expulsion order, enclosing with the letter a draft complaint (styled as the Verified Petition for Writ of Administrative Mandamus). AR 952-954. Doe and USC, thereafter, entered into a "Tolling Agreement" providing that from that date forward any delay by John Doe in filing suit against USC would not be argued to bar the subsequent litigation. The Tolling Agreement had an effective date of December 16, 2013 with either party having the right to terminate the agreement. AR 976-977. USC terminated the Tolling Agreement by an email to Doe's counsel on March 25, 2016. AR 1090. John Doe thereafter filed his Verified Petition for Writ of Administrative Mandate on April 7, 2016.

Rehabilitation Materials Submitted to USC.

John Doe through new counsel, on March 28, 2016, emailed a letter to USC's outside counsel seeking to commence a "dialogue along the lines contemplated in the University's Summary Administrative Review decision of May 31, 2013." The letter referred to the statement by Dr. Raquel Torres-Retana in that decision that SJACS would not "oppose an appeal, as deemed appropriate by the Vice President for Student Affairs, or designee" to reinstate John Doe to the University. AR 982. Dr. Carry, USC's Vice President for Student Affairs, on April 4, 2016 sent a letter to Doe's counsel, in which he said his letter was in response to Doe's attorney's letter of March 28. Dr. Carry advised

that he was aware of the offer in SJACS' decision dated May 31, 2013 (i.e. that SJACS would not oppose an appeal to the Vice President for Student Affairs), but his decision was that:

Based on the facts of both cases and the University's policy regarding expulsions, I do not deem it appropriate to reconsider Mr. Doe's status at the University. As such, Mr. Doe's status at USC remains unchanged. AR. 1089.

John Doe's counsel, on February 1, 2017, sent to USC's lawyers a packet of materials purporting to demonstrate that John Doe was rehabilitated. The packet included statements by Doe, and his parents, and statements showing Doe's completion of therapy and alcohol and drug abuse programs, and certificates showing his participation in volunteer work. AR 993-1029.

Petitioner John Doe prepared and lodged the administrative record on March 17, 2017. His counsel included therein the documents his counsel had submitted to USC's counsel on February 1, 2017 to show Doe's rehabilitation. The parties briefed the issue of whether the Court should augment the administrative record with those documents. The Court would ordinarily strike from the administrative record any documents that were not submitted during the administrative process. The Court, in this case, will include in the administrative record the exchange of correspondence between Doe's counsel and USC including Dr. Carry's letter dated April 4, 2016. The correspondence through that date bear upon the issue of whether SJACS granted to Doe a right to appeal for reinstatement to USC's Vice President for Student Affairs. The administrative record, however, should be closed once Dr. Carry considered and rejected to that request. The parties do not raise an issue as to whether Dr. Carry's action was an abuse of discretion based on the information that was then available to him.

The Court will deny petitioner's request to augment the record with the materials that his counsel collected and provided after Dr. Carry's rejection letter dated April 4, 2016. The documents excluded are those marked as AR 993-1029.

DISCUSSION

WHEN THE SANCTION IS SIGNIFICANT AND THE OUTCOME "TURNS ON" WITNESS CREDIBILITY A FAIR DISCIPLINARY PROCESS REQUIRES A HEARING:

The Court to decide this case has relied on the guidance provided in two appellate decisions, decided last year, that reviewed the legal sufficiency of procedures provided in a university disciplinary proceeding that adjudicated a complaint of sexual assault made by one student against another. *Doe v.*

Regents of the University of California (2016) 5 Cal.App.5th 1055 (the *Regents* case) and *Doe v. University of Southern California, supra*, (*Doe v. USC* case) The *Regents* and *USC* cases considered the necessity of providing a hearing in which the accused student (with the aid of counsel) would have an opportunity to challenge the credibility of the complainant as to whether the sexual activity occurred with mutual consent. The parties are familiar with the decisions, and the Court finds no need to recite their specific facts. The issues that are relevant to the present action, however, are extensively discussed in the two decisions.

The *Regents* and *USC* cases are agreed that this Court under CCP 1094.5 is to provide an independent review as to whether the university provided a fair procedure. *Regents*, 5 Cal.App.5th at 1082; see, *Doe v. USC*, 246 Cal. App.4th at 247. On the issue of whether a hearing that permits cross-examination is required, the *Regents* decision held:

There is no requirement under California law that, in an administrative hearing, an accused is entitled to cross-examine witnesses....Yet, in the instant matter, where the Panel's findings are likely to turn on the creditability of the complainant, and the respondent faces very severe consequences if he is found to have violated school rules, we determine that a fair procedure requires a process by which the respondent may question, if even indirectly, the complainant.

The *USC* decision did not reach a different conclusion. The appellate court in *Doe v. USC* held an adversarial hearing process was not in that case required because there was no significant factual dispute as to what had occurred. See, 246 Cal. App.4th at 226, 235. The appellate court found that the discrepancies between statements given by the complainant and the accused student were minor, and, once they were resolved (by close reading of the investigators' notes), the University's decision should be reversed because SJACS had not notified the student of the particular student conduct rules it had found were violated. *Doe v. USC* also advised that an adversarial hearing is not always needed to make factual determinations and that the Office of Civil Rights for the federal Department of Education recommends against an adversarial hearing in a student disciplinary proceeding. *Id.* at 245.

