

**COMPLAINTS OF SEXUAL MISCONDUCT**  
**INVESTIGATIVE REPORT VE REPORT**

**FILED:** 1/26/17  
**COMPLAINANT:** Mark Mitchell  
**RESPONDENT:** Alice Smith

**DATE OF INCIDENT:** 10/30/2016  
**DATE OF THIS REPORT:** 4/7/17

**BACKGROUND**

On 1/15/17, I was assigned to investigate a complaint of sexual misconduct filed by Alice Smith against Mark Mitchell. The complaint alleged that the incident occurred on 10/30/16. On 1/26/17, Mitchell had filed a cross-complaint against Smith.

**INVESTIGATIVE PROCESS**

On the morning of 1/27/17 I interviewed Alice Smith. Based on information received through that interview and her written statement, I then interviewed Smith's witnesses Marnie Macon, Lanie Jones, and Maria Vasquez. On 1/30/17, I interviewed Mark Mitchell, and based on that interview, I then interviewed Mitchell's witnesses Rich Patterson, Jen Lewis, Craig Fishman, and Burt Broommate.

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The Policy also prohibits Sex/Gender-Based Harassment:

*One form of harassment is unwelcome verbal or physical conduct based on sex that, because of its severity and/or persistence, creates a hostile environment by interfering significantly with an individual's work or education, or adversely affecting an individual's living conditions.*

The Policy also prohibits Retaliation:

*Retaliation is prohibited under this policy. Retaliation is words or acts taken in response to good faith reporting of sexual misconduct, participation in the University's investigation, or otherwise opposing what the individual reasonably believes to be sexual misconduct. Retaliation will be a violation of this policy when it is sufficiently serious (e.g., severe and/or pervasive) to discourage a reasonable person from further such activity. The protection against retaliation applies to both parties and to all witnesses. All persons who believe they have been subjected to misconduct under this policy are encouraged and have the option to seek support, utilize available resources, and come forward with their concern or complaint.*

## **INTERVIEW SUMMARIES**

### **ALICE SMITH**

I interviewed Smith on 1/27/17 from 9:20 to 10:15AM. I asked her to relate her activities on the night of the incident, prior to going to Shiners. She said that she and Marnie Macon, a friend from class, met at Smith's apartment that night and spent time having drinks before leaving for the restaurant. They traveled to Shiners and socialized for several hours. She estimated that she had two gin and tonics at her apartment, and two margaritas at the restaurant. I asked her to gauge the effect of the alcohol, and she estimated it was moderate – it made her more outgoing, loud and friendly than she would have been without drinking. She said she felt enough effect that she would not have driven herself that night. Outside at Shiners, Macon introduced her to one of her friends, Mark Mitchell, who was there with a group. Smith said that Macon wandered off, and she stayed out on the patio talking with Mitchell. She said he was stroking her back and hugging her, which was fine with her. She said that Mitchell seemed fairly drunk at the time as evidenced by his being loud and outgoing, but said his manner was similar to many people there,



who drove them to her apartment. She said she was neither supporting nor leading Mitchell, and he walked to the car with her normally. They chatted along the way, and she said Mitchell was fully conscious and involved with her. Macon dropped them off at her building and Smith led Mitchell upstairs. She said that he walked on his own, without stumbling or needing assistance. Since Jones, her roommate, was awake, she went in and introduced Mitchell, and he went himself down the hall to Smith's room. She and Jones chatted about the night, and she then went to her bedroom.

When she got to her room, she undressed and thinks she put on a nightgown. Mitchell undressed himself to his boxer shorts. They made out for a while and Mitchell fondled her breasts (he was a little rough, but she didn't complain), then she lay on her back with him straddling her. He removed her gown and underwear. She could see he was erect and may have stroked his penis through his boxers. He said he did not have a condom, so she reached into her nightstand and gave it to him. He removed his shorts, applied the condom himself, and attempted unsuccessfully to penetrate her. After a very brief time, he pulled back, stripped off the condom and re-approached her as if to resume intercourse. She objected verbally and gave him another condom, with which he repeated the previous sequence. This occurred a total of three times, after which they both fell asleep. She did not characterize him as passing out, but said he moved to get comfortable and eventually quieted down, so she thought he was asleep.

She awoke a while later to find him reaching around and strongly grasping and squeezing her breasts. This continued for a few minutes. She did not react or say anything, because she hoped and expected it to stop. He then ran his hand down to her crotch and tried to finger her vagina. She resisted this by firmly squeezing her legs together; again hoping that he would give up. I asked why she hadn't told him to leave at some point, and she said that he was behaving so aggressively she was afraid "he'd get mad and do something bad."

