

UNIVERSITY OF ILLINOIS
AT URBANA-CHAMPAIGN



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CONFIDENTIAL

I. Summary

This matter involves allegations of sexual harassment brought against Jay Kesan, a professor at the University of Illinois at Urbana-Champaign College of Law (“College”). On or about June 26, 2015, the College’s Senior Associate Dean for Academic Affairs at that time, Jamelle Sharpe, notified the Office of Diversity, Equity, and Access (ODEA) that the College had received multiple complaints regarding Professor Kesan’s interactions with female faculty members and students and requested that ODEA investigate the matter. ODEA met with three complainants – two now former faculty members of the College and one now former law student – who had independently reported inappropriate interactions with Professor Kesan to the College administration. Their collective complaints included allegations of Professor Kesan talking about his own sex life and his views on adultery, inquiring about the sex lives of others and their views on adultery, veiled references to masturbation, invitations to stay at his apartment in Chicago, touching one complainant on her thigh, repeated efforts to hug one complainant despite her clear aversion to such contact, advising one complainant that women should wear skirts when interviewing so as not to offend male interviewers, and failing to respect the complainants’ personal space. All three complainants maintained that their colleagues and peers over the years had reported similar inappropriate interactions with Professor Kesan.

All three complainants, on the condition of anonymity, expressed a willingness to have ODEA investigate their claims of sexual harassment against Professor Kesan. Given the commonality and the numerosity of the complaints, ODEA decided to bypass informal resolution efforts in favor of formally investigating those complaints.

As part of its investigation, ODEA interviewed the three complainants, Professor Kesan, and thirty-eight (38) witnesses. Those witnesses were comprised of eight (8) current students, four (4) former students, twenty-five (25) current or former faculty or staff members of the College, and one (1) individual who was unaffiliated with the College. Five of the witnesses were male. Collectively, witnesses portrayed Professor Kesan as someone who at times is overly friendly, verbose, and does not edit his thoughts before speaking. He tends to stand close to others when speaking with them, is oblivious to normal social cues (such as when someone is uncomfortable or in need of more personal space), and tests the boundaries of what is appropriate contact and

communication, but makes it a point to never blatantly cross the line. He engages in conversations of a personal and intimate nature that a reasonable person would know to be inappropriate for the workplace or with colleagues, which causes others to be uncomfortable and to avoid further interactions with him. Professor Kesan has developed a negative reputation among many of the College's female faculty members, which has prompted a number of female faculty members to warn junior female faculty members and female law students to avoid certain interactions with him.

Although I am unable to conclude, based upon my review of the evidence, that Professor Kesan's actions constitute sexual harassment or sexual misconduct as defined by University policy, his actions certainly have made the working and teaching environment uncomfortable for a countless number of female colleagues and students. Through his actions, Professor Kesan, in my opinion, has violated the spirit of the University's policies prohibiting sexual harassment and sexual misconduct and has clearly violated the University's Code of Conduct. That Code requires employees of the University to conduct themselves in a manner that will maintain and strengthen the public's trust and confidence in the integrity of the University and take no actions incompatible with their obligations to the University. In fulfilling that obligation, employees are expected to treat others with civility and decency. The manner in which Professor Kesan has interacted with certain female colleagues and law students can be deemed neither civil nor decent. Because Professor Kesan has violated the Code of Conduct and likely will continue to disrupt the working and teaching environment of the College unless appropriate action is taken, I recommend that, at a minimum, Professor Kesan be required to undergo sexual harassment training and professional coaching and have a copy of this report and all related documents placed in his permanent personnel file so that they may be considered whenever he is being considered for possible promotions, merit increases, awards, recognitions, or other employment related matters. The remainder of this report offers more details regarding the investigation and ODEA's findings and recommendations.

II. Background and Allegations

A. Interviews of the Individual Complainants

Complainant Number 1

Based on the allegations reported to Dean Sharpe and relayed to this office, ODEA contacted each individual identified by the College as a possible complainant. ODEA contacted Complainant No. 1, a former law student, on or around July 20, 2015 and met with her in early August 2015. Complainant No. 1 stated that she was first introduced to Professor Kesan as a student in his class. As with all of her professors, she invited Professor Kesan to have lunch with her as part of the College's initiative encouraging students to meet with their professors in more casual settings. Complainant No. 1 recounted that her lunch conversation with Professor Kesan initially was unremarkable and consistent with her lunch meetings with her other professors. She discussed her career interests with Professor Kesan, to which he responded by noting the importance of working hard and by conveying that he had graduated first in his law school class at Georgetown University. Professor Kesan maintained that this achievement resulted from him studying eight hours each day without a social or dating life. Complainant No. 1 reported that soon thereafter Professor Kesan

shared that conversations with his friends always revolved around “who got laid.” Allegedly, Professor Kesan proceeded to inform Complainant No. 1 that he had to rely on “self-help” because he is only human, which she construed, given the context, to refer to masturbation. Because the remark made her feel uncomfortable, she ignored the comment and steered the conversation in a different direction.