However, the rule drawn from the two cited California decisions is that, where the issue of consent "turns on" the credibility of the complainant, some hearing is required to permit the accused student to ask questions, "if even indirectly," of the complainant and other witnesses material to the complainant's credibility. That rule requires *USC*, in this case, to provide limited hearings as to each complaint against John Doe.

With respect to each complainant the charges against Doe depend on the credibility of the complainant. Each complainant claims to not remember any

sexual assault on her person as she had “blackout.” The University in its findings, however, relied on the complainants’ memories before and after her blackout and also on the memories of drinking party companions who saw the victims in inebriated states. The witnesses, however, at the time of their observations were themselves compromised by alcohol and drug use. Those witnesses, moreover, were asked to remember how inebriated the complainants were at events that occurred months before the interviews. And, to make the inquiry more problematic, SJACS was told by a witness it found “highly credible” (AR 509) that witnesses favorable to John Doe could be untruthful.

The facts in this case are in material dispute. The Court in the discussion below reaches the conclusion that SJACS’ findings, as to each complainant, rest on critical witness credibility determinations. A fair procedure, under such circumstances, requires a procedure that will provide an adequate opportunity for the accused student to test the credibility of the material witnesses in a limited adversarial hearing before the decision is made.

USC’s position is that a hearing is not required to test witness credibility even on the central issue of consent so long as the accused has an opportunity to present his case in the manner that is provided by USC’s rules. The Court does not agree with USC’s position. But, even assuming USC’s position, the Court finds that the procedure provided by USC to John Doe did not adequately provide to him an opportunity to present his case against the charges against him. And, because USC’s investigatory procedures in this case did not provide John Doe with an adequate opportunity to rebut those accusations against him, USC’s findings adverse to John Doe are not supported by substantial evidence.

The Court, in the discussion below, will establish USC’s findings of non-consensual sexual activity in each case “turn on” determinations of witness credibility. The Court after that will discuss USC’s argument that its procedures satisfied John Doe’s due process rights even though not providing him with an adversarial hearing to test the credibility of the complainants.

A. SJACS’ FINDINGS AS TO JANE ROE 2’S INCAPACITY REST ON SIGNIFICANT WITNESS CREDIBILITY ISSUES:

SJACS’ key finding with respect to its Jane Roe2 investigation is that Roe2 ingested cocaine at the party on August 20, 2012 and that John Doe knew this (and took advantage of it). There is either no evidence to support this finding, or, alternatively, it rests on the credibility of a single witness identified as “R.”

The record provides the following timeline for the Jane Roe2 episode.

Jane Roe 2 and her roommate, R, attended a small party held at the apartment of M, R’s boyfriend at the time, on August 20, 2012. AR 541, 546. The party started about 9 p.m. Jane Roe2 and John Doe left the party about 10

p.m. (AR 564, 567), and walked to John Doe's apartment about a half mile away. About midnight John Doe called R and M, who were still together at M's apartment (all party goers having left by 10:30 p.m.), and said Jane Roe2 was sick and they, or one of them, should pick her up. AR 546. R told SJACS that her boyfriend, M, was too drunk to drive. R told SJACS that she didn't know where Doe's apartment was and therefore could not help her roommate. (R told SJACS that she was a 4 or 5 on a 1-10 inebriation scale that night. AR 565.) Jane Roe2 on her own left John Doe's apartment and walked back to the dorm room she shared with R. When R and M arrived back at the dorm room later that night, Roe2 was sitting in front of the door. She had not been able to enter because R had her keys. Roe2 was dressed but without underwear or bra. R described Roe2 then as "very drunk." AR 566. R gave Roe2 something to eat and put her to bed. AR 749. Later that day Roe2 went to the University clinic and received fluids via an IV. AR 541, 609.

There is No Eyewitness Evidence that Jane Roe2 Had Ingested Cocaine.

SJACS found that John Doe had sexual relations with Roe2 in his apartment without her consent because due to her intoxication (alcohol and cocaine) she was unable to give consent. SJACS further found that Doe knew Jane Roe2 had taken cocaine. SJACS' finding on these points is quoted below:

Ms.[R] described the gathering as very social. Ms. [R] observed individuals consuming alcohol and specifically observed Mr. [M] and Ms. Roe2 engage in cocaine use. Ms. [R] recalls that while in Mr. [M]'s bedroom, he and her roommate, Ms. Roe2 used cocaine in the presence of herself and Mr. John Doe. Ms. [R] further reported that because of this action, she became upset with Mr. [M] and the two remained in the bedroom arguing. Ms. Roe2 and Mr. John Doe exited the bedroom and ... [] Sometime later, as Ms. [R] exited the bedroom, she became aware that Mr. John Doe and Ms. Roe2 had left the apartment, as did all other guests.

The question is: Upon what evidence did SJACS conclude that Jane Roe2 had taken cocaine and, furthermore, that John Doe had observed her take cocaine?

Jane Roe2 had stated in her intake interview with SJACS on February 5, 2012 that:

Friend had mentioned to her that at the gathering she was obviously drunk, based on her behavior "out of it" She was also told she did cocaine. Ms. Roe stated that she does not use narcotics and does not recall doing cocaine that night. AR 541.

That statement is not reliable evidence because Jane Roe2 had no memory of taking narcotics. What a friend may have told her is unattributed hearsay. SJACS did not ask the obvious follow-up question: who was the friend who told Roe2 she had taken narcotics?

