

# Daily Journal

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## 2024 CLAY AWARDS



PICTURED: Beth Jay, Scott Dixler, Mark Kressel and Jeremy Rosen | PHOTO CREDIT: Justin Stewart

### CONSTITUTIONAL LAW (DUE PROCESS)

## Colleges Maintain Own Paths to Disciplinary Proceedings

### BOERMEESTER V. CARRY

JEREMY B. ROSEN, BETH JAY, SCOTT P. DIXLER AND MARK A. KRESSEL  
HORVITZ & LEVY LLP

Intimate partner violence on campus plagues administrators who have to balance student body safety, the need for discipline and fair treatment for the parties involved.

Now, thanks to appellate practitioners Jeremy B. Rosen, Scott P. Dixler and their team at Horvitz & Levy LLP, private universities needn't run elaborate campus court systems to adjudicate sexual misconduct claims between students.

The team included Horvitz & Levy partners Beth J. Jay, Mark A. Kressel and Sarah E. Hamill (currently a law clerk in the Southern District), plus Karen J. Pazzani of Pazzani & Sandhu LLP and Julie Arias Young (currently working as a mediator).

Rosen, retained by the University of Southern California, persuaded the justices to reverse a Court of Appeal ruling and disapprove a series of recent opinions that, for private universities' sexual assault and intimate partner violence proceedings, imposed a demanding due process standard that required live cross-examination.

"The court understood from the beginning of oral argument the importance of giving private universities flexibility to come up with disciplinary systems that make sense but retain guardrails to ensure fairness," Rosen said.

Underpinning USC's argument was California's fair procedure doctrine, which limits the right of private associations that hold economic power over members to arbitrarily expel them. The case turned on how the doctrine should apply in a private university setting. *Boermeester v. Carry*, S263180 (Ca. S. Ct., op. filed July 31, 2023).

Plaintiff Matthew Boermeester sued for the right to a live hearing and cross-examination after he was expelled from USC for physically assaulting his ex-girlfriend. The named defendant, Ainsley Carry, was USC's vice-president for student affairs. Plaintiff attorneys Mark M. Hathaway and Jenna E. Parker of Hathaway Parker represented Boermeester.

Dixler, who researched the record and drafted USC's successful petition for review and its merits briefs, said, "Before the Supreme Court's decision, several Court of Appeal decisions had encroached on universities' freedom to develop their own disciplinary procedures and micromanaged decisions that should be left to universities. Our work on USC's behalf resulted in a strong decision halting that trend."

The high court held 7-0 that fair procedure does not require providing a live hearing with cross-examination.

"The fair procedure doctrine allows private institutions to govern themselves, but also allows courts to police

the margins to insure fairness for members," Rosen said. "The decision allows USC to come up with its own rules." He added that the impact of the case is illustrated by the significant friend of the court support for USC's position by other private universities and numerous women's organizations.

The decision not only clarifies a contentious area of California law, but also empowers private universities to hold perpetrators of sexual misconduct and intimate partner violence to account, allowing for the campus to be a safer space and protecting victims from being retraumatized by lengthy court-like proceedings. Rosen noted that recently, California lawmakers have adopted legislation that conforms to the court's decision and Horvitz & Levy's position.

Rosen, who has been with Horvitz & Levy for almost 24 years, credited strong teamwork for the win. In addition to Dixler, Jay, who served as principal attorney for three California chief justices before joining the firm, helped develop the arguments in

the petition for review. Hamill, Kressel and the others supplied strategic thinking.

"These are superstars I was working with," Rosen said.

—JOHN ROEME