Notwithstanding her discomfort with his comment, Complainant No. 1 continued to interact with Professor Kesan by email and by periodically inviting him to lunch because she valued his insight and guidance. She reported that, on one occasion while they were eating lunch in his office, Professor Kesan asked her why she was not eating much, to which she replied that she tends not to eat much during finals. Professor Kesan purportedly responded by rubbing her thigh and advising her not to worry about exams. Feeling uncomfortable, Complainant No. 1 ended the conversation and left Professor Kesan’s office.

Because she wanted to further her own career interests, Complainant No. 1 continued to communicate and meet with Professor Kesan while she was in law school. Complainant No. 1 initially was uncertain as to whether Professor Kesan’s conduct was illegal, or instead, an accepted part of the College’s culture given that it was well known within the College that a senior staff member was dating a law student. Complainant No. 1 maintains that it was only after she discussed her experiences involving Professor Kesan at a lunch with another professor that she realized that his words and actions exceeded the appropriate boundaries for a professor-student relationship. During the lunch, the other professor encouraged her to report the incidents to the College’s administration, which ultimately resulted in Dean Sharpe contacting ODEA.

Complainant No. 1 also noted that she had discussed the incidents involving Professor Kesan with three other law students. While one law student indicated that she had not had any uncomfortable interactions with Professor Kesan, due in part to a male professor advising her early on to avoid Professor Kesan, the other two students conveyed to her in separate conversations that Professor Kesan purportedly inquired about their dating lives when they met with him to discuss intellectual property, and one of the students added that Professor Kesan proceeded to tell her that women want to date him because of his wealth. Following these conversations, Complainant No. 1 ceased communicating with Professor Kesan and sought to avoid him for the remainder of her time in law school.

On or about September 23, 2015, Complainant No. 1 informed ODEA that she wanted to pursue allegations of sexual harassment against Professor Kesan, but only if she could do so without being a named complainant.

Complainant Number 2

Based on information provided by Dean Sharpe, ODEA contacted and met with Complainant No. 2, a former faculty member of the College, in July 2015. Complainant No. 2 reported that Professor Kesan invited her to lunch shortly after she joined the faculty and purportedly asked her personal questions during lunch that she found to be both inappropriate and unrelated to their conversation. Specifically, Complainant No. 2 alleged that Professor Kesan sought her opinion about adultery and then shared that he thought it was fine as long as it is kept secret by the parties. Complainant

No. 2 also maintained that, shortly after she joined the faculty, Professor Kesan routinely tried to hug her whenever she encountered him. According to Complainant No. 2, during her first couple of years at the College, Professor Kesan repeatedly invited her to his apartment in Chicago and out for drinks despite making it clear to him that she was not interested in either offer. While Complainant No. 2 acknowledged that Professor Kesan is known as someone who likes to stand close to you when he is speaking, she maintained his interactions with her and others went beyond that. Over time, Complainant No. 2 became more uncomfortable interacting with Professor Kesan and more assertive in her response to his advances. Ultimately, she stopped responding to his email invitations to go to lunch and began avoiding him altogether. Eventually, Professor Kesan's efforts to communicate with her ceased.

Complainant No. 2 shared her interactions involving Professor Kesan with several colleagues both within and outside the College. In response, several of her colleagues raised assorted contentions about Professor Kesan, including contentions that other faculty members were having issues with him, that he was prohibited from traveling with female staff based on prior inappropriate behavior, that he was overheard inviting a group of women at a College-sponsored event to his Chicago apartment, that he invited a female professor from another academic institution to his Chicago apartment when they attended a conference together, and that he had made a pass at a non-tenured professor at another academic institution he was visiting.

Based upon these conversations and her own experiences with Professor Kesan, Complainant No. 2 began to advise new female faculty members to avoid Professor Kesan. Even though she found his behavior to be inappropriate and was concerned, and continues to be concerned, about him advising female students, Complainant No. 2 did not initially pursue a formal complaint against Professor Kesan out of fear that it may affect her professional career. Because that fear has continued to persist, Complainant No. 2 elected on or about September 22, 2015 to participate in this investigation as an anonymous complainant.

Complainant Number 3

On or about August 12, 2015, ODEA met with Complainant No. 3, a former faculty member, who reported that Professor Kesan made inappropriate remarks to her when they met for dinner to discuss the academic job market. According to Complainant No. 3, their conversation was professional in the beginning, but Professor Kesan gradually began asking personal questions and making similarly personal comments, despite her repeated attempts to keep the conversation professional. Professor Kesan purportedly inquired about whether she would discuss her romantic relationships with colleagues, her relationship status, her sexual practices, and her living habits, and also intimated about his sex life and his sexual fantasies. During their conversation, Professor Kesan also reportedly advised her to wear skirts when applying for jobs so as not to offend older male interviewers. Because of her junior faculty status, Complainant No. 3 continued the dinner conversation with Professor Kesan, but sought thereafter to limit or avoid her interactions with him.