SJACS' finding is based solely on its interview with R. She gave SJACS this description (seven months later) of the August 20 party:

There was drinking—lots of drinking. Body shots. [M] off of R, R off of Roe2. Doe was in the room. Jane Roe2 and [M] had done cocaine in [M]'s room. R became upset with [M] for that. R and [M] were in his room. When they came out of the apartment, a lot of people were gone. Doe and Roe2 were not there. AR 566.

SJACS' interview note does not say that R said she was present in M's bedroom and at that time she personally observed Roe2 ingest cocaine. Nor does the note say that R told SJACS that John Doe was present in the bedroom at the same time she was and that they both saw Roe2 ingest cocaine. R, in the interview, said something else: she said that Jane Roe2 "had done" cocaine. SJACS' (and R's) use of the past tense suggests that R got the information she relayed to SJACS from somebody else. SJACS' note does not say that SJACS asked R who was the source for her information that Jane Roe2 had ingested cocaine at the party and, moreover, that John Doe had observed that. (An argument could be made, that if R didn't think her boyfriend should provide cocaine to Roe2, and she was in the bedroom when that was about to occur, she would have stopped the transaction then and there.) SJACS' interview note says only that Doe was in a room at the party where Roe2 was drinking alcohol. It says nothing about Doe being in a room where Roe2 was taking cocaine.

M, R's boyfriend, was interviewed twice. AR 564, 567. M said he didn't "fully recall that night" but he "did not see anyone doing cocaine." AR 564. (But, of course, according to his girlfriend, he was the supplier of the illegal drugs.) John Doe was asked and he denied that he had seen Roe2 take cocaine or that he had taken cocaine himself on August 20. He denied that he was even in M's bedroom at the party (where the cocaine transaction supposedly occurred) that night. AR 568, 561.

This Court finds there is no substantial evidence for SJACS' conclusion that Roe2 took cocaine and that John Doe saw her taking cocaine before they left the party to go to his apartment on August 20.

The central issue, however, is whether Roe2 was intoxicated to the point that she was unable to consent to sex with John Doe. M described Roe2 as drunk, which he described as 6 or 7 out of 10, when M and R found her sitting in front of her room door after she walked back from John Doe's apartment. AR 564. R stated, according to an SJACS note, that Roe2 "very drunk" when she

found her at the door of the apartment they shared. AR 466. These statements, however, do not settle the question. SJACS quoted witnesses as using the term “drunk” without defining what they meant. SJACS usually asked interviewees to estimate intoxication on a 1-10 scale with 10 being “blacked out”, but SJACS did not ask that question about Jane Roe2’s condition. (R advised that she herself was a 4-5 at the party.) The witnesses also agree that Roe2 was ill to the point of possibly vomiting at John Doe’s apartment, but SJACS’ investigation did not determine the cause of her illness.⁵

The evidence leaves the Court with the conclusion that the issue of Roe2’s ability to consent to having sex with John Doe is reasonably disputed and that its resolution rests on the findings of witness credibility. If the fact-finder did not believe R saw Jane Roe2 ingest cocaine, the fact-finder would then have to decide whether Roe2’s alcohol consumption alone was sufficient to take away her ability to consent. Under the circumstances such credibility determination can be best made through a hearing in which John Doe may participate by proposing questions to the witnesses testifying against him. A fair hearing requires that. *Regents*, 5 Cal.App.5th at 1082.

SJACS’ Findings as to Jane Roe2 Rely on Witness Credibility Issues.

SJACS reported to the Appeals Panel that: “SJACS found [R] to be a particularly credible witness.” AR 520. SJACS relied on R as a source of information in each case. SJACS did not reveal to the Appeals Panel that it had been told, confidentially, not to trust R’s neutrality.

R was the girlfriend of M at the time of the Jane Roe2 incident (August 20, 2012). She was also Jane Roe2’s roommate. R told SJACS twice (first in an email, then in an interview) that she had been told by her boyfriend, M, that John Doe and his fraternity brothers who would give testimony for him could be untruthful because their fraternity wanted to be approved by the University for a house “on the row.” AR 038 on 2/27/13; AR 050,566 on 3/13/13. R kept SJACS apprised as to what M said John Doe and his friends were saying about the two complaints. AR 050,566 on 3/13/13. R’s boyfriend, M, later approached SJACS to share confidential information about his romantic relationship with her, information that he thought would indicate R was biased against John Doe. (The nature of the confidential information is not revealed in the record.) SJACS discounted the allegation that R was biased because John Doe rather than the ex-boyfriend M was the accused student. Dr. Torres-Retana entered this note: “Motive for [R] coming forward is unclear how reporting

⁵ The record does not disclose whether SJACS requested Jane Roe2’s medical records for the IV treatment she received on August 21, 2012. The medical records would include as part of the patient history the patient’s response as to whether she had taken dangerous drugs in the recent past. Possibly the medical records would reflect that tests were performed to detect whether she had recently taken drugs.

against John Doe is getting back at [M].” AR 087 on 5/13/13. M, however, was the only witness for John Doe in the Jane Roe2 matter, and SJACS discounted M’s statements because, in part, his statements conflicted with R’s.

When asked by the Appeals Panel for a statement, SJACS did not inform the Panel that R was not neutral as a witness (that her motive was “unclear”) and that she had been telling SJACS confidentially what she learned from her boyfriend about what John Doe was saying about the SJACS investigation.⁶ SJACS did not advise the Appeals Panel that R had reported that she was a 4 or 5 on a 10 point inebriation scale when she witnessed the cocaine transaction in her boyfriend’s bedroom.

