CONFIDENTIAL INVESTIGATION REPORT

Introduction

In mid-April 2018, the undersigned was engaged by Santa Barbara City College ("SBCC") to conduct an impartial investigation and provide a confidential report concerning a series of events surrounding the speaking appearance at a Faculty Colloquium on March 19, 2018, on the SBCC campus of an outside speaker, Dr. Michael Shermer ("Shermer"). My specific charge was to review pertinent documentation, interview persons with relevant knowledge of the events, set forth the material facts, and determine whether there have been any violations of SBCC policies or procedures by Mark McIntire ("McIntire"), Adjunct Professor of Philosophy, who coordinated the colloquium at which Shermer spoke. My inquiry also covered whether the complaints from four female professors constituted Title IX violations because the relevant SBCC policies and procedures incorporate Title IX standards.

Background Facts

At the beginning of the Spring 2017-18 semester, the SBCC Faculty Colloquium began to promote the attendance of Shermer, a Professor of Critical Thinking at Chapman University and a well-known American science writer, as its guest speaker. Founder of The Skeptic Society, he publishes Skeptic Magazine, serves as an editor and columnist for Scientific American, and has written several books and given numerous talks and speeches. He agreed to serve gratis as the speaker in an effort both to support the Santa Barbara community and to promote his new book entitled, "Heaven On Earth: The Scientific Search For the Afterlife, Immortality And Utopia."

On the morning of March 19, at 7:53 a.m., McIntire sent out an "all-campus" email informing the recipients that the colloquium speaker that night in the Garvin Theater would be Shermer. At 9:04 a.m., in response to that email, Dr. Raeanne Napoleon ("Napoleon"), Chair of the Department of Chemistry, sent the following all-campus email:

As a former participant in the faculty colloquium series, I think it's important that we understand who tonight's speaker is.

Michael Shermer is someone who has been accused of sexual harassment and sexual assault (rape) by multiple women. Although the police did not bring formal charges against him, there have been many witnesses that have publicly corroborated the stories of the victims. At one point, the organization he worked for even admitted they knew what Shermer had been doing and that they did nothing.

https://the-orbit.net/almostdiamonds/2014/09/13/dawkins-tries-again/
We all know that he still has the right to free speech, so I'm not saying we should stop him from speaking, but I am using this platform to warn the women attending the talk that they should be careful not to be alone with him or hang around late on campus after the talk is over. I am also using this platform to highlight this information to faculty and staff so that you can choose whether or not you will support this event.

Perhaps we weren't aware of this when he was invited. We are all aware now.

A number of emails followed that day and during the succeeding weeks regarding Napoleon's missive. For example, Dr. Manoutchehr Eskandari-Qajar, Professor of Political Science, sent the following all-campus email on March 19:

Dear Colleagues,

I am, like many of us on campus, at a loss for words regarding the conundrum in which the Faculty Colloquium series and its co-sponsors find themselves. The invitation to Dr. Shermer was made on the part of the committee at the suggestion of a colleague who knew Dr. Shermer and had asked if he would be willing to give a talk here at SBCC. On hindsight, due diligence on the part of the committee would have required a more thorough review of the background of the speaker, but given the recent publication of his book and the prominence of his voice in academic circles, the thought of checking for alleged sexual impropriety simply did not occur.

This is not to excuse, but rather to explain.

Given the lateness of our awareness of a potential problem and the imminence of the advertised lecture today at 6pm, a cancellation of the lecture is not possible, as far as I can ascertain. I am therefore pleading with my colleagues and members of our SBCC community to allow this commitment to be honored and the lecture to go forward, with the understanding that honoring the commitment is not honoring the person nor consenting to the alleged actions.

I am personally extremely aggrieved and conflicted at the news and the allegations, since I have been assigning Dr. Shermer's writings to my classes for well over a decade. I am, frankly, speechless and numb, as I said, but believe that the invitation to speak should proceed and hope that the lecture would still provide the audience food for thought on the essential questions of science and metaphysics, which we all anticipated with such fervor still only a few hours ago.

Private emails were also exchanged that same day between McIntire and Napoleon. McIntire sent an email to Napoleon and Geordie Armstrong, Adjunct Professor of Geography, expressing his, "bemusement that faculty, who as scientists, demand nothing short of strict, empirical proof of truth of claims can so completely abandon this laudable, legal and ethical standard when it comes to spreading unproven accusations." Napoleon responded in part as follows:

I'm not going to defend our professionalism within the sciences. I think both Geordie and myself have a proven track record of not only respectable scientific research, ethics, as well as
credentials, but also as educators on this campus. To even question that or bring that up is insulting, frankly.

That being said, I will admit that I wonder if I should have emailed you first before going all campus. I respect the work you put into the faculty colloquium and I would hope that you didn’t know about this ahead of time. It would have been nice to receive a heads up. I stand by what I did regardless.

However, there was a timeliness to this all and an urgency. People on this campus needed to know. I’ve heard that it was not well attended. I think that response to the information is very telling. I wasn’t willing to wait.

Please keep pushing free thought on this campus and please keep putting together quality colloquium for the campus community.

I would urge you to keep in mind that regardless if someone has been formally charged with something, doesn’t discredit the multiple victims that share similar stories.

I’m not willing to engage further on this. Again, I stand by what I did.

The controversy continued to further expand when both Dr. Anthony Beebe ("Beebe"), the SBCC President, and Napoleon received the following email from Shermer on March 20, referring to an article which appeared in The Channels, the SBCC student newspaper:

Please see the attached letter. This is set to go public to the entire SBCC community shortly. Unlike what you did to me yesterday, I don’t want to blindside you with this by hearing about it from the entire campus community, which is going to happen soon. As you will see, if the school newspaper article is not taken down immediately, and if I do not receive a public retraction and apology by you Dr. Napoleon—to be sent to the entire SBCC community who received your email—I will send all the documentation I have collected today—including private emails that have furthered the defamation—and forward it to my attorneys in Los Angeles. This is no bluff. This law firm specializes in defamation and libel cases and are one of the best in the country. What you did was immoral and illegal. I will not stand for it. I am a public intellectual from which my entire livelihood depends so I cannot allow these sorts of illegal acts taken against me.

Had you aired these concerns to me privately yesterday I could have cleared it all up, but instead you chose to blindside me with this vicious, libelous, and defamatory attack on my character and income. Now, around 20,000 people in your community, and who knows how many hundreds of thousands of others who may run across your newspaper article while googling my name (I’ve already received three Google push notices about it today), believe I am a rapist and sexual assaulter, with [sic] is false and defamatory and I will not tolerate it.

Then, on March 21, McIntire sent the following all-campus email stating that Shermer should be given the opportunity to respond all-campus to Napoleon’s email, and to which he attached two personal statements from Shermer. Thus, McIntire said:
On the morning of this past Monday, March 19, 2018, our featured SBCC Faculty Colloquium presenter for that evening, Dr. Michael Shermer, was calumniated on this all campus email forum. No advance inquiry nor notice was given by the calumniator. In our American justice system those accused of criminal acts have the right to defend themselves against their accuser(s) in the very forum of the accusation. Accordingly, here is, #1. the response of Dr. Shermer to his calumniator, and #2 Dr. Shermer’s 2014 personal statement in response to the libelous BuzzFeed article with updates as additional information was provided to him about the original incident in 2008. Note as well that Dr. Shermer remains under teaching contract as a Presidential Fellow at Chapman University into 2019 after the university administration launched its own investigation in the Fall of 2017 when someone sent them a defamatory email similar to the one sent to the SBCC community.

As coordinator of the SBCC Faculty Colloquium that invited Dr. Shermer to present on the evening of March 19th, I believe I have the moral responsibility to present Dr. Shermer’s response to his calumniator. Here is the link to the 2014 document sent to me yesterday by two members of our faculty and Dr. Shermer himself.


Now, here is Dr. Shermer’s response to the accusatory email sent campus-wide by his calumniator:

________________________________________

March 20, 2018
To the SBCC administration, faculty, students, and staff:
Last night it was my great honor to speak for your Faculty Colloquium hosted by professors Mark McIntire, Peter Naylor, the SBCC Critical Thinking Project, and Associated Student Government, with the book signing hosted by Chaucer’s Books.