In a later discussion with a male colleague regarding Professor Kesan's comments about interview attire, the colleague shared with her that Professor Kesan has a reputation of being "touchy" and engaging in inappropriate conversations with female faculty members. When she first started at

the College, another faculty member warned her that Professor Kesan stands uncomfortably close when speaking to you. While Complainant No. 3 noted that Professor Kesan routinely infringed upon her personal space, she also observed that, [REDACTED]

In September 2015, Complainant No. 3 expressed an interest in having ODEA conduct a sexual harassment investigation, but she asked that her name not be included due to her status as a junior faculty member and concerns about retaliation.

B. Interview of Professor Kesan

ODEA met with Professor Kesan on October 6, 2015, by phone on July 5, 2016, and on June 13, 2017. In its initial meeting on October 6, 2015, ODEA advised Professor Kesan that three individuals, who requested to remain anonymous, independently alleged that he had interacted with them in a manner that they considered to be of a sexual nature and/or based on their sex. Professor Kesan denied engaging any colleague or student in a sexual manner, but acknowledged that he previously had been accused of sexual harassment on two prior occasions. In one case, ten to twelve years ago, a law student accused him of misinterpreting what he recalled as a friendly gesture, such as a hug. The matter was resolved by Professor Kesan agreeing to provide the student with an unbiased letter of recommendation, which he maintained he did without hesitancy as the student was a good student. In the other case, a former law student told several people within both the College and the Illinois Cyber Security Program that Professor Kesan previously had allegations of sexual harassment levied against him. Aside from these two instances, Professor Kesan did not recall any other instances in which sexual harassment allegations involving him had been raised. He characterized both instances as misinterpretations of his interactions with the reporting individuals. Professor Kesan acknowledged being aware of rumors about him, but maintained that the rumors have no validity and are perpetuated by a former student as noted above.

In response to the specific allegations raised by the complainants in this investigation, Professor Kesan stated that it is possible that he may have touched someone in a gesture of assurance or comfort, but did not intend for that action to be construed, and is not aware of anyone having construed such a gesture as being sexual in nature, offensive, or unwelcome. Further, Professor Kesan describes any such touch as being nothing more than a brief tap. Professor Kesan stated that it is not uncommon for students to confide in him or seek advice about their interviews, relationships, the law school dating scene, and various stressors in their lives. In response, he may share his personal views and/or experiences as a way to reassure students and minimize the perceived gravity of the situation. He proffered that many times these conversations occur among a group (e.g., conversations with students about balancing the academic rigors of law school with a social or dating life). He recalled one instance of comforting a student who was sitting next to him in a car crying. He maintained that he tapped the student on the knee in an attempt to console her, and that others were in the car to witness this interaction.

Professor Kesan acknowledged that he often hugs colleagues, both male and female, however, he does so with appropriate brevity and formality. He is cognizant of colleagues who are not as

receptive to his hugs and governs his physical conduct appropriately around these colleagues. He further recognized that he may stand unreasonably close to people due to his hearing loss; however, he reports using non-verbal positioning cues to signal that he is attempting to gain a better hearing vantage. He regrets that his cues are misinterpreted by some as an attempt to infringe on their personal space.

Professor Kesan recalled two instances in which he made a comment about two female faculty's physique. He argued that both comments were within the context of discussing exercise. In one instance, a colleague had recently given birth and was talking about working out to which Professor Kesan told her that she looked great. In the other instance, Professor Kesan was talking to a colleague about the value of having a treadmill in her office and made a similar comment to this colleague.

Professor Kesan reported that he spoke about sex with two colleagues around the time that a news story broke about the Ashley Madison website.¹ He also recalled having discussions over the years about [REDACTED]

[REDACTED] He admits that he was not particularly cautious in his discussions of these relationships.

Professor Kesan further acknowledged that it is not uncommon for him to have conversations with colleagues about their respective family dynamics and demands of family life. He remembered one conversation that he had with a staff member about the hardships of traveling without one's family. In the conversation, Professor Kesan indicated that the conversation included discussions of loneliness, companionship, and intimacy. However, he maintained that this conversation and others involving personal topics were always seemingly reciprocated. Professor Kesan felt that he had a good relationship with the majority of the women faculty in the College, and that conversations with women faculty occurred organically and were often in public, open spaces. Professor Kesan stated that, in fact, in having meetings, with students in particular, he generally always leaves his door open.

Professor Kesan maintained that when he has extended invitations to students and colleagues to use his apartment in Chicago, it is within the context of discussing interviews or meetings that his student assistants or colleagues have in Chicago. He insisted that his invitations are directed toward male and female students and colleagues alike, and are intended only as friendly gestures. To date, no one has responded affirmatively to his invitations.