That SJACS withheld from the Appeals Panel information about the credibility of a witness it described as “highly credible” supports the Court’s conclusion that, because central credibility issues are contested, USC procedures should have allowed a means for John Doe to test the credibility of Jane Roe2 and her roommate R. Jane Roe2, had she been asked at a testimonial hearing whether she took cocaine on August 20, likely would have vehemently denied that, because she denied such in her statement that she submitted to the Appeals Panel. AR 749. (She also denied her medications “could have caused the illness and loss of consciousness I experienced.” AR 748.)

B. SJACS’ FINDINGS RE JANE ROE’S INCAPACITY REST ON SIGNIFICANT WITNESS CREDIBILITY ISSUES:

SJACS’ investigation of the Jane Roe complaint also raises significant credibility issues.

SJACS Wrong: Roe Did Not Black Out While She Was Drinking with Doe.

SJACS found that Jane Roe “blacked out” at some point during a party at the Las Vegas Palms Hotel on March 31, 2012 and had only bits of memory of taking a taxi to the Venetian Hotel where John Doe had a room. Here are SJACS findings with regard to Jane Roe’s level of intoxication:

Ms. Jane Roe reported that on Saturday, March 30, 2012 (sic March 31) she socialized with the group at the pool. She self-admitted to consuming alcohol and cocaine. ... In the evening she attended a party at The Palms, where she recalled continuing with the consumption of alcohol and use of cocaine. Her last vivid memory of March 30, 2012 (sic) is being in bar, ordering another drink and speaking with Mr. John Doe. She did share a few hazing (sic) memories or flashbacks from throughout the night. Ms.

⁶ SJACS included in its decision in each case a list of contacts. SJACS stated in each decision it received “[a] February 28, 2013 email from Ms. [R] to Dr. Torres-Retana, expressing concern over the credibility of witnesses.” AR 580 (Roe 2), AR 117(Roe).

Jane Roe reported her next full memory is waking up in bed with Mr. John Doe on Sunday morning. AR 340, 104.

SJACS' finding that Jane Roe's last memory was ordering a drink with John Doe is manifestly in error. In its interview with Jane Roe on February 7, 2013, Roe said according to SJACS note: "The last thing she recalled before blacking out was that she was ordering another drink ... at the bar with her date." AR 022. Roe's date for the weekend was B, not John Doe. The fact Jane Roe's last clear memory is sharing a drink with someone other than John Doe undermines SJACS' assertion, made elsewhere in its decision (AR 342, 102), that John Doe was appraising whether he could take advantage of her condition.

There Are Conflicts in Witness Statements About What Roe Remembered.

SJACS' finding that Jane Roe did not consent to sex with John Doe is supported by its finding that she did not remember having sex with him in his hotel room. SJACS made this finding in its decision:

Ms. Jane Roe's next recollection is being awakened in bed with Mr. John Doe on early Sunday morning. Unknown of her whereabouts, she gathered her clothing and cell phone. She noticed that Mr. [B] had attempted to contact her. She turned to find Mr. John Doe naked, lying on the bed and he appeared asleep. Ms. Jane Roe articulated at this point she began to realize that some level of sexual activity must have taken place, but she could not recall exactly what happened. AR105, 122.

This finding was perhaps corroborated by SJACS' interview with R in which R said she received on Sunday morning on her cell phone a group chat with Jane Roe saying: "things not going well", "woke up in bed with someone not my date", "don't know what to do."

[R] responded—did you have sex, Roe responded she did not know. AR 050.

SJACS in believing that Jane Roe had no memory of having sex with John Doe seems to ignore their notes as to what Roe told her date, B, when meeting with him that Sunday morning. The SJACS' investigators made separate notes in their B interview. One note reports:

At 5 am he received a call from her, "Where are you?" ... He saw her, she asked if he was mad at her. "Are you mad at me?" At that point he realized she had slept with Doe. AR 045.

The other note states:

About 5 am, Roe called him. "Where are you? Are you mad at me?" ... He saw her and put it together. She had slept with Doe. She did not say it. AR 046.

SJACS' notes leave it unclear whether SJACS asked Roe's date whether Roe said she had had sex with John Doe and if so whether it was voluntary. Those questions were critical and SJACS' notes should leave no doubt that those questions were asked and what B's answers were.

SJACS was advised what B's response would be through an interview it later conducted with "N", another witness at the party. SJACS' notes report N as saying: "Heard from [B] that Doe had sex with Roe." AR 052. B filed a declaration in support of John Doe's appeal. He therein testified that he did tell SJACS that Jane Roe told him she had sex with John Doe:

9. During the course of my meeting with Dr. Raquel Torres-Retana on approximately March 8, 2013, I confirmed to Dr. Torres-Retana that Ms. Jane Roe had admitted to me on April 1, 2012, only a few hours after the alleged events, that she and Mr. John Doe had had sex. Ms. Jane Roe did not claim at that time that she did not recall what had occurred. Although she knew I was upset at the time, Ms. Jane Roe did not suggest that Mr. John Doe's actions had been suspicious. AR 692.

N's declaration contradicts SJACS's interview note for its meeting with N. N's declaration says he informed SJACS that Jane Roe told him she had sex with John Doe in the hotel room. SJACS' notes, as quoted above, state that N intuited that conclusion but "[s]he did not say it."

