



Office for Civil Rights
& Title IX
University of Missouri

**HEARING PANEL RESOLUTION
INVESTIGATIVE REPORT**

Winters v. Stein

Investigator: Amanda Hardin
Date of Report: July 12, 2021

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CASE OVERVIEW

PARTIES

1. Claire Winters, MU Student
2. Michael Stein, MU Student

WITNESSES

1. Nikki McKnight, Friend of Winters
2. Joe Smith, Friend and Roommate of Stein
3. Sara Jones, Friend of Winters
4. Michelle Greene, Girlfriend of Smith and Party Attendee
5. Izzy Brown, Party Attendee
6. DL Whiple, Party Attendee

HISTORY OF THE CASE

On May 4, 2021, Claire Winters made an initial report to the Office for Civil Rights & Title IX (OCRT9). The report contained information alleging behaviors by Michael (Mike) Stein that may constitute sexual assault (rape), in violation of University policy.

On May 6, Winters submitted a formal complaint to OCRT9.

On May 19, I sent Winters and Stein a Notice of Allegations letter describing the allegations against him.

On May 28, I met with Stein to obtain his statement in response to the allegations.

Between May – June 2021, I interviewed witnesses and conducted follow-up meetings with both the Complainant and Respondent. Summaries of my interviews are contained in this Investigative Report.

RELEVANT DATES IN THE EQUITY RESOLUTION PROCESS

August 2020

- Claire Winters and Michael Stein met as members of the University of Missouri's Chemistry Club.

May 1, 2021

- Winters attended a party at Stein's off-campus house. Winters alleges Stein engaged in nonconsensual sexual intercourse (sexual assault: rape) with her in his bedroom while she was incapacitated due to alcohol consumption.

May 6, 2021

- Winters filed a formal complaint with OCRT9.¹

¹ Exhibit 1: (Winters Formal Complaint).

May 19, 2021

- OCRT9 sent Notices of Allegations² and No Contact Directives³ to Winters and Stein.

June 23, 2021

- Parties were notified of Assistant Vice Chancellor Andy Hayes' determination that there was sufficient basis to proceed to the resolution phase of the Equity Resolution Process.⁴

July 12, 2021

- OCRT9 sent the parties Notices of Hearing⁵ and granted them electronic access to the Investigative Report and Exhibits.

August 12, 2021

- Hearing to be held via Zoom at 9:00 a.m.

INTERVIEW DATES WITH PARTIES AND WITNESSES

1. May 4, 2021 – Interview with Winters (Zoom)
2. May 28 – Interview with Stein (Zoom)
3. June 2 – Interview with Witness McKnight (Zoom)
4. June 2 – Interview with Witness Smith (Phone)
5. June 4 – Interview with Witness Jones (Zoom)
6. June 5 – Interview with Witness Greene (Phone)
7. June 8 – Interview with Winters (Zoom)
8. June 10 – Interview with Stein (Zoom)

METHODS USED TO GATHER EVIDENCE

In conducting my investigation, I met with the Parties and witnesses through a combination of phone calls and Zoom meetings. All communications outside of these interviews were through email.

SITE VISITS

No site visits were conducted.

² Exhibit 2: (Notice of Allegations: Stein).

³ Exhibit 3: (No Contact Directive: Stein).

⁴ Exhibit 4: (Stein Email: Matter Moving Forward to Resolution Phase).

⁵ Exhibit 5: (Notice of Hearing: Stein).

POTENTIAL POLICY VIOLATIONS

I delivered a Notice of Allegations (NOA) to Michael Stein via University email on May 19, 2021. The NOA informed him that an investigation was being conducted pursuant to the University of Missouri Collected Rules and Regulations (CRR) Section 600.040.

The NOA stated that Stein was accused of violating the following University policy:

- CRR 600.010 Equal Employment/Educational Opportunity and Nondiscrimination Policy

The NOA contained the following:

Claire Winters reported that, in the overnight hours of May 1-2, 2021, Michael (Mike) Stein engaged in nonconsensual sexual intercourse (sexual assault: rape) with her while she was incapacitated due to alcohol consumption and thus unable to consent to sexual activity, as defined by University policy.

Specifically, Winters reported the following:

1. Winters reported arriving at a party at Stein's off-campus house at 155 Main Street in Columbia, Missouri, around 10:00 p.m. She reported that she consumed alcohol and played games with her friend and other party attendees, and that Stein was present at the party as well.
2. Winters reported feeling dizzy and nauseous after consuming approximately two shots of vodka prior to arriving at Stein's house and an unknown amount of alcohol while playing beer pong. She reported that, due to feeling sick, she sat down on the couch in the living room. She stated that she does not recall much more of the evening because she was in and out of consciousness due to alcohol intoxication.
3. Winters said that she remembers being in the living room and then being on Stein's bed in his bedroom but has no memory of how she got to Stein's bedroom. She alleges that when she regained consciousness, Stein was allegedly on top of her. She stated that he did not have a shirt on, and her shirt was also removed, but she does not recall removing it. She alleges that he was kissing her and touching her breasts over her bra. She reportedly tried to pull away but was unable to move very much, due to her level of intoxication.
4. She reported that she does not remember anything else about the night. Winters stated the next morning, she woke up in Stein's bed around 8:30 a.m. and she was fully naked. She reported that she saw a condom wrapper and used condom in the trash can. She reported immediately getting dressed and leaving before Stein woke up. Based on her intermittent memories from that night, waking up naked in his bed, and finding the used condom the next morning, Winters alleges that Stein engaged in nonconsensual sexual intercourse (rape) with her while she was incapacitated and unable to consent to sexual activity.