After the event I was informed that earlier in the day an assistant professor at SBCC named Raeanne Napoleon sent out an email on a campus-wide email server that defamed me by suggesting that I am a rapist and sexual assaulter. She added to the defamation by implying that any students who do attend should not be alone with me, especially if it is dark, as if I were a rapist hiding in the bushes. This is a disgusting, repulsive, defamatory lie. I am no such thing and never have been and never would be and I will not stand by and allow my name and reputation to be so denigrated. Dr. Napoleon doesn’t know me and doesn’t know anything about me. And yet she feels no compunction whatsoever to publicly hurl such calumnies against me in an act of wonton irresponsibility.

Further, Dr. Napoleon willfully and intentionally left out of her email my public response to the libelous BuzzFeed article, clearly and unmistakably posted in the article itself. So Dr. Napoleon either didn’t read the article she is relying on to defame me, or she did and knowingly and willfully left out my response so as to convince you all to boycott my talk and form an unopposed opinion of me as a rapist and sexual assaulter. Either way, it is a form of fraud, in addition to libel and defamation.
As well, in her email Dr. Napoleon implies that the police were called to investigate me but “did not bring formal charges against him.” This is another defamatory lie. Dr. Napoleon has no evidence whatsoever about anything the police did or did not do because there never were any police ever involved in relation to me about anything I have ever done. I have never once spoken to a law-enforcement officer or anyone in any capacity about the lies told about me in the BuzzFeed article. The only motive for Dr. Napoleon to include this lie in her group email to you all was to defame me. That is illegal.

Note as well that the author of the libelous article in The Channels, Daniel Wallace, interviewed everyone but me. Why? I am quite accessible online and the hosts of last night’s event have my personal email and phone number. Any journalist worthy of the name would have called or emailed to ask for a response before publishing a hit piece like this. Had he done so, for example, I would have given him my response to the BuzzFeed article that Dr. Napoleon intentionally left out. And I would have informed him that last Fall a moral crusader of Dr. Napoleon’s ilk sent an email similar to hers to faculty and administrators of Chapman University, where I have been a Presidential Fellow for many years. The President, along with the administration, undertook a thorough investigation of these allegations and dismissed them as unwarranted. I am teaching there this semester and will be teaching there for the 2018/2019 academic year. I would have also informed Mr. Wallace, along with Dr. Napoleon had she contacted me before irresponsibly defaming me, that none of my other business associates have acted on these false allegations: Scientific American, where I have written a monthly column since 2001; my book publisher Macmillan, one of the big four publishing houses in New York; and my literary agency and lecture agency. I continue working with these companies because they have drawn the same conclusion as Chapman University.

Instead of trying to determine the truth about me, the motive of Mr. Wallace and Dr. Napoleon was to personally harm me. The point was to get you all to boycott my talk as well as believe these lies about me. It worked. As Dr. Napoleon boasted in a private email that I have: “I’ve heard that it was not well attended. I think that response to the information is very telling.” My attorneys will be most interested in reading Dr. Napoleon’s private emails in which she continues to defame me.

Let me be clear: this is not a free speech issue. This is a libel and defamation issue. It is against the law to tell or pass on lies about someone with the intent of damaging them or their reputation. This is precisely what Dr. Napoleon has done, and the college, the school newspaper, and Daniel Wallace are now complicit in that defamation. I will not stand for it.

I am hereby putting SBCC and the school newspaper, The Channels, on notice that if this libelous article is not removed from the web site immediately I will turn over all the emails and documents I have to my Los Angeles attorneys who specialize in defamation and libel. I can prove damages in lost book sales last night as a direct result of this email and this newspaper article, and you will pay for it.

Further, Dr. Napoleon, I hereby demand that you retract your libelous accusations of me publicly to the entire campus via this email system, and publicly apologize for wrongly implying that I am a rapist and sexual assailter. You have no evidence whatsoever of this allegation.
because there is no evidence. If you do not do by 6 p.m. Wednesday I will take legal action against you personally for libel and defamation of character. You have libeled me and defamed my character to over 17,000 people, and by giving an interview to the school newspaper that is now online, the potential for these lies to be spread to millions more is now a reality, potentially costing me millions of dollars in down-stream income. I make my living as a public intellectual and you have single-handedly suggested, without any evidence whatsoever, that I am a rapist and sexual assaulter, and as a consequence last night alone I lost major book sales, along with my reputation being severely damaged. I normally fill halls of thousands of people and sell hundreds of books. Due to your actions, a desultory audience resulted in minuscule book sales, a fact that you boasted about in your private email, thereby implicating you in intentional libel and defamation of character. If you do not retract and apologize, you will pay.

A final warning to you Dr. Napoleon: I moved to Santa Barbara with my wife and young son last year and I have made an effort to engage with the rich intellectual community here, which is why I waived my normal speaking fee to come to SBCC. You are hereby put on notice that if you or anyone associated with you intend to pursue your defamatory actions going forward by following me around this small community where I live and work and play with my young son, I will have a restraining order placed on you. Anyone who would do what you did to me yesterday is potentially dangerous and I will protect my family in any manner deemed necessary. My son is too young to understand the evil that you have wrought, but my wife fully understands and she too will be on the look out for you. Further, you are not to contact my employers, business associates, colleagues, or anyone else, especially here in Santa Barbara where I intend to raise my family, with the intent to harm me, and if you do I will prosecute you to the extent of what the law allows.

Dr. Michael Shermer, PhD
President’s Fellow
Chapman University

On March 26, Napoleon received a "cease and desist" letter from Timothy L. Neufeld, Esq., a partner in Neufeld Marks, a Los Angeles law firm. Napoleon then retained Melissa J. Fassett, Esq., a partner in Price, Postle & Parma, LLP, who responded to Neufeld on March 28 with a "cease and desist" directed to Shermer.

In addition to the above all-campus email, McIntire commented on The Channels article by rebuking Napoleon and asserting that, "Dr. Shermer was treated shabbily by Dr. Napoleon's irresponsible all campus email attempt to cancel his colloquium, or at the very least suppress audience attendance." He asserted that, "she succeeded only in fingering herself as the calumniator of the very worst stamp," and he went on to "publicly ask that Dr. Raeanne Napoleon do the right thing, at the right time, for the right reasons. Apologize for your calumny." In response, pursuant to SBCC Administrative Procedure ("AP") 3435, Napoleon filed an "informal complaint" against McIntire, alleging that his assessment of her was untrue, was "damaging her reputation on campus," and was "creating a hostile and intimidating work environment."
On April 4, Napoleon received a second "cease and desist" letter from Shermer's attorneys which contained a new deadline for an apology and official retraction. Napoleon has never apologized or retracted her statement regarding Shermer.

On April 11, Danielle Swiontek ("Swiontek"), Associate Professor of History, sent an all campus email, which stated the following:

As you know, I rarely use all-campus email, but I thought it was important for everyone to know that the Michael Shermer incident has not ended. As you saw in the email that Mark McIntyre sent out, Mr. Shermer made legal threats against Rae, the College, and the Channels.

As a result, Rae has had to retain an attorney in order to respond to his legal demands, which is quite expensive. Friends have set up a GoFundMe campaign to help defray the legal costs, and any leftover funds will be donated to Times Up!, a legal fund to help women fight sexual assault and sexual harassment in the workplace.

I'm providing the link below in case you would like to donate.

Reactions to Swiontek's all-campus email were immediate. Without reiterating all of the emails, many supportive of Napoleon and Swiontek, one particular email exchange between Robert Haines-Fisher ("Fischer"), Professor of Biology and Peter Naylor ("Naylor"), Professor of Economics, in response, deserves mention here. Thus, Fischer said, "The next thing that needs to be addressed is faculty members using our state-owned email system to publicly threaten other faculty members." Naylor responded, "Excuse me. Who is the victim here? Raeanne who leveled the false charges, or Michael who responded with information that disproved the charges? Please, use some judgement."

Fischer then replied all-campus, to Naylor as follows:

That's one way to characterize what happened. Another is this: Raeanne provided publicly and previously available information [sic], Shermer responded with a personal statement that proves or disproves nothing, and Shermer's threat to sue Raeanne was forwarded by a faculty member to "all-campus," which includes student workers.