The Court recognizes that the issue is not whether Jane Roe remembered having sex with John Doe, but whether she consented to it (and had the capacity to consent). However, the excerpts that the Court has quoted from the record illustrate that any conclusions on that point will depend on the fact-finder's determinations on witness credibility. It is the centrality of this issue that requires for a fair hearing a procedure that permits John Doe a means to ask questions, even if indirect, of Jane Roe.

SJACS Witness Interviews Do Not Show Jane Roe as Unable to Consent.

SJACS in its decision does not report it had obtained any first hand testimony that Jane Roe was incapacitated.⁷ Roe's date, B, told SJACS:

She had been drinking throughout the day, [B] knew she was intoxicated. But she was coherent, did not appear "trashed." RTR asked about cocaine. [B] did not see Roe use any cocaine. Knows it was around. AR 045.

John Doe told SJACS:

⁷ USC's Policy as quoted earlier provides: "Incapacitation is a state where one cannot make a rational, reasonable decision because they lack the ability to understand the who, what, where, why or how of their sexual interaction."

[He was] 6/10 feeling good – buss (sic buzz?) ...Her? About the same (6). No red flags. Coherent, able to talk. AR 033.

Jane Roe told SJACS that H could provide observations about her intoxication level. SJACS' note describes H as saying:

Ms. [H] stated that everyone was drinking at the formal. She and Jane Roe had been drinking together. Although Jane Roe was responsive, walking and talking, it was clear she was intoxicated. Not stumbling drunk, but not walking straight. RTR asked she was "staggering", yes, not falling down, but staggering. They were having fun together, taking pictures. AR 084.

The evidence of Jane Roe's level of intoxication is not conclusive because none of the witnesses suggest that Jane Roe, during the party, was incapacitated to the extent of not being able understand where she was and what she was doing. An evaluation of witness credibility would be required to determine the degree of Jane Roe's incapacity.

SJACS relies on Jane Roe's own testimony that John Doe sexually assaulted her while she was blacked out. SJACS's decision states:

Ms. Jane Roe's next recollection is being awakened in bed with Mr. John Doe on early Sunday morning. Unknown of her whereabouts, she gathered her clothing and cell phone. ... She turned to find Mr. John Doe naked, lying on the bed and he appeared asleep. Ms. Jane Roe articulated at this point she began to realize that some level of sexual activity must have taken place, but she could not recall exactly what happened. She nudged Mr. John Doe and asked him what she should tell her date. Mr. John Doe responded with a specific lie. AR 105, 122.

The facts as reported in SJACS interview notes do not support this description. Jane Roe in her intake interview said:

She then recalled waking up in a panic searching for her clothing. She was completely naked. Doe was also naked in his bed. She asked him what she should tell her date [N] if he should ask. Doe told her she should tell [N] they went to a strip club. Roe proceeded to go back to her own hotel room by herself. AR 022.

To obtain John Doe's reaction SJACS told him in his interview that Roe said "she woke up in a panic." He responded:

she was never asleep. After sex they stayed up talking. Maybe 2 hours (best estimate). [] she left early morning (maybe 5am) AR 056

Jane Roe when she was re-interviewed described an "awakening experience."

RTR also informed her that Doe shared they had not fallen asleep. After sex, they stayed awake talking. Roe responded she does not know. All she recalls is having an "awakening experience"...and from that point on, she recalls everything. She awoke and panicked because she did not recognize her whereabouts. AR 059.

SJACS conceded in its meeting with John Doe (and his lawyer) on May 20 that Jane Roe had now admitted she had not awakened from sleep, rather she recalled an "awakening experience" while with Doe. AR 088. In light of that concession, SJACS' finding that Roe's "next recollection" after having a drink with John Doe (actually with B) at a party was "being awakened in bed with Mr. John Doe" is false at its beginning and misleading at its conclusion.

Jane Roe, after SJACS rendered its decision against John Doe, told SJACS that she had found telephone records she had forgotten about (and SJACS had not asked about). AR 238. Jane Roe, in the declaration she filed with the Appeals Panel, described the telephone calls she placed from John Doe's hotel room (and attached her telephone billing records).

Jane Roe, according to her statement and to her billing records, placed 37 phone calls from 2:13 a.m. to 7:07 a.m. on April 1 from the hotel room she was sharing with John Doe. AR 268-270. She reiterates she had a "memory of 'waking up'—either from sleep or my black out—in a room with Doe as I described earlier." AR 268. Most of her telephone calls (or attempts to complete telephone calls) were with persons with whom she was interacting on that weekend, such as her date, B, her friend, R, various sorority pledge sisters, and others who were in Las Vegas that weekend. (Roe provides a listing of her calls and call times at AR 268-270.)

Jane Roe had told SJACS that she was blacked out until "around 6 A.M., although I may be a little off there—as soon as I was aware of myself again." AR 066. And Jane Roe tells the Appeals Panel: "nothing says 'SOS' like 37 calls." The number of phone calls that Jane Doe made over a five-hour period do not suggest that she was, after her awakening experience, focused on finding her clothes and leaving the hotel room. Jane Roe's phone calls starting at 2:13 a.m. on April 1 raise questions as to whether and when she was unable to consent and whether she would appear to someone else (such as John Doe) to be unable to consent. The facts suggest that a reasonable person could have doubt as to whether Jane Roe lacked the capacity to make decisions about sexual activities.