APPLICABLE POLICY DEFINITIONS

Equal Employment/Educational Opportunity and Nondiscrimination Policy (600.010)

B. Definition of Discrimination and Harassment.

...

1. **Sex Discrimination.** Sex discrimination is conduct that is based upon an individual's sex, pregnancy, gender identity, or gender expression that adversely affects a term or condition of an individual's employment, education, living environment, or participation in a University education program or activity. Sex discrimination under this policy includes the following:

...

- a. Sexual Harassment, as defined in CRR 600.020, is governed exclusively by CRR 600.020 and CRR 600.030. *All other forms of sex-based discrimination are governed by this policy, including sex-based harassment that does not rise to the level of Sexual Harassment as defined in CRR 600.020, and conduct that meets the substantive definition of Sexual Harassment as defined in CRR 600.020 that occurs outside the University's education programs, activities, or employment, or occurs outside the United States, but nonetheless has an effect that interferes with or limits any person's ability to participate in or benefit from the University's education programs, activities or employment;*

...

The applicable definition from CRR 600.020:

"Sexual assault" - Any sexual act that constitutes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape, as defined below:

- (i) "Rape" is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. There is "carnal knowledge" if there is the slightest penetration of the vagina or penis by the sex organ of the other person. Attempted Rape is included.

...

3. **Consent to Sexual Activity.** Consent to sexual activity is knowing and voluntary. Consent to sexual activity requires of all involved persons a conscious and voluntary agreement to engage in sexual activity. Each person engaged in the sexual activity must have met the legal age of consent. It is the responsibility of each person to ensure they have the consent of all others engaged in the sexual activity. Consent must be obtained at the time of the specific activity and can be withdrawn at any time. Consent, lack of consent, or withdrawal of consent may be communicated by words or non-verbal acts.

Someone who is incapacitated cannot consent. Silence or absence of resistance does not establish consent. The existence of a dating relationship or past sexual relations between the Parties involved should never by itself be assumed to be an indicator of consent.

Further, consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Coercion and force, or threat of either, invalidates consent.

4. **Incapacitated or incapacitation.** A state in which rational decision-making or the ability to consent is rendered impossible because of a person's temporary or permanent physical or mental impairment, including but not limited to physical or mental impairment resulting from drugs or alcohol, disability, sleep, unconsciousness or illness. Consent does not exist when the Respondent knew or should have known of the other individual's incapacitation. Incapacitation is determined based on the totality of the circumstances. Incapacitation is more than intoxication but intoxication can cause incapacitation.

Factors to consider in determining incapacity include, but are not limited to, the following:

- a. Lack of awareness of circumstances or surroundings (e.g., an inability to understand, either temporarily or permanently, the who, what, where, how and/or why of the circumstances; blackout state)
- b. Inability to physically or verbally communicate coherently, particularly with regard to consent (e.g., slurred or incoherent speech)
- c. Lack of full control over physical movements (e.g., difficulty walking or standing without stumbling or assistance)
- d. Physical symptoms (e.g., vomiting or incontinence)

APPLICABLE PROCEDURE

At all times, this investigation was conducted in accordance with the relevant University of Missouri Collected Rules and Regulations, specifically Section 600.040, which describes the Equity Resolution Process for resolving complaints against students.

JURISDICTION

At the time of the alleged incidents, both Winters and Stein were enrolled students⁶ at the University of Missouri.

STANDARD OF PROOF

When this matter is reviewed by the decision maker pursuant to the University's Equity Resolution Process, the standard of proof will be "preponderance of the evidence," defined as determining whether evidence shows it is more likely than not that a policy violation occurred.⁷

⁶ Meeting the definition as set forth by CRR 600.040(C)(19), "A person having once been admitted to the University who has not completed a course of study and who intends to or does continue a course of study in or through one of the campuses of the University..."

⁷ Per CRR 600.040(P)(1).

CREDIBILITY ASSESSMENT

The information provided in each interview summary was obtained by an interview with the stated person that was free of prompting, coaching, or behavior that could, in any way, compromise the validity of the statements made. At all times, the parties and witnesses were interviewed in a manner free of any coercion or undue intimidation.

All parties and witnesses were interviewed by telephone or Zoom video conference. The statements offered by parties and witnesses during interviews were in their own words and of their own accord. Each person received a copy of their summary presented within this Report, prior to its finalization; these individuals affirmed that the details contained within their summaries were accurate to the best of their knowledge.

PARTY INTERVIEWS

CLAIRE WINTERS, MU STUDENT

I first met with Claire Winters on Tuesday, May 4, 2021, over Zoom. During our meeting, she described an incident implicating one of the University's Nondiscrimination Policies. On May 6, Winters submitted a formal complaint along with a detailed statement alleging that on May 1, 2021, student Michael (Mike) Stein engaged in nonconsensual sexual intercourse with her at his off-campus house, located at 155 Main Street. She reported that she was unable to recall all the events of the night due to her level of incapacitation. Below is a summary of the information collected during the course of the investigation.

