

Daily Journal

FEBRUARY 21, 2024

TOP VERDICTS

THE LARGEST AND MOST SIGNIFICANT VERDICTS
AND APPELLATE REVERSALS IN CALIFORNIA IN 2023

Boermeester v. Carry et al.

Private universities don't have to install elaborate court systems to deal with sexual misconduct claims, thanks to appellate lawyers at Horvitz & Levy LLP, who won a major state Supreme Court reversal in a closely-watched case.

"USC, like all schools, tries to balance the rights of its students with its obligation to keep its campus safe for all," said Horvitz partner Jeremy B. Rosen, who has been with the firm since 2001. He argued the case at the high court as he, law partner Scott P. Dixler and a Horvitz team persuaded the justices, 7-0, to reverse a lower court.

USC student Matthew Boermeester was expelled following an investigation that determined he violated USC's policy against intimate partner violence by physically assaulting his ex-girlfriend. Boermeester sued, claiming USC's disciplinary proceedings violated his common law right to fair procedure because, among other things, he was denied the ability to attend a live hearing at which he or his attorney could directly question and cross-examine his accuser.

He won. A divided Court of Appeal agreed with Boermeester and imposed a live cross-examination re-



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quirement before a university could discipline a student for intimate partner violence.

USC then retained Horvitz to challenge the ruling.

"Schools simply aren't in a position to operate a full court system for student discipline," Rosen said. Dixler, who did much of the briefing, added, "The Supreme Court recognized that USC had quite a robust procedure in place to protect students' rights even without cross-examinations." *Boermeester v. Carry et al.*, S263180 (Ca. S. Ct., filed July 6, 2020).

Quoting experts, the appellate team pointed out that the prospect of cross-examination in school discipline hearings could cause victims to fear coming forward. And, because schools don't have subpoena power, it would be difficult to compel witness testimony.

Rosen said the justices affirmed the basic common law right of private universities to determine their own rules. "They have the leeway and flexibility to solve their own problems without the interference of the court system, which is an outcome tied to 100 years of Supreme Court doctrine."



BETH J. JAY

It's true, he added, that there are some restrictions. "Private associations have to give notice and an opportunity to be heard, but beyond that, the courts step out of the way."

And Rosen said, "USC was pleased that the Supreme Court endorsed their procedures without imposing rigid rules."

Mark M. Hathaway of Hathaway Parker, who represented Boermeester, did not return a message seeking comment.

— JOHN ROEMER

CASE DETAILS	CASE NAME	Boermeester v. Carry et al.
	TYPE OF CASE	Right to fair procedure (disciplinary proceedings at private colleges)
	COURT	California Supreme Court
	JUDGE(S)	Chief Justice Patricia Guerrero, Justice Carol A. Corrigan, Justice Goodwin H. Liu, Justice Leondra R. Kruger, Justice Joshua P. Groban, Justice Martin J. Jenkins, Justice Kelli Evans
	PETITIONER'S LAWYERS	Horvitz & Levy LLP, Jeremy B. Rosen, Mark A. Kressel, Scott P. Dixler, Beth J. Jay Sarah E. Hamill (now a judicial law clerk); Pazzani & Sandhu, LLP, Karen J. Pazzani
	RESPONDENT'S LAWYERS	Hathaway Parker, Mark M. Hathaway, Jenna E. Parker