In addition to the all-campus email responses about the GoFundMe account, Ellen Carey ("Carey"), librarian and Assistant Professor, replied to all with an email which provides in pertinent part the following:

None of us has any way of knowing exactly what happened between Shermer and the women who have accused him of sexual assault. But because Shermer chose to respond to Rae publicly, and Mark McIntyre chose to share that response with the whole campus, we can see something of Shermer's character in it. In my opinion, it amounts to bullying, which is not something that any of us should support, whether it happens over email or in any other form.
In response, McIntire (who also sent a private email to Swiontek chastising her for misspelling his name) sent a personal email to Carey and Robin Goonough ("Goodnough"), which states in pertinent part as follows:

I do not wish to procreate your vitriol even though you use my name to further it shamelessly wrapping yourself in righteous, but furtive indignation.

Let me get this straight. You attack me for the following:

1. Defending an invited guest at our Faculty Colloquium from the calumny of Dr. Napoleon’s ‘Pearl Harbor’ sneak-attack on a man never charged, convicted or even investigated for the accusations circulated by professor Napoleon. These accusations, if you ever bothered to fact check for yourself, never even rose to the level worthy of a full inquiry by Chapman University in 2014.

2. Providing our slandered guest with the opportunity to respond to these salacious and unwarranted accusations in the same venue in which he was slandered, and defamed, i.e. and by an ‘all_campus email’, and an unprofessional CHANNELS hit piece timed hours before our invited guest’s presentation.

3. Merely pointing out that The CHANNELS student newspaper writer never even attempted to contact the target of his hit piece, Dr. Michael Shermer, published just 2 hours before the Faculty Colloquium for our invited guest, Dr. Michael Shermer on March 19, 2018, and a mere 7 hours after professor Napoleon’s sneak attack on Dr. Shermer. Thus, the CHANNELS hit piece violated the very first rule of professional and ethical journalism, i.e. give the target of a hit piece the chance to offer their view in response. Moreover, my all_campus email announcement of Dr. Michael Shermer’s colloquium was published in late January 2018, January 24th to be exact in plenty of time for professor Napoleon to secrete her venom. She waited until the morning of the event. The hit piece was published ‘coincidently’ that afternoon at 4 pm. I don’t believe in coincidences. The ‘morning after’ regrets must have caught up with her for she sent me this email: (To which he attaches Napoleon’s email, dated March 20, 2018 set for the above)

4. As the campus librarian, you openly claim that mere accusation of a heinous rape crime constitutes proof of rape so certain that the accusation itself justifies calumny, slander. Shame on you. You know better. Mere accusations are never proof in any court of law in a rational democracy.

5. That I object to professor Danielle Swiontek’s [sic] use of an all_campus email to financially profit professor Napoleon is in direct violation to SBCC Board of Trustee’s [sic] Policy...

McIntire then cites the SBCC Electronic Communications Policies, SBCC Administrative Regulations 3720.1-3720.7, prohibiting the following:

District electronic communications resources may not be used for:
• unlawful activities
• commercial purposes not under the auspices of the District;
• personal financial except for incidental use directly related to one’s responsibilities at the District;
• personal use inconsistent with Section 3720.42, Personal Use; or
• uses that violate other District policies or guidelines. The latter include, but are not limited to, policies and guidelines regarding intellectual property and sexual or other forms of harassment (See Appendix B, References).

He then asserts, "... all monies raised for Napoleon through this illicit use of all campus email must be returned by Napoleon in reparation for this flagrant violation."

The emails continued to fly. On April 14, McIntire sent another all-campus email sharing Shermer’s letter of that date with the SBCC community. In that letter, Shermer stated that he was no longer pursuing legal action, but reiterated his assertion that Napoleon had defamed him. His letter provided in pertinent part:

> Upon the advice of my attorney I have decided not to pursue any further legal action against the college, *The Channels* school newspaper, or professor Raeanne Napoleon. Although we have an excellent case that I was defamed, it is not worth the time and cost pursuing legal recourse for what is (hopefully) an inconsequential incident. But I want to be as clear about why I was so upset and responded as I did to Napoleon’s All Campus email on the day of my talk at your school, Monday March 19, which was followed by a story in *The Channels* that included quotes from Napoleon and links to blogs alleging that I am a sex offender and rapist. The newspaper did not fact check the claims nor did they even offer me a chance to respond. That was bad enough, but Napoleon did not simply repeat lies told about me in these blogs, she added a new one:

> Although the police did not bring formal charges against him, there have been many witnesses that have publicly corroborated the stories of the victims.

What police? Where? When? Never in my life have I been investigated by the police—or any law enforcement agency—for anything anytime anywhere. She simply made that up. I asked her and the newspaper privately to please retract it because it isn’t true. I didn’t even get the courtesy of a reply. That’s why I sent out my statement to the All Campus email. I received no response to that either, and that’s when I took the only course left open to me: the law. I have now asked professor Napoleon three times for evidence that police were involved in the allegations against me, and three times she has failed to provide any. The reason is that there is no such evidence because there was no police involvement. But don’t take my word for it, check the blogs yourself and you will see that there is no evidence for police involvement. This can be done in a matter of minutes by simply searching “police” in those blogs.

Imagine if I sent out an all campus email alleging that Raeanne Napoleon has misappropriated funds at SBCC, adding “although the police did not bring formal charges against her, there have been many witnesses that have publicly corroborated the stories of her fiscal improprieties.” Would you not assume that there was a police investigation? Of course you would! (For the
record: I just made that up. There are no such allegations against Napoleon. To The Channels newspaper: do not print that quote. It is entirely fabricated, like the original quote.)

Fact Checking. That’s all it takes to debunk Alternative Facts and Fake News like this, which is why the way The Channels newspaper handled this issue is so inexcusable. There is a reason why no newspaper or print publication or journalistic source of any repute has ever published anything about the allegations against me: they fact check. The author of the BuzzFeed article that launched this whole affair four years ago is a regular contributor to The New York Times and Los Angeles Times. There’s a reason he ended up publishing it on a click-bait site that features such articles as “Butt Facts That Will Surprise You” and “Can We Guess Your Favorite Sex Position?” It is not because The New York Times and Los Angeles Times shy away from stories about sexual assault allegations; quite the contrary, they have led the #MeToo movement against the despicable men who have treated women criminally. It is because they fact check. There’s a reason why I am still a professor at Chapman University, a monthly columnist for Scientific American, a regular public speaker at colleges and universities around the country, and my books are published by one of the most respectable book publishers in the world: they fact checked the allegations against me and dismissed them. Social justice activists whose priorities veer far from the truth-value of claims and allegations have actively tried to get me fired and failed. Why? Fact checking.

Without fact checking, alternative facts and fake news can spread through citation circles, where A makes a claim, B sites A, C sites B, D sites C, A sites D, and round and round they go. The reason I put my foot down about the fabricated “police” story is that I’m concerned future bloggers will pick up on that and spread it around, adding yet another lie to the story. Over the years I have witnessed on social media (the lowest of standards) the transformation of “allegations of rape” to “known rapist” to “convicted rapist.” Convicted! I am confident that most members of the SBCC community are committed to the truth and that in the future fact checking will be incorporated into articles before they are published The Channels, thereby averting harm to members or guests to your campus. To SBCC students training to be journalists, please incorporate fact checking into your practice. We all need it because we all make mistakes.

...... But criticizing my ideas, beliefs, attitudes, and opinions is different from defaming my character. That is not free speech; that is libel, and it is illegal, as it should be.

On April 22, McIntire commented on an April 19 article in The Channels with the following:

The Left is gone. They have lost their collectivist minds. Once again, mere accusation is sufficient for absolute proof. And of course, any response I make to defend myself from mere accusation of being a ‘bully’ will prove beyond any reasonable doubt that I am, in fact, a ‘bully’ (small ‘b’). And, of course, if I don’t respond to these ad hominem attacks that should have been ruled out of order under Robert’s Rules of Order, then that also is proof beyond any reasonable doubt that the mere accusations are true and no evidence is required. Gee, that sounds exactly what happened to Dr. Shermer at the hands of Dr. Napoleon doesn’t it?

