

# Freedom is Academic

by Timothy D. Lusch (June 2016)



“The consensus of this Committee is final,” the Facilitator said.

“But Your Honor—” Danny Koenig pleaded.

“Mr. Koenig, you have self-identified with the male gender and we will proceed on that basis unless you complete a Gender Identification Modification form at the University Office of Gender Inclusion, Refusion, and Reassignment. Do you understand?”

Danny leaned over to his University appointed attorney, Ze, and whispered, “So dude, like, I don’t get what that means you know what I’m sayin’?”

“Shhh!!” Ze glared at him. “And do not call me dude. It is highly offensive and a blatant violation of the Code of Non-Offensive Acceptable Speech. I am making a request that you refer to me as Ze. If you persist in calling me dude I will report you to the Office of Offensive, Hate, and Unsafe Speech. I think you have enough to deal with now.”

Danny laughed nervously. “I know right? For sure.”

“You think this is funny?” Ze asked.

“No. Its just that—”

“Mr. Koenig, if you need additional time to discuss the issue of gender self-identification with your attorney or a Gender Neutral Counselor from the Office of Gender Discovery and Equality you may have it at the request of your attorney,” the Facilitator said.

“That will be unnecessary Facilitator,” Ze responded.

“Your Honor, I mean like I’m just trying to—”

“Mr. Koenig you will refrain from addressing this Committee or me as Your

Honor. It is an elitist title laden with historical and colonial bias that is offensive to unrepresented and underrepresented socio-economic, racial, gender specific and gender neutral minorities.”

“Um...K. Sorry,” he said. The silence in the room and the stare of the Facilitator swallowed him. He just wanted it all to go away. Danny instinctively reached into his jacket for his phone, forgetting the University Police had it. He tried to think things through.

*This sucks. It's not fair. I just wanna tell them everything so they get it. The whole thing was kinda messed up for real but like nobody got hurt and it shouldn't be a big deal...*

“Mr. Koenig, if you please? We will proceed,” Facilitator said.

Danny looked at Ze. Ze was writing furiously.

“Um...I guess?” Danny said.

The Facilitator looked across the enormous round table at which all were seated and said, “Counsel for the Sexually Assaulted Victim, you may begin.”

“Thank you Facilitator. The SAV requests the personal narrative of Ivy Pettinger. As a preliminary matter Facilitator, Mr. Pettinger currently self-identifies with the male gender. He asks to be referred to as Ivy. He feels comfortable with the use of traditional pronouns for purposes of this hearing. It should be noted that the date of this complaint precedes the date of Ivy's Gender Identification Modification. Ivy asks this Committee to refer to him in discussions of the underlying sexual assault as Ivy and further requests acknowledgement of his identification with the female gender at the time of the assault. The requisite GIM Form 10-C was appended to the SAV Narrative and tendered to collaborating counsel prior to today's hearing.”

“Thank you Counsel,” Facilitator said. “Any issues you feel need to be addressed Counsel for the Offender?”

Utterly confused, Danny turned to Ze and was about to ask a question. Ze glowered at him. “Shh...Facilitator we feel there is no need to discuss any of this further.”

"But Your Honor," Danny interjected, "I don't feel like, you know, this has been explained in such a way that I—"

Ze stood up, apologized to the Committee, and asked for a moment with the Offender. Facilitator nodded in agreement. Ze leaned in close to Danny, surveyed his moppy hair, rumpled jacket and skinny jeans. Ze did not like this part of the job. But there was no better path to an administrative policy post than service to the Committee.

"Listen," Ze whispered. "You are interrupting the very hearing given you for your benefit. The procedure is collaborative, the policies are clear, and the purpose is consensus. Nobody can ever say for sure what happened on May 1<sup>st</sup> last year, but we can come to some understanding and agreement. All this benefits you. These are your rights. But we cannot exercise them if you keep interrupting."

"Look," Danny said, "all this new to me. I came to college not knowing any of this stuff."