Winters reported that she and Stein met during the Fall semester of their freshman year and became friends. She stated,

We first met in August (2020). We had some classes together, but we never really talked much. But then I joined the Chemistry Club shortly after school started and that's where I started talking to him. We then started hanging out more.

When asked how often they hung out together, she said, "Besides Chemistry Club meetings, we would hang out maybe once a week or once every two weeks. A smaller group of us liked to do different things together, like karaoke or just hang out at Mike and his roommate's place. It was just whatever."

Winters then began to describe what occurred on the night of the incident. She recalled,

I was with my friend Nikki McKnight, and we were pre-gaming at her place. I got to her apartment around 9:00 p.m. and we hung out there for a while before leaving to go to Mike's party. We were just talking for a bit and then called an Uber to take us to the party.

When asked what she had to drink while at McKnight's apartment, Winters responded, "It was some shots of tequila." When asked how many shots of tequila, she stated, "I think it was about two." When asked what size cup she drank from, she stated, "They were just regular size shot glasses. She (Nikki) poured us each a shot and we drank it, and then maybe 15 minutes later, she poured another."

Winters stated they consumed the last shots of tequila right before the Uber arrived around 9:50 p.m. She said she and McKnight arrived at Stein's house just after 10:00 p.m.

Winters then described what happened next. She recalled,

I was there, hanging out, and playing drinking games. I kept losing and after about an hour, I stopped playing because I started to feel sick, so I went to sit down. My memory is fuzzy from that night. I don't remember much more. I remember, at one point, standing around the living room as a group and just talking. I think it was after midnight (May 2), and the next thing I remember is being on Mike's bed without my shirt on and him being on top of me. I don't know how I got to his room. I think I remember trying to pull away, but he kept kissing me and touching my breasts. I don't remember exactly what happened after that. The next morning, I remember waking up totally naked, quickly putting my clothes on, and leaving. I left the house and texted Mike to ask what happened.

I asked what time she woke up the next morning. Winters estimated, "It was around 8:30 a.m." When asked whether Stein said anything to her when he was touching her breasts, she recalled, "No, I don't think so. I don't remember hearing him say anything."

Winters was asked to recall what was said in the text conversation with Stein the next morning (May 2). She explained,

He texted back saying that it was 'the same thing that always happens when we get together.' I told him that I'm not sure if that's true because I don't remember what happened. He then tells me that we were making out downstairs and that I suggested we should go upstairs to his room. But, I don't remember that. I don't know why he thought I was having a good time.

When asked if she still had that text conversation on her phone, she said that she did and would submit screenshots⁸ to be included as part of the investigation.

I asked Winters what Stein meant by his statement that it was "the same thing that always happens when we get together." She responded, "He was referring to other times we've had sex. We've hooked up a few times when we've been drunk. But this was different. I wasn't just drunk. I was way more than that."

Winters stated that she and Stein met later that afternoon (May 2) to talk about what happened. She recalled,

We met at Café D to talk about it. He talked about me spilling my drink and then that I kissed him downstairs in the kitchen. I don't remember that at all. He also told me that we were kissing in his bedroom and that I took my shirt off, and then we took our pants off. I just don't believe that. I would remember. There's no way I would forget getting undressed and kissing him and him putting a condom on and having sex with me. He did those things while I was too drunk.

Winters was then asked to recall how much alcohol she consumed while at Stein's party. She stated,

I only drank when I was playing the drinking game. It was beer pong. Nikki was my partner. We played a couple of other people that I didn't know. I think they were visiting from out of town. I kept losing so I kept having to take a drink.

⁸ Exhibit 6: (Screenshots of Text Messages between Winters and Stein.) Provided by Winters

In an effort to clarify how much alcohol she consumed, I asked Winters whether she consumed her drink from a cup or bottle, and she confirmed that she drank from the standard size (12 ounce) red solo cup. She further described, "Everyone had their own drink that they would drink from if they lost. So, every time I lost, I drank from my own cup."

Winters stated that she drank a vodka cranberry cocktail while playing beer pong. When asked if she made the drink herself, she confirmed that she did. When asked how much of each ingredient she poured in the cup, she stated, "I'm not sure. I think I poured about 1/3 vodka and 2/3 cranberry juice. It was pretty full. I had to be careful not to spill it at first." When asked how much she consumed of her drink, she stated, "I don't remember, maybe 2/3 of the cup. I didn't drink it all."

When asked if this was a typical amount of alcohol for her to consume, she answered,

It didn't seem like more than normal. I can usually drink a lot, but it was different this time. I didn't have as much to eat as normal. I don't know if that was different or maybe it was that I drank a lot pretty quickly because I kept losing, and I had those tequila shots before leaving Nikki's. I have never blacked out or forgotten a night though. That's what is so weird about this.

I asked what she had to eat that day, and she said, "I had a bagel for breakfast and a salad for a late lunch. I didn't really eat much for dinner; I just had some chips with cheese dip and salsa at Nikki's. There wasn't food at the party."

Winters was then asked to describe what she felt when she began feeling sick. She stated,

I first noticed that the room seemed weird, like it was moving, but I knew I wasn't [moving]. I felt off, kind [of] dizzy. Then I started to feel nauseous. That's when I went to sit down in the living room. It's right off the dining area, which is where the beer pong table was.