Had my (our) accusers bothered to actually employ critical thinking and writing skills, they would have known 1. Dr. Shermer has abandoned all legal actions against anyone at SBCC, including but not limited to the College itself, Dr. Napoleon and The Channels. I relayed his letter
‘all-campus’ 2. Now, since there is no pending or even threat of legal action by Dr. Shermer there is no need to illicitly use the college email system to raise money for her personal legal case that does not exist and will not exist. 3. To date, in the real world outside the academy, the only person facing legal ‘threat’ is the ‘bully’ professor Mark McIntire as evidenced by a legal notice filed by Dr. Napoleon’s attorneys: PRICE, POSTEL & PARMA. (see attached PDF). It seems the only qualification you needed in the academy to actually be a ‘bully’ in the uncritical thinking of some, is expressing opposing views. Of that, I plead “Guilty and charged, your honor!” Perhaps I should be fired. At very least, I should perhaps be sent to a campus re-education gulag. If that fails, then, as the Bolsheviks did in the old Soviet Union, and now done in Marxist China, I should spend my waning days in a psychiatric facility far away from the general population just because I express views some may find ‘offensive’ and I’m an ‘accused bully’. 

My bags are packed, and they’re right by the door waiting for the Associated Student Government van to take me away.

Cordially,
Professor Mark McIntire
(Accused bully)

On April 30, Napoleon sent an all-campus email informing the community of her "experience of the events," as she felt that her, "voice has been lost in the more recent discussion." Thus, she explained:

I sent out the original March 19 email about the allegations against Dr. Michael Shermer only after consulting with a group of colleagues, who were equally alarmed by the allegations. We thought the campus should know, and I ended up being the one who sent out the email.

We knew that my email had the potential to stir up the campus, because it is such a difficult subject, but nevertheless an important thing to share. We’ve all watched the #MeToo and #TimesUp movements unfold and I didn’t think for a second that cultural shift that has been happening in the wake of those movements wasn’t appreciated on this campus. None of us were prepared for the vitriolic attacks on me and my colleagues who defended my actions on all-campus email and the legal threats from Dr. Shermer. None of us would expect the students at the Channels to have to handle the stress of being attacked the same way.

Given the defamatory accusations made by Dr. Shermer and Mark McIntire, I was forced to retain an attorney, Ms. Melissa J. Fassett of Price, Postel & Parma LLP, in order to defend myself. She has had to send out multiple cease-and-desist letters to both Dr. Shermer and Mark McIntire on my behalf. Despite those cease-and-desist requests, they continued with their own defamatory actions. In his final email, Dr. Shermer announced that he was dropping his lawsuit against me, the Channels, and the college. Then, he went on to attack and defame me again via a Letter to the Editor published on Thursday.

It is important that the campus understands that the reason Dr. Shermer dropped his case is because there is no case and there never was a case. Forwarding links to published articles is not libel or defamation. The BuzzFeed article is four years old and names several accusers and has never been retracted, corrected, nor removed from the public arena. Sharing an opinion is not
libel or defamation. More than anything, I have wanted these public attacks on me (both via all-campus email and comments on the Channels’ articles) to stop.

It is Dr. Shermer and Mark McIntire who continue to draw attention to this issue. It is Dr. Shermer and Mark McIntire who continue to defame, threaten, and harass me, and, in Mark McIntire’s case, my colleagues as well. Because of this harassment, my lawyer has had to continue to defend me, and I continue to incur legal expenses.

Through all this, the Administration has been distressingly silent in protecting me from workplace harassment and in enforcing standards of civil speech. They’ve also been silent on protecting and defending the students at the Channel. I greatly appreciate my colleagues and students who have publicly spoken in support of me. Their organized response seems to have created enough pressure that the Administration might now address the issues of gender equity and email harassment on campus. Academic freedom is important, but academic freedom should never excuse bullying and never excuse harassment.

I want to thank everyone who has stood by me through this difficult time, especially those that did so without hesitation and especially those that have done so publicly. And I greatly appreciate so many of you that contributed to my legal expenses: I will be sure to thank each of you individually. Your support has meant everything.

And I’d like to acknowledge the support Daniel Wallace and everyone at the Channels has received. Daniel and the Channels stood strong through difficult times. I am in awe of their resilience and ability to navigate this difficult situation.

Although this has been painful for me and for others, I am hopeful that we can use this incident to create an environment at SBCC that is safe and welcoming for women and people of color. For employees and for students. No one should feel bullied and harassed at school or in their workplace. I am hopeful that we can look at ourselves closely, how we respond and handle situations like this (and even better, make sure we avoid these situations all together without controversy), and work together to make SBCC a better place.

In response to that all-campus email, a number of emails were sent in support of Napoleon’s initial email regarding Shermer’s appearance. One such email was sent by Sandy Starkey, Professor of English, who asserted that “public colleges have a duty to protect students in any school-sponsored activities.” Cynthia Davis (“Davis”), Professor of English, responded all-campus, agreeing with Starkey and thanking Napoleon. Her email then provoked the following private email response from McIntire:

My dear Cynthia,

So, if a man defends himself against unwarranted, unproven, and uninvestigated on their face value, mere accusations that have never been proven then that man is a ‘bully’?
I thought that you at least would understand that such accusations by ONE woman do not constitute proof of guilt to any critical thinker. Have you or any of the Napoleon mafia even looked for the evidence in these accusations? Did you know that there never was any police complaint, investigation or charge. Did you even know that this woman accuser invited the accused to be a panelist on a conference she sponsored months AFTER the ‘rape’ she imagines?

Pathetic!

Mere accusation does not constitute ‘proof’ of anything. Proof takes evidence. Either Dr. Shermer’s accuser knew, or you should have known, the following facts driving your accusations against Dr. Shermer.

1. Only one woman, not several as you claim, claimed she was raped contrary to the calumniator’s insinuations

2. This woman never filed charges with the police contrary to the calumniator’s insinuations

3. No police ever interviewed Dr. Shermer contrary to the calumniator’s insinuations.

4. Months after she made this accusation of rape, this woman invited Dr. Shermer to serve as a panelist at a conference she sponsored. He accepted.

Worse, you not only accepted these accusations as fact you put your imprimatur on warning women attending Dr. Shermer’s colloquium that evening to “not be alone”...especially after dark” as insinuating that Dr. Shermer was going to leap out of the bushes and start raping women indiscriminately. Have you lost your mind?

Did you know that the accuser, with ‘morning after regret’, sent me a private email acknowledging that “maybe” she should have contacted me before sending out that early morning sneak attack on Dr. Shermer. “Maybe”? Really?

Did you know the calumniator sent me this email, not on all_campus but privately “the morning after’? [McIntire attached Napoleon’s March 20, 2018 email referenced above].

No. you could not have known since you never searched for the truth.

Now, reacting to the campus-wide revulsion to the accuser’s dirty deeds, the accuser postures as a free-speech martyr. And you fall for it. It’s quite true that the accuser has the free speech right to spew libelous, slanderous, and/or calumnious speech. But you are not protected by the First Amendment for doing so. The legal accepted definitions of Libel Slander and Calumny are:

Libel is a method of defamation expressed by print, writing, pictures, signs, effigies, or any communication embodied in physical form that is injurious to a person’s reputation, exposes a person to public hatred, contempt or ridicule, or injures a person in his/her business or profession. (source: https://www.law.cornell.edu/wex/libel)
Slander is a false statement, usually made orally, which defames another person. Unlike libel, damages from slander are not presumed and must be proven by the party suing. See, e.g. TXO Production Corp. v. Alliance Resources, 509 U.S. 443 (1993)
(source: https://www.law.cornell.edu/wex/slander)

**Calumny:** Definition from Nolo’s Plain-English Law Dictionary (cal-um-nee) Maliciously misrepresenting another’s words or acts, causing injury to that person’s reputation; or falsely charging another with a crime. Definition provided by Nolo’s Plain-Engli ... 
(source: https://www.law.cornell.edu/search/site/calumny)

The accuser is, I suggest, are guilty of all three [sic]

Dr. Shermer took the high ground after you went low. All he asked for was an apology and a Channels retraction based on facts 1 through 4 above. That’s all. Now you go even lower. In direct violation of Board of Trustees policy 3720.7 you have used the ‘all-campus’ email system to enrich your self for a law suit option that Dr. Shermer has publically dropped.

While the personal public attracts on me are as fatuous as they are hysterical, nevertheless, I am proud to be the object of your attack against Dr. Shermer.