Professor Kesan reported that he has never invited a student or colleague out for a date or to dinner. He did not recall talking to anyone about or referencing masturbation or encouraging women to wear skirts for interviews. He maintained that perhaps in discussing interviews with his student assistants, he may have referenced older male lawyers at the firm where he previously worked and suggested that a student err on the side of dressing conservatively, but he has never advised a

¹ In July 2015, various news outlets reported the theft of the user data of AshleyMadison.com, a commercial website billed as enabling extramarital affairs, by a group referring to itself as "The Impact Team." That group threatened to disclose the identities of Ashley Madison's users if the responsible company did not agree to immediately and permanently shut down the site.

student or colleague to wear a skirt to an interview.

Professor Kesan contends that the complainants' allegations and the witnesses' testimonies, discussed below, are without merit or lack appropriate context.

C. Witness Interviews

Witnesses of both genders maintained that Professor Kesan infringes on their personal space when talking to them to the point that some feel trapped by him in their encounters, seemingly pinning them against a wall or in a corner of a room. This often has led to individuals trying to increase the space between themselves and Professor Kesan, only to have him continue to advance toward them throughout the conversation. Some believe that Professor Kesan is simply oblivious to normal social cues and body language that typically convey another's discomfort with an unwanted conversation; others contend that he is well aware of his actions.

Many of those interviewed also reported having conversations and/or interactions with Professor Kesan that were gender-based or of a sexual nature. [REDACTED] member of the College, for example, reported that Professor Kesan periodically would inquire about her relationship status and ask her how she was able to go without sex whenever she indicated that she was not in a relationship. Another staff member recalled an occasion on which Professor Kesan seemed to be peering down her shirt while she was talking to him at her desk, to which she reacted by zipping up her sweater. She also noted that, to the extent possible, she tried to keep her conversations with Professor Kesan brief because he always invaded her personal space. Another individual maintained that Professor Kesan invited her to lunch when she joined the College's faculty and during that lunch placed his hand on her knee, which she found to be both odd and uncomfortable. She also added that she, thereafter, made it a point not to be alone with him.

A different faculty member reported that during a casual conversation with Professor Kesan in his office shortly after she started, he kept coming closer to her and asked her questions that made her feel uncomfortable, though she does not recall now the specifics of what was discussed. She vowed thereafter to never meet with him in his office again. In addition, she reported that while talking to Professor Kesan at an out-of-town event, he asked her what she planned on doing during the visit and proceeded to tell her that he thought it was good to get away from one's spouse. Given that both were traveling without their spouses, the conversation made her feel uncomfortable, so she promptly ended their conversation and left. She also added that she only talks to Professor Kesan in passing because he makes her feel uncomfortable by purportedly staring at her chest and other parts of her body while they are talking.

Several other female witnesses, likewise, reported that they felt as though Professor Kesan looked at them inappropriately whenever he interacted with them. One former staff member reported that Professor Kesan always made a point to stop and talk to her in the hallway even though they did not have a close working relationship. During these conversations, Professor Kesan would flirt and leer at her, which made her uncomfortable. She also noted that he once invited her to his condominium in Chicago, which she felt was both disconcerting and unprofessional. Another faculty member reported that she always felt that Professor Kesan was assessing her sexual appearance. She reported that in a one-on-one conversation with him, Professor Kesan looked her

up and down in what she perceived to be a sexualized manner and told her that she did not seem to have any trouble losing her pregnancy weight. After that, she sought to minimize her interactions with Professor Kesan and to never engage him for longer than a couple minutes by always generating an excuse to end the conversation.

One faculty member [REDACTED] reported that when she first met Professor Kesan, he looked her up and down and commented that she looked like an athlete, while noting that he was a good basketball player. She also stated that during a one-on-one dinner with Professor Kesan, he observed that she was young and attractive and questioned whether that posed challenges for her in the classroom. He then proceeded to inform her about how his students are obsessed with him, and that one student even sent their underwear to him. After she attempted to redirect the conversation to no avail, the dinner concluded with Professor Kesan inviting her to use his condominium in Chicago should she ever need a place to stay in Chicago. Shortly afterwards, Professor Kesan again invited her to dinner, noting that he was lonely and wanted to get together with her. She reported that she seeks to avoid Professor Kesan at conferences and other events that they are both attending, and that Professor Kesan has confronted her about their limited interaction.

A faculty member [REDACTED] recounted an instance when [REDACTED] [REDACTED]. She made it a point to assign a male faculty member to solicit Professor Kesan's feedback so as not to put a female faculty member potentially in an uncomfortable situation based on her own uncomfortable one-on-one interactions with Professor Kesan. Yet another faculty member relayed that when she talks to women students about independent research, she steers them away from working with Professor Kesan, even if their research interest is within his field of study.