She was then asked to describe what happened while she was sitting down in the living room. She recalled,

That's where I really get confused. I remember sitting and Snapchatting, and at another point, I remember standing and talking to people. I don't really remember what we were talking about, but I remember we were laughing. The next thing I remember is being in Mike's room, but I have no idea how I got there. It's like I was just there, on his bed, and he was on top of me.

Winters stated that she recalls talking to Stein at the party and remembers that he was part of the group she was talking with in the living room. When asked who else was in the group she was talking with, she stated, "I remember it was Mike and Nikki who were all talking and laughing." I asked whether she told anyone that she felt sick, and she replied, "I don't remember if I did. I think people could probably tell though."

When asked why she thought others would be able to tell, she said,

I just felt so weird, and since I can't remember parts of the night, I'm sure it was obvious to others. I felt unsteady. I was able to walk around somewhat okay; like, I didn't need help to stand up. I just felt odd.

When asked how many people were at the party, Winters stated,

Not a lot, maybe a total of six or seven, but not everyone was there the whole time. I also didn't know them all. It was a mixed group. That's one reason I brought Nikki. I really only knew Mike and his roommate, Joe (Smith).

I then asked follow-up questions related to Winters being in Stein's bedroom. In response to what occurred during that time, she described,

I remember just being on his bed and without my shirt on. I remember kissing him, but then remember him touching my breasts, and I just remember feeling like I was wanting to push him away, but I just couldn't. It's like I couldn't say anything. Then, the next thing I remember is waking up the next morning, naked. I was so confused.

When asked how she and Stein were positioned on the bed, she stated, "We were laying down and he was on top of me." When asked how her shirt was removed, she stated, "I don't remember." When asked if she had been wearing a bra and whether it was on or off, she answered, "My bra was still on when he was touching my breasts over my bra, but it had been removed by the time I woke up the next morning." When asked if she recalled her pants or underwear being removed, she stated that she did not remember how or when they were removed. She added, "I have no memory of any of my clothes being removed." When asked if Stein was clothed, she explained,

From what I remember, when he was on top of me and we were kissing, his shirt was off, but I don't remember him actually taking it off, if that makes sense. The next morning, I could tell his shirt was still off when I woke up, but I didn't look to see if he was fully naked. He was still sleeping when I left.

I asked Winters what she believed happened and she replied,

It seemed weird that I woke up naked and it just seemed like something happened, but I was confused because I couldn't remember anything. Then, I noticed the condom wrapper and used condom in the trash can and we always use a condom, so I just put things together. It freaked me out, so I got dressed before he woke up and left.

When asked if she had any vaginal pain afterward, she stated, "No. I didn't have any pain." When asked if she experienced any bleeding or other discharge, she stated, "No." In response to whether she recalled Stein putting on a condom, she stated, "No."

When asked what positions they were in when they were in his room, she stated, "I only remember laying on the bed and him being on top of me." When asked if she felt anything other than him touching her breasts, she stated, "No, I just remember him touching my breasts." In response to whether she felt him touch her vagina or insert his penis, she stated, "No."

In response to whether she remembers walking to his room, she stated, "I don't. It's like I remember being in the living room. Then, I came to, and I was on his bed, and he was on top of me. Then, I just remember waking up the next morning and leaving." I asked if the room was dark or light, and she stated, "It was kind [of] dark. I think a lamp was on." In response to whether she heard any noises while in his bedroom, she stated, "No, I couldn't hear anything. I think it was after midnight and people were probably already gone. It was quiet."

As a follow up to Winters' earlier statement about their prior sexual activity, I asked Winters to describe the nature of her and Stein's relationship. She stated, "We started off as just acquaintances in Chemistry Club. We hung out more and started a friends-with-benefits type relationship." In reference to her earlier statement that they are usually drunk when they have sex, Winters stated that they often hang out at Stein's house and play games and drink. She added, "We've hooked up a few times after we've had drinks." When asked if they have ever had sex when they had not been drinking, she stated, "No. Alcohol is always involved."

I asked when they had sex the last time, prior to the incident. Winters replied,

Spring Break (late March 2021). We were on the same trip together. We both had been drinking a lot and hooked up. That's the last time, and we hadn't hung out again until the party at his house (May 1, 2021).

I asked whether they had communicated with each other since the Spring Break trip. She stated, "Yes. We mostly send Snaps to each other."

Winters was asked to describe how their prior sexual interactions differed from the night of the reported incident. She stated,

I remember the details of every other time we've had sex, and I can't remember the details of this night. I must have been too drunk. I passed out and only remember little parts of what happened. I remember wanting to say something but not being able to. And then I just remember waking up the next morning. It all feels so shocking, and when he was acting like everything was normal to him, I just don't feel like it was. I don't understand how it could be. I mean, I didn't even remember spilling my drink on me, but apparently that happened.

When asked what drink she spilled, she explained that Stein told her the next morning at Café D that she had spilled beer on her shirt while they were talking in the living room. She added, "I apparently spilled it on my shirt, and they were laughing. I remember them (Mike and Nikki) laughing at something, but I didn't know that was why. I don't even remember drinking a beer." She stated she checked her shirt the next day and could see the stain and noticed it smelled like beer.