I can no longer recommend students to take yours [sic] class as a professor of Critical Thinking and Writing.

In response to her receipt from Davis of McIntire's email, Napoleon sent McIntire's email to some administrators, some College Planning Council (CPC) faculty and McIntire's Department Chair/Dean, asking the college to "handle" the attacks against her and alleging that the college is "shirking its duties as an employer" to keep her "safe from retaliation." Jen Maupin, Professor of Biological Sciences, responded to all: "[W]ords/phrases like 'pathetic' and 'the morning after' are loaded, and I read them to belittle and shame the recipients," and added that, "free speech has its limits, and no one should be threatened, mocked or belittled."

On May 4, Swiontek received an email from Josh Grega, a reporter for the Santa Barbara News-Press, who indicated that he was doing a story regarding Swiontek's use of SBCC's all-campus email to solicit funds for Napoleon's legal defense on GoFundMe in violation of SBCC's electronic communication policies. Swiontek then emailed Beebe, Paul Jarrell ("Jarrell"), Executive Vice-President, Luz Reyes-Martin ("Martin"), Executive Director of Public Affairs and Communications and others, asking that Grega be informed that she did not violate the policy. Her email stated that, "she refused to be bullied and harassed by Mark," and objected to "her name being dragged through the mud." She asked that the "college intervene as this situation is out of control." Although Swiontek received emails from Jarrell and Beebe assuring her that they would respond on her behalf, the News-Press article regarding her "violation" appeared on Sunday, May 6, 2018. Swiontek sent an email to Jarrell asking that the college contact the reporter and request a retraction. Swiontek received an apology from the college that
the article had been published prior to their statement having been received by the reporter. In addition, Martin shared the following message that was sent to the News-Press:

Good Morning Mr. Grega -

As the spokesperson for Santa Barbara City College, I am writing with a comment regarding the article published today titled "SBCC professor solicits money with school email". I'd like to note that SBCC was never contacted to respond or provide comment on the claims made in the article concerning our Administrative Procedures. The assertions made in the article are incorrect. Santa Barbara City College is requesting a retraction of the claim that Professor Swiontek's use of email was in violation of our procedures. Below is a statement in response. SBCC values our relationship with our local media and I hope that in the future reporters from the News-Press will reach out when writing about the College. I am always available to respond via email, phone or text (my contact information is below) to provide comment, clarification or more information about any subject.

Statement from Santa Barbara City College

Santa Barbara City College is committed to maintaining a positive campus climate free of harassment. We work every day to create an academic and professional environment that is welcoming, inclusive and supportive for all students, faculty and staff. SBCC has in place processes for investigating reports of harassment. Due to confidentiality standards and ongoing investigations, SBCC cannot comment on the specifics of any individual report. However, we can assert that we take these reports very seriously and are diligently following our processes and evaluating all options available to address them. Regarding the specific claim regarding sharing of GoFundMe information, Professor Swiontek's use of our all-employee email list was not in violation of our administrative policies or past practice.

When by May 6, the article was not retracted, Swiontek requested that SBCC's attorneys send a letter asking for retraction and removal of the article from the News-Press website. Martin responded that the News-Press had been unresponsive, but the college would send a letter to the editor with a response and ask that it be published, which it was on May 13, 2018. No retraction was forthcoming.

On May 15, 2018, McIntire established a GoFundMe account of his own in order to defray his "legal expenses incurred defending Dr. Michael Shermer...against defamation and 'bullying' claims" by Napoleon and Swiontek.

Title IX Complaints

As noted above, four SBCC female professors have filed administrative complaints denominated as falling under Title IX regarding McIntire's emails to them. In addition, they made various complaints to the administration regarding McIntire's treatment of them and the college's failure to protect them from the "harassment" and "bullying" they claim they experienced both from McIntire and as a result of the "fallout" from the Shermer incident.
Specifically, on April 16, Napoleon filed a complaint that asserted in relevant part that:

a. She has been continuously threatened with a meritless lawsuit from Shermer;

b. She has been publicly defamed by Shermer and McIntire;

c. McIntire has harassed her via email;

d. Shermer has sent defamatory all-campus emails through McIntire;

e. SBCC has not prevented McIntire from repeatedly and viciously attacking her and retaliating against her for speaking out against Shermer on March 19, 2018.

That same day, Swiontek filed a complaint which alleged "sexual harassment of an employee." Specifically, she claimed that McIntire sent her a vaguely threatening email when she supported Napoleon in the Shermer incident and also sent threatening emails to other female faculty which in concert display a "pattern of sexual harassment against female faculty." She also alleged that the "odd tone" of the emails make her concerned for her personal safety. In addition, she learned from a student (Cristian Walk, ("Walk")), that McIntire has referred to her, Carey, and Napoleon as "the sorority" in front of other students, which she took to be belittling and undermining their reputations as serious academics.

On April 17, Carey, referencing her email to McIntire and his response to her (set forth above), filed an additional complaint also labeled Title IX alleging that McIntire's email to her was aggressive and bullying, that he "personalize(d)" the issue, and "criticized" her as a librarian. She explained that she first responded to Swiontek's email because she was concerned about the bullying tone of some previous emails and also felt compelled to respond, "when there is an information literacy component," her area of expertise. She contended that since Swiontek and Napoleon also received emails from McIntire, but Fischer, a male, had not, she was, "concerned that McIntire is targeting women in particular."

On May 1, Davis filed her Title IX complaint against McIntire. Particularly, Davis referenced McIntire's email to her, dated April 30, set forth above, contending that McIntire "debased" her as being unduly accusatory and not professional. She stated that his email, "insults my ability to think (and teach) critically, which is my profession." She characterized the email as "verbal (written) harassment."

**Interviews**

As part of my investigation, I interviewed Napoleon, Swiontek, Carey, Goodnough, Davis, Fischer, Walk, McIntire, Shermer, Alex Michael Madajian (student), Celeste Barber, and Anita Cole. A number of them reviewed with me the emails which they sent to and/or received from McIntire. Since I have set forth the chronology and content of those emails, I will not reiterate
them here. Rather, my intent is to review the following pertinent additional information and/or perspectives gleaned from the interviews, which are relevant to my conclusions.

Napoleon explained that she had been informed on the day of the colloquium that there had been accusations of sexual assault against Shermer. She "searched" Shermer on the internet and concluded that the college community should be informed. Thus, she sent her email all-campus (to faculty, staff and students who work more than 20 hours per week). Her goal, she claimed, was to try to get the professors not to "plug" the colloquium or give extra credit to students who attend it. She noted that she never had a prior issue with McIntire and only responded to him after he sent his email attacking her for what she said about Shermer. We discussed what she believed was the failure of the college to protect her from Shermer's threats, McIntire's comments and his denigration of women. She believed that McIntire had not sent an email to Fischer, a male. Rather, he targeted female faculty who spoke up in her defense and referred to them as "Napoleon's mafia" and the "sorority."

Swiontek believed that McIntire "planted" the New-Press Article regarding her alleged violation of the computer use policy, since he hosts a talk show on a radio station owned by the newspaper and gloated about the article on Face Book. She found his private email to her regarding the misspelling of his name to be "threatening." She discussed, as well, her comments at the April 12 Board meeting at which she claimed that a handful of male faculty members were allowed to create a hostile work environment for female faculty members, staff and students. At that same meeting, she stated that, "[A]cademic freedom is important, but...should never excuse bullying" and expressed the hope that, "SBCC would develop clear policies on professional standards in email use." She told the Board that: "We are guides and role models to our students, and we should be modeling civil discourse and informed, academic debate. We should not tolerate an environment whose faculty, staff, and students are silenced through bullying and harassment." She, too, claimed McIntire only targets women and referred to McIntire's pejorative use of the terms "sorority" and "Napoleon's mafia." She is fearful of McIntire's "unhinged" behavior which he exhibited by sending out Shermer's emails all-campus.

