

Investigation Report For University of California Office of the President Matter

Prepared by Mary L. Topliff, Esq. Dated October 24, 2014



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I. Overview of Investigation

I was retained by the University of California Office of the President (UCOP) or
April 15, 2014 to conduct a fact-finding investigation regarding allegations raised by
that her direct manager, Vice Chancellor Graham Fleming, engaged
in sexually harassing conduct towards her during various occasions prior to her
termination in 2012. For ease of reference, will be referred to
throughout this report as

A. Interviews and Information-Gathering

I conducted interviews of the following individuals, whose job titles listed may not be official. Interviews were conducted in person, except where noted. For ease of reference, the report will identify individuals generally by their last names.

Name	Title	Interview Date
Current Vice Chancellor Office Employees (in alphabetical order)		1
1. Mary Barnum	Chief of Staff	7/14/14
2.		6/25/14
3. Graham Fleming	Vice Chancellor for Research	8/22/14
4. Robert Price	Associate Vice Chancellor for Research	7/31/14
5. Patrick Schlesinger	Assistant Vice Chancellor	9/24/14 (telephonic)
Former Vice Chancellor Office, RES Employees (in alphabetical order)	Former Title	
6.	Control States	6/24/14, 7/9/14
7. Lisa Bolivar	HR Director (Vice Chancellor's Office)	6/23/14, 6/27/14
8.		4/24/14, 8/19/14 (telephonic)
9		6/25/14
Those Handling/Overseeing Prior Investigations (in alphabetical order)	2.4	



10. Debra Harrington	Labor Relations Director	7/14/14, 8/19/14
11. Denise Oldham	Title IX Officer	7/23/14
12. Vicki Oppenheim	Employee Relations Consultant	7/9/14, 7/17/14
13. Linda Williams	Associate Chancellor and LDO for UCB	7/25/14, 8/20/14
Other		
14. Nancy Feinstein	Consultant	9/30/14 (telephonic)
15.		7/25/14

employees or consultants) declined to be interviewed in this investigation.

initially agreed to be interviewed but apparently changed his mind shortly before his scheduled interview date.

Concurrently with this investigation, Judith Rosenberg, Principal Investigator for the Office of Ethics, Compliance and Audit Services for the Office of the President, conducted a fact-finding investigation regarding a complaint raised by against Fleming. To make the process more efficient, Rosenberg and I jointly interviewed most of the individuals. I also reviewed Rosenberg's notes from her interviews of on December 16, 2013 and of on March 19-20, 2014.

Several delays occurred during this investigation. Voluminous documents were made available for review at the University of California Berkeley (UCB) campus on June 10, 2014, copies of which were provided the following week. Additional files and documents were identified in witness interviews, which were reviewed by counsel due to attorney-client privilege concerns, thus causing some delays in completing interviews. A set of documents was provided by UCB in August 2014. Fleming's counsel also provided a set of documents shortly before and at his interview. I reviewed an additional set of voluminous documents at Fleming's counsel's office in late August 2014.

B. University Policy

This report covers my fact-finding investigation regarding the allegations raised by a swell as the issues and concerns that were raised during the course of this investigation and whether there is a preponderance of evidence that any violations



occurred, as set forth in the University of California Policy on Sexual Harassment (dated May 2008). This policy was in place during the pertinent time periods at issue.

The policy defines sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment, . . . unreasonably interferes with . . . work or creates an intimidating, hostile or offensive working . . . environment." The policy provides that consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

Section B.I. of the policy, entitled "Conflicts of Interest Arising out of Consensual Relationships," defines a consensual relationship as one in which two individuals are involved by mutual consent in a romantic, physically intimate, and/or sexual relationship. It provides that such a relationship "that might be appropriate in other circumstances is inappropriate and poses a potential conflict of interest when one individual has responsibility for supervising" the employment of the other. It further states that it "is always the responsibility of the individual in authority to maintain appropriate professional boundaries" and that such individuals are "expected to be aware of their professional responsibilities and avoid apparent or actual conflict[s] of interest, favoritism, or bias."

No legal opinions are expressed regarding whether any legal violations occurred or not. The following report provides my findings.

II. Background Information

A. Complaints Regarding Actions Arising From Her Consensual Relationship with Her Prompted Several Investigations in 2011

On or around July 26, 2011, various University employees, including Fleming, then-Chancellor Birgenau, Sheryl Vacca (Senior Vice President & Chief Compliance & Audit Officer), Lisa Bolivar (HR Director for the Vice Chancellor of Research), Vicki Oppenheim (Employee Relations Consultant supporting RES) and possibly others were sent a typed anonymous letter. The letter alleged that had been having a sexual relationship with her the sexual possibly of time forcing others to cover for and that there were rumors that he had received several pay increases.

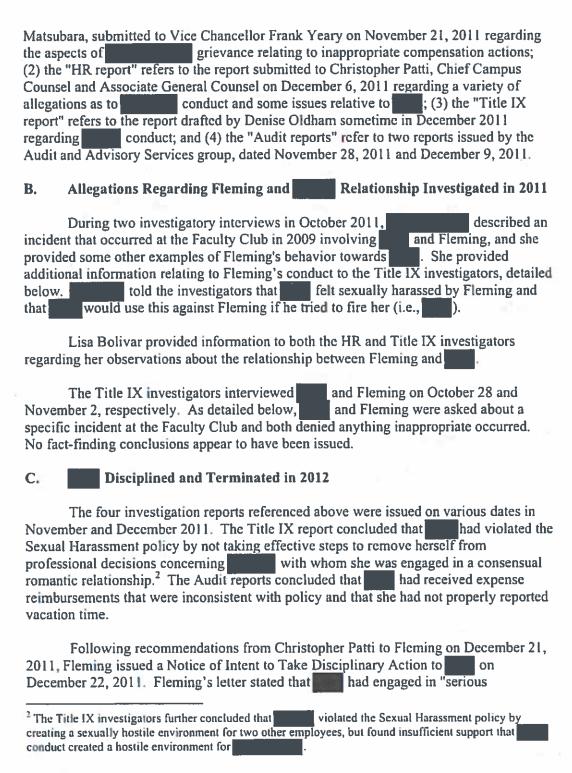
At this time, was department. was employed as in RES.



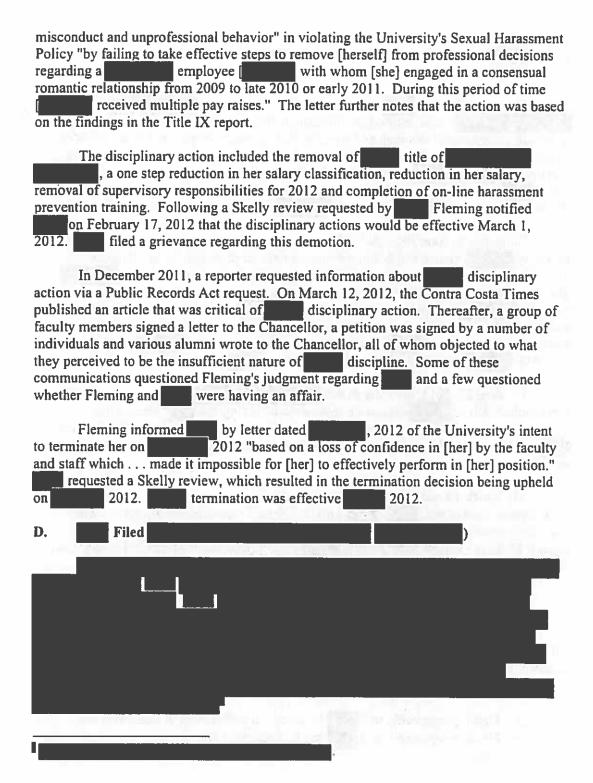
Denise Oldham (Title IX Officer) had been informed previously about similar allegations. In October 2010, an anonymous complaint was raised on the Ethics Point hotline, and an anonymous letter, dated April 28, 2011, was sent to Vacca and Oldham, containing more detailed allegations regarding relationship with improprieties within RES. Later,) disclosed in one of the investigation interviews that she was the anonymous reporter in October 2010. On August 5, 2011, Oldham, Debra Harrington (Labor Relations Director) and Bolivar met with Fleming to begin the process of addressing the allegations. On August 8, 2011, Oldham and Fleming met with whereupon she admitted that she had previously engaged in a consensual sexual relationship with her Oldham sent a letter to dated August 11, 2011, which Oldham referred to as the Early Resolution letter, to resolve the potential conflict of interest by changing direct reporting relationship. The letter further provided that Fleming would work with HR to explore concerns of favoritism regarding pay increases and the was to ensure that she had complied with the harassment prevention training requirement and was to coordinate a "compliance and workplace climate-related" educational program for RES. On August 17, 2011, submitted to Fleming a lengthy, detailed complaint letter with various attachments. This was later submitted as a PPSM 70 grievance on September 12, 2011. She complained that affair created a conflict of interest, that received inappropriate pay increases and stipends to detriment, and that affair created a hostile work environment for Subsequently, other complaints were raised by employees in RES alleging that (and others) had engaged in various instances of potential policy violations (ranging from hostile work environment to improper overtime reporting to drug use). Linda Williams, as the Locally Designated Official (LDO) for UCB, organized the investigations into these various complaints. The Campus Climate and Compliance Office (referred to in this report as Title IX) investigated whether had violated the Sexual Harassment policy. The Labor and Employee Relations Department investigated PPSM 70 grievance (i.e., those aspects that were not investigated by the Title IX investigators) and the RES "climate" issues. The Audit Department investigated various allegations relating to improper expense reimbursements, time reporting, and time off reporting. The investigation reports that were prepared are referenced in the instant report as follows: (1) the "Rittling report" refers to the report drafted by Peter Rittling and Odessa There are varying accounts of the approximate dates of the consensual relationship between

It appears that it extended from around September 2009 until late 2010 or early 2011.











E. Allegations Against Fleming in 2013 Relayed to Office of the President

On April 30, 2013, provided deposition testimony She testified that Fleming had repeatedly sexually harassed her, including inappropriate touching and hugging, telling her he loved her, kissing the back of her neck on one occasion, and grabbing her behind and breast on one occasion. She testified that previously had raised the issue of Fleming harassing which denied at the time because she did not want to put anyone else through what she had gone through. She testified that allegations were all true in this regard.
Sometime in June 2013, Judith Rosenberg was assigned to investigate a complaint raised by that he had been retaliated against for participating in a Title IX investigation (relating to the Title IX investigation referred to in this report). attorney, Hunter Pyle, sent a letter to Rosenberg on December 6, 2013, summarizing the bases for complaint as a precursor to interview by Rosenberg (that had apparently been difficult to schedule). Pyle's letter included references to Fleming having sexually harassed During Rosenberg's interview of on December 16, 2013, provided additional details about allegations against Fleming.
On June 27, 2013, the University's legal counsel notified Christopher Patti of deposition testimony, including that alleged that Fleming had sexually harassed her. Patti notified Rosenberg on February 28, 2014 that testified in her deposition that Fleming harassed her and that she recanted her prior denial.
On March 19 and 20, 2014, Judith Rosenberg and Irene Levintov (Principal Investigator) interviewed provided details regarding her allegations that Fleming sexually harassed her, as well as information regarding complaint against Fleming. Unless noted herein, descriptions in her March 2014 interviews and in my interviews were consistent.
F. Fleming Notified of Allegations (May 2014)
John Lohse (Director of Investigations) notified Fleming by letter dated May 13, 2014 that this investigation had been initiated regarding allegations that Fleming sexually harassed her over a period of years, beginning in 2008 through her termination. Lohse identified the following allegations:

Fleming repeatedly toldFleming repeatedly told

body.

he loved her and wanted to sleep with her.

she had beautiful breasts and commented on her

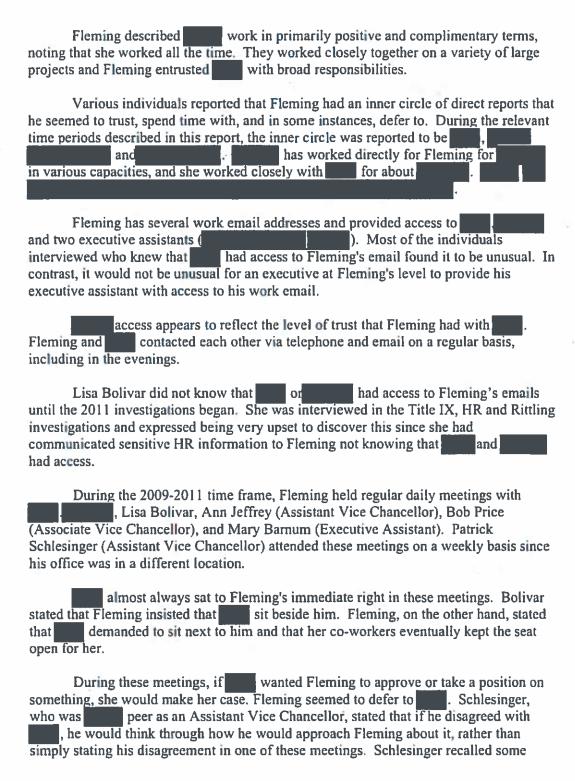


Research in April 2009.

	On one occasion, Fleming kissed on the back of the neck while she was seated at her desk.
	At the Faculty Club, Fleming told to turn around and he touched breast.
	 On several occasions when Fleming hugged , he had an erection. When Fleming and traveled for work, he asked if he could come to her hotel room or went to the hotel room and asked him to leave. During a trip to South Dakota, Fleming arranged for adjoining rooms and went into room where he rubbed her feet and had an erection while he hugged her while lying on the bed.
	 Fleming described his sexual encounter with a student in graphic detail. Fleming informed that he kissed who works in Fleming's office.
	 Fleming frequently called and emailed her after office hours and told he he loved her.
G.	Scope of this Investigation Report
	The questions investigated are:
	Did Graham Fleming engage in conduct or behaviors directed towards or about that more likely than not violated the University's sexual harassment policy?
	Did Graham Fleming more likely than not create an actual or potential conflict of st arising from his relationship with in violation of the University's sexual ment policy?
III.	Factual Findings
Α.	Reporting and Work Relationship with Fleming
promo	reported to Fleming in various capacities from July 2001 until her nation in 2012. began her employment, received a series of priors, and was appointed by then-Vice rellor for Research Beth Burnside. Fleming was appointed Vice Chancellor for

Based on my interviews, employees both within and outside Fleming's department had the impression that was considered a star performer who had worked her way up through the ranks at UCB. She was also viewed as having close ties with Fleming.







⁴ Fleming also hugged

and

specific instances in which he disagreed with and, after he explained his position to Fleming, Fleming agreed with him. Price observed that the VC office ran well under Burnside and when Fleming was with him. appointed, he brought and had sharp elbows, threw her weight around, and used her relationship with Fleming to tremendous effect, causing resentment from Bolivar and Jeffrey. He said would call Fleming at night to lobby him to agree with her. Bolivar and Schlesinger observed that had Fleming's ear and could persuade and influence him in many areas. Schlesinger stated that it was obvious that and Fleming had worked together for many years and they sometimes shared inside jokes about certain faculty. Schlesinger also recalled that could be pushy and that Bolivar and Jeffrey were not her fans. Description of Gradual Change in Fleming's Behavior B. described Fleming's behavior towards her as gradually changing. She recalled that she gave him a consoling hug when one of his family members passed away and he gradually became "more touchy," hugged her more frequently, and generally became more familiar and informal around her. She recalled it began around 2004 when she started working more closely with Fleming. She stated that his behavior towards her was worse when they were traveling together. stated that she became adept at "bobbing and weaving" to avoid physical contact with Fleming. C. Fleming's Expressions of Personal Friendship and/or Fondness Towards Fleming and acknowledged that they hugged each other on numerous occasions.4 Of the individuals interviewed who witnessed them hugging, they stated that did not appear uncomfortable nor did she seem to try to physically distance herself from Fleming as a way of avoiding his contact. In his interview, Fleming stated that he attended a sexual harassment prevention training course in 2006 and learned that hugs were acceptable in the workplace, so long as they were welcomed by the other person. He thereafter asked if his hugs were welcome. They both said yes, so he assumed that when he hugged , that his hugs were welcome. Fleming further noted that initiated some hugs with him.

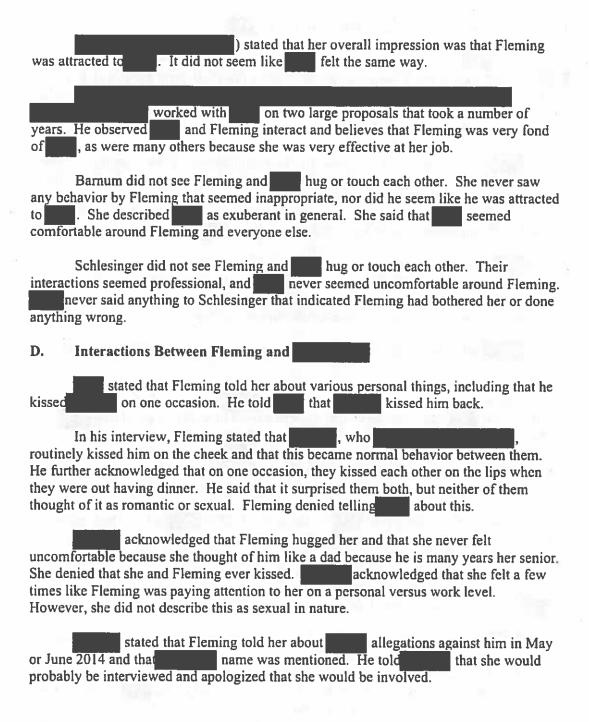
neither of whom reported feeling uncomfortable.



Fleming stated that kissed him on the cheek while wishing him a happy birthday on one occasion in December 2006, and on another occasion, she did so in front of her husband when they dropped Fleming off at his home following a business trip (described in detail in Section III. H.). He acknowledged kissing occasion. Fleming recalled that literally cried on his shoulder during the pendency of the various investigations regarding her conduct. He stated that on August 8, 2011, after Denise Oldham left his office when initially admitted her affair with was very emotional. The two of them sat in his office, and she held his hand until she calmed down. provided emails she exchanged with Fleming.⁵ (See Exhibit 1). On December 4, 2011, he wrote, "I love you very much," in one email to explained that he casually used the word "love" to or about as a way of expressing as a person and employee. He did not mean it in a romantic way. He denied saying that he was in love with . He denied that ever said that she loved him in a romantic way. Various emails from Fleming to included the closing salutation, "Hugs, G." Fleming explained that he routinely used this expression with other employees with whom he was friendly, including Alexander Pines (who Fleming noted is a heterosexual and others. Fleming provided an example of an male professor), email exchange with Professor Pines, indicating that they both closed their emails in this stated in her interview that Fleming and used this type of informality recalled that Fleming. and sometimes ended emails with each other by writing "love" and sometimes "smoothes." . Fleming cared about According to observed that it seemed like Fleming was attracted seemed to care more for and stated that Fleming. and lioked with each other and sometimes the content seemed sexually inappropriate. Neither nor recalled any specific examples, although stated that the comments were not about each other but innuendo about others. stated that Fleming was very fond of and of . She said that Fleming was attracted to in a "friend crush" sort of way. acknowledged as very likeable, casual. that she also felt this way towards . She described informal, easy to talk to, and one of her best friends and colleagues. She did not observe being flirtatious towards Fleming or anyone else.

⁵ These emails were provided to Fleming's counsel. Some of the emails were shown to Fleming in his interview. He did not deny that he wrote any of these emails.

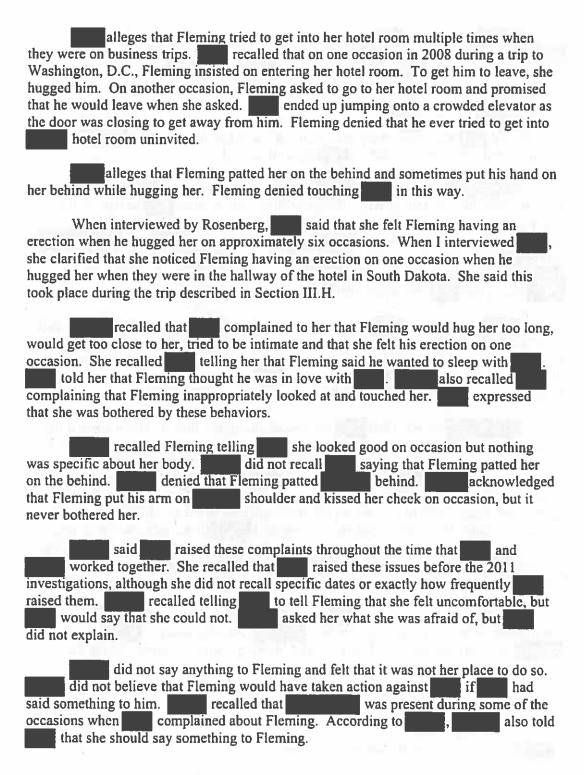




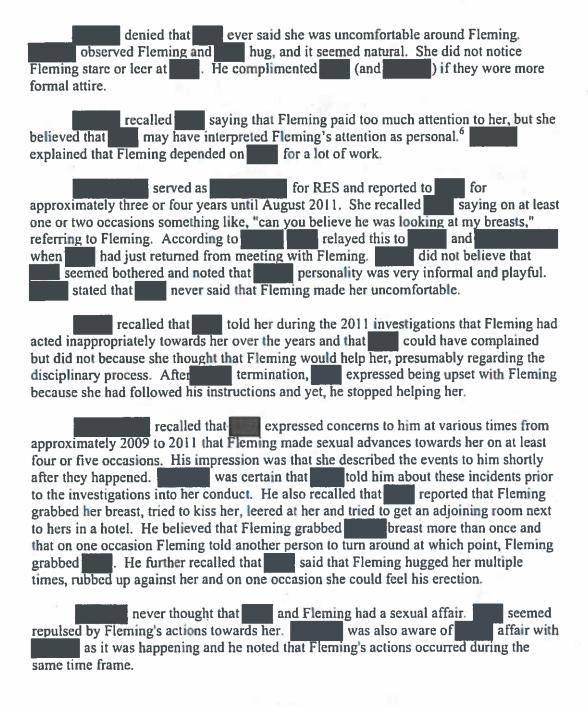


E. Allegations of Fleming's Sexual Interest in and Fleming denied that they had ever engaged in a sexual affair. acknowledged that Fleming did not say or imply that if she went along with him, she would receive favored treatment or vice versa. In this investigation, concern that University employees and others may perceive that her accomplishments were due to Fleming's feelings about her. alleges that during a business trip to South Dakota in 2009, Fleming told her that he loved her physically and intellectually, and that he wanted to sleep with her. She told him that this would not happen and that his fantasy about her would be better than reality. She further recalled that at some prior date, Fleming told her that he was in love with her. Fleming denied that he said anything like this to alleges that Fleming complimented her breasts on various occasions. During the aforementioned 2009 business trip, she recalled that he told her she had the most beautiful breasts. She stated that she began wearing a sweater when she met with him to prevent him from looking at and commenting on her body. allegation regarding Fleming grabbing her breasts is detailed in Section Ш.І. Fleming denied staring at or commenting on breasts or body. Fleming did not notice that wore sweaters when she was around him. When asked how dressed, he said that she often wore low-cut shirts and showed cleavage which, on occasion, seemed unprofessional. He recalled telling that her attire was inappropriate when she was to meet with the Chancellor on one occasion, and he told her that she was showing too much cleavage for some meetings in Washington, D.C. In an email exchange with on December 4, 2011. relayed to Fleming that she had lost a lot of weight. (See Exhibit 1). Fleming replied that she should not lose too much weight, stating "[y]ou are a great weight now - I don't want to have nothing to hang on to (sic)!" In his interview, Fleming stated that this was trivial and nothing sexual was intended. He explained that he was merely trying to be encouraging because she was worried about losing too much weight. alleges that Fleming tried to kiss her on the mouth. She recalled a specific incident in which she was working with Fleming at his home and as she was leaving, he tried to kiss her even though his wife was home at the time. said she turned away so that he could not kiss her. Fleming denied that he ever tried to kiss on the mouth and denied that he tried to kiss her at his home.



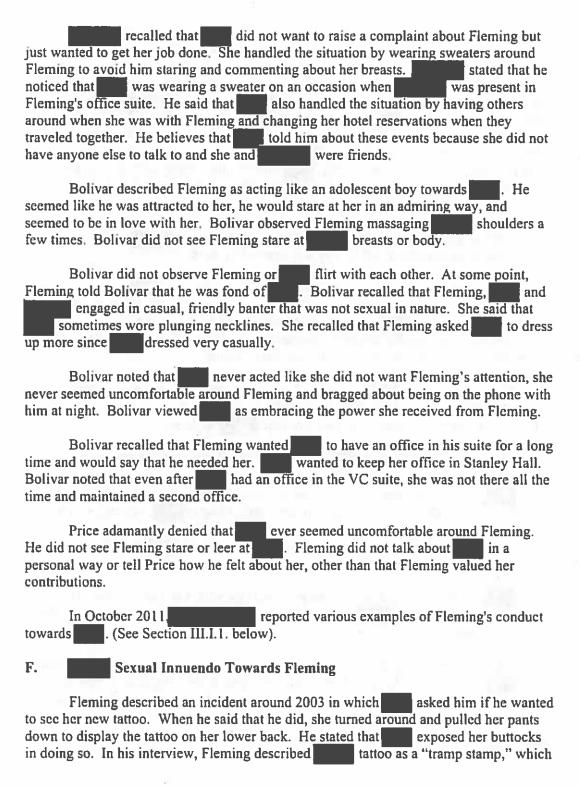






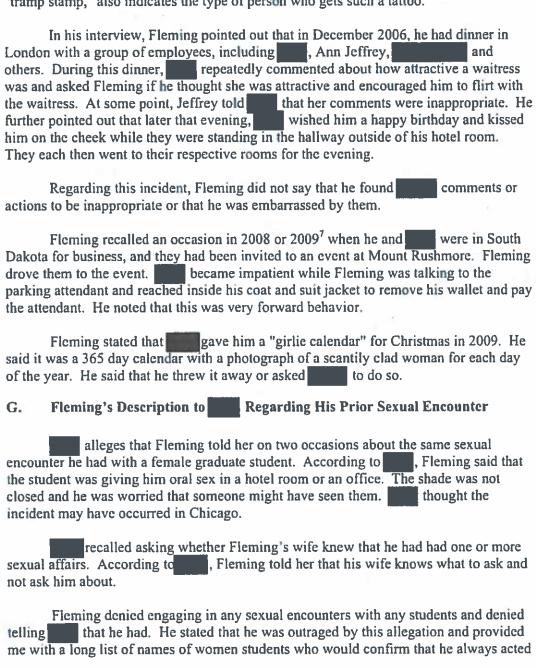
was not clear regarding what "personal" attention meant.







refers to the location of the tattoo on the lower back. Fleming stated that the name, "tramp stamp," also indicates the type of person who gets such a tattoo.

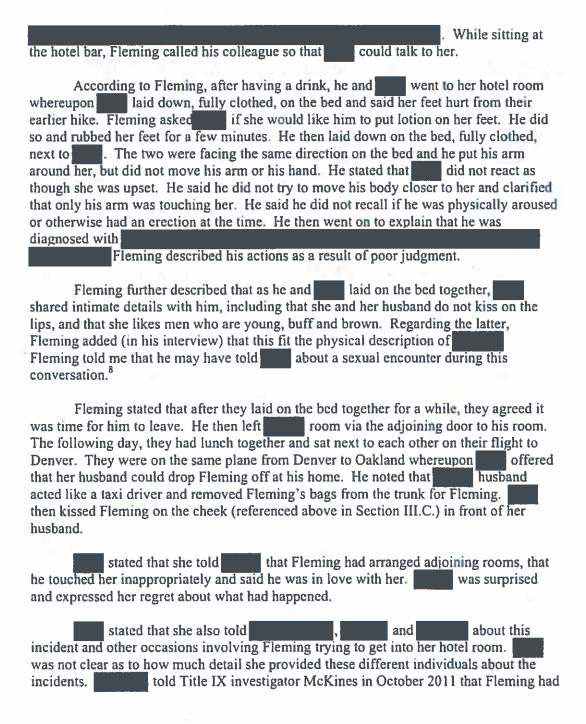


recalled that this trip occurred in 2010 or 2011.



appropriately. Two of these names were also on Fleming's "List of Persons with Relevant Information" provided at his interview. One individual, sent an email to Fleming on June 5, 2014 in reply to an email from Fleming (which was redacted), in which she stated that she was angry about complaint against Fleming, that was desperate to re-write her own mistakes, and that Fleming was a wonderful mentor.
recalled that she heard warn Fleming that he should be careful around female students and that his behavior would catch up to him someday. denied having any knowledge that Fleming ever acted inappropriately with or towards any female students. She further denied warning Fleming about his behavior.
stated that she does not know of anyone who has been uncomfortable around Fleming, including students and employees. Some students have told her how lucky she is to work with Fleming. denied that Fleming ever told her about any sexual affairs or encounters and denied hearing any rumors to this effect.
H. Fleming's Physical Contact with in Hotel Room in 2009 and Related Intimate Discussion
alleges that in 2009, she and Fleming traveled to South Dakota for a large project in which about 50 people would be attending. She recalled that Fleming told her where he was staying and she assumed that everyone would be at the same hotel. When she arrived at the hotel, the parking lot was empty. Yet, when she checked in, she then realized that her room was next door to Fleming's room and the two rooms had an adjoining door.
stated that on the second night, she and Fleming had drinks at the hotel bar and that Fleming had a lot to drink (but she did not). He then made various sexual comments (described above in Section III.E.) that he wanted to sleep with her and that she had the most beautiful breasts. These comments culminated in Fleming telling that if she would let him rub her feet and cuddle, then he would leave her alone. She acknowledged that she went along with this so that he would do so. stated that when Fleming hugged her in the hallway of the hotel, she felt his erection.
Fleming initially described this as the "foot lotion incident" in his interview. He recalled that he and travelled separately to South Dakota and discovered after the first night that they had adjoining rooms in the hotel. He said that he has never made his own hotel reservation and was surprised.
Fleming described in detail the project they were working on in South Dakota and the events of the day in question which involved a trip to an underground facility. He recalled that



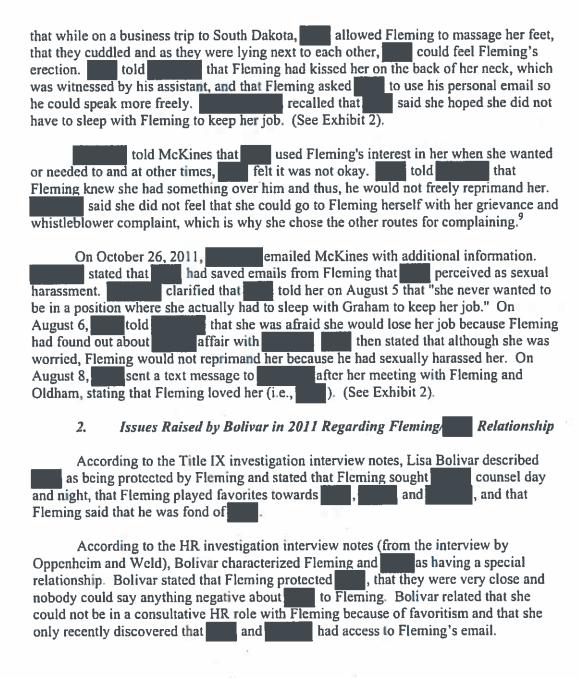


⁸ He stated that such encounter occurred sometime before 1978.



given a foot rub and that the two had cuddled while on a business trip. (See Section III.I.).
stated that shortly after the trip, told her that Fleming had gone to her hotel room, put his arm around her and may have tried to kiss her. recalled that told her that Fleming gave her a foot rub. told that she told Fleming to go back to his room. seemed frustrated when describing this incident, but she was not outwardly emotional. As noted above in Section III.E., also also recalled telling her that Fleming had touched her inappropriately, among other things.
I. The Faculty Club Incident and Other Information Reported by in 2011 Regarding Fleming's Conduct
1. Issues Raised by in 2011 Regarding Fleming's Conduct
On October 11, 2011, Vicki Oppenheim and Jessica Weld interviewed as part of the HR investigation. When asked if had anything else to share, said that felt sexually harassed by Fleming and would use it if he tried to fire. She then described an incident that occurred at the Faculty Club in July 2009 in which Fleming told to turn around so he could molest told afterwards that when she turned around, Fleming grabbed breast. Further stated that had told that Fleming and had cuddled and held hands on another occasion. Oppenheim recalled that seemed upset as she described these things.
Oppenheim told me that reported that Fleming knew that had a boyfriend and that he expressed being mildly tolerant of it by asking if she was taking off to see her boyfriend. Oppenheim noted that she and others in HR wondered what Fleming's relationship was with given her high salary and apparent status as Fleming's favorite who could do no wrong. She stated that there was some concern amongst the HR group that Fleming would protect and any she heard later that Fleming had resisted terminating to the state of the state
After it was determined that the allegations should be investigated by the Title IX group, Carmen McKines interviewed on October 24. It related the Faculty Club incident described above, adding that had thanked her for going with her that day. It told McKines that she felt guilty because she was at the Faculty Club as a buffer for but could not do anything. It recalled that told her that Fleming had apologized the following day.
According to McKines' interview notes, said that she had told more than once that this was not okay, presumably referencing Fleming's behavior. provided McKines with other examples that she heard from the provided more than once that this was not okay, presumably referencing Fleming's behavior.





⁹ Since did submit her grievance to Fleming, it appears that she may have been referencing an earlier anonymous complaint that she reported.



3. Investigation in 2011 Regarding Faculty Club Incident and Related Issues

On October 28, 2011, Oldham and McKines interviewed According to Oldham's notes, stated that she had a vague recollection of having drinks at the Faculty Club with and Fleming and that Fleming hugged her when she left. She did not recall any particular comment from Fleming and did not recall him telling to turn around. She said that Fleming hugged her a lot but that it was not a big deal and was not with sexual intent. However, sometimes she felt uncomfortable and once talked to Fleming about it. said it was possible that she could have joked that she hoped she never had to sleep with her boss to keep her job
According to Oldham's interview notes, she asked why would report this. replied that was out to get her and perhaps had joked about her close relationship with Fleming. Oldham asked again if she had ever had unwelcome sexual contact with Fleming, which denied. Oldham asked her if she would know how to handle it if it happened, and replied that she was well aware of the sexual harassment policy.
Oldham did not recall asking about the specific examples that had provided. When asked why not, Oldham stated that she wanted to ask open-ended questions about whether actions by Fleming were consensual. Oldham explained that had previously described being close friends with Fleming and gave the general impression that she had no romantic interest in him and had not received any pressure from him (although nothing specific was said by in this regard).
On November 2, 2011, Oldham and McKines interviewed Fleming. Prior to the interview, Oldham or McKines prepared questions for the interview that consisted of asking Fleming if he made the comment at the Faculty Club about molesting, and whether he asked if she was going to be with her boyfriend (i.e., According to Oldham's notes and my interview of Oldham, the interview of Fleming was limited to these two questions. Regarding the former, Fleming said that a long time ago, he had drinks at the Faculty Club with and and that he hugged and made a stupid joke. He did not clearly recall what was said, but he guessed he could have made the comment. He noted that he and had hugged each other in front of their spouses and that he had a completely clear conscience about his conduct towards and his colleagues.
In my interview of Oldham, she recalled that she told Fleming about description of the allegations regarding the Faculty Club and told him that the source was for the fleming said he almost never spoke to her. He said he was shocked by the allegations and launched into an attack on following the fleming about of the source was followed by the allegations and launched into an attack on following the fleming about of the flemin



that it seemed to her that Fleming had talked to about the subject matter of the interview beforehand. She acknowledged that she did not ask Fleming about any of the specific examples that had provided. and Fleming's denials seemed believable. She Oldham recalled that both noted that Fleming was difficult to read, but she had no reason not to believe him. She further stated that at the time, and had motives to hurt each other. Title IX and HR Investigation Reports (2011) 4. Shortly after the interviews, Oldham typed a summary and spoke to campus counsel and Linda Williams. Oldham's summary was initially part of the draft Title IX investigation report prepared sometime in November 2011. Linda Williams reviewed the draft and made some edits and comments, but did not recommend that the section regarding Fleming and be deleted. According to Oldham, after she included this in her draft and showed it to Linda Williams and Chris Patti, she decided to remove it from the report because it was a separate investigation into events that allegedly happened to whereas the Title IX report related to grievance. Oldham thereafter maintained a file with the above-referenced interview notes, documents and the summary. The HR investigation team 10 conducted numerous interviews that culminated in the HR report. Bolivar had provided information to them about a "special relationship" between Fleming and and and her impression that Fleming showed favoritism. had informed Oppenheim and Weld of the allegations regarding Fleming's behavior towards. Several drafts of the HR investigation report described this information provided by Bolivar and . However, the final version of this HR Report, dated December 6, 2011, omits this section. Neither Harrington nor Oppenheim identified the author of the drafts or the final version. 11 Neither of them recalled or could say why the section was deleted. I am unaware of any fact-finding conclusions that were reached regarding the allegations raised. It does not appear that anyone communicated the who had raised the allegations. According to Fleming, after his results to November 2011 interview, he did not hear anything further about the allegations from any University officials.

¹⁰ The interviewers were Vicki Oppenheim, Jessica Weld, Aurora Rezapour and Odessa Matsubara. Oppenheim is the only current UC employee.

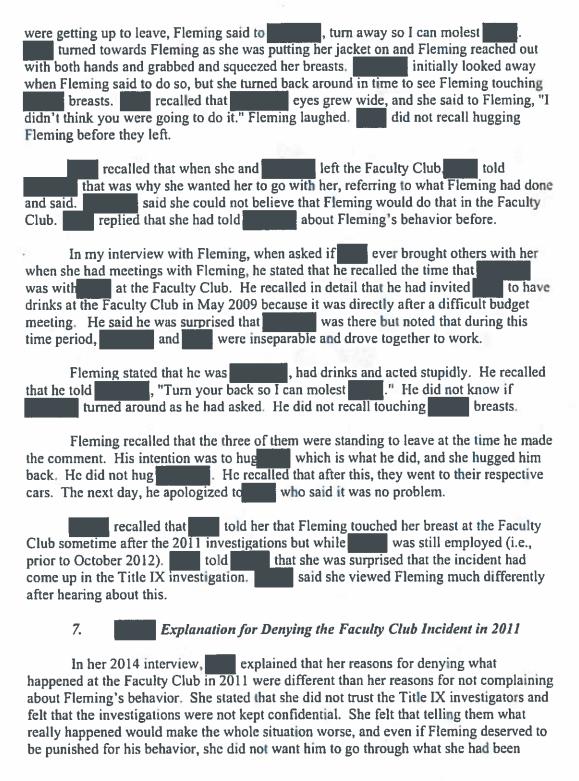
¹¹ Oppenheim believes that Rittling, Odessa Matsubara or both were the authors (even though Rittling had not conducted any of the interviews and Matsubara had conducted only one).



5. Fleming's and Recollection of Their 2011 Interviews Regarding the Faculty Club Incident and Related Issues

3
In my interview of the content of th
told me that shortly after the interview, she shared the questions and her answers with Fleming. Fleming asked her what she had told replied that she had told everything because she had been her best friend. When Fleming asked her how she could trust reminded him that he had trusted with information, such as his kiss with
recalled that Fleming told her about his interview with the investigators. believes that Fleming was provided with a written list of what she described as "accusations." Fleming related to her that he was asked about the Faculty Club incident, and he said he hugged but it was allowed and he had done so in front of their spouses. He told her that was the extent of the interview.
In my interview, Fleming stated that he was interviewed by Oldham and McKines in his office. He recalled that the Faculty Club incident was discussed, and they asked him if he knew at the time it was happening that had an affair with He did not recall that anything was characterized as allegations. He did not believe that any other issues were discussed. He said he did not know if there were any findings and never saw a summary of any interviews on this subject. Fleming recalled that him that she was asked about her relationship with Fleming and that she replied that nothing inappropriate had occurred. He did not recall if she told him this before or after he was interviewed.
6. and Fleming's Rendition in 2014 of the Faculty Club Incident
In my interview, stated that Fleming had invited her to have drinks at the Faculty Club. She asked to go with her, which she did. sat across the table from Fleming and sobserved that Fleming seemed drunk. When they







going through. She did not think that any complaint she raised would be addressed appropriately. She further explained that she was an emotional basket case at the time and could not think straight during the interview in 2011. She said that during the time frame in the fall of 2011, she thought she would leave the University and move on.

According to Oldham, did not seem afraid to say anything to her in any of Oldham's interviews. Oldham felt that she had a rapport with noting that thanked her at the end of each interview. Oldham was surprised when to one of the interviews, and recalled that said she needed to have someone take notes for her since there were so many interviews. It did not say that she felt uncomfortable with Oldham or McKines. It did tell Oldham that the Labor Relations investigator (presumably Rittling) had been mean to her.	
As noted below in Section III.M.4., Fleming did not believe that was treated fairly during the investigation process. As such, he asked to attend one of interviews by the Title IX investigators.	
recalled that told him that she had been interviewed about Fleming and that she denied what had happened. She told that she was worried she would lose her job due to her affair with She relayed that Fleming had assured her that everything would blow over and that he would look out for her. She felt that if it got back to Fleming that she had reported his behavior, he would no longer support her.	
J. Fleming Kisses Neck in Office in August 2011	
alleges that sometime in August 2011, Fleming walked into her office as she was seated facing away from him at her computer. He lifted up her hair and kissed the back of her neck. When looked up, she saw in the doorway. was one of Fleming's at the time. said that she and Fleming believed that saw the incident and that Fleming said that was too smart to say anything.	
In his interview, Fleming admitted kissing the neck. He stated that he went into her office before their usual 8:30 a.m. meeting. was not paying attention to him and continued to work on her computer with her back to him. To get her attention, he walked behind her, lifted up her hair and kissed her neck. He believes that someone in the office saw this but was not sure who.	
According to , in October or November 2011, Fleming, and had lunch and Fleming said something about having heavy hair. asked him how he knew that and Fleming told about lifting up hair to kiss her.	



corroborated hearing about this incident at lunch with Fleming and denied witnessing this event. recalled hearing about this incident from either or before the 2011 investigations. She did not believe that seemed upset about it. K. **Efforts to Avoid Fleming** According to she tried to avoid Fleming in various ways. As noted above, she said she would bob and weave to avoid close physical contact. She asked book Fleming's hotel room on a different floor from hers on the next business trip to South Dakota after the events described in Section III.H. On one of the trips, booked a room in a different hotel from Fleming and on final trip to South Dakota in 2010 or 2011, she changed her flight so she was on a different flight from Fleming. recalled trying to book different hotels from Fleming. She recalled asking where Fleming was booked and which floor his room would be on. stated that she sometimes took another person with her, including , when she was meeting with Fleming. Although stated that she simply liked being around she acknowledged that asked her to attend some meetings with Fleming that did not need to attend for her own job duties. According to _____, on the second business trip to South Dakota, was part of the group. Fleming wanted to take and to dinner, but at the last minute, was upset because she wanted said she was not feeling well. act as a buffer with Fleming. texted that was supposed to be there to help her, to which replied, "just say no" (which took to mean that should say no to Fleming). said Fleming called and texted her multiple times after dinner to get together; ignored the messages. to act as a buffer, one recalled mentioning that she wanted occasion being the South Dakota trip attended. She recalled that both Fleming did not go to dinner with them. She recalled were annoyed that was supposed to be the buffer but did not know if mentioning that was simply trying to avoid a one-on-one with the boss. tried to avoid Fleming. When was working in the stated that chemistry building, she would make sure that was going to be there. made sure that would be with her when was to be around Fleming. stated that she recalled saying that she did not want to be alone with Fleming. She also recalled that took with her when she had meetings with Fleming so that would not be alone with him or so that the meeting would not last longer than necessary. recalled mentioning that she wanted to



be on a different flight and stay in a different hotel than Fleming when they had business trips together. recalled that told him that she took others with her to meetings with Fleming and that she tried to stay in different hotels. denied telling to "just say no." She said there would be no reason for her to say this. She stated that she was surprised by allegations against Fleming because she did not believe that Fleming behaved in a harassing way towards Relates Various Incidents Contemporaneously to Others L. As noted, several individuals corroborated that told them about various examples of Fleming's behavior toward her in a contemporaneous manner, including and and, to some extent, worked closely with on two large projects and thinks very highly of her personally and professionally. also has close ties to Fleming who sits on the board of directors of institute. has been good friends with for many years. has not been in close touch with since left the University in October 2012. did not express any ill will towards Fleming. continues to report directly to Fleming. She was very work and stated that she liked personally. She is also complimentary of very supportive of Fleming. was friendly with but denied socializing with her. She was the recipient of a large pay increase approved by sometime prior to August 2011. denied that she has had recent contact with Although would not agree to be interviewed in this investigation, it is clear that she intensely disliked at the time that she provided the various examples of Fleming's behavior towards to the investigators in 2011. She told the investigators that told her about various incidents directly after they occurred.



M. Fleming's Efforts to Minimize Disciplinary Action Against

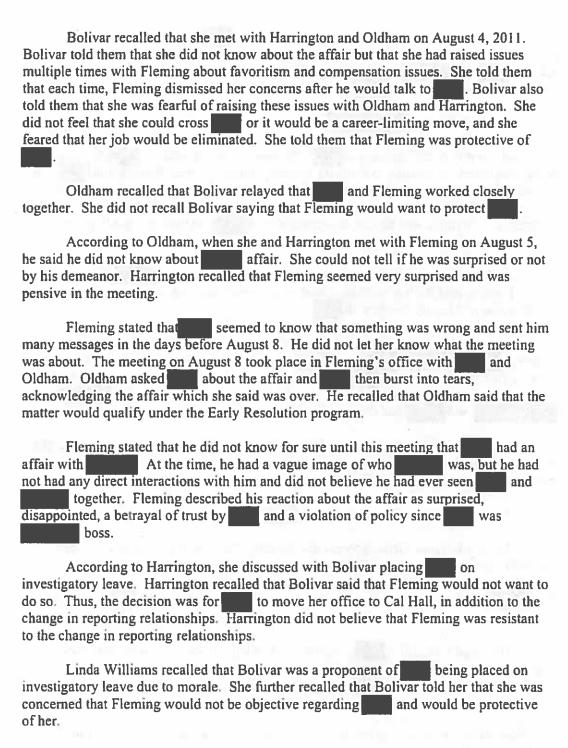
1. Fleming Threw Away Anonymous Letter and Took No Action

In his interview, Fleming stated that sometime in 2010 or at the latest, early 2011, he received a handwritten anonymous letter that was delivered to his Chemistry Department office. The letter referenced having a sexual affair with an unspecified person. Fleming believes that opened the letter and gave it to him. He did not recall talking to her about it. He did not feel there was anything to do with this information, did not report it to anyone and threw the letter away. recalled seeing an anonymous letter that was sent to Fleming regarding having an affair with Fleming told her that he would not do anything with the letter because it was anonymous. He told her not to tell anyone about it. Fleming stated that he later learned that a similar letter had been received by Linda Williams, He recalled that Linda Williams told him sometime later that she had seen such a letter and decided it had no merit. I showed Fleming the typed anonymous letter (referenced in Section II.A.) that was sent sometime in July 2011, which triggered the initial investigation. Fleming told me that he did not recall receiving or seeing this letter. 12 Price recalled reading an anonymous letter that complained of favoritism by and and referred to a sexual relationship that was having. He believes this letter was given to Linda Williams, after which he did not hear anything. filed her grievance at which point Price asked About six months later, Linda Williams what happened to the earlier complaint letter. He recalled that Linda Williams found the prior letter in her files but he was unaware of whether any action had been taken. August 2011 Events Regarding 2. Affair with When Bolivar received the anonymous letter regarding contacted Denise Oldham who advised her not to talk to anyone about it and to bring it to her. The same day, Mary Barnum showed her the same letter that had been addressed to Fleming. Bolivar either showed the letter to Fleming or told him about it. He told

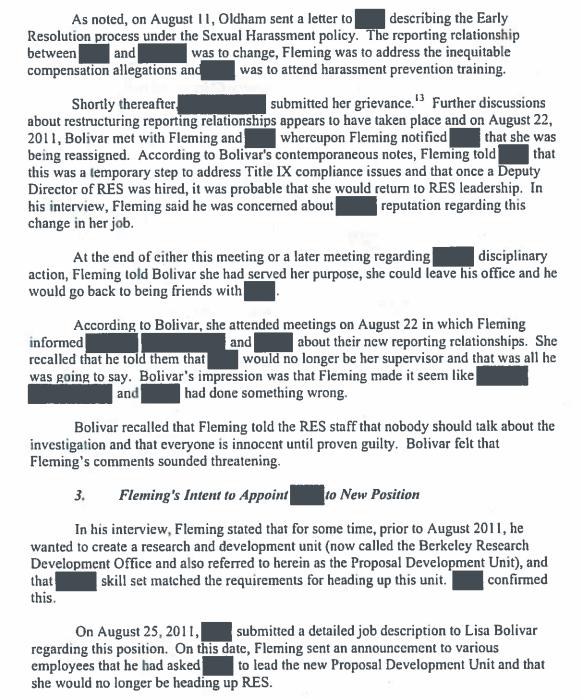
Bolivar that it was just a disgruntled person and it was of no concern to him.

¹² It appears that this letter was sent to Fleming because the postmarked envelope was part of the Title IX files.









¹³ It appears that this grievance triggered the various investigations which then superseded the Early Resolution process.



According to Bolivar, Fleming did not want employees to have the perception that was being demoted. He thus made this announcement before the job was formally created. Bolivar said that HR spent a lot of time back-tracking regarding this position because of Fleming's announcement.

Linda Williams recalled that Fleming was going to move into the position without posting it. She told Fleming that the position needed to be posted and that he had to recruit for the position, along with having a search committee.

On October 28, 2011, Fleming wrote a letter to Linda Williams with copies to Patti and the Chancellor, in which he stated that he intended to assign to start up the Proposal Development Unit unless there was a legal reason preventing him from doing so. Although Patti's reply was provided to me in this investigation by Tony McKnight at UCB, it could have been inadvertent and I will not relate the content here. Fleming replied to Patti, expressing his objections to the length of the investigations regarding and the amount of time that had been interviewed without being provided a list of allegations. Fleming also pointed out that Lisa Bolivar would be receiving an apology from one of the investigators. ¹⁴

4. Fleming's Attempt to Have Rittling Report Revised or Retracted (November 2011)

Fleming appointed Peter Rittling to conduct an investigation into some of the allegations raised by in her grievance. Rittling submitted his written report on November 21, 2011 to Frank Yeary (the step 2 reviewer). Fleming received an unredacted version of this report. It and Fleming both stated that they strongly believe that was provided with an unredacted version of this report; Fleming explained that Linda Williams informed him of this. Linda Williams denied that would have received an unredacted version of Rittling's report. She explained that Fleming did because he was direct supervisor.

Fleming stated that he provided a portion of the report to and gather information for the response. states that she received the full report from Fleming.

The report appears to reflect information the investigator obtained from who relayed that Fleming knew about the affair and asked if she wanted to take time off to be with her boyfriend. Fleming seems to have interpreted Rittling's report as stating that Fleming himself acknowledged making that remark. In addition,

¹⁴ Bolivar confirmed that she complained to Fleming that Peter Rittling implied that she was lying when he interviewed her and Fleming told her he would have him apologize.



Fleming stated that he had independent knowledge that some of the information in the report regarding compensation issues was wrong.

and Fleming met at Price's house on a weekend to finalize the response which culminated in a letter from Fleming to Chris Patti and Linda Williams, dated November 28, 2011. Fleming told me that he wrote the letter in its entirety.

Price recalled that asked him to review a draft response that she had written and that Fleming was writing a separate response. The three met at Price's house where they went over the report in detail. Price felt that they had valid points to make in response to the report. Price recalled that Fleming wanted to have the Rittling report retracted or rewritten.

Fleming said that he wrote the letter because he wanted the factual errors corrected. He expected that the report would be revised and reissued. However, after sending his letter, neither Linda Williams nor Patti replied nor was his letter ever discussed in any meetings with them.

Linda Williams recalled receiving Fleming's letter and speaking with him about the Rittling report. Fleming expressed that he was unhappy and upset about the content of the report and that he did not think that Rittling had done a good job.

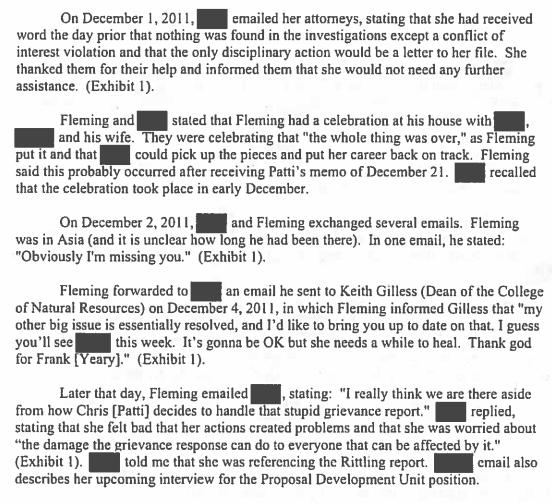
Fleming acknowledged that he expressed his opinions about the report to Frank Yeary and that he likely gave Yeary a copy of his November 28 letter. Fleming did not recall specifically what Yeary said about the report but he believed that Yeary felt it had been poorly done. Fleming denied providing any input regarding Yeary's actions as the step 2 reviewer and stated that he did not know what Yeary did.

5. Fleming and Communications Regarding the Proposed Disciplinary Action and Public Records Act Request (November-December 2011)

According to _____, on November 30, 2011, Fleming met with Patti and possibly Harrington and Linda Williams to review the various investigation reports and findings. On or around December 1, Fleming showed _____ a document written by Patti that discussed the findings relating to ______ and Lisa Bolivar.

According to ______, Fleming told ______ and her around this time that he disagreed that any action should be taken regarding _______ and Bolivar. He said that the finding regarding _______ related to a conflict of interest and that there was no finding regarding hostile environment or inappropriate compensation actions. Her discipline would consist of a letter to her file for one year and training.





Fleming replied, stating: "Yes when we are through this and you are healed a bit more, we will have to talk about those decisions. But for now your responsibility to me is yourself and your healing. Not anyone else. Bob and I will take responsibility for them (we've already discussed this). During this I insist that I am calling the shots, because I would hate to go to all this trouble for no purpose! I love you very much and I am quite determined to work with you on things we are both good at. I'm not done on the grievance report, but it will do [no] good to obsess over what ifs. Frank (no problem) and Chris need to make up their own minds about what I say in my letter. Then and only then we can make our move. Please tell me you want to work with me too. This is hard. Hugs, G." (Exhibit 1).

In his interview, Fleming reviewed this email and stated that his comment regarding "make our move" referred to waiting for the memo from Patti regarding the



disciplinary action recommendation (which was dated December 21, 2011 and is described in Section III.M.6.).

recalled that she told Harrington that she would transfer to another department but when Harrington asked Fleming, Fleming refused. told me that she informed Fleming that she would resign during the time period of the investigations but he would not let her. Fleming denies that

According to the emails provided by Fleming sent her another email on the evening of December 4 in which he stated: "I'm glad we are stuck with each other sorry for going emotional on you. Your earlier email was heart rending. Love, G." (Exhibit 1).

On December 15, 2011, Fleming forwarded to an email he received from Dan Mogulof (who handles public relations matters). Mogulof had forwarded a Public Records Act request from a reporter requesting disciplinary action information about.

Price recalled that around the time that the Public Records Act request was submitted, Mogulof recommended that should be fired right away. Price said that he and Fleming discounted Mogulof's comments in which he described what would happen if there was a newspaper article. In retrospect, Price said everything played out the way Mogulof outlined, referring to the backlash from faculty and alumni.

6. Patti's Recommendation of Discipline (December 21, 2011)

At his interview, Fleming provided a three-page memorandum from Patti to Fleming dated December 21, 2011. The memo purportedly enclosed the four investigation reports described above, namely, the Title IX report, the HR report, and the Audit reports dated November 28, 2011 and December 9, 2011.





Fleming stated that the recommendations in Patti's memo of December 21 reflected a consensus decision, presumably of Fleming and Patti. Fleming was unable to elaborate due to attorney-client privilege concerns.

Linda Williams was involved in various meetings involving the actions that

Linda Williams was involved in various meetings involving the actions that would be taken regarding; these meeting also included Fleming, Patti and Jeannine Raymond (Assistant Vice Chancellor). Williams recalled that Fleming was resistant to disciplining or terminating. She also said that Fleming's view on the appropriate discipline for was reflected in the disciplinary letter he drafted. She recalled that Fleming expressed that what will did was wrong (regarding her affair with and other actions creating a conflict of interest) but that termination was not appropriate. She was unable to elaborate further due to attorney-client privilege concerns.

7. Disciplinary Action and Appointment to New Position (February 2012)

As noted, on December 22, 2011, Fleming notified of the intent to discipline her due to her violations of the Sexual Harassment Policy. The disciplinary action was to include a reduction in her salary from \$188,531 to \$173,531 (i.e., a \$15,000 annual reduction), along with a one step reduction in her salary classification and removal of title as Assistant Vice Chancellor. When the disciplinary action was finalized after the Skelly review, pay was reduced to \$175,000 (i.e., a reduction of \$13,531 annually).

Due to attorney-client privilege matters, I was unable to ascertain whether the actual reduction in salary was the "significant" salary reduction recommended by Patti. Linda Williams told me that she did not believe that demotion and the amount of the salary reduction would go over well if others found out.

Bolivar recalled that she had various conversations with Linda Williams about the complaints involving and Bolivar stated that Linda Williams was surprised by "light" disciplinary action by Fleming.

According to Fleming, was recommended by two interview committees for the position to head the Research Development Office. One of the interview committees, appointed by Fleming, consisted of Bob Price, Keith Gilless (Dean of the College of Natural Resources), and others.



in December 2011, and was recommended by the interview committee. Fleming recalled that the first interview committee recommended sometime prior to his letter to Patti and Linda Williams, dated October 28, 2011.

On February 21, 2012, Fleming sent a letter congratulating on her new p th

position of Director of Research Development, which is the same position referenced in the disciplinary action letter.				
8	3.	Lisa Bolivar's Perceived Threat By Fleming (February 2012)		
Bolivar e	express	ing to Bolivar, when proposed various salary actions over the years, sed her concerns to Fleming. Typically, Fleming would say that he talked erything was fine.		
and some of were alw	the stip	stated that she told that some of the stipends for emed unusual. She recalled that obtained Fleming's approval for pends. Stated that after noticing that the compensation decisions proved, she stopped expressing her concerns and merely processed them.		
and paid a actions,	well s	called that Bolivar told him it was odd that had been promoted ince he was a friend of She raised this prior to the complaint about affair. He also recalled that Bolivar objected to other salary would write long responses and Bolivar's objections would then be Fleming. At the time, Price discounted Bolivar's objections and trusted		
delegate Fleming with var and that	d salar recalle ious sa she wa	g stated that sometime in 2009, HR implemented a policy or directive that y actions, including stipends, to directors, which would include that Bolivar frequently expressed to him that she was uncomfortable alary actions over the years. He said that he clashed with her all the time as "typical HR," which he explained meant that she was in favor of having y not relate to their job performance (with which he disagreed).		
F agreed.		g stated that set up performance and pay standards with which he ipends awarded seemed reasonable to him.		
Bolivar, setting a Universi salary ac Fleming	inquirabove the industriant in the industriant	ruary 27, 2012, (HR Compensation Specialist) emailed ing as to where the approval authority rested within Research for salary he salary range maximum. Bolivar recalled that around this time, the strying to protect Fleming by saying that HR approved the questionable She recalled that shortly after email, she was meeting with office and while discussing the salary actions, he pointed at Bolivar and the one who approved the salary actions. He then said HR was looking for		



a place to blame but that HR had clearly approved the actions. Bolivar told him this was not true and they were approved by the Vice Chancellor's office. Fleming said, so you're the one then. Bolivar said, no, you're the one who approved them. She recalled that Fleming looked at her then ended their meeting by saying he had another call to make.

According to Bolivar, she immediately went next door to Price's office and told him that she was not going to take the fall for the she would tell the truth if asked. Price told her not to worry and that he had told Fleming that Bolivar had records reflecting the salary actions.

Bolivar recalled that she met with Linda Williams shortly thereafter and told her what Fleming had said. Linda Williams told Bolivar not to worry.

Linda Williams recalled that Bolivar said she had raised concerns about some of the salary actions but was overridden. Bolivar said that Fleming was blaming her and she had to remind him that she had previously raised concerns about the compensation decisions.

Fleming did not recall having a conversation with Bolivar about who should be blamed for the investigation findings that some of the compensation actions were inappropriate.

Price recalled Bolivar telling him that she would not take the fall for regarding the salary actions. He did not recall Bolivar saying that Fleming was trying to blame her. However, she felt that Fleming lacked confidence in her because she had resisted the salary actions and other positions she took on HR issues. Price tried to change her perception about this and to dissuade her from complaining to the Office of the President.

Bolivar also stated that on another occasion, she told Price that would take Fleming down with her. Price recalled that Bolivar told him that Fleming would not be objective about regarding the investigations and disciplinary action.

Price was involved in discussions regarding the proposed disciplinary action of and learned that there was also a recommendation that Bolivar ought to be disciplined for approving the salary actions. He knew that she had opposed them and objected that she should be disciplined. He recalled that Fleming agreed with him. Ultimately, Bolivar received no discipline.

Bolivar stated that she stopped having work to do around January 2012 and attributed it to her advice that should be terminated for her behavior and for her poor oversight of RES. Bolivar transferred to a position with UCOP in May of 2012.



9.

She stated that she did not want to work for Fleming anymore and the position was the only one she could find.

described in detail a conversation she had with Fleming after the first newspaper article was published about her affair with and before she was terminated. She stated that Fleming told her that two other newspapers had contacted him or the University and that he was going to be speaking to them or had already done so. recalled that he told her that he disclosed mame to one of the reporters which upset.

and Fleming's Communications Following the Newspaper Article

On or about March 14, 2012, she asked him where she stood and he said that she had already been disciplined so there was nothing more to do than to wait it out. She recalled reading him some thoughts that she had written after their heated conversation the day prior. She attempted to explain why she was so upset and that it was because the publicity impacted more than her and her job but also her family and possibly and his family. She felt that the University had mishandled the investigations as well as the media. She then told Fleming that if she had told the Title IX investigators the truth about what Fleming did at the Faculty Club, the focus would be on Fleming and he would then understand how she felt. According to Fleming said that her words were heart-rending and asked that she relate them to Price, with the exception of the part about Fleming's behavior at the Faculty Club.

also stated that Fleming told her that she would not be terminated the day before he wrote the letter informing her of the University's intent to terminate (dated , 2012).

Fleming recalled that was emotional about information that was released to the press. He noted that she never accepted that she had caused any of the problems. He denied that he told her she would not be terminated and denied that she told him if she had told the truth in the Title IX investigation that he would be the focus.

10. Termination of 2012)

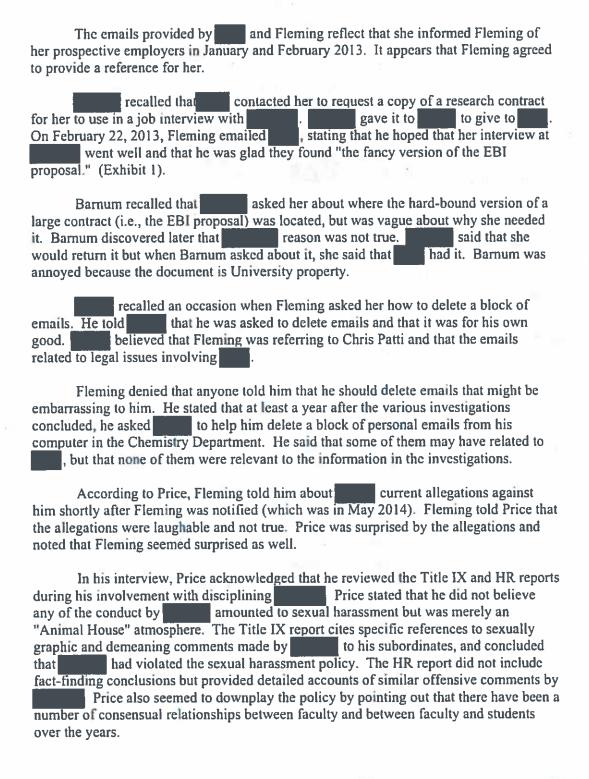
As noted, Fleming informed by letter dated , 2012 of the University's intent to terminate her "based on a loss of confidence in letter] by the faculty and staff which . . . made it impossible for [her] to effectively perform in [her] position." Fleming stated that he made the decision to terminate in consultation with Patti. He said the Chancellor was not involved in the final discussion on this subject.



Price recalled being involved in a few meetings in which the termination of was discussed. He described them as short and few. He recalled that Fleming had a meeting with the Chancellor in which the Chancellor said Fleming had to fire Price and Fleming did not want to fire her even after the onslaught of complaints from alumni and faculty.

alumni and faculty.
According to told her that Fleming had betrayed her when the decision was made to terminate did not tell that she had or would raise any complaints against Fleming. Stated that Fleming told her that terminating was the worst thing he ever had to do because she was so valuable. He expressed concern for her ability to find a job given the information in the press.
stated that she was instructed to arrange for to return her University- issued laptop. told her that she needed to remove some items that should not have been on the laptop and postponed the return. did not know what the items were that referenced.
Barnum recalled discussions in the daily meetings that Fleming held regarding failure to return the laptop. Barnum and Jeffrey felt that it should be returned and Linda Williams got involved in trying to retrieve it. Price did not want to bother about it. The laptop was never returned.
N. Interactions With and About After Termination
Bolivar recalled that when was terminated, Fleming was instructed not to talk to by legal counsel and possibly others. However, Fleming would say that they could not tell him who he could talk to or not. According to Fleming told her that he was advised not to interact with after her termination. decided on her own to minimize her contact with
On March 28, 2012, emailed Fleming to let him know that she had applied for a position with and to ask him if he would call one of the decisionmakers. Fleming agreed. In his interview, stated that he wanted to hire to work at around the time that she was terminated. He recalled that Fleming discouraged this, saying there would be political blowback. director agreed and was not hired.
On October 14, 2012, Fleming emailed to express his best wishes for her . He also wrote: "As you may know Ann [Jeffrey] and Lisa [Bolivar] are gone and we have a happy office. But I miss you." (Exhibit 1).







O. Performance Comments to External Consultant and Feedback on

Nancy Feinstein was hired sometime after May 2012 to provide management consulting services, focusing on the improvement of morale within RES. During this process, she interviewed and had various discussions and meetings with Fleming. Fleming provided a copy of Feinstein's power point presentation materials that described her assessment of RES, which refers to by name in somewhat unflattering terms.

Feinstein told me that disclosed to her that she was a whistleblower and had tried to get to stop her affair with told Feinstein that said that she did not have to worry about Fleming terminating her because information that Fleming had sexually harassed , including that a staff person saw Fleming kissing told Feinstein that she did not trust that Fleming would because he wanted to have an affair with her. do anything about all the time and would roll her eyes and say derisive stated that Fleming called things about Fleming. said that she overheard Fleming tell to go off and be with her boyfriend. This occurred when was having lunch one day with had Fleming on her cell phone speaker. and

Feinstein heard from a few other employees that they believed Fleming either wanted to or was having an affair with the state of the control of the control

According to Feinstein, she contacted Fleming and asked him directly if he had or wanted to have an affair with . She told him that she needed to know this for the work that she was doing. She recalled that Fleming said the notion was ridiculous, that was one of his trusted colleagues and that he is married. Fleming told Feinstein that he did not want to leave and he tried to prevent her from being terminated. He felt that she was brilliant and valuable for the University. On the other hand, he conveyed to Feinstein that he felt was psychotic.

Feinstein recalled that Fleming said that legal counsel told him he was not allowed to talk to and he seemed distressed by this. He told Feinstein that not talking to felt like he had betrayed her and that would not like this lack of contact.

In my interview, Feinstein made a point of describing as manipulative with a strong personality, based on her interviews of others. She did not speak directly with Feinstein also made clear to me that she did not believe allegations, which Fleming had shared with her.



Other Feedback Regarding Job Performance 1. Price stated that after he took over as Interim RES Director and after terminated, he discovered that . His comments appear to relate to various problems within RES that came to light later and Price had to fix them. left the RES department Barnum's impression is that . Barnum recalled that some faculty complained about When she was terminated, it became clear that she had not taken care of certain things. Decision Not To Complain about Fleming's Behavior Until 2013 P. stated that she decided she could manage Fleming's behavior and never seriously considered raising a complaint during her employment, in part, because she did not want him to get into trouble. She said his behavior, some of which she described as flirty, made her crazy and she hated it, but she did not deal well with confrontation. She felt that her decision not to complain about Fleming only affected her but was "destroyed," she had when her and deposition, she had become enough. By the time of her second employed and did not need Fleming as a reference. When she was asked in the deposition about the source of her stress claim, she decided to describe everything about her stress, referring to the various behaviors of Fleming. In his interview, Fleming noted that repeatedly told him that she did not because of the affair. When asked why he thought want anything to happen to was raising the harassment allegations against Fleming, he stated that it could be to allegations against Fleming more plausible. make

IV. Fact Finding Conclusions

The following findings were reached based on a review of information gathered in the investigation and an assessment of whether sufficient evidence existed to render the alleged events or circumstances at issue more likely than not to have occurred or existed. Where relevant, the investigation also examined whether sufficient evidence existed to support any contrary positions advanced by other witnesses in the investigation.



I reiterate that I am not expressing any legal opinions as to whether the elements of sexual harassment and/or hostile work environment under California or federal law are present.

A. Did Graham Fleming engage in conduct or behaviors directed towards or about that more likely than not violated the University's sexual harassment policy?

The investigation revealed that Fleming more likely than not engaged in certain conduct and behaviors towards that violated the University's sexual harassment policy. This finding is based on the following. The sub-headings are intended solely for ease of reference.

1. Reported to Fleming and Was Favored by Fleming

reports, consisting of a a to be Fleