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Sydney B.,

Complainant,

vs.

L. Douglas Wilder,

Respondent.

) **RESPONDENT, L. DOUGLAS WILDER'S
RESPONSE TO EXTERNAL INVESTIGATOR
SHIPPER'S RECOMMENDED FINDING OF
RESPONSIBILITY OF NON-CONSENSUAL
SEXUAL CONTACT (ALLEGATION I, OF
CHARGING COMPLAINT)**

**TO: LAURA WALSH RUGLESS, EXECUTIVE DIRECTOR OF EQUITY AND
ACCESS SERVICES AND TITLE IX COORDINATOR:**

PLEASE BE ADVISED THAT: Pursuant to Section 13.03(q) of VUC's Sexual
Misconduct/Violence and Sex/Gender Discrimination Policy, Respondent, L. Douglas Wilder
hereby submits the following statement contesting External Investigator, Jody Shipper's
Recommended Finding of Responsibility of Non-consensual Sexual Contact, Allegation I of
the underlying charging complaint, for the reasons set forth more fully below. Wilder accepts
the findings of no responsibility as to Allegation II, III, and IV (Sexual Exploitation; Sex-
Gender-based Discrimination; and Retaliation, respectively).

Wilder contends, and the evidence establishes, as detailed below, that the
Preponderance of the Evidence Standard was not appropriately applied by the External

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1 Investigator, and in fact was simply not followed. Moreover, in addition to being unsupported
2 by the evidence, the External Investigator's reasoning with respect to Allegation I, is, inter
3 alia, unsound, biased and violates due process. Wilder also offers a more appropriate
4 interpretation of the events as described in the allegations, which again supports a finding of
5 No Responsibility as to Allegations I, II, III, and IV. Lastly, regarding the thoroughness,
6 fairness and/or impartiality of the investigation, Wilder is concerned that there has been an
7 underlying bias in how VCU's Equity and Access Services Office (EAS) has undertaken this
8 investigation, and raises below, specific questions that need to be addressed.

10 1. ***The Applicable standard***

11 Preponderance of the evidence is the standard of proof in most civil cases, including
12 Title IX cases, in which *the party bearing the burden of proof must present evidence which is*
13 *more credible and convincing* than that presented by the other party, or which shows that the
14 facts as presented by the complaining witness *are more likely than not* to be true. In most
15 cases this means that there must be *at a minimum*, a 51 percent likelihood that the facts are
16 true. The burden of proof rests with the complaining party.

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19 The evidence, consist of the Complainant's statements, Complainant's roommate's
20 and mother's statements, Wilder's statements, eight (8) phone calls (content unknown) from
21 Wilder to Complainant and eight (8) phone calls from Complainant to Wilder (again content
22 unknown). ***(For reasons which only External Investigator Shipper is aware, Shipper***
23 ***only references three (3) calls from Complainant to Wilder in her findings with respect***
24 ***to Allegation I, while the record reveals that Complainant made a total of eight (8) calls***
25 ***to Wilder after the alleged incident.)***

1 2. ***The External Investigator’s conclusion “that it was more probable than not that
2 Wilder kissed Complainant and touched her knee” is not based on sound
3 reasoning, is inconsistent with her investigative findings as set forth in her
4 report, and is simply not supported by competent trustworthy evidence.***

4 The External Investigator concluded that the preponderance of the evidence supports a
5 finding that Wilder kissed Complainant and touched her leg on February 16, 2017, based on
6 the “totality of the evidence.” That “evidence,” according to the External Investigator, was 1)
7 Complainant’s unsubstantiated conclusion that Wilder invited her to dinner (which he denies),
8 and 2) Wilder’s failure to explain why he called Complainant multiple times after the February
9 16, 2017 dinner. Specifically, the External Investigator concluded that “because [Wilder]
10 offered no explanation for those calls, . . . that it would be unreasonable to suggest that
11 [Wilder] would have called Complainant if there had not been some kind of precipitating event
12 he felt required further discussion with Complainant.” This conclusion is factually and legally
13 untenable.
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16 ***a. Contrary to the External Investigator’s assertions, Wilder did explain his post
17 February 16, 2017 phone calls to Complainant***

18 The External Investigator’s statement that Wilder failed to explain why he called
19 Complainant after the dinner is misleading and is clearly designed to lend support to her
20 finding. The statement itself suggests that she actually *asked* Wilder to explain the calls and
21 he simply would not or could not explain them. What the External Investigator fails to disclose
22 is that she never even brought up the calls let alone asked Wilder to explain them. The
23 External Investigator simply asked Wilder if he ever called Complainant and if so how many
24 times – to which Wilder replied that, to his recollection, Complainant would text him and ask
25 him to call her and he would call her in response to her texts. Wilder also told the External
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1 Investigator that he may have texted Complainant twice. The deliberate and calculated
2 omission of this evidence is indicative of bias and constitutes a gross violation of due
3 process.