Carey explained that she comments to posts and emails only when there is a "literacy component." Thus, she posted her reply to The Channels article about Shermer on March 25, and also sent an all-campus email on April 11 in response to Naylor's email (see above). Since she believed that Shermer's response to Napoleon constituted "bullying," she felt compelled to reply. In regard to the April 11 personal email from McIntire, she interpreted his reference to "morning after regrets" to be sexual in nature. Noting that she had not attacked McIntire in her email, she felt threatened and "shaken up" by his aggressive tone and upset that he questioned her integrity. She alleged that Fischer never received an aggressive reply from McIntire, and she felt attacked on the basis of her gender and isolated because his email was sent to her privately. In her opinion, McIntire's behavior was "bullying" (by discrediting feminists on campus), and he
harassed women. She, too, referred to his use of the term, "Napoleon's mafia," which she believed was based on their "different politics" and because they are feminists.

Davis has known McIntire since the 1980's when he was politically aligned with her ex-husband and supported causes with which Davis did not agree. She next encountered McIntire when she began to teach at SBCC. Although she agreed in principle with Napoleon in regard to the Shermer matter, she had stayed out of the fray. However, after she heard about the "attack" on Daniel Wallace, editor of The Channels, and received Starkey's response to Napoleon's April 30 email, Davis wrote that "Sandy nailed it." In regard to the private email to her from McIntire, she did not believe she had been singled out as a woman, but opined that he would not have addressed her in that manner if she was not a woman. She considered the email to be insulting and was particularly offended by his "My dear Cynthia" salutation. She believed the email was intended to disparage and attack her for supporting the accusation against Shermer, Napoleon's right to notify the community and to defend herself against bullying.

Goodnough, Department Chair and Professor of ESL, discussed gender equity on the campus over the years she has been at SBCC. Although she has not seen anyone be uncivil to McIntire, he has said some "outrageous" things on all-campus email. Although she had responded to several of the emails regarding the Shermer incident, McIntire did not respond to her and believed he inadvertently copied her on his email to Carey. In her opinion, that email was scary, unreasonable, escalating, menacing, "seemed a little off" and "unhinged," and had it been directed to her she would have been afraid. In her view, female students need to see that female faculty will not tolerate intimidating and nasty language.

Fischer clarified that since McIntire did not respond to his all-campus email regarding use of the SBCC state owned email system to threaten a faculty member, that is the reason some of the female faculty believe that McIntire's responses to them were gender-based. However, Fischer recalled a situation in which he did exchange emails with McIntire. Specifically, in April 2018, when Naylor made what Fischer believed to be "insulting statements" about incarcerated students (a different topic), and Fischer challenged Naylor's comments, McIntire replied to Fischer in an all-campus email which Fischer described as "derogatory." The email follows:

I Say there dear Robbie, how very bemusing of you, old chap!...
Since when, dear Robbie, is asking for a divergent view 'Intentionally provocative'? ...
Do you have special cognitive powers to actually 'know' with epistemic certainty, the
'intentions' of your very own colleagues. Please publish this groundbreaking
philosophical discovery, dear Robbie....
How narrow minded, Dear Robbie...
After all, I'm sure you recall your Aristotle's Metaphysics quip from your undergraduate
days...
Have you lost this ability to entertain opposing views, dear Robbie? More's the pity if
you have.
More important in terms of my investigation is an email which Fischer sent to Beebe and Jarrell on March 22, alleging that McIntire's use of the SBCC state owned computer to publicize Shermer's letter to Napoleon was improper. Although Fischer could not say whether McIntire's responses on certain issues were gender-based, he believed that certain of McIntire's responses on other issues fell below the level of what he would consider to be respectful treatment of coworkers and students.

I then interviewed McIntire in company with his union representative, Cornelia Alzeheimer, who participated by video conference from Germany. McIntire has been an Adjunct Professor of Philosophy for 23 years and obtained an MA in Philosophy from Oblate College at Catholic University of Washington. He hosts a radio show on KZSB once a month on which he talks to "diverse, interesting people whose voices are not heard." He taught one on line course, "Critical Thinking & Writing," for which he held office hours once a week at the cafe on campus. He was the Faculty Advisor to three clubs: Critical Thinking Project, 2020, a Year Without War, and the Economics Club (now disbanded). He described the course he teaches and that he received a score of 4.7 out of 5 in student ratings. He discussed his prior performance evaluations and noted that he had not been rehired for the 2018-19 academic year.

In regard to the Shermer colloquium, McIntire recalled an all-campus email was posted to announce the event and that it had been advertised as early as January 2018. No one questioned Shermer's participation until March 19, after Naylor sent the all-campus email about the event. He recalled that he characterized Napoleon's email as a "Pearl Harbor Attack" and had been asked for his reaction to the allegations about Shermer by Wallace, who had not spoken to Shermer. McIntire chose not to inform Shermer of the "situation" prior to Shermer's talk. The colloquium attendance was smaller than anticipated, only one-third of the Garvin theater was occupied. After the colloquium, when McIntire and Shermer were at dinner, he informed Shermer for the first time of the situation. Shermer was very upset. The next morning, McIntire received the email from Napoleon in which she indicated that perhaps she should have contacted him prior to sending her all-campus email. He described her original email as "toxic." He also discussed his investigation of Napoleon's sources regarding the allegations about Shermer, found that only one woman had complained and actually there had been no police involvement. McIntire also referred to the Chapman University internal investigation which he said failed to substantiate the allegations. In response to Napoleon's question as to whether he would have cancelled the colloquium had he known about the accusation, McIntire said he first would have fact checked the sources and spoken to Shermer. Given what he discovered, he would have proceeded with the colloquium.

After the event and the flurry of emails which ensued, Shermer asked McIntire to be the "conveyor belt" for the 2014 statement in which Shermer defended himself against the "BuzzFeed" article. Thus, on March 20, McIntire sent both Shermer's 2014 response and
Shermer's letter response to Napoleon's email by all-campus email and stands by that decision. McIntire also said that he confined himself to private emails after he vowed to Beebe that he would not use all campus email. (His responses to Beebe were sent on April 19, and again on April 30, after receiving Beebe's request to his colleagues regarding use of the all-campus email). McIntire felt Shermer had been mistreated and was alarmed that the evidentiary line had been crossed. Noting that the complainants are part of the "Me Too Movement," and being sensitive to a male who was unjustly accused, he opined that the process had gone "off track." He was aware of the reaction to his use of colorful language, irony and sarcastic politeness, but believes that his emails are protected by the canons of academic freedom, and the First and Fourteenth Amendments. His use of the terms "morning after" and "My dear" he explained were just his "being Mark McIntire," and there was no improper motivation, vindictiveness or retaliation intended.

Alzheimer, McIntire's union representative, agreed that some of his emails could have been "softer," but as she put it, "Mark is Mark." McIntire, she pointed out, was in a situation in which a high-profile speaker was involved, which McIntire had worked hard to organize, and was "destroyed" by Napoleon's email, to which McIntire had no time to react. McIntire is not disrespectful to women, had nothing to do with the News-Press article about Swiontek, and prior to this situation had enjoyed a warm, personal relationship with all four complainants.

Shermer, too, was interviewed. He moved to Santa Barbara with his family one and one-half years ago. When contacted by Naylor about participating in the colloquium, he agreed to speak gratis, and Naylor made the arrangements. Shermer met McIntire for the first time on the day of the lecture. He expected there would be a large turnout and was "bumped" when only 50 or so people came. He agreed it was not a big financial loss, although Chaucer's had his books for sale at the colloquium. After the one hour talk, he went to dinner with McIntire who told him about the email "warning" by Napoleon to the campus due to rape allegations. These allegations dated back to 2008, and he noted that since the 2014 article, he has given 100 public talks. When Shermer received a copy of Napoleon's email he became very upset, especially since she had referenced the police, which to Shermer made it sound serious. He insisted no police were ever involved and the assertion that they were involved particularly distressed him. When The Channels printed an article that day mentioning the police (although Wallace had never contacted him), Shermer asked McIntire to publicize his letter by all-campus email, asking for a retraction by Napoleon, and demanding that the newspaper report be taken down. Shermer was upset and worried about new attention from social media and believed that either the newspaper or Beebe would call him. When this did not occur, he contacted an attorney who gave time frames for retracting the statements. After three weeks went by, and his lawyer advised him to "forget it," Shermer asked McIntire to post a second letter stating that he would not follow up on his requests. Since McIntire believed that in fairness Shermer should have his say, Shermer was
now concerned that McIntire could lose his job over it. Shermer further indicated that he had no idea how the News-Press or the Independent had obtained their information.