SJACS filed a response to the Appeals Panel after Jane Roe's submission. AR 508-511. SJACS did not propose to reopen its investigation, in order, for instance, to contact any person who received any of Roe's post-midnight calls to get an evaluation as to whether Jane Roe appeared to lack consent capacity. SJACS ignored the new facts presented by Jane Roe. The Appeals Panel in its decision did not discuss whether the fact Jane Roe had placed 37 phone calls

was inconsistent with SJACS' finding that she was suffering from black out during that period. The Appeals Panel, in fact, did not mention Jane Roe's statement nor the documents and declarations she had filed with the Appeals Panel.

The actual facts as presented in the interviews and Jane Roe's later statements to the Appeals Panel put into doubt SJACS' narrative that Jane Roe had blacked out to the point that she could not consent to sexual activity. The significance of her mental state being subject to doubt, an evidentiary hearing should appropriately evaluate her credibility and John Doe's credibility on the issue.

SJACS' findings refer to other "flashbacks" that Jane Roe remembered from her blackout period, e.g. that John Doe supposedly took away her cell phone (if so, how could Roe make 37 phone calls between 2:13 a.m. and 7:07 a.m.); that a taxi driver ejected them from his vehicle; and that an unknown woman asked Jane Roe whether she was okay. The Court shall not discuss these memory fragments because it holds that due process requires that USC provide a hearing that would permit John Doe to ask questions pertinent to the credibility of the complainant. Facts that either party believes to be relevant to the issue of consent may be raised in that proceeding.

C. A FAIR HEARING IS A NECESSARY COMPONENT OF A DISCIPLINARY PROCEEDING THREATENING EXPULSION FROM A UNIVERSITY:

This Court holds that in university-level student disciplinary proceedings, where suspension or expulsion from the university are threatened, and the imposition of the sanction "turns on" the credibility of the accusations made by a complaining party, a "fair hearing" requires that the accused student be given an adequate opportunity to offer evidence and also to challenge the credibility of the complaining party as to his/her complaints against the accused student. The manner in which that requirement may be fulfilled will depend on the circumstances. The procedure described in *Regents*, in which the student could propose to an examining panel questions that could be put to the complainant, was sufficient, in that case, to meet due process requirements.

This Court does not find that the University Review Panel procedure, as described in USC's Conduct Review System, Rule 12.12 et seq. (AR 848 et seq.), to be mandated in this case. The Review Panel procedure imposes on the complainant an obligation to prosecute the case, see, Rule 12.50, although the panel may agree "to a different format." Moreover, the Review Panel procedure, as presently structured, does not define a role for SJACS as an investigatory agency to make recommendations to the Review Panel. Apart from the Review Panel procedure, the USC Governance Manual does not appear to provide a procedure that gives an accused student a right to hear and to challenge on credibility grounds the statements made by the accusing party. USC on remand

will have the opportunity to implement a procedure that is suitable for its goals and that will, at the same time, provide a fair hearing to the accused student.

The Court, to be clear, does not order USC to grant to John Doe a hearing before a University Review Panel under the rules provided in the 2012-2013 Governance Manual. The University will have the latitude to implement a hearing procedure that is appropriate to provide due process to John Doe.

USC's brief argues that an adversary hearing is not required for due process in a disciplinary hearing when the accused student has had "notice of the allegations and an opportunity to respond." Opp. Br. 14:11. USC has not found a decision on point but it has cited to three decisions it regards as analogous. The Court finds the decisions to be distinguishable.

James v. City of Coronado (2003) 106 Cal.App.4th 905 reviewed a police department's disciplinary proceeding against two police officers. The officers petitioned for a writ of mandate to require a hearing to cross-examine witnesses under the Public Safety Officers Procedural Bill of Rights Act (Gov. Code 3300 et seq.) The appellate court affirmed the denial of their petition because the proceeding was the lowest level of internal discipline and the consequences to the officers were minimal (no loss of rank or pay). USC's expulsion order imposes on John Doe severe adverse consequences, and, for that reason, requires a proceeding that is adequate to protect his legal interests.

In *Salisbury v. State Bar* (1985) 39 Cal.3d 547 the petitioner was successful in overturning the State Bar's cursory denial of his claim against the Client Security Fund. The court held that, although a formal hearing with full rights of confrontation and cross-examination was not necessarily required, the process must achieve the purpose of affording applicants a reasonable opportunity to raise objections to the action being taken. "The intended effect," the court said, "is to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions." Id. at 566. In this case, because USC did not provide a procedure by which JohnDoe could hear the complainants' actual statements (as opposed to what SJACS said in its notes the witnesses said) and suggest follow-up questions, John Doe did not know with certainty what the witnesses had said. He had no opportunity to know if there was a gap between what the complainants and other witnesses actually said and the findings made by SJACS based on what SJACS said the witnesses said.

Matthews v. Eldridge (1976) 424 U.S. 319 favors John Doe's position. The decision held that a social security recipient is entitled to an evidentiary hearing before an administrative law judge through an appeal process that is available if the agency has terminated his receipt of disability benefit payments.

USC DID NOT PROVIDE A FAIR HEARING IN EITHER THE ROE2 OR ROE CASE:

USC's Opposition Brief argues that Doe received a fair hearing because the Student Conduct Manual gave him notice of the allegations and an opportunity to respond. Opp. Br. 14:11.

This Court finds to the contrary: that USC did not provide a fair hearing to John Doe—mainly because it did not give John Doe (and his counsel) access to the evidence collected by SJACS in its interview notes.