4 Without the “unexplained” phone calls the External Investigator is left with only the
5 Complainant’s allegations and Wilder’s denial. An examination of the report establishes that
6 based on at least 10 material inconsistencies in Complainant’s statements to the External
7 Investigator, referenced in the External Investigator’s report but not in her findings as to
8 Allegation I, coupled with Complainant’s behavior following the alleged incident, the
9 preponderance of the evidence supports a finding that it is more likely than not that Wilder did
10 not kiss Complainant, did not try to kiss Complainant, did not touch Complainant’s leg nor did
11 he try to touch her leg.
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14 ***b. Complainant’s inconsistent statements and behavior***

15 *i. Complainant alleged that Wilder kissed her and touched her leg, yet she told*
16 *her roommate that Wilder “tried” to kiss her. She said nothing about Wilder*
17 *touching or trying to touch her leg.*

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19 *ii. Complainant told the External Investigator that she told her roommate about the*
20 *incident the night it happened. However, according to the External Investigator’s*
21 *findings, the roommate stated that she did not become aware of the incident until*
22 *after the investigation was underway.*

23
24 *iii. At a later time, not disclosed in the report nor to Wilder, Complainant told her*
25 *mother that Wilder “tried” to touch her leg. She said nothing to her mother about*
26 *Wilder actually touching her leg or kissing or trying to kiss her.*
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1 iv. Complaining witness claimed Wilder gave her a note the day after the incident
2 directing her not to tell anyone what happened at his condo. Work records
3 establish that Complainant did not work that day. More importantly, Complainant
4 claims to have not kept the note which would have substantiated her claim. In the
5 transcript from Complainant's March 2019 interview with the External Investigator,
6 Complainant offered no explanation as to what she did with the note when asked
7 by the External Investigator nor did the External Investigator did not pursue the
8 matter.
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10 v. Complainant told the External Investigator that *they* made dinner plans by
11 phone. Wilder's phone records disclosed that there were no calls from or to
12 Complainant prior to the February 16, 2017, dinner. The record was conspicuously
13 silent as to whether Complainant produced her February phone records however,
14 given that the External Investigator concluded that no calls were made between the
15 parties prior to the dinner the logical conclusion is that Complainant did not
16 produce her February phone record (the record shows that she only produced
17 phone records for March-April 2017, while Wilder provided records for February –
18 June 2017) or she produced the record and it did not support her claim. In either
19 case, it was incumbent upon the External Investigator to disclose this information.
20 Complainant's comment that they made dinner plans is suggestive that the idea to
21 have dinner was at best a mutual decision and calls into question the External
22 Investigator's conclusion that Wilder asked Complainant out to dinner. An
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1 assumption the External Investigator placed some degree of weight on in reaching
2 her conclusion that Wilder kissed Complainant and touched her on the knee.

3 vi. Complainant alleged that Wilder called her “every single day” during the
4 month of February 2017 before and after the dinner. Again, Wilder’s phone records
5 disclosed this to not be true and Complainant either did not submit her phone
6 record for February 2017 or her record did not support her claim. In any event, as
7 mentioned, the External Investigator concluded that there were no calls from Wilder
8 to Complainant in the two weeks preceding the dinner and only two (2) calls in the
9 two weeks following the dinner.

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11 vii. Complainant’s roommate told the External Investigator that Complainant was
12 “super-duper drunk,” that she “parked far from the curb” and that “she fell down a
13 **flight** of stairs.” Complaining witness made no reference to being inebriated and in
14 fact told the External Investigator that she felt ok to drive. Her initial inability to
15 remember that she was intoxicated (apparently months after her initial interview
16 with the External Investigator, Complainant told a Post reporter that she was drunk)
17 or that she fell down a flight of stairs calls into question the accuracy and
18 veracity of her recollection of what transpired after dinner on February 16, 2017.