One former student reported that, while conducting research with Professor Kesan, they occasionally met for meals during which their conversations repeatedly revolved around her relationship status and Professor Kesan telling her that they had so much in common. According to the student, Professor Kesan would "hit on her" and ask her personal questions unrelated to the research to the point that their conversations became more personal than research focused. She stated that, over the course of their relationship, Professor Kesan began hugging her at the beginning and end of every encounter, was flirtatious with her, and would touch her on her arm and once on her buttocks in a manner that went beyond just being friendly and exceeded the boundaries of an appropriate professor-student relationship. The student also noted that on multiple occasions, Professor Kesan invited her to join him on non-research related travel. She conveyed that she became increasingly uncomfortable with Professor Kesan due to his physical and verbal interactions and began having panic attacks in anticipation of seeing him. Eventually, she minimized her personal interactions with him and limited their communication to email. She stated that she reported the discomfort caused by her interactions with Professor Kesan to a friend and one of the career counselors but asked them to keep it confidential.²

Another former student reported that when she was leaving an out-of-town event, Professor Kesan asked her if she would be interested in staying in his hotel room, which she declined. Professor Kesan persisted in continuing to invite her and telling her that he was fond of her. It was only after she declined his invitation multiple times that he finally relented. The student also recounted that

² See Exhibit A.

Professor Kesan seemed to repeatedly look at her in class and then asked one day after class why she seemed so withdrawn. She, along with another student who had similar experiences with Professor Kesan, reported their respective interactions with Professor Kesan to the College administration, and subsequently, to the Provost's office, in an effort to prevent other students from being subjected to similar conduct by him.

Another former student, likewise, reported that she found her interactions with Professor Kesan uncomfortable and more physical than appropriate for a professor-student relationship. She maintained that Professor Kesan frequently touched her on her arm, shoulder, and back during conversations and would continue to come toward her whenever she sought to increase the space between them during conversations. On one occasion, after she accepted a lunch invitation from Professor Kesan, he drove her to and from the lunch with his hand on her knee, and during the lunch, he talked about his dating life, how women viewed him because of his status, and inquired about her dating life. She sought to minimize her interactions with Professor Kesan by emailing him any questions that she had about his class, but he would not respond to her emails. Instead, he would address her questions after class after all of the other students had left. Professor Kesan continued to repeatedly invite her to coffee even after she was no longer in his class, which she always declined.

A current student reported that Professor Kesan placed his hand on the small of her back as she was leaving his office, which she considered to be an unusual gesture from a professor and one that made her uncomfortable. Based on that encounter, she has made it a point to not meet with him alone. The student indicated that although she would like to conduct independent research in the area of intellectual property or cybersecurity, she is precluded from doing so because Professor Kesan is the only professor at the College who does research in those areas and she does not feel comfortable working with him independently. She also noted that other students with whom she has spoken have likewise had uncomfortable interactions with Professor Kesan.

One College administrator reported that he was directed by a former member of the College leadership team to keep an eye on Professor Kesan at an event that both the administrator and Professor Kesan was attending. The administrator was specifically directed to watch Professor Kesan around female guests and to interfere if circumstances warranted. The administrator reported that before the event concluded, he had to interrupt a conversation between Professor Kesan and two to three female guests because the guests appeared to be cornered and uncomfortable. Since that event, whenever he attends an event at which Professor Kesan is present, he closely watches Professor Kesan's interactions with women and their reactions to Professor Kesan, and intervenes when needed.

III. Applicable Policies

The complainants in this matter have alleged that Professor Kesan engaged in sexually harassing conduct. Based on the allegations as presented, this investigation invokes the *Sexual Misconduct Policy* and the University Code of Conduct and is investigated pursuant to the *Policy and Procedures for Addressing Discrimination and Harassment at the University of Illinois at Urbana-Champaign*.

The *Sexual Misconduct Policy* defines sexual harassment as unwelcome sexual, sex-based, or gender-based conduct, whether verbal, written, electronic, and/or physical in nature that is either:

(1) sufficiently severe or pervasive; (2) objectively offensive; and (3) unreasonably interferes with, denies, or limits a person's ability to participate or benefit from educational and/or employment opportunities, assessments, or status at the University; or

by a person having power or authority over another in which submission to such conduct is made explicitly or implicitly a term or condition of educational and/or employment opportunities, participation, assessments, or status at the University. Campus Administrative Manual §IX-B-6.