"Maybe. That is your parents fault for not raising you in an inclusive and inoffensive environment. But you attended the Second Year Student Seminar on Inclusion, Non-Judgment, Unlearning Bias, and Acceptable Speech last semester. You should know all this."

Danny felt angry. He thought all that crap was what the University did because they wanted money from the government. He never thought any of it really mattered. He spent the half day each week dedicated to the Seminar designing his own drinking game with his besties. Gathered in the Safe Learning Space, they sat in a big circle while the discussion droned on about all kinds of stuff that he thought didn't sound like fun. So he, Ben, and Joey texted each other ideas about drinking games. They settled on Games, Guzzling, and Girls. Tri-G for short. He thought it was awesome and Ben said they should get a patent or something. All three agreed it would be a blast and the perfect cover whenever their parents called. They would be able to say they were studying Trig.

"Well I don't know all this and like you are supposed to be helping me. I mean like this is your job and whatever."

Ze rarely showed emotion. But Ze felt anger with Danny was the only appropriate

response. Ze did not like this kid. He was an entitled suburban brat whose family money insulated him from the serious issues of life. Sexism, racism, gender equality, climate change—all of these things Ze experienced. Maybe not personally but at the University Ze had seen how horrible life could be in the real world with all its problems and prejudices.

"Danny, you are a victim of privilege. Its not your fault you didn't grow up in an inclusive and tolerant home. But it is your fault that you haven't used the benefit of a college education to unlearn your upbringing and—"

"Wait a minute," Danny snapped, "my parents are decent people and they have worked kinda hard—"

"Your parents are part of the power structure Danny. They benefit from from the dominator culture. You benefit from it. The rest of the world, the world of the oppressed, those suffering from racism, sexism, colonialism, income inequality, gender discrimination, melting ice and rising water—all these people suffer Danny. And you, damn you, you come in here with your privilege and demand the right to live as you always have in the face of all this oppression. How dare you!"

"Like I'm sorry, I mean like, I know bad stuff goes on and stuff—one of my buddies, I mean not really but like I went to high school with the guy back home in Bexley, you know he overdosed on Oxy and—"

"Danny! Stop with the first world problems. You need to understand the hurt you caused. Now, we are going in there and the Victim will tell us what happened and then you will get a chance to tell us what you think happened. That's it. Not complicated. Okay?"

Danny put his head down. He never really thought about all the things Ze was talking about. He had heard a little bit he guessed, he knew some Asians at school, but it seemed like they all got along and had a good time. He knew they were Chinese or something but they were born here, spoke English, and partied. He just didn't know they had it so bad. He began to think he should've asked them more about their lives.

"Alright," Danny said. "I'm sorry. I just didn't feel like I was getting it. I mean this is like a bad situation for me and everything. So like will you ask

Ivy questions and like point out he is lying and that?"

"Probably not Danny. You are the one who is here for violating University policy. The SAV counsel will ask you questions, and I will only challenge the Victim narrative if it is clear he is blatantly lying."

Danny was confused. He felt bad about what happened but felt Ivy tricked him that night last year. He just didn't get why everybody acted like he was so evil.

"Now, Danny, we are going back in there. We are going to listen to the Victim. And then you will get a chance to talk. You can say what you feel then. But I'm warning you, the Committee and the Facilitator will not appreciate your interruptions, understand?"

"Yeah."

"And don't use offensive or hateful speech when you talk, okay?"

"Uh-huh. Yeah. I mean I guess I will try not to."

Back in the hearing room, Danny saw Ivy standing by the window. He tried to make eye contact so he could be like *Dude! WTF? Why you doing this?* But he could see Facilitator standing next to Ivy, listening intently and nodding. Ivy was crying.

Ze told Danny to sit down. When Facilitator sat nearly opposite Danny, he felt eyes on him. He looked and Facilitator was staring at him. Eyes narrowed, lips tightly pressed together. He leaned over to Ze's ear and said, "Why's the Facilitator mean muggin' me?"

