



## COLLEGE OF LAW

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Champaign, IL 61820

**Vikram David Amar**

Dean

Iwan Foundation Professor of Law

November 8, 2018

Dear Members of the College of Law Community:

As we hope you know, the College has been working energetically to address concerns arising from Professor Jay Kesan's past sexual misconduct and its continuing effects. Moving forward, we want to be as transparent as possible with students, faculty, and staff. Last week we told you all about many measures we have implemented in the short term to ensure that students who do not want to interact with Professor Kesan can exercise that choice, without forgoing access to educational opportunities.

In the spirit of ongoing transparency, I, along with Associate Dean Johnson and the College's Executive Committee, write to share with you several recent important developments that focus on the College's intermediate-term efforts on these issues.

First, after extensive discussions, Professor Kesan and I have agreed that it would be in the best interests of the institution for him to voluntarily pursue a one-year, unpaid leave of absence, from January 1, 2019 through December 31, 2019. During this one-year leave, Professor Kesan will receive no salary from the University and will have no professorial teaching or service activities. Although the Office of the Provost must approve such leave, the College of Law administration, with the support of the Executive Committee, will strongly recommend that the Provost implement this course of action. This unpaid leave will benefit the law school community even as it also affords Professor Kesan an opportunity to reflect deeply on his past misconduct, the harm that it has caused, and what is needed to ensure it does not ever recur going forward in any situation in which he finds himself.

Second, and related, Professor Kesan has authorized us to share with you that he has already begun receiving, and will continue to receive, professional counseling which we hope will equip him to better understand his past actions and avoid misconduct of the type in which he has engaged.

Our acknowledgment that Professor Kesan needs to focus on personal reflection and

growth and will likely benefit from counseling should not, of course, be understood to imply that we feel he lacked moral responsibility for his misconduct. To the contrary, our agreement with Professor Kesan on the propriety of an unpaid leave is rooted in our understanding that he accepts full responsibility for his past words and deeds and that he appreciates how deeply his conduct has injured particular individuals as well as the College of Law more generally. This unpaid leave, along with the other measures described below, constitute a tangible expression of contrition on his part. We hope that this expression, together with his absence from the community for a year, will begin to help the community heal from the suffering and anxiety caused by his past misconduct. (Professor Kesan has also asked that we distribute an apology letter that he has written, and it is appended hereto.)

Third, Professor Kesan has agreed that after his one-year unpaid leave of absence he will be bound to follow various protocols designed to protect and reassure the College's students (and also those in other units on campus) and that relate to specific logistics concerning student interaction.

Fourth, Professor Kesan has voluntarily agreed to waive confidentiality rights he might otherwise have with respect to information surrounding the misconduct described in the ODEA investigation report. In particular, when he returns from his unpaid leave of absence, and for five years thereafter, he will not seek to prevent the College from advising students who enroll in his courses of the results of the ODEA investigation. This information will be communicated to students in the form of a short summary of the ODEA's findings and conclusions. Naturally, since information about the ODEA report is currently available through media outlets, the information won't cease to be available in some form to students even after this five-year period, whether or not the College continues to think it necessary to affirmatively advise all of Professor Kesan's students.

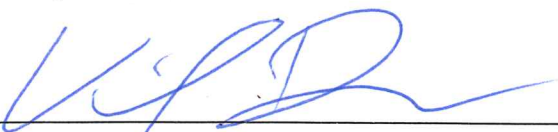
In the same vein, Professor Kesan has also decided to waive confidentiality objections he might otherwise have to the University's disclosure - in response to a recent FOIA request - of a 2002 letter from his personnel file. This letter, from then-Dean Heidi Hurd to Professor Kesan, was prepared in response to an episode - mentioned in the ODEA report - in which a student told Dean Hurd she was uncomfortable with some of Professor Kesan's words and conduct. Professor Kesan presented to Dean Hurd a different version of what had transpired. The student chose not to file a complaint under the University's sexual harassment policy, and as a result Dean Hurd could not initiate or conduct any investigative process or determine the precise facts. But Dean Hurd nevertheless decided that "for the protection of both" parties it made sense for Professor Kesan and the student not to have any interaction, and she also mentioned a "series of behaviors" Professor Kesan would be well-advised to steer clear of to avoid

“even the perception of impropriety in the minds of those who might now view your conduct through the lens of rumor.” The episode was, as noted above, discussed in the ODEA report – and was in fact shared with ODEA by Professor Kesan himself during the investigation. (The occupants of the College of Law Deans’ office in place at the time the Kesan investigation was initiated in spring of 2015 had also shared the substance of the episode with ODEA and offered to provide Dean Hurd’s memo.) But even though the episode was already described in the ODEA report, Dean Hurd’s letter serves as yet another helpful reminder that we need to create a culture in which people who experience harm can feel comfortable being named complainants. Without named complainants willing to participate in a rigorous and full process, in most instances it will be nearly impossible to impose appropriate corrective measures.