When asked how she felt the next morning, Winters stated, "I felt awful and had a headache, but it wasn't too bad." When asked if it was typical for her to not feel well and have a headache after a night of drinking, she stated, "Yeah, it's not uncommon."

When asked if she told anyone else about what happened, she stated, "Just my friend Nikki. I texted her the next day." When asked what she told McKnight, Winters replied, "I texted her after I heard from Mike and just told her that we had sex, but I didn't remember any of it. We really didn't talk much more about it."

In response to whether she had saved any Snapchat posts or other messages from that night, she replied, "No. I pretty much just used Snapchat at the party and didn't save any of those." When asked who she was Snapchating, she stated, "Sara (Jones). She's a friend of mine who is also in Chemistry Club. She didn't feel like coming to the party, so I was just sending her Snaps." I asked what she was

sending Jones in the Snaps, and she explained, “I don’t remember too much, but I think I was just sending her random pictures. It wasn’t, like, a conversation.”

I asked Winters if she and Stein interacted on the night of the party, before the incident. She recalled, “A little off and on. I introduced him and Nikki and we talked a bit in the living room. I think he was hanging out with people outside quite a bit.” In response to whether Stein had been drinking, she responded, “He was but it was the usual beer. He wasn’t drunk or anything like that.” In response to whether she and Stein had prior conversations about having sex that night, she stated, “No.” When asked if she has spent the night at Stein’s before, she stated, “Yeah, I’ve stayed a time or two. It’s never been a planned thing. I just end up staying. Most of the time, I don’t stay.”

MICHAEL STEIN, MU STUDENT

I met with Michael (Mike) Stein and his support person on May 28, 2021, over Zoom. Below is a summary of the information collected during the course of the investigation.

Stein stated that he was at the party the night of May 1-2, 2021. He stated it was at his house and he was there for the entire party, which started around 7:00 p.m. and ended around midnight. He said that he lives with one other roommate, Joe Smith, who was also at the party that night.

When asked how he knows the Complainant, Claire Winters, Stein replied,

We met in Chemistry Club last year (August 2020). I would say that we’re friends and we hang out pretty regularly. We are...I guess you would say...sort [of] like, friends with benefits. We’ve hooked up on a few different occasions, like just random times and then over Spring Break (late March 2020). That was the last time we had sex before this night.

Stein stated that he and Winters have hung out at other times without having sex and the last time they hung out together was the Spring Break trip.

When asked about his level of intoxication the night of the party, Stein stated that he was not very intoxicated. He described having four bottles of Corona (beer) and one shot of vodka over the entire night, along with some water. When asked when he started drinking, he said, “Around 7:00 p.m.” When asked when he stopped drinking, he said, “Probably around midnight when people were leaving.” In response to how that compared to other nights of drinking, he stated, “That definitely wasn’t a lot. It was pretty typical for me, but I’ve also been known to drink more.” When asked if he recalled the night clearly, he replied, “For sure. I remember everything fine.”

When asked if he recalled seeing Winters at the party, he stated, “Yes.” Stein was then asked to describe what he remembered. He recalled,

I remember seeing her come in and she was with a friend of hers. I think her friend’s name was Nikki. I had never met her before that night. They were playing beer pong and I heard Claire say something about losing, but I didn’t pay too much attention. I was talking with others and hung out a lot outside. I know she was drinking when she lost, but nothing else really stood out. She seemed normal to me. I’ve been around her when she’s drunk, and she just seemed like she usually does. I would even describe her more like being tipsy and not really all the way drunk.

Stein stated that he has been around Winters at times when she has been intoxicated, slurring her words, and having trouble walking. Stein stated that he did not know whether Winters had consumed any alcohol before arriving at his house. Stein was asked to further describe what he meant when he described Winters as being “tipsy and not really all the way drunk.” He replied,

She was a little more talkative and handsy, but she was talking fine. She wasn’t slurring her words or anything. I saw her spill her drink on her shirt at one point, but her friend said something like, ‘party foul,’ and we all just laughed about it. She was holding a Corona (beer) and talking, and then it just tipped weirdly and spilled. Like, obviously it was no big deal. It was just kind [of] funny.

When asked if he recalled seeing her sitting on the couch, he stated,

She was on the couch at one point later in the night. I first asked what she was doing, and she said she was just sitting down because wasn’t feeling well. I asked what was wrong and if she needed anything, and she said she was ‘okay now’ and feeling better. I stayed and talked to her and Nikki.

He added,

I saw her playing beer pong. I know I was talking with her and her friend Nikki for a while, both when they first got there and in the living room—that’s when she was sitting down. And then a bit later, I was in the kitchen, which is by the beer pong table, and she came up to me and started getting a little handsy.

When asked to describe what he meant by “handsy,” he recalled,

She came over to me and kissed me when we were all downstairs. She came over and kind [of] fell into me when I was in the kitchen, which is by the living room and dining area. She was standing close to me and then kissed me on the lips. She then started pulling me towards the stairs, like to go upstairs, where my bedroom is. So, we went upstairs, and she was rubbing my chest and we started kissing as we walked into my room. We were standing by my bed when she took her shirt off and she then lifted my shirt up a bit, like she was wanting me to remove it, so I took my shirt off. We then got onto the bed, and I was on top of her. We kept making out and I started touching her breasts. I unbuttoned her pants and she unbuttoned mine. I helped her remove her pants and I took mine off without her help. We then had sex. After that, we just fell asleep.