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20 viii. Complainant stated that she “was so irritated with Wilder calling her every
21 day” after the alleged incident that she “stopped answering his calls and ignored
22 him.” Her phone records show that she called Wilder 8 times during this period.
23 Complainant also stated that Wilder’s calls “progressed from telling her ‘do you
24 know who I am, you can’t ignore me’ to asking [her] to meet him in person so he
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1 could apologize.” Either she ignored his calls or she took his calls – she could not
2 have done both.

3 ix. Complainant told the External Investigator that prior to February 16, 2017,
4 Wilder would refer to her as “Baby girl,” made derogatory statements and sexual
5 overtures towards her and would look at her in such a way that it made her
6 uncomfortable. Notwithstanding, by her own account she planned a dinner with
7 Wilder, and in an email dated February 14, 2017, told Wilder that she would “be
8 available on the date, time and location that [they] discussed!” The exclamation
9 mark at the end of her email suggest excitement on her part regarding the
10 impending dinner and hardly supports Complainant’s narrative that Wilder “made
11 derogatory statements and sexual overtures’ [towards her] and would look at her in
12 such a way that it made her “uncomfortable.”

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15 x. Complainant told the External Investigator that she “felt scared” when she
16 was alone with Wilder at his downtown condo after he allegedly kissed her and
17 placed his hand on her thigh. She also claimed that after that alleged incident,
18 Wilder invited her to spend the weekend with him in Atlanta – which she declined
19 and Wilder flatly denies. Notwithstanding these claims, Complainant drove over an
20 hour to Wilder’s secluded Charles City residence – anticipating that it would be just
21 the two of them there. This is hardly the behavior of a young woman who had been
22 previously sexually assaulted by the person she was meeting and of whom she
23 claimed she was “scared.”

1 xi. Complainant called Wilder 8 times after the alleged February 16, 2017
2 incident. This is hardly the behavior of someone who was the victim of
3 nonconsensual sexual contact, someone who - prior to the calls being made - was
4 being pursued against her wishes, to whom unwanted derogatory and sexual
5 comments, that made her uncomfortable, were made, or someone who feared the
6 person she was calling.
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8 xii. According to the report, Complainant stated that when she arrived at
9 Wilder's secluded Charles City home, she noted that "it was just woods and a long
10 driveway" prompting her to call Wilder to confirm that she was at the right location.
11 In fact, Wilder's Charles City home sits more than a mile back from the main road
12 and is surrounded by woods. In spite of all of the above, Complainant made the
13 mile plus long drive through the secluded woods to Wilder's residence and stayed
14 there for approximately 2 ½ hours. Again, Complainant's actions belie her claim
15 that she was the victim of a nonconsensual sexual contact, that she feared Wilder
16 after that alleged contact, that she was being pursued by Wilder against her
17 wishes, and that Wilder made unwanted derogatory and sexual comments to her,
18 which made her uncomfortable.
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21 One is only left to speculate as to why the External Investigator chose to consider only
22 the inconsistent statements Complainant made to her roommate and mother in deciding
23 whether Complainant was truthful in her claim that Wilder kissed and touched her and not all
24 of the above referenced inconsistencies. Particularly when the External Investigator found the
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1 remaining allegations unfounded, in part based on these very same inconsistencies and
2 behaviors.

3 Given the material nature and substance of the above referenced inconsistencies
4 coupled with the fact that Complainant’s credibility is central to these proceedings and the
5 inconsistencies call into question Complainant’s credibility and veracity - no reasonable
6 unbiased External Investigator, without a pre-existing agenda, armed with this information,
7 would conclude that it was more likely than not that Wilder kissed Complainant and touched
8 her leg.
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10 3. ***The External Investigator’s reasoning as to why the evidence supports a finding***
11 ***that Wilder kissed Complainant and touched her knee is unsound***