That point brings me from the intermediate to the longer term. The College of Law, and various of its faculty members, are deeply immersed in the university-wide effort to revisit, among other things, the substantive standards and processes used in sexual misconduct matters, and the extent to which confidentiality of results should or should not be maintained. We expect the spring semester will see a great deal of work on these questions, and the law school remains committed to playing a leadership role in this effort.

We are aware that the measures we’ve described above are not a panacea. We must dedicate ourselves to working with all faculty, staff, and students to ensure that sexual misconduct does not go unreported or unaddressed. We likewise must be devoted to working with the University as a whole to improve the way sexual misconduct across campus is dealt with. As the College’s faculty (all of us on this letter included) have already said (but it bears repeating), we can and must do better, and are deeply sorry for the harm people have suffered because we are not yet where we should be.

Sincerely,



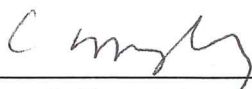
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Professor Vikram Amar, Dean



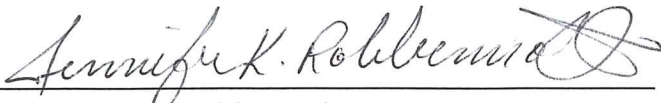
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Professor Eric Johnson, Senior Associate Dean for Academic Affairs



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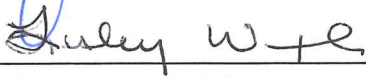
Professor Colleen Murphy, Executive Committee Member



Professor Jen Robbennolt, Executive Committee Member



Professor Jamelle Sharpe, Executive Committee Member



Professor Lesley Wexler, Executive Committee Member

## Statement of Jay P. Kesan Regarding the ODEA Investigation

Recent events and the widespread public reaction to my words and deeds have caused me to think more deeply about my faults and understand more clearly the harm I have caused many people. It was wrong for me to engage in the conduct described, correctly, by the complainants and other witnesses, as set forth in the ODEA report. It was wrong for me not to consider the harms that such conduct can create and how it can undermine peoples' welfare and ability to flourish in the workplace. And it was wrong for me to engage in similar conduct with other people, who may not have felt comfortable coming forth to the ODEA. For all of these wrongs, and to all of the current and former students and faculty who have been impacted by my actions, I am deeply sorry.

I understand that the University of Illinois is reexamining its policies and procedures for dealing with sexual harassment in light of these events. But future policy changes can never address the past harms I caused. Many students and members of the community have ongoing concerns for their current well-being, which they may feel powerless to address. The law school is trying to address those concerns, but it is limited in what it can do.

I have therefore decided to do some things voluntarily that might help with the healing process—in whatever small ways that I can.

As I say I am sorry, I realize that words will never be enough to show that my remorse is real or that I am committed to changing as a person. The truth is that for many years, I did not fully understand, as deeply as I am beginning to now, just how harmful the effects of my conduct were on other people.

Greater understanding has prompted a sincere and good faith desire in me to make amends that go beyond mere words. After much personal reflection and soul searching, I have decided to take the following voluntary actions, among others:

1. I will take a one year, unpaid leave of absence beginning at the end of this semester, for the calendar year 2019.
2. In consultation with the College of Law, and procedures it suggests, I will make a summary of the ODEA's findings available for 5 years to any students who may take a course of mine or work with me in the future.
3. I have and will remain enrolled in a program of personal counseling for a period of time that my therapist deems appropriate and will provide documentation of this to the College of Law.
4. As I learn and reflect more, I will look for ways to productively contribute to the #MeToo movement.

I know that this is but a beginning. Repairing relationships is difficult work, and there are never any guarantees. I recognize that the people I have harmed may never forgive me or be open to seeing the positive growth that I fully intend to engage in now and in the future. But I have to start somewhere. This is the best way that I currently know about how to start the difficult journey of trying to rebuild relations of trust with an institution and community that I truly love and have called my home for over 20 years.

A handwritten signature in blue ink, appearing to be 'Jay M' followed by a stylized flourish.