In sum, Shermer said that in retrospect he wished he had never pursued the matter and that all involved should just drop everything. He also pointed out that in December 2017, Chapman University was contacted regarding the sexual assault claims, investigated, and decided that no action was required. His concern now is in regard to future talks and the "fallout" from the allegations. He regrets that his tone was "over the top" and is, "sorry he has caused all this ruckus" and "got everyone all riled up."

Celeste Barber, who retired three years ago after having taught English as an adjunct for 20 years, believed she was well-respected, having created the "Great Books Curriculum." Barber had been very good friends with Davis, knows Carey and opined that the "climate" at SBCC is hostile to conservatives. She had been interviewed on McIntire's radio show regarding the "Great Books" but never engaged with him off campus. In fact, at times she saw him with Davis, who on occasion met with McIntire for coffee. When Barber told Davis that she had voted for Trump, Davis denounced her and told her she was a "vile person." She recalled that McIntire promoted Shermer's talk for three weeks prior to the event during which Napoleon could have contacted him. Finally, she stated that McIntire's use of the term, "My dear" is not condescending, and in her opinion his character is "impeccable."

Discussion

My role was to determine if McIntire's conduct contravened any SBCC Board policy or administrative regulation or procedure. As part of my review of the numerous communications, it is necessary for me to consider the possible application of Title IX principles since some Board policies incorporate these concepts.

Title IX provides in pertinent part that, "no person shall, on the basis of sex...be subjected to discrimination under any education program or activity receiving federal financial assistance...." While "sexual harassment" allegations fall within the penumbra of Title IX, and case law interpreting it, most instances of alleged violations involve students as victims. Moreover, the more typical sexual harassment claims advanced under Title IX, unlike the present matter, concern overt conduct, such as unwelcome sexual advances, requesting sexual favors or actual physical contact sexual in nature.

To establish a Title IX sexual harassment violation, a complainant is obliged to demonstrate that the unwarranted conduct directly affects a condition or privilege of the employment, including that it be so sufficiently "severe" and "pervasive" as to create an "abusive" or "hostile" work environment. The conduct must be objectively abusive or hostile, i.e., one which a reasonable person would find to exist. A subjective belief, standing alone, will not suffice. It must be both. In analyzing whether actionable sexual harassment took place, courts have considered a variety
of pertinent factors, such as whether the offensive conduct (often speech) is merely annoying, consists only of isolated incidents no matter how boorish or inappropriate they may be, or not so serious as to interfere with the complainant's ability to perform his or her work.

In order to support a finding of a violation of Title IX, proof by a preponderance of the evidence must be offered to demonstrate that a member of a protected class was excluded from participating in, denied the benefits of, or was discriminated against with respect to an educational program or activity as the result of the challenged action. Such a determination is a *sine qua non* for finding Title IX has been contravened. Offensive utterances, standing alone, will not suffice, especially in an academic setting where the exchange of opinions is particularly to be encouraged and protecting the rights of others with whom you disagree freely to express their own opinions is an ultimate goal.

On balance, the fact that some of the comments made by McIntire accurately may be described as rude, hurtful, officious, insulting, belittling, or the like, they do not constitute, either alone or in combination, the existence of the "abusive" or "hostile" environment that Title IX requires in order to be actionable.

As noted above, there are Board policies and procedures in which Title IX principles are found. However, I first start with BP 1200, which articulates that the "Mission" of SBCC is to create a "diverse learning environment that inspires curiosity and discovery." A "core principal" of that objective is the need to foster a "free exchange of ideas in a community of learners." Certainly, inviting Shermer to be the principal colloquium participant, given his "skeptic" philosophy and advocacy, squarely met those goals.

Nevertheless, in carrying out the mission described in BP 1200, another Board Policy, BP 3050, requires that all members of the SBCC family must adhere to the principles of "mutual respect and integrity" in dealing with campus issues. Unfortunately, some of McIntire's comments to his colleagues arguably fell short of meeting that standard. So too, BP 4030, which extols the need for "academic freedom," also emphasizes that the opinions of others must at all times "be respected."

To put "teeth" into the salutary concepts contained in these general policies, the Board promulgated AP 3430, which is designed specifically to provide meaningful protections primarily against sexual harassment, including bullying. Thus, it expressly prohibits "gender based harassment," which can be "verbal," "physical," "visual or written," "environmental" or "sexual" and specifically targets creation of a "hostile environment."

In every case, however, the allegedly harassing behavior must be so "pervasive" and so "severe" that the subject of the alleged harassment would be adversely affected to such a degree that the conduct "...interferes with his/her ability to participate in or to realize the intellectual benefits of an institutional activity, employment, or resource." Thus, even if statements are sexist,
patronizing, ridiculing, and intended to convey derogatory attitudes based on gender or some other protected status, they still must be so impactful as to constitute that high degree of interference.

Separate and apart from this elevated requirement for establishing culpability in which AP 3430 tracks Title IX language, is the additional concept of "sexual harassment," which entails creation of a "hostile environment." Unlike Title IX, in order to establish the existence of a "hostile environment" under AP 3430, one only need show that the conduct has a "negative impact" upon the individual's work, or creates an "intimidating, hostile or offensive work or educational environment." This is a lesser burden than the "interference" standard which Title IX requires.

Nevertheless, in order to establish that a "hostile," or "offensive" environment exists, the complainant must show that the unwelcome conduct is so sufficiently severe, and so pervasive, as to "...alter the conditions of an individual's learning or work environment, unreasonably interfere with an individual's academic or work performance, or create an intimidating, hostile or abusive learning or work environment." This type of harassment must be such that, "...a reasonable person of the same gender would perceive the environment as hostile." Finally, while not sanctionable, AP 3430 also makes the point that at all times SBCC members are expected to "exercise appropriate restraint," and to "show respect for the opinion of others."

Findings

My independent investigation of the circumstances give rise to what I must describe as the "unfortunate" series of events surrounding Shermer's appearance. Based upon this investigation, I find that a small number of the comments made by McIntire in his emails were gender-based in a purposefully disparaging fashion. By way of examples are his pejorative references to certain female professors as constituting a "sorority," characterizing Napoleon's comments the day after the event as "morning after regrets," and using the phrase "fingerling herself as the calumniator." While those comments reasonably could give rise to a belief among some female faculty that at times he was "anti-feminist," especially since they believed (erroneously) he never directed negative comments toward male faculty members, patently they were not "severe" or "pervasive" enough to demonstrate actionable harassment or bullying took place in violation of BP 3430 or AP 3430.

While some of McIntire's email comments to or about female faculty who had engaged with him over the Shermer matter unquestionably were deserving of criticism due to their being rude, harsh, sarcastic, insensitive or unprofessional in nature, none of their contents amounted to an exclusion, denial of benefits, or discrimination unduly interfering with one's legitimate access to an educational program or activity. Even in light of what I believe to be the lesser requirements imposed by AP 3430, my investigation did not identify the existence of conduct by McIntire which was so "severe" and so "pervasive" as to create a "hostile" or "abusive" environment.
within the meaning of BP 3430, AP 3430 or any other Board Policy or Administrative Procedure. While Board policy encourages faculty and others to exercise "appropriate restraint" and to "show respect for the opinion of others," failure to do so is not conduct for which sanctions may be imposed. Thus, I am unable to conclude that McIntire's conduct gave rise, either alone or in combination, to violations of any Board policy or procedure regarding sexual harassment.

Of course, as is obvious from some of McIntire's emails, and however well-intentioned they were in defense of Shermer, some clearly went beyond mere clever irony or sarcasm and spilled over into rudeness, humiliation, belittling and the like. But given the exalted nature of freedom of speech, unless there is some other deficiency, his words are protected.

To be sure, from my review of the emails, many of which I have referenced and incorporated into this Report, together with my interviews with Napoleon, McIntire, and Shermer, it is obvious that at least a few of McIntire's highly charged email comments unquestionably did, on occasion, "bump up" against the limits of expected civil discourse. But, none had the effect of meaningfully excluding Napoleon or others from participating in any program or activity, denying them benefits, or discriminating against them on the basis of their sex, gender, or any other protected category. Were some of the comments offensive, intemperate, sometimes insulting or rude, and even outrageous? Yes, they were. But from a quantitative standpoint, clearly they were not so "pervasive" as to create an actionable hostile or abusive work or learning environment within the meaning and intent of Board policies and procedures. So too, while some most certainly were impolite, immature, or disrespectful, from a qualitative standpoint they were not so "severe" as to fall outside the type of speech which the First Amendment protects.