The University's power to act on allegations of sexual harassment is not, however, limited to cases where the actor's conduct satisfies the very demanding standards established by case law and upon which the campus' *Sexual Misconduct Policy* is predicated. This sexual harassment standard closely parallels the standard that would apply in a civil damages action against the University for sexual harassment. Thus, if the University could act only in cases where the actor's conduct satisfied this standard, it would be powerless to intervene until the actor's conduct had exposed the University to civil liability. Accordingly, conduct that falls short of the high standards required to find a violation of the *Sexual Misconduct Policy* will also be subjected to analysis under the University Code of Conduct. The Code of Conduct states that:

Those acting on behalf of the University have a general duty to conduct themselves in a manner that will maintain and strengthen the public's trust and confidence in the integrity of the University and take no actions incompatible with their obligations to the University.

With regard to professional conduct, those acting on behalf of the University should practice:

- Integrity by maintaining an ongoing dedication to honesty and responsibility;
- Trustworthiness by acting in a reliable and dependable manner;
- Evenhandedness by treating others with impartiality;
- Respect by treating others with civility and decency;
- Stewardship by exercising custodial responsibility for University property and resources;
- Compliance by following State and Federal laws and regulations and University policies related to their duties and responsibilities;
- Confidentiality by protecting the integrity and security of university information such as student records, employee files, patient records, and contract negotiation documents. https://www.ethics.uillinois.edu/compliance/university_code_of_conduct.

My responsibility, then, is to decide both (1) whether Professor Kesan's alleged conduct satisfied either the campus' definition of sexual harassment; and (2) whether Professor Kesan's alleged conduct violated the University's standards of professional conduct. In addressing both of these questions, I reviewed the evidence utilizing a preponderance of the evidence standard. A

preponderance of the evidence requires that the evidence supporting a finding is more convincing than the evidence to the contrary.

IV. Analysis and Findings

As noted, campus policy recognizes two different forms of sexual harassment, namely quid pro quo harassment and hostile environment harassment. To establish quid pro quo harassment, the evidence must show that Professor Kesan used his power or authority as a professor to explicitly or implicitly condition work or educational opportunities, participation, assessment, or status for female colleagues and students on their submission to his conduct. While one former faculty member maintained that she was advised once by a student that Professor Kesan propositions female students for sex in exchange for employment opportunities within the intellectual property law field, none of the three complainants or the witnesses offered any evidence to support this contention. Because that claim was not substantiated and given the lack of other evidence, I cannot find that Professor Kesan engaged in quid pro quo harassment. I, therefore, will focus my analysis on whether Professor Kesan's purported conduct created a hostile work or academic environment within the meaning of the applicable policies.

For a hostile environment claim to be viable, the evidence must establish that the affected colleague or student was subjected to verbal or physical conduct because of her sex or gender, the conduct was unwelcome, and the conduct was sufficiently severe or pervasive to alter the conditions of her environment and thereby create an objectively abusive work or academic environment. A consistent theme among the claims raised by the three complainants, as well as in the testimony conveyed by the other witnesses, is that Professor Kesan makes female colleagues and students uncomfortable by engaging them in conversations and other conduct, both within and outside the College, that revolve around sexual comments, references, and innuendos (such as references to sexual relationships, sexual fantasies, adultery, and masturbation), comments about or looking at their bodies, physical touching (including hugs and touching of an individual's thigh, knee, arm, or buttocks), or invitations to his apartment in Chicago. Notwithstanding, Professor Kesan's denials and his attempts to explain his conduct, I find that each of the three complainants were able to offer credible evidence establishing that they had been subjected to unwelcome verbal or physical conduct by Professor Kesan that was based upon their sex or gender.

The more difficult question is whether the conduct experienced by each of the complainants was sufficiently severe or pervasive as to objectively alter their respective environments. A claim of hostile work environment harassment cannot be supported through allegations of casual, isolated, or sporadic incidents. While it is possible for a single action to give rise to a hostile work environment if that action is extraordinarily severe, generally a complainant must show that she was subjected to repeated, if not persistent acts of harassment. Absent extraordinary severity, a complainant must show a series of incidents that were sufficiently continuous and concerted to have altered the conditions of her working or academic environment. A complainant must show that she has been subjected to continued explicit propositions or sexual epithets or persistent offensive touchings.

Although Professor Kesan's interactions with each of the complainants were certainly

inappropriate, his interactions with Complainant Nos. 1 and 3 can best be described, given their duration, as isolated or sporadic incidents that were not severe enough to objectively alter the work or academic environment of either individual. While Professor Kesan's attempts to interact with Complainant No. 2 through repeated invitations to join him for drinks or to use his apartment in Chicago and through his multiple attempts to hug her over an extended period, these actions too, despite their longer duration, are insufficient by themselves to have objectively altered her work environment. As such, I must conclude that the statements and conduct attributed to Professor Kesan, while clearly objectionable and having no place in a workplace or academic setting, do not by themselves establish the severe or pervasive conduct needed to sustain a hostile work environment claim under the relevant policy.