As a follow up to his statement that she fell into him, I asked Stein to describe that action. He recalled, “She was walking towards me and then just kind of stumbled a bit and fell into me. I caught her and we just laughed. Then, she just stood up by me and leaned in close and kissed me.”

I asked Stein what type of clothing he had on, and he described, “It was jeans and a collared shirt. I think she was wearing jeans and a t-shirt.” In response to whether he was touching her breasts over or under her bra, Stein stated, “Over, at first. Then, I unhooked her bra, and she slipped her arms out.”

When asked if he used a condom, he stated, “Yes.” In response to where he got the condom, he stated, “It was in my nightstand. I just reached for it and put it on.” When asked what Winters was doing at that time, he said “I don’t know. I was focused on other things, and I didn’t look at her.”

In response to whether Winters said anything to him during the sexual activity, he stated, “No, not really.” In response to whether she asked him to remove her clothing or to remove his clothing, he stated, “No, she didn’t say anything like that.” When asked if she has said things during any of their past sexual encounters, he stated, “Maybe sometimes. We aren’t talking a lot or anything, but she may say something.”

In response to how long they engaged in sexual intercourse, he replied,

I have no idea, maybe 20 minutes. I’m really not sure. The party was mostly over when we went upstairs. I think Nikki and maybe one or two other people were still there; I don’t know for sure. My roommate and his girlfriend were already in his room, which is downstairs.

In response to whether he finished (ejaculated), Stein stated, “Yes.” When asked what he did after he finished, he stated, “I got up, put the condom in the trash, and went to the bathroom. I cleaned up and watched some TikToks before getting back in bed and going to sleep.” He stated he was in the bathroom for “maybe 15 minutes.” He stated that Winters was asleep by the time he got back into bed. In response to what Winters did when he first got up to go to the bathroom, he stated, “I think she was just laying there. She had rolled over on her side. I’m not sure if she was asleep yet or not. She has stayed over before though, so I just thought she may stay again.”

In response to whether they talked about having sex that night, Stein replied, “No. We don’t usually plan ahead of time. It has always just kind [of] happened.”

When asked how he knew Winters was consenting to sexual intercourse, he stated,

There was never any indication that she was uncomfortable. She didn’t pull away or say anything. I didn’t know anything was wrong until we were texting the next morning. I had no idea she was upset. We’ve had sex like that before and it was like every other time. Nothing seemed off. I was shocked to get the allegations.

I thought we were having a good time like we always do, and things were just progressing naturally. She never told me to stop, and she came on to me. She was kissing me back and touching me, so I thought it was fine. She had pulled at my shirt and took off her shirt, and she was even on top of me at one point. I thought it was weird when she texted me that she didn’t remember anything. Nothing was different about this night than any other time we hooked up.

When asked to describe their text conversation the following morning, Stein said,

She sent me this text and was like, ‘What happened last night?’ I responded something like, ‘The same thing that usually happens.’ I was kind [of] being lighthearted at that point but then she was like, ‘I don’t know because I don’t remember,’ or something like that. I then told her that we had sex. We ended up talking about it in person later that day and I told her about her spilling her drink, and she just had no memory of any of it.

Stein stated that he no longer had the text conversation on his phone because he dropped his phone in the pool. He stated he had to replace his phone and he does not use a cloud server to retain his messages. He stated that he hasn’t talked to Winters since their in-person conversation at Café D on May 2.

In response to his statements about their prior sexual activity, I asked whether alcohol has been involved previously. Stein responded,

Yeah, alcohol is usually involved. We're both usually drunk. I remember over Spring Break, we were both so drunk that we had to lean on each other when we were walking. We had sex then and it felt the same as this time. This is the first time she hasn't remembered though. That's still so weird because it seemed like she was into it.

I asked who usually initiates sex, and Stein replied, "Both of us do. Maybe me more than her, but we both have."

I asked how frequently he and Winters communicate with each other. Stein replied, "Pretty regularly. We talk at Chemistry Club and then mostly talk through Snapchat." When asked if they have had regular communication since the Spring Break trip, he stated, "Yeah, it's been pretty regular." I asked whether they talked about having sex again (after Spring Break), and he answered, "No, not really. We'll sometimes send pictures to each other, where we are partially dressed or something, just trying to be flirty, I guess." When asked if the photos are ever nude photos, he replied, "No, they're not like that. Mine may be a photo of me shirtless and she may send one where I can see her bra."

When asked what she did that signaled to him that she seemed "into it", Stein said,

Like I mentioned earlier, it was that she didn't say to stop and her actions didn't make me think I should stop. Like, she was kissing me and rubbing my chest. She took off her shirt and wanted me to take off mine. She was on top of me at one point.

In response to whether he talked to anyone about the incident afterward, he stated, "A little with my roommate, but no one else. I just told him I was surprised that she didn't remember things and then that she filed a complaint."

When asked who was at the party, Stein stated, "Joe (Smith), Claire (Winters), Nikki (McKnight), Joe's girlfriend Michelle (Greene), and a couple of Joe's friends. I don't know their names."