USC in failing to provide to John Doe with the SJACS interview notes did not follow its own adjudicatory rules. The Governance Manual, in Student Procedural Protection Rule 12.30F provides (bolding added):

The accused student may inspect documents and/or relevant information on file prior to the review. A request to inspect documentation or evidence should be directed to the staff member in charge of the review at any time during the process.

John Doe did ask for the file in each case. He submitted a note to SJACS during his meeting with SJACS on February 20, 2013 saying: "I, John Doe, would like a copy of the written report for [each case]." AR 035, also AR 079. USC did not provide the documents that Doe requested from either investigation (apart from notes taken during the Roe2 and Roe interviews) and thus failed to comply with its own procedural Rule 12.30F.

USC's brief fails to discuss the restriction it imposed on the evidence it made available to Doe. USC's brief declares: "USC provided written notice to Doe of both the charges against him, as well as his rights. AR 8-21, 547-560 [e.g. the Notice Letters]. This included the right, upon request, to view the statements of the complaining parties, which he requested and received. AR 8-9, 547-48, 36, 86." Resp. Br. 10. USC's reference to AR 8-9 and 547-48 are to the Notice Letters. USC's reference to AR 36 and 86 are to SJACS' transmittal of its intake interviews with Jane Roe2 and with Jane Roe and its April 30 interview (with email paste in) with Jane Roe. SJACS, in other words, from its evidence file gave John Doe three documents.

SJACS did not disclose to John Doe its interview notes with all of the other witnesses. John Doe, for instance, never saw SJACS' note of its interview with R in which she said none of Doe's fraternity brothers were to be believed because the fraternity needed to take care of Doe to gain University approval for a house "on the row." R, with that statement, impeached the credibility of all of the witnesses who in their answers to SJACS questions supported John Doe. (The record does not reflect if SJACS checked to determine whether Doe's fraternity was negotiating with USC to obtain approval for a house on the row, thus substantiating R's concern about the truthfulness of Doe's fraternity brothers.)

John Doe also never saw SJACS note in which R said Jane Roe2 “had done” cocaine on August 20, 2012—the only basis for SJACS’ inference that John Doe had observed Jane Roe2 ingest cocaine in M’s bedroom. John Doe (and his attorney) thus were deprived of the information they needed to attack SJACS’ finding that John Doe saw Jane Roe2 ingest cocaine and, therefore, should have concluded that she could not voluntarily consent to having sex.

SJACS did not provide John Doe with its interview notes with B, Jane Roe’s date for the Las Vegas weekend, so Doe was unaware that SJACS had not documented whether the investigators had asked B the key questions: what exactly did Jane Roe tell him about her night with John Doe: that she had sex with Doe, that she did not have sex with him, or that she did not know whether she had sex with Doe. If SJACS had given to John Doe its interview notes with B (and with N, who corroborated B) he would have had an opportunity to suggest follow-up questions that SJACS might ask Jane Roe about what she told her date shortly after leaving Doe’s hotel room.

John Doe’s right to legal counsel was impeded because his counsel was not provided with the information in SJACS files and upon which SJACS relied in rendering its findings. Because SJACS did not provide its interview notes (the only evidence SJACS had for its findings) John Doe’s legal counsel in appealing SJACS’s suspension and expulsion orders before the Appeals Board could not challenge the adequacy of SJACS’ investigation in gathering evidence nor the sufficiency of the evidence to support SJACS’ findings.

SJACS’s decision to not provide to John Doe all of its interview notes fatally undermined the fairness of USC’s proceeding against Doe. John Doe, firstly, was not given adequate notice of the charges against him because the detail of what the charges were and what evidence supported the charges were contained in the investigators’ notes that were not given to Doe. To take one example, the only evidence that John Doe saw Jane Roe2 take cocaine and thus to be chargeable with notice that her judgment was impaired comes from what R told SJACS. SJACS did not provide to John Doe its interview note with R, and Doe accordingly had no opportunity to point out to SJACS or to the Appeals Panel that SJACS had misconstrued what R had actually said. This notice issued was discussed in *Doe v. USC, supra*. The accused student in the USC case was led to believe by SJACS investigation that he was accused of having had sex with the complainant without her consent, but instead he was found responsible of encouraging others to hit the complainant. 246 Cal. App. 4th Id. at 237. The appellate court also noted that the accused student was not provided with SJACS’ interview notes with witnesses other than the complainant. Id. at 244. The appellate reversed the sanction, quoting from the U.S. Supreme Court in *Goss v. Lopez* (1975) 419 U.S.565 and saying:

"At the very minimum, therefore, students facing suspension ... must be given some kind of notice and afforded some kind of hearing." (Goss, supra, 419 U.S. at p. 579, italics omitted.) The hearing need not be formal, but "in being given an opportunity to explain his version of the facts at this discussion, the student [must] first be told what he is accused of doing and what the basis of the accusation is." (id. at p. 582.) Doe v. USC, Id. at 240.

John Doe, in this case, could not be fully notified of the accusation against him in the Jane Roe2 matter without seeing SJACS' note from its interview with R. He was not told that a witness told SJACS she had observed Doe watching as Jane Roe2 ingested cocaine shortly before they left the party at about 10 p.m. As to the Jane Roe matter, John Doe was significantly handicapped in defending against the charges that Roe had blacked out without having SJACS' notes that were prepared from their interviews with R, N and H.

SJACS' failure to provide their interview notes to John Doe prevented him, secondarily, from pointing out to SJACS and to the Appeals Panel that he was deprived of a fair adjudicatory procedure because SJACS' evidence was insufficient to support its findings.