This conclusion is not altered by the fact that there are multiple complainants or that numerous witnesses have claimed to have experienced similar encounters with Professor Kesan. To meet the demanding standards imposed under the law for establishing hostile environment harassment, an individual complainant must be able to show that the alleged harassment she experienced altered the conditions of her environment. The complainant must be able to show the offending behavior affected her directly; she cannot rely on rumor, hearsay, or the purported experiences of others to support her individual claim.

While the conduct attributed to Professor Kesan does not meet the high standards needed to state a hostile environment harassment claim for individual complainants under University policy, the collective evidence gathered during the investigation revealed a pattern and practice by Professor Kesan of engaging female students and junior female colleagues in a manner that he knew or should have known would make them feel uncomfortable and was highly inappropriate for a workplace or academic setting. Through this conduct, Professor Kesan certainly violated the spirit of the University's nondiscrimination policy, as well as its Code of Conduct.

The University's Code of Conduct requires employees and other representatives of the University to conduct themselves in a manner that will maintain and strengthen the public's trust and confidence in the integrity of the University and take no actions incompatible with their obligations to the University. In fulfilling that obligation, employees are expected to treat others with civility and decency. Engaging female students and colleagues in unwelcome conduct that is replete with sexual references, connotations, and innuendos and unwanted touching can be deemed neither civil nor decent. Such conduct also deviates dramatically from the professional standards and responsibilities expected of professors as reflected within the policy statements and guidance issued by the American Association of University Professors (AAUP).³

V. Conclusion

Even though Professor Kesan may not have engaged in conduct with respect to any one individual that rose to the level of actionable harassment under the campus' *Sexual Misconduct Policy*, he has taken advantage of his status as a professor to create an uncomfortable work or academic environment for a number of female colleagues and students by injecting unwarranted and

³ See the AAUP's [Statement on Professional Ethics](#).


unwelcome references to sex, as well as unwanted invitations, touching, and ogling, into his interactions with them. Because such conduct is inconsistent with the standards expected of College professors as articulated by the University's Code of Conduct and reiterated by the AAUP in its Statement on Professional Ethics, I recommend that the following actions be implemented in an effort to bring this conduct to an end and to restore civility and decency in the work and academic environment:

- Conduct in-person training for all College faculty and staff on reporting sexual harassment and other forms of sexual misconduct;
- Incorporate written information on how to report incidents of sexual harassment and other forms of sexual misconduct into the orientation process for new College faculty and staff;
- Incorporate written information on how to report incidents of sexual harassment and other forms of sexual misconduct into the orientation process for incoming College students;
- Send an annual communication to the entire College community affirming the College's commitment to maintaining an environment free from discrimination and harassment and its commitment to respond to all reports of discrimination or harassment.
- Post updated reporting resources and information throughout the College;
- Require Professor Kesan to undergo sexual harassment training and professional coaching;
- Permanently place a copy of this report and all related documents in Professor Kesan's department and campus personnel files so that they may be considered in assessing future employment actions relating to him, such as opportunities for promotion, administrative positions, endowed chair or professor positions, awards, recognitions, or other employment related matters; and
- Review the matter with Academic Human Resources so as to determine what employment action may be taken against Professor Kesan under the applicable policies and procedures for the University of Illinois at Urbana-Champaign and the University of Illinois System.

This report represents ODEA's final and complete investigation of this matter. Pursuant to the campus' *Policies and Procedures for Addressing Discrimination and Harassment at the University of Illinois at Urbana-Champaign*, the Dean of the College of Law shall submit a response to this report and its recommendations within twenty-eight (28) calendar days of receiving it. Thereafter, either party will have fourteen (14) calendar days to appeal ODEA's and the Dean's decisions.

This report is deemed to be private and confidential. It is not to be shared or circulated to others except as necessary for implementing recommendations.

Respectfully submitted,



Kaamilyah Abdullah-Span, EdM, J.D.
Senior Associate Director

EXHIBIT A



To:

Hi!!

Yeah, Kesan is a total creepy douche-bag. I was THIS close to telling him to [REDACTED] but I think things are manageable over email. Despite the gropey thing, I did feel like I got a glimpse into how you must have been feeling about [REDACTED] UGH! The research thing should definitely be over by the end of the summer. Whew.

On [REDACTED] wrote:

I can't believe Kesan was ACTUALLY sleazy?!? That's awful! I would say that I know how you feel, but fortunately [REDACTED] has never touched me. Ugh. How long is the research thing going to last?

On [REDACTED] wrote:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On [REDACTED]

[REDACTED]

Is Kesan finally gone?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

UNIVERSITY OF ILLINOIS
AT URBANA - CHAMPAIGN

College of Law

202D Law Building, MC-594
504 East Pennsylvania Avenue
Champaign, IL 61820



Vikram David Amar

Dean
Iwan Foundation Professor of Law

October 20, 2017

Kaamilyah Abdullah-Span
Senior Associate Director
The Office of Diversity, Equity, and Access
1004 South Fourth Street, Suite 310
Champaign, IL 61820

Dear Kaamilyah –

We are in receipt of and appreciate the opportunity to respond to the Investigative Report prepared by your office concerning allegations levied against Professor of Law Jay Kesan and dated September 18, 2017. We are thankful for the hard work you and your Office of Diversity, Equity and Access (ODEA) colleagues put into this Report and have, on our end, carefully reviewed the allegations underlying the Report as well as the Report's factual determinations and recommendations.