WITNESS INTERVIEWS

WITNESS 1: NIKKI MCKNIGHT, FRIEND OF WINTERS

I spoke with Nikki McKnight on June 2, 2021, over Zoom. Below is a summary of the information collected during the course of the investigation.

McKnight was first asked to describe how she knows the Complainant. She stated, "I am friends with Claire. I've known her since freshman year (August 2020). We are in the same sorority." When asked if she knows the Respondent, she stated,

I only know Mike because Claire told me about him after she came back from Spring Break. She told me that on the trip to PCB (Panama City Beach), she hooked up with him. I know they talk sometimes and hang out together.

McKnight stated that she attended the party on the night of the reported incident. When asked to describe what occurred that night, she stated,

Mike told Claire he was having a party that night and I went with her. Claire and I were together basically that whole night. We pre-gamed at my apartment before heading over to Mike's. Once we got there, we just hung out, played some beer pong, and talked with people.

When asked how much alcohol Winters consumed at her apartment, McKnight replied, "I'm pretty sure we each had like three shots before the Uber got there. Two shots of tequila and one of vodka." McKnight stated they drank the shots of alcohol within about 20 – 25 minutes and left shortly before 10:00 p.m. I asked McKnight if she noticed whether Winters appeared intoxicated at this point, and she responded, "No, she was fine when we left. She ordered the Uber and was chatty like normal. She was fine."

McKnight continued by describing what occurred once they arrived at the party. She stated,

I don't really know what to say. Nothing really stuck out about the party. It was just very typical. I did see Claire spill her drink when she was getting up to go to the bathroom. It's like she got up and was talking and holding her drink. Then, it tipped and spilled on her shirt. That's about it though. Nothing else was unusual.

When asked what drink Winters was holding when it spilled, she stated, "It was a Corona bottle."

In response to whether she saw Winters consume alcohol while at the party, McKnight stated,

Yeah, she drank from her drink when we lost playing beer pong. We kept losing so we drank a lot. I don't know how much though. She had a mixed drink. I was just drinking a beer. She was also sipping on a Corona later on. That's the beer I just talked about that she spilled on her shirt.

I asked if she recalled how Winters reacted when she spilled her beer. She stated, "She just kind of laughed. Me and Mike were standing there, and we all laughed. She went to the bathroom after that."

When asked if she has been around Winters when she has been intoxicated before, she replied, "Yes. I've seen her really drunk a couple times, and she wasn't any more drunk than usual. She was laughing a lot and having a good time. I didn't think she was super drunk." McKnight stated that Winters was not slurring her words and appeared to be walking and interacting normally.

In response to whether she saw Winters and Stein talking together that night, McKnight stated, "Not much. She introduced me to him when we first got there. And then, later, we were all three talking together for a bit." When asked if she ever saw them talking together alone, she stated, "No."

I asked when she left the party. McKnight stated,

I left between 11:30 p.m. – 12:15 a.m. I don't remember exactly. I couldn't find Claire. She had gotten up to go to the bathroom but then never came back to the living room. But, she knew I was going to leave around that time because we had already talked about it. She sometimes stays there overnight, so I just went ahead and went back to my apartment. I sent her a Snapchat saying I was leaving. I didn't get a response to that. The

next time I heard from her was the next morning when she texted me to tell me what happened.

McKnight continued by describing the text conversation⁹ the next morning. She recalled,

It was weird. She just texted me and said something like she and Mike had sex, but she was passed out. I was like, 'What are you talking about?' She said that she had texted him to ask what happened because she woke up without clothes on or something, and she didn't remember anything. She said that he told her they had sex and he thought everything was fine. We haven't really talked much more about it. I've tried to let her have her space and come to me if she wants.

McKnight continued,

I don't know what to think about it. She's told me before that they have had sex and it's usually when they've been drinking. But, she always remembers what happened. I'm confused because I thought she seemed fine but maybe she really wasn't. I feel bad because I know she's upset and feels taken advantage of.

WITNESS 2: JOE SMITH, FRIEND AND ROOMMATE OF STEIN

I spoke with Joe Smith on June 2, 2021, over the phone. Below is a summary of the information collected during the course of the investigation.

Smith was first asked how he knows the Respondent. He stated, "I'm Mike's roommate. We first started rooming together Freshman year." When asked if he knows the Complainant, he replied,

I don't really know her, know her. Mike and Claire have been in one of those friends-with-benefits situations for months now. I was in the group that went to PCB for Spring Break and knew that they hooked up on that trip. Ever since then, it seems like they have been pretty close.

Smith continued by describing what he recalled occurring on the Spring Break trip to Panama City Beach. He stated,

On that trip, we were all pretty drunk. It's Spring Break and everyone is drinking. The night that they hooked up, I remember we played "Never have I Ever" and Claire and Mike both lost several rounds. They were both helping each other get upstairs to the room that night. The next morning, they were really all over each other. I heard later from Mike that they had sex.

Smith stated that Winters also goes out with the group when they go to bars, and she comes over to their house when they have parties. He said that Winters and Stein hang out alone sometimes (without the group). He stated that Winters has stayed overnight with Stein previously.