SJACS' investigation failed to tie the various witness statements about the complainants' degrees of intoxication to the definitional standard. The University is required to have evidence that "the complainant [was] unable to consent due to the consumption of alcohol or drugs" for a finding of sexual misconduct or sexual assault. SJACS for that finding relied on the following evidence: the complainants said they could not remember having sex (and, therefore, they must not have consented); the observations of others that the complainants appeared "drunk" before they left the party; and each complainant ingested cocaine before they left the party (apparently suggesting that a person who has taken cocaine may lack the capacity to consent to sex). One witness reported Jane Roe2 appeared drunk before leaving the party with John Doe, and three witnesses reported that Jane Roe appeared drunk in the late hours of the Las Vegas party. However, the notes do not reflect that any follow-up question was asked to obtain the witness' opinion as to whether the complainant appeared, at that time and in the witness' opinion, incapacitated or otherwise unable to give consent. Under USC policy incapacity "is a state where one cannot make a rational, reasonable decision because they lack the ability to understand the who, what, when, where, why or how of their sexual interaction." The fact that the complainant appeared "drunk" is a subjective opinion (particularly if the witness too was drunk) and not determinative of the complainant's capacity to knowingly engage in sex. In the *Doe v. USC* case, the complainant described herself as intoxicated, as drunk, and as "more drunk" but acknowledged that she had consented to sex but not to being hit. 246 Cal.App.4th 228, 233.

SJACS' investigation, secondly, failed to look for corroboration of the statements of the witnesses on which it relied. For instance, R told SJACS she remembered receiving telephone calls from both Roe2, her roommate, and Roe, her sorority sister, that reflected they had "blacked out." R said Jane Roe2 placed a call to her on August 20, 2012 from John Doe's apartment, which R described as incoherent, and this was followed by John Doe's call saying Roe2 was sick. R said that on April 1, 2012 she called (or texted) her friend Jane Roe because she learned from a group chat on her iphone that Roe woke up in a strange room. SJACS could have confirmed these calls by asking the complainants to provide texts if the messages were exchanged that way but in any event telephone records to confirm the time and recipients of the calls. Had SJACS asked Jane Roe for phone confirmations SJACS would have learned that Roe placed 37 phone calls after she left the party with John Doe. SJACS could have asked permission from Roe2 to obtain medical records for her visit to the campus clinic on August 21, 2012 to obtain more information about her condition on the preceding evening. SJACS could have confirmed with Roe2's physician whether her change in medication when combined with alcohol could have contributed to her loss of memory and whether any memory loss would indicate loss of cognitive incapacity.

The Court finds that there is not substantial evidence to support USC's findings with respect to Jane Roe2 or Jane Roe. A finding of substantial evidence must be based on a fair procedure that permits the accused student to have fair notice of the evidence against him or her in order to prepare a response to the precise charge. SJACS' investigation did not provide that opportunity to John Doe because it did not provide to him the evidence that it had collected and because the investigation itself failed to apply the University's standards in conducting an investigation of complaints of sexual misconduct.

USC, in this Court's view, could improve its investigations in cases involving claims of sexual misconduct by hiring individuals with police or prosecutorial experience to assist in gathering evidence and drafting findings based on the evidence.

PREPARATION OF JUDGMENT AND RETURN ON WRIT OF MANDATE:

The Court has considered but does not find weighty petitioner's other claims challenging the fairness of USC's procedures.

Presuming that the investigation is competently conducted and a fair hearing is provided the Court does not find that the University's investigation of two matters involving the same accused student is a denial of the student's due process.

The petitioner has not cited evidence in the record of bias by the SJACS' investigators. The Court has criticized the procedures in the instant


investigation and the lack of evidence to support certain of its findings but the Court has not found any intent on the part of SJACS' investigators to deny a fair hearing, under USC's procedural rules, to John Doe.

The Court will enter Judgment and issue its Writ of Mandate for the reasons addressed above. The Court directs petitioner's counsel within ten days to serve and lodge with the Court a proposed Judgment and a proposed Writ of Mandate that is consistent with this Statement of Decision.

Once Judgment is entered, the parties are directed to retrieve the binders containing the administrative record and to preserve the record in their offices. The names of the parties and witnesses in many cases has not been expunged from the administrative record, and therefore counsel should take any measures required to protect the privacy of those persons.

The Court Clerk is directed to file, enter and serve this Statement of Decision on this date.

DATED: September 15, 2017



RICHARD L. FRUIN, JR.
Superior Court of California
County of Los Angeles

APPENDIX

Interviews and Emails in SJACS Investigation in John Doe Matter

for Jane Roe2 Investigation

for Jane Roe Investigation

Witness	AR Citation	Date	AR Citation	Witness
Jane Roe2	540 and 542	2/5/13		
		2/7/13	022	Jane Roe
John Doe	033	2/20/13	561	John Doe
R's email	Not listed	2/27/13	038	R's email
M	564	3/8/13	044	M
		3/8/13	045 and 046	B
R	566 and 565	3/13/13	050	R
		3/25/13	052	N

M	567	3/29/13	054	M
John Doe	568 and 569	4/8/13	055	John Doe
		4/30/13	059	Jane Roe
		5/1/13	059,062-066	Roe's email
		5/10/13	080,083,084	H
		5/10/13	085	Doe (rec. info only)
		5/13/13	087	M
		5/20/13	088-89	Doe/P. Slavin