Around 7:30AM her phone alarm sounded. He got up and left. He was gone from the apartment when she got up.

I asked her to describe the marks on her breasts, and she said they were painful bruises. I asked if any of them could have been hickeys, and she said Mitchell did suck on her breast during foreplay, but there were many more marks than he applied that way. She also explained that

and Macon were joking and talking about hookups later, and she said that phrase jokingly because Macon is a first-year student.

I asked whether the incident has had an effect on her. Smith said that ever since the incident, she has feared seeing Mitchell or having to speak with him. She said, "Doing work has been a real struggle" because she is so distracted and preoccupied with thoughts of the incident. She said it even affected other relationships, citing an instance after the incident when she became so panicked when in the company of a male friend that she had to ask him to leave the room. She said that the filing of Mitchell

After he finished his narrative, I asked him clarifying questions. I first tried to determine if there were other witnesses to his interactions at Shiners. Mitchell said that he could not recall anyone else besides the names he already mentioned who saw him at Shiners. I asked whether he saw anyone else at the apartment, and he said that Smith lives in a single unit without a roommate. There was no one else in the apartment when he arrived or left. I asked him to discuss the texts he had provided that discussed his reactions to the incident -- during the next day, he texted to friends his piecemeal memories about the previous night with such comments as “WTF happened last night? I think I was raped...LOL”; “I was trashed”; I was so drunk I don’t remember shit...LOL”; (in answer to “Were you still drunk this morning?”) “Yes. Honestly, I don’t remember Shiners at all”; (in answer to “So you actually don’t remember?”) “Legit, I blacked out.” He explained that some of the apparent light-heartedness, such as “lol” after some statements was just texting style. He was very serious about his confusion at what he had been through.

I asked him to characterize his drinking habits. He said he has been as drunk as he was that night often, and was “pretty close to his limit.” He said that when getting drunk he gets more cocky,

apartment, which he again characterized as a single bedroom unit. He doesn't remember exactly how they got naked, but believes there was foreplay, during which he administered hickeys to Smith's breasts with his mouth. He recalls her saying, "You better not give me hickeys," but he has "had a lot of partners and they always enjoy them."

He took out a condom from his wallet and applied it himself to his penis. He penetrated her vagina for five to fifteen seconds, but could not maintain an erection and the condom fell off. She then gave him another from her nightstand, but the same thing occurred twice more. She then told him to go to sleep, which he did. He awoke the next morning from her alarm, and after several snooze alarms, Smith criticized his selection of Friday morning classes and sent him on his way. He said he walked directly out of the apartment, called an Uber and returned to East Campus.

He sent texts shortly after he left Ms. Smith's apartment, to friends about the incident, but did not discuss it widely he said, because "I don't like to discuss my private sex life." I asked how the incident affected him. He said that for the next week he felt like an "object" or a "sex toy" because of the circumstances of the incident, and since then, although he has continued to go out socially, he has developed major trust issues, including "paranoia," when he is around women. He said he has since tried to not get so drunk that he blacks out. He pointed out that at the time of the incident he was in peak shape, but the stress of the investigation has caused him to lose 12 pounds of muscle due to disruption in his appetite and sleep. He fears loss of his reputation, which he characterized as being "pretty popular, with no enemies."

### **MARIA VASQUEZ, SMITH'S FORMER GIRLFRIEND AND CURRENT FRIEND**

I interviewed Vasquez on 1/28/17 from 3:10 to 3:30PM. He said she and Smith had met their first year, dated sophomore year and though not dating now, saw each other several times a week. She said that Smith had texted her on the early afternoon of 10/30/16 and asked if she'd come over. She left her job at the VA Hospital early, and arrived at Smith's apartment about 4PM. She went into her bedroom and saw Smith changing her sheets, which also seemed odd. Smith said, "Last night I was sexually assaulted." She seemed to be making an effort to remain composed. Smith showed her Vasquez her upper chest, which appeared to have a rash, and then showed Smith her breasts, which she said had bruises on them. She advised her to take photos, which she did with her phone. Smith also said that her vagina had been bleeding that day. They discussed seeing a doctor and having a rape kit done, but she demurred. They discussed next steps and Vasquez and Smith's roommate, Lanie Jones, pushed reporting the incident. They continued the persuasion for several weeks during which her bruises ripened and faded. They did not photograph that development.