12 One also is left to surmise why the External Investigator, instead of treating the
13 statements Complainant made to her roommate and mother for what they were – prior
14 inconsistent statements which call into question the veracity of Complainant’s claim –
15 dismissed them as “Complainant’s imprecision in relating to them what occurred or the
16 witnesses’ imprecise recollection of the discussion.” There is no factual or legal basis for this
17 conclusion. The External Investigator simply interpolates her personal unsubstantiated
18 opinion as to why the witnesses’ versions what happened were inconsistent with
19 Complainant’s version. However, the External Investigator’s report referenced no ambiguity in
20 the witnesses’ recollection as to what Complainant told them, no hesitation on their part in
21 relaying what allegedly complainant told them to the External Investigator. In reading the
22 report, the witnesses’ respective recollection was clear, unequivocal, and precise. Moreover,
23 although the External Investigator had the Complainant’s statement when she interviewed the
24 witnesses, there is nothing in the report to suggest the External Investigator even asked the
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1 witnesses to explain the discrepancy between their version of the events and Complainant's.
2 Nor does the report demonstrate that the External Investigator, in her subsequent interview
3 with the Complainant, asked Complainant to explain the discrepancies.

4 Given that these discrepancies go the heart of Complainant's claim in Allegation I, the
5 External Investigator's failure to reconcile these discrepancies (while relying on these same
6 discrepancies to support her conclusion that Allegation II, II and IV were unfounded) as well
7 as the External Investigator's decision to ignore significant additional evidence available to
8 her but not mentioned in the findings, violates Wilder's due process protection and precludes
9 a finding that Complainant's claim that Wilder kissed her and touched her thigh is supported
10 by a preponderance of the evidence.

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13 **4. *Wilder's credible and consistent explanation of the events supports a finding of***
14 ***No Responsibility as to Allegations I, II, III, and IV.***

15 Wilder maintains his actions do not support any finding of responsibility for Allegation I,
16 II, III, or IV and the External Investigator has not cited competent, reliable evidence to the
17 contrary. To avoid any doubt, Wilder's account of the events is summarized below:

18 a. Wilder did not invite Complainant to dinner. Furthermore, there is nothing in
19 Wilder's recollection of the event (as referenced in the findings) that would indicate otherwise.

20 b. Wilder did not induce Complainant to become intoxicated. As such, there was no
21 intent to make Complainant more vulnerable to his advances.

22 c. Wilder did not touch or attempt to touch the leg of the Complainant, neither did
23 Wilder kiss or attempt to kiss the Complainant at any time.

24 d. Wilder did exchange calls with the Complainant immediately after dinner, but
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1 always in response to outreach initiated by Complainant. There had NOT been any
2 precipitating event prompting the calls. Wilder did not engage in these exchanges with any
3 motive, specific or otherwise.

4 e. With respect to Wilder's behavior in the subsequent months after the alleged
5 incident, at no time did Wilder exhibit or engage in behavior with the Complainant that was
6 inappropriate. More specifically, Wilder did not invite Complainant to Atlanta. While Wilder did
7 allow Complainant to visit him at his Charles City residence, however, that was in response to
8 Complainant's outreach and with the belief that doing so was merely a hospitable gesture.
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10 f. Wilder's use of the "baby girl" moniker was not unique to Complainant and more
11 importantly, was never intended as a personal term of endearment.
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13 g. Lastly, Wilder was neither a decision-maker nor a decision-influencer in
14 determining whether Complainant would be hired as a part-time worker in the Summer of
15 2017. Wilder did not attend any lunch where Complainant's part-time employment was
16 discussed. Moreover, Wilder categorically denies he engaged in any retaliation toward
17 Complainant as there was NO precipitating event.
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19 As someone who has championed minority and women's rights, Wilder is sympathetic
20 to the importance of ensuring Title IX allegations are fully investigated. In this circumstance,
21 the preponderance of the evidence weighs in favor of finding that the allegations are false,
22 lack credibility and reflect glaring inconsistencies. While one cannot be certain as to the
23 underlying motivations of the Complainant, it is not hard to imagine that in this case, when
24 Complainant was confronted with financial difficulties almost two years subsequent to the
25 alleged incident, she crafted a story that would allow her to reap a financial reward from a
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1 respected, high-profile faculty member who might be more concerned with the appearance of
2 impropriety than with the underlying truth.

3 While disappointed in the External Investigator's findings and with growing concerns
4 about the impartiality of the overall process, Wilder remains confident that the truth will out.