Ze jerked. "Danny, it is not okay for you to be in my safe zone. I've put up with you doing it until now but I am asking you to stop. Now pay attention. We are starting."

Danny slouched down in his seat, brought hand to cheek, and leaned on the table.

"The Sexual Assault Victim Ivy Pettinger will now share the narrative of what happened on May 1, 2015," Facilitator said. Facilitator's eyes fastened on

Danny. He looked up at the wall clock and saw that it was almost noon. Outside, a rainy drizzle obscured the campus office building across the courtyard. It had darkened quite a bit since morning. Clouds, thick and heavy, lingered above the rectangular office building and the tree line just beyond. He felt his stomach gurgle and a warm acidic fluid mix with his saliva. He regretted playing Tri-G again last night. He kept wishing he had his phone. He wanted to text Ben and Joey about all this stuff.

"My name is Ivy Pettinger. I am a junior here at the University. My personal area of study is Interdisciplinary Approaches to Bias in the Historiography of Nineteenth Century LGBTQ Communities in Canada. I am also Campus Climate Change Consensus Coordinator—"

"Thank you for your service. As Facilitator I speak for the Committee in acknowledging your hard work on behalf of all humanity. Forgive my interruption, please continue."

Ze looked on Ivy with admiration smiling and nodding respectfully toward him.

"What the hell are you doing?" Danny whispered. "Whose side are you on?"

"Shhh!" Ze said. "This isn't about sides Danny. We are all losers in the War on Climate Change."

"But this isn't about that," Danny pleaded. "We are here because of me, not the climate!"

"Oh it's not? Climate change is catastrophic Danny and affects all of us. Ignorance will not spare you or your friends. Maybe if you paid attention to important issues like this instead of assaulting transgendered people you wouldn't be here in the first place and the climate might improve," Ze whispered harshly.

"But you are my attorney, how can you make up your mind so—"

"Mr. Koenig! We are prepared to proceed with the factual narrative from Ivy. If you need more time to consult with your attorney—"

"That is not necessary Facilitator," Ze volunteered. "The Offender has been warned."

"Thank you Counsel. Please proceed Ivy," Facilitator said.

"Well, I met the Offender at a concert at the campus Hillel. I was with my friend Bronwyn and we came to see another friend of ours play an acoustic guitar set. We sat down next to Dan—I mean, the Offender, and he and I, you know, we just started talking a little. Flirting I guess."

"Now Ivy," the SAV Counsel interjected, "at this time, and supported by appended documentation, you self-identified as a female named Ivy, correct?"

"Yes," Ivy answered. "And I dressed as a female and wore makeup and all that."

"As is your right," Facilitator said. "Please proceed Ivy."

"Yeah, so like, me and Dan—the Offender, I mean, like we just got each other you know? And so like we kinda just talked the whole concert, not loud you know, but like whispering and stuff. And then, near the end of the show, I like thought that was going to be it with talking but the Offender he just like straight up asked me if I wanted to go back to his place, and you know, like hang out."

"Ivy," SAV Counsel asked, "were you aware that there might be interaction leading to a consensual and contractual sexual transaction?"

"What?" Ivy said, clearly confused. "Like, no I mean we like knew that going back to his place whatever meant we might do it but you know at the time he didn't like say that's why we are going back there you know but I knew there was a chance and I was good with it you know what I'm sayin?"

"And so," SAV Counsel said, "you had an implicit agreement with the Offender to enter each other's safe space for the possible purpose of express sexual contact?"

"I mean like yeah it was okay you know? So we got to his place and we talked and he was really nice and—"

"Ivy," SAV Counsel redirected him, "the quality of your consensual foreplay is not relevant. Did you both sign the University Sexual Interaction Consent Form?"

"No. Like he had me sign a piece of paper. Looked like something he made up you know, just a generic consent form. So I signed it because like I wanted him and

he wanted me and we just wanted to do it—”

“Facilitator,” SAV Counsel declared, “at this time I would like the Committee to note for the record that a University approved SIC Form was not used and this creates a presumption of coercion.”