In response to whether he was at the party the night of the reported incident, he stated, "Yeah, I was at the party that night, but I was with my friends from out of town and my girlfriend, Michelle (Greene), so

⁹ Exhibit 7: (Screenshots of Text Messages between McKnight and Winters). Provided by McKnight.

I wasn't really paying much attention to everything going on. I was also pretty drunk so don't remember a lot."

I asked who his friends were, from out of town. He stated, "Izzy Brown and DL Whipley" In response to whether he would provide their contact information, he stated, "I can email it to you. I'm not sure if they saw anything or not though."

When asked if he saw Winters and Stein together that night, he stated, "I remember seeing Claire next to Mike early on, but nothing stands out after that." When asked what he recalled about Winters being next to Stein, Smith stated, "She was just kind of standing right by him in the kitchen, which is in between the dining area and living room. I think she had her hand on his arm or something. That's really all I remember." When asked if he saw Stein and Winters kiss, he stated, "No."

Smith said that he never saw Winters leave. He stated that he and his girlfriend went to his bedroom around 11:00 p.m.

When asked when he heard about what is being alleged to have occurred, he stated, "I heard about it when Mike got that letter. He was shocked." In response to whether Stein talked to him about what occurred before getting the Notice from our Office, he said, "Not really. He did mention the text conversation between him and Claire because he thought it was kind [of] strange at the time. But, he didn't say anything more until he got that letter." I asked if Stein usually talks about things like that with him, and Smith replied, "No, not usually. I mean, he told me about the time on Spring Break, but he doesn't usually talk about his sex life." In response to whether Stein has shared more details with him now, Smith stated,

He's worried about what may happen and feels bad that she thinks these things about him. He didn't talk about details but just seemed really surprised. He then told me that you may be contacting me, but he didn't say anything else.

WITNESS 3: SARA JONES, FRIEND OF WINTERS

I spoke with Sara Jones on June 4, 2021, over Zoom. Below is a summary of the information collected during the course of the investigation.

Jones stated that she was not at Stein's house on the night of the reported incident. She added, "I knew he was having a kickback, but I didn't feel like being around a lot of people."

When asked how she knows Stein, Jones replied,

I know both Claire and Mike from Chemistry Club. That's where I met them. A group of us became friends where we would hang out and just do things as a group. There was a rumor in Chemistry Club that Claire and Mike had hooked up, but I don't know.

When asked if Winters or Stein ever talked with her about their relationship, Jones stated,

No, I mean, I like to keep to myself a bit when it comes to everyone's relationships. People hook up and I don't really care about what they do. It's just, like, whatever. I heard it may be happening but neither of them told me directly, so I don't even know if it was true.

When asked if she had been around Stein on other occasions (other than Chemistry Club), she stated, “No, I haven’t.”

When asked if she had been around Winters on other occasions (other than Chemistry Club), she stated,

Once or twice. I really don’t do much with them and, if I do, I don’t stay all that long. I’m not as much of a drinker as everyone else, so I like to leave before things get going too much. They keep trying to get me to come to these parties, but I’ve been around them enough to know that it’s not really my thing. I like to smoke weed and just chill and talk and they are more like, ‘Let’s play beer pong and be loud.’ You know, it’s just different.

In response to whether she has seen Winters intoxicated, Jones stated, “No, I don’t think so. I’ve heard she likes to drink and gets pretty drunk, but I don’t know.”

When asked if she recalled Snapchatting with Winters the night of the reported incident, she replied, “Yes, I think so.” When asked if she remembered what she and Winters messaged about, she stated, “From what I remember, it really wasn’t like a conversation. She was just sending pictures from the party. She was just trying to show me what I was missing out on.” In response to whether anything stood out about the photos, she stated, “No. They were just pictures. It all just looked like a normal party. She usually sends me photos like that.” When asked if Winters was in any of the photos, Jones stated, “I think, maybe. I don’t really remember. I do remember seeing pictures of people playing beer pong, but Claire wasn’t in it though. And I remember seeing random pictures of people talking but don’t think Claire was in those either.”

When asked if she has spoken to Winters or Stein about what reportedly occurred, she stated, “No. They haven’t said anything to me.”

WITNESS 4: MICHELLE GREENE, GIRLFRIEND OF SMITH AND PARTY ATTENDEE

I spoke with Michelle Greene on June 5, 2021, over the phone. Greene stated that she knows Stein “a little bit” from seeing him when she’s been at Smith’s house. She stated that she does not know Winters or what Winters looks like. She stated that she does not recall the night in question so does not want to participate further.

WITNESS 5: IZZY BROWN, PARTY ATTENDEE

I sent outreach to Izzy Brown on June 2, 4, and 14. No response has been received.

WITNESS 6: DL WHIPLEY, PARTY ATTENDEE

I sent outreach to DL Whiplew on June 2, 4, and 14. No response has been received.

LIST OF EXHIBITS

Exhibit #	Description of Exhibit	Page #
1	Winters Formal Complaint	1
2	Notice of Investigation: Stein	2-9
3	No Contact Directive: Stein	10
4	Stein Email: Matter Moving Forward to Resolution Phase	11-12
5	Notice of Hearing: Stein	13-20
6	Screenshots of Text Messages between Winters and Stein. Provided by Winters.	21
7	Screenshots of Text Messages between McKnight and Winters. Provided by McKnight.	22