She said Smith eventually told her that she was filing a complaint and that "her #1 consideration was justice." She told her that she wanted to prevent Mitchell from treating younger students the same way Mitchell had treated her.



**MARNIE MACON, SMITH'S FRIEND, MITCHELL'S CLASSMATE AND ACQUAINTANCE**

I interviewed Macon on 1/28/17 from 3:30 to 4:15PM. She told me that she and Smith were friends from class. She had been friends with Mitchell since their freshman year began, but more so earlier than recently. They are acquainted, but don't go around together. I asked her to relate her memory of the night of the incident. She said that she went to Smith's apartment, they had some drinks and then drove to Shiners. She saw Mark Mitchell with others, including Craig Fishman and Rich Patterson,



intercourse but Mitchell wasn't able, so they fell asleep. At some point, she realized that Mitchell had woke up and squeezed her breasts and tried to penetrate her vagina with his fingers. She explained that she resisted by lying in bed with her body tensed up. Smith told Jones that she was in pain and bleeding in her vagina. She also showed Jones visible bruises on her breasts. I asked Jones if they were possible hickeys instead of bruises. Jones said that although there's a similarity, they did not look like hickeys. They discussed whether to see a doctor, but Smith declined. Smith kept describing Mitchell's behavior as "aggressive." Jones asked Smith why she hadn't made Mitchell leave, and Smith responded, "I wasn't going to kick him out on the street in the middle of the night."

That afternoon, Maria Vasquez came over, and she and Smith talked about the incident in Smith's bedroom. The three then discussed together filing a complaint. Smith said she would consider it. She continued to discuss options with Smith over the next several weeks, and said that Smith finally convinced herself to pursue a complaint.

Jones said she did not know Mitchell previously, and would not recognize him today.

#### **RICH PATTERSON, MITCHELL'S FRIEND**

I interviewed Patterson on 2/3/17 from 11:00 to 11:15AM. He said he is acquainted with Mark Mitchell through his dorm mate Craig Fishman. He does not know Alice Smith, and said he first heard her name during this interview. He said he had not discussed the complaint with Marnie Macon. I asked him about drinking at Fullsteam on the night of the incident. He does not remember much of the night of the incident, but recalls being only at Shiners with his girlfriend, who was visiting from out-of-town, and that they left earlier in the night than others. He does not remember interacting with Mitchell that night or seeing him in the company of Alice Smith, whom I had described for him.

I asked if he had ever been with Mitchell when he was drinking a lot, and he said he has. He described that as Mitchell drinks, he gets more outgoing and social and laughs more.

#### **JEN LEWIS, MITCHELL'S FRIEND**

I interviewed Lewis on 2/3/17 from 2:00 to 2:20. She said she knew Mark Mitchell from her dorm c Ó /

I asked if she had been around Mitchell when he was drinking. She said she has seen him “out of it” when he’s slow to react and physically off-balance.

### **CRAIG FISHMAN, MITCHELL’S FRIEND**

I interviewed Fishman on 2/4/16 from 1:30 to 2:10PM. Fishman said he has known Mark Mitchell from the first day they arrived at the university. He said that on the night of the incident, he, Rich Patterson and Mitchell were drinking at Fullsteam. He recalled that one of the beers was a high alcohol IPA called Seeing Double, and that they drank more than usual. He said that Mitchell especially “drank a lot for him, and in fact for a human.” He said that when they warned him about drinking too much, he said, “I can’t get drunk off of beer.” After drinking at Fullsteam they walked across to Shiners. He characterized Thursday night as a big night at Shiners and because he goes there regularly, the events of the particular night of the incident blend with other similar visits. He said that he may have seen Mitchell in passing while at Shiners but has no specific memory of Mitchell interacting with a woman.

He had lunch with Mitchell the next day, and Mitchell said, “I think I was raped.” He seemed serious about the statement. Mitchell went on to recount that he had gotten “super drunk,” and a girl took him to her apartment. He woke up and saw a condom on the bed, but remembered little. Over the next several days, Mitchell asked what he should do. Fishman told him that from what he had described, there didn’t seem to be any wrong-doing on his part, so “just forget it.”

Broommate why he had tried to prevent Mitchell from leaving with Smith. Broommate said that he thought Mitchell was too drunk to know what he was doing.

Broommate did not see Mitchell again until he returned to the dorm sometime the next day. He seemed upset, and said, "It was weird, she kept giving me condoms," but told Broommate he couldn't