“Do you feel like there is disagreement Counsel?” Facilitator said to Ze.

“Facilitator, as Counsel for the Offender I have advised him of all his rights and the risks that pertain to their exercise under our collaborative procedure. Therefore, we feel like this is fair.”

“Wait a minute! I didn’t coerce any—”

“Mr. Koenig, sir, please, you are grossly out of line,” Facilitator said. “Your counsel has spoken in your behalf. We will move on. Please contain your outbursts. Ivy, please, continue.”

“Well we started kissing and like his hands were all over me and then he, well you know, he grabbed me down there and that’s when he realized I was transgendered.”

Ivy started crying and bellowing and wiping his face in his hands. Ze got up and handed him a tissue and patted his arm. Facilitator encouraged Ivy to be strong. When the SAV Counsel stood up and asked for a recess, Ivy straightened in his chair and said he wanted to continue. He needed to tell his story. He said he didn’t want to be a victim anymore, he wanted his voice to be heard for all Transgenders everywhere.

“So then the Offender pushed me away from him. He was screaming at me, I mean like, really screaming at me. And he shook me and said I tricked him, I lied to him, and I humiliated him. He said *I* humiliated *him*! I was so sad. And scared. And then...then...he punched down there and—this is so awful—I HATE YOU DANNY!—but he punched me there and said I was a man and could take it. I got up, I was crying you know, and I was slow because he hurt me, he really hurt me there, and I grabbed my stuff and like I just took off. I went home, and the next day I went to the Office of LGBTQ Support and they reported a sexual hate crime to the University Police.”

“And criminal charges were never authorized right?” SAV Counsel asked.



"No," Ivy said. "They didn't believe me. No one believes me! Or like there wasn't enough evidence or whatever but they didn't do it and they stole my humanity and I feel like they think I am a liar and like people look at me diff--"

The Facilitator, with stentorian authority, said, "We have heard enough. Ivy, you may relax now. Everything is alright. And you, Offender, do you wish to tell us what you think happened or do you agree with facts that Ivy just testified to?"

Danny was perplexed. He knew that was pretty much what happened but they didn't seem to get that Ivy tricked him and there is no way he knew she was a he until it was too late and it all seemed so overdone and he just wanted his damn phone back.

Ze was irritated. Danny is the worst kind of person Ze thought. Representing barbarians as a progressive person is so hard. If people only knew what it was like to do this week after week.

"Danny," Ze said, "if you speak, I cannot help you. Do you understand?"

"Yeah but I need to talk to you abou--"

"The Offender will testify, Facilitator," Ze declared.

Danny looked at Ze and then around the table. Everyone glared at him. Except Ivy. Ivy had his head down and was whimpering. *This is crazy* he thought. *This is all so crazy*. He felt alone. He reached for his phone again. "Damn," he said.

"You are not to use that language here," Facilitator said. "Now, speak. If you feel the need to do so in your own behalf."

Danny felt low. Wretched. He thought he should pray. Not because God would help him. He wasn't sure whether God would or whether God was even there. He hadn't been to temple since his Bar Mitzvah and was pretty sure God would remember that. But he didn't know what else to do, no one around to advise him, he felt desperate. He tried reaching for the holy words, those words from long ago. He had spent months memorizing them, and now, in distress, he could not find them within.

"If you choose not to speak Mr. Koenig—"

"No, Facilitator, I will speak," Danny said. "Look, this is all so crazy. I mean like, that's pretty much what happened but it's not right in the sense that Ivy tricked me and she—he, whatever, that he tricked me you know?"

SAV Counsel rose and asked, "Are you telling us that what Ivy experienced is how you perceived the incident?"

"Yes," Danny said. "But not entirely becaus—"

"That's enough. These are yes or no questions. And in fact, you do not deny affirming the University Student Code of Conduct, the Sexual Assault Policy, the University Statement on Diversity, and the Tolerance Pledge?