Nor, as some interviewees charged, did McIntire always confine his verbal disparagements to female faculty. As shown in the exchange he had with Fisher regarding the program in which previously incarcerated SBCC students spoke, he was equally harsh and biting toward a male colleague as well.

Violation of BP 3050

Having determined that McIntire's actions did not amount to actionable discrimination or harassment, including creation of a hostile or abusive environment in violation of relevant Board policies and administrative procedures, there remains for consideration the additional question of whether, nevertheless, he violated any other Board policies or procedures. Thus, BP 3050, the Code of Professional Ethics, instructs faculty to, "adhere to the principles of...mutual respect" and to be "open to the opinions of others and judicious in what they say and do." It takes little imagination to conclude that a few of McIntire's email comments and posts on The Channels directed toward Napoleon and others were the very antithesis of those concepts. Even if, in his view, they were designed to "set the record straight," some were inappropriate. Commenting, as
Alzheimer did, that McIntire's comments were just, "Mark being Mark," does not constitute an acceptable excuse no matter how exercised he might have been over the unfair treatment he believed had been given to Shermer.

To be sure, McIntire understandably was highly upset by the contents of the email Napoleon posted just before 8:00 a.m. on the morning of the colloquium. The work he and others had devoted to organizing the event, and the "coup" in obtaining Shermer to be the speaker, now threatened totally to unravel. From McIntire's standpoint, Napoleon's "11th hour" email, posted without fact-checking or contacting McIntire to alert him in advance before she went "all-campus" (which Napoleon later "wondered" whether possibly was an error on her part) was inexcusable. Not only was Shermer an author of several books, a well known journalist, a magazine publisher himself, and a leader in the "Skeptics Movement," he had agreed to speak without charge and reasonably expected to have an opportunity to sell some of his books to attendees.

But even those factors, including Napoleon's resting her concern about Shermer's appearance on the hearsay contents of a 2014 social media (BuzzFeed) article, do not excuse some of McIntire's blistering responses. Some of his sarcastic and accusatory statements toward Napoleon and others flew directly in the face of the SBCC Professional Code of Ethics requirement of "mutual respect." While there is no sanction provided for in BP 3050 for Code of Ethics violations, I am compelled to conclude that in those instances his conduct fell outside the letter and the spirit of the Code's expectations.

Violation of BP 3720 and AP 3720

In assessing whether McIntire may have violated SBCC's Computer and Network Use policy (BP 3720) and its implementing administrative procedures (AP 3720), I have closely examined their exact wording. First, I take note of and emphasize that McIntire was an authorized user. It was he, not Shermer, who actually dispatched the communications in question. Also, McIntire arguably was adopting Shermer's views as his own since they coincided with the same or similar positions he had espoused regarding the colloquium incident and Napoleon's actions respecting it. This is especially relevant since I find nothing in the subject BP or AP unmistakably prohibiting an authorized user such as McIntire from distributing content simply because it was sourced from another person.

While AP 3720 obviously bars certain authorized users from assisting others to gain access to which they are not entitled, the prohibitory language by its very terms likely should be read only to apply in the context of attempting to gain access to "information resources." The reasonable interpretation of AP 3720's language prohibits an SBCC employee from allowing unauthorized persons to obtain proprietary SBCC data and information. That is not the situation here.
In any case, whatever meaning one ascribes to the AP 3720 provision, taken as a whole, the scope and application of the prohibition certainly is open to competing interpretations. Simply put, the language is less than instructive in helping to determine whether the mere distribution of information via all campus email by an authorized user, which was obtained from an outside party, constitutes the type of conduct which clearly is barred. Most likely, it is not.

Moreover, ambiguity also exists with respect to the "Abuse of Computing Privileges" paragraph found in AP 3720. There, the harm sought to be prevented arises only when an SBCC employee provides direct access to a computer, direct access to protected data itself, or in some other way paves the way for an unauthorized person to obtain direct access. Again, since none of these scenarios describe the actions taken by McIntire, he cannot be found to have violated either BP 3720 or AP 3720's provisions against "abusive" use.

Another relevant provision is the "Personal Use" paragraph of AP 3720 which requires that the challenged use must have been either for "work related purposes only," or be "related to District functions." Also, they must not have been undertaken for "personal activities not related to District functions." Construing those terms is not always the easiest of intellectual endeavors as they have various meanings depending substantially upon the context in which they are being considered. Interpreting their impact in a particular set of circumstances is made even more difficult by the occasional lack of organization displayed in AP 3720 wherein various standards are scattered about without a totally logical connection.

Be that as it may, I find it more likely than not that the use of the all campus email by McIntire to disseminate Shermer's position regarding his participation at an SBCC sponsored colloquium, organized and coordinated by SBCC faculty and students, may appropriately be categorized as "work related" and/or "related to District functions." In McIntire's case, the colloquium clearly was a District function directly related to McIntire's and other faculty members' specialty. While not exactly the same situation, McIntire's use in this instance was not qualitatively different from Swiontek's later use of all campus email to solicit donations for Napoleon's GoFundMe account to defray legal fees in defense of a possible law suit also directly connected to the event.

In addition to the foregoing, I also note that AP 3720 specifically describes other prohibited activities when it comes to alleged misuse of SBCC resources, such as the all campus mail system. Thus, in the "Unlawful Messages" paragraph, users are cautioned not to use "electronic communication facilities" to send, among others, "harassing" or "threatening" communications which violate "applicable federal, state, or other law or District policy." Also, in the separate "Nondiscrimination" paragraph, users are instructed not to transmit, "any message ...which violates any District procedure regarding discrimination or harassment...." I have considered both of these provisions and find that McIntire did not violate either when he sent Shermer's communications to the others.
Previously in this Report, I determined that the facts did not establish any violation of AP 3430's prohibitions against harassment generally, or "sexual" harassment in particular, in connection with McIntire's other emails. The same is true here. No "harassment" within the meaning of AP 3720 took place either.

Nor was McIntire's conduct "threatening" within the meaning of AP 3720. True, in the letter sent through McIntire on the all campus system, Shermer did inform Napoleon that he had consulted with counsel and was contemplating a law suit alleging he had been defamed. That is not in my view the type of "threatening" message which AP 3720 is designed to prevent.

In essence, whether McIntire's activities were prohibited is an issue over which reasonable persons may disagree. Based upon my independent review of the facts gleaned from my investigation, I have determined that the circumstances do not support a conclusion that McIntire violated BP 3720 or AP 3720. In reaching that result, I have also considered that severe sanctions could be imposed, including termination of SBCC employment, for violations. To require McIntire to defend against serious assertions that he violated ambiguous and amorphous provisions subject to more than one interpretation, simply would be unfair and unwarranted.

Conclusions

For the reasons set forth above, I reach the following conclusions concerning whether, as a result of his conduct on or after March 20, 2018, McIntire violated any of the provisions of SBCC Board Policy or Board Procedure:

1. McIntire violated BP 3050 (Institutional Code of Professional Ethics);

2. McIntire did not violate BP 3430 or AP 3430 (Prohibition of Harassment).

3. McIntire did not violate BP 3720 or AP 3720 (Computer and Network Use)

It now has been nearly three months since the "Shermer controversy" erupted. Although intra-faculty dissension concerning it hopefully has subsided, there remains in my view a need for the entire SBCC community to continue to consider what occurred and why. I am confident that the Board, senior administration, faculty, students, and all other interested persons will work together to avoid a repetition. The specific actions the SBCC family can take to implement beneficial changes are, of course, matters of policy for the college community cooperatively to decide.

I appreciated the opportunity to speak with, and to listen to, the interviewees in an effort impartially to determine whether any Board policies or procedures had been violated by McIntire. I extend my sincere thanks to all those at SBCC for the prompt and consistently excellent assistance they provided to me during the course of my investigation.
Accordingly, I herewith submit my Confidential Investigative Report to the Board and President Beebe for their consideration and express my appreciation for the opportunity to serve them and the SBCC community at large.

DATED: June 15, 2018

Respectfully submitted,

[Signature]

Judge Elinor R. Reiner (ret.)