5 **5. *Specific questions regarding concerns about the thoroughness, fairness and/or***
6 ***impartiality of the investigation and the underlying appearance of bias in how***
7 ***VCU's Equity and Access Services Office (EAS) has undertaken this***
8 ***investigation that need to be addressed.***

9 Finally, given that the July 9, 2019 Finding of Responsibility of Non-consensual Sexual
10 Contact, Allegation I of the Charging Complaint against Wilder is not only unproven, but as
11 outlined previously, is supported by evidence which at best is conflicting and at worst, is
12 untrustworthy, therefore does not meet the Preponderance of the Evidence Standard, one
13 must question the motives that underpin the overall approach that VCU has taken. More
14 specifically, there are eight material questions that need to be addressed:

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- 16 a. What steps were taken to ensure that Laura Rugless and other University decision-
17 makers responsible for overseeing the Title IX investigation (both directly and
18 indirectly) were not subject to any negative bias towards Wilder as the result of Wilder's
19 prior involvement in the Angelica Bega matter that resulted in the resignation of the
20 former Dean, John Accordino?
 - 21 b. To what extent was the nearly two (2) years delay between the alleged incident and
22 the filing of the complaint by the Complainant, considered with respect to the
23 Complainant's motivations? How did the timing of Complainant's filing impact VCU's
24 motivations and approach to the subsequent investigation?
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- 1 c. Given this allegation of harassment was referred early in the process to the Richmond
2 Police Department (RPD) for investigation, what weighting was given to the RPD's
3 ultimate determination that the allegations were unfounded?
- 4 d. Why was there an abrupt change in outside External Investigator? VCU initially
5 selected a Maryland attorney to investigate the case. After the original External
6 Investigator corresponded and scheduled a February 12, 2019, meeting with Wilder,
7 VCU removed and replaced the External Investigator (who was a person of color) with
8 Jody Shipper. Laura Rugless claimed that the original External Investigator was
9 replaced "due to unforeseen circumstances" and her inability to travel at that time.
10 Rugless also claimed that the External Investigator had to "withdraw unexpectedly."
11
- 12 e. Why was Jody Shipper, Grand Rivers Solutions selected on February 18, 2019 at
13 likely a greater total expense, given that on December 11, 2018, the California Court of
14 Appeal, Second Appellate District, ordered a trial judge to set aside the expulsion of
15 John Doe, because the accused student was denied a fair Title IX proceeding by USC.
16 Shipper was the Title IX Coordinator at USC responsible for overseeing the
17 investigation. One must question why VCU would choose an External Investigator,
18 who presided over a high-profile investigation that just three months prior was
19 overturned by an Appellate Court because the accused was denied a fair Title IX
20 proceeding?
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- 22 f. Given the known inadequacies in VCU's approach to investigating Title IX cases – as
23 evidenced by Laura Rugless' admission (in the Richmond Magazine) that "the process
24 in not perfect by any means" (referring to Title IX investigations) – what steps did VCU
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1 take to ensure an investigation of allegations against such a high-profile faculty
2 member like Wilder would be undertaken less imperfectly?

- 3 g. Given the sensitive and private information that is subject to 13.06(f) of the sexual
4 misconduct/ violence and sex/gender discrimination policy and sections 5 and 6 of the
5 University's maintenance and release of employment and personal information policy
6 and Virginia DHRM Policy 6.05 – Personal Records Disclosure, what steps were taken
7 by VCU to discourage Complainant from seeking to advance her allegations against
8 Wilder in a public forum (i.e., Washington Post) outside the formal process?
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10 h. To what extent do recent claims that VCU's EAS office is racially insensitive (e.g.,
11 EAS's recent investigation exonerating a professor who was the subject of a
12 discrimination complaint stemming from his notifying VCU police that a woman of color
13 was sitting in the code-entry access only School of Arts lounge) reflect and inherent
14 bias?
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16 As VCU considers whether there is need for additional investigation before providing
17 the statements along with the Final Investigation Report to the Review Panel for further
18 proceedings as outlined in the Policy, the above questions should also be explicitly
19 addressed.
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21 **6. Conclusion**

22 The evidence overwhelmingly establishes, that the Preponderance of the Evidence
23 Standard, which is the controlling standard in this proceeding, was not appropriately applied
24 by the External Investigator, and in fact was simply not followed. Moreover, in addition to
25 being unsupported by the evidence, the External Investigator's reasoning is, inter alia,
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