We accept the Report's findings of fact and join the Report's conclusion that Professor Kesan's conduct, though it did not violate the University's *Sexual Misconduct Policy*, nevertheless violated the University *Code of Conduct*. While we appreciate the potential difference between a violation of the University's *Sexual Misconduct Policy* and a violation of the University's *Code of Conduct*, we at the College of Law take the latter very seriously, especially in the context of conduct that makes "the working and teaching environment uncomfortable" for female colleagues and students. (Report at p. 2.) The University of Illinois is committed to fostering an educational environment that is free from even the perception of intimidation or harassment, and in my capacity as Dean as the College of Law, I fully expect and insist that faculty will adhere to these standards.

Regarding the specific recommendations on Page 13 of the Report, the College of Law plans to take the steps discussed below.

As to the first recommendation of "in-person training for all College faculty and staff on reporting sexual harassment and other forms of sexual misconduct," we plan to review carefully the training we currently provide to faculty, staff (and students as well, even though they are not mentioned in this recommendation in the Report), and take any appropriate measures – including possibly in-person training – that we feel are needed to ensure complete understanding of reporting rights and procedures.

As to the second and third recommendations that we “[i]ncorporate written information on how to report incidents of sexual harassment” into the orientation process, we plan to implement these recommendations in full by providing such written information for new faculty, staff and students.

As to the fourth recommendation, we plan to implement it in full by “send[ing] an annual communication to the entire College community affirming the College’s commitment to maintaining an environment free from discrimination and harassment and its commitment to respond to all reports of discrimination or harassment.”

As to the fifth recommendation, we plan to implement it in full by posting “updated reporting resources and information throughout the College.”

As to the sixth recommendation, we plan to implement it by “requir[ing] Professor Kesan to undergo [in-person] sexual harassment training” by appropriate ODEA staff members who were in no way involved with investigating him or preparing the Report.

As to the seventh recommendation that we “[p]ermanently place a copy of [the] Report and all related documents in Professor Kesan’s department and campus personnel files so that they may be considered in assessing future employment actions relating to him,” we have been advised by campus counsel that the normal practice here at UIUC is for only ODEA to permanently maintain a physical copy of reports like the one issued in this matter, and we believe that following the normal practice in this case is advisable. Professor Kesan’s department and campus personnel files will, however, contain a memorialization of the discussion we plan to have with him on this matter after we file this response, and that memorialization will allow future College of Law deans to know (and learn details of) the relevant information concerning this matter and its resolution.

As to the eighth recommendation that we “[r]eview this matter with Academic Human Resources so as to determine [appropriate] employment action . . . against Professor Kesan,” we have undertaken the recommended review, and plan to take the following course of action, in addition to requiring Professor Kesan to undergo in-person training as described above:

1. We will not revisit the determination we made in the spring of 2017 that Professor Kesan would not participate in this past spring’s salary program. I told Professor Kesan at that time that his failure to participate was on account of this matter, and now that the Report has been issued, I do not plan to retroactively allow him to participate (as I would have had the Report come out differently).
2. No appointment of Professor Kesan to any endowed Professorship or Chair in the College of Law or the University can take effect prior to August of 2019. Because of the pendency of this investigation, over the last two years we have already excluded Professor Kesan from consideration for any of the College’s recent named chairs or professorships, including the six named chairs or professorships that have taken effect (or will take effect) at the College during the 2016-2017 and 2017-2018 academic years. Assuming no additional acts of similar misconduct by Professor Kesan come to light –

and we note here that the most recent incidents discussed in the Report occurred prior to August 2015 -- Professor Kesan would again be eligible to be considered for named chairs and professorships that take effect in August 2019 or later.

Let me conclude where I began: the College of Law (and, we believe, Professor Kesan himself) takes this Report and its conclusions very seriously. The College will not tolerate misconduct of this kind, and Professor Kesan is now on notice that if there are future violations of this type on his part, of either the *Code of Conduct* or the *Sexual Misconduct Policy*, then the employment consequences are likely to be more severe, including, potentially, the loss of tenure or employment. Given what Professor Kesan has said to us after having seen the Report, we have reason to expect that no such future violations will occur, and that Professor Kesan himself and the College of Law environment will both have benefitted significantly as a result of this Report and process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Vikram David Amar', with a long horizontal flourish extending to the right.

Vikram David Amar

Dean

Iwan Foundation Professor of Law