"I don't remember to be perfectly—"

"Is this your signature?" the SAV Counsel asked after approaching Danny.

"Yes."

"And this?"

"Yes."

"And this?"

"Yes."

"And lastly, this?"

"Yes."

"And in fact Mr. Koenig, you readily admit to using a non-University approved sexual consent form?"

"Yeah but—"

"And you don't dispute that this creates a presumption of coercion?"

Danny looked at Ze. His eyes widened and he raised his eyebrows. Ze looked down and continued writing.

"Look I don't know what that means I just--"

"Facilitator I am finished with my questions."

SAV Counsel sat down. The Facilitator looked at Danny with disgust. Danny looked out the window. At nothing and at everything. He was trying to figure out how it came to all this.

"You may make a last statement Mr. Koenig," Facilitator said.

"Look, I just want to say this is all wrong. Unfair. Ivy is a guy, a dude, and he knew it when we met and he never told me. He just assumed I would be like totally fine with it and I wasn't man I really wasn't and yeah I shouldn't have punched her or him whatever but I was angry and I didn't agree to all of that and I'm not saying I shouldn't apologize or whatever but all you are making Ivy out to be a victim and none of you are talking about what she or he or what the hell ever did. his is ridiculous, I mean just stupid you know?"

"Are you finished?" Facilitator asked.

Danny sighed. He had no more to say. He couldn't even say what he was trying to say. Everything was so muddled up and confusing and the situation was just bad.

"This Committee, in collaboration with both counsel, has arrived at a consensus," Facilitator said.

Danny leaned over to Ze and whispered, "Don't they go in another room or something?"

Ze replied, "No! This isn't a TV show Danny. This is the real world. People make real decisions. Now please get out of my personal space!"

"The Committee finds you, Daniel Koenig, in willful and gross violation of University Policy. Decorum and concern for the Victim militates against repeating the factual basis for our finding here. You have been given an opportunity to address the Committee and so therefore we proceed to the punishment phase. You are hereby expelled. All rights, honors, and privileges that previously attached to your membership in our University community are revoked. Further, you are barred from re-applying for admission to this University. You will be placed on the Inter-University Sexual and Gender

Offenders registry for a period not to exceed five years. Upon application at another university or college you must disclose your Offender status or face potential criminal punishment. These are your penalties. Do you understand and acknowledge each as I have read them to you?"

"The Offender understands," Ze stated, rising from the table. "We thank this Committee for its objectivity, its professionalism, and its dedication to the truth."

Danny buried his head in his forearm and rested both on the table. He felt a warm wetness around his eyes. He felt that his life was over. He regretted not telling his parents about this. They might have been able to help.

"There is," Facilitator declared, "one alternative. Mr. Koenig, are you interested?"

Danny wiped his face free of snot and tears, and shook his head up and down.

"You may, consent from Ivy Pettinger already obtained, admit to discipline here today. This Committee will hold your admission in abeyance for the period of one year. You will enter the Rectification, Rehabilitation, and Reparation program at the University. Upon successful completion of the program, you will come back before this Committee for Reintegration. You must demonstrate understanding and adoption of acceptable behavior and speech. If you do so, you will then be free to pursue your personal zone of academic interest at this University and become once again a full fledged member of the community of learners and agents of educational equality. Do you accept?"

"Yes, Facilitator. Yes. Thank you. I'm so sorry. I just—"

"Enough," Facilitator said. "You have much to do before this Committee can give weight to your words. You must learn to unlearn Mr. Koenig. It is the only path to freedom."

### ***Postscript***

After graduation from the 3R program a year later, Daniel Koenig returned to full academic citizenship in the University. The Committee awarded him the Distinguished Reintegration Award. He changed his personal zone of academic interest to Implicit Bias in Post-Modern Power Structures. In the year

following, he presented a paper on Violations of Gender Code and Repetitive Trauma for Victims at the University Symposium on Inclusivity, Sensitivity, and Community. He received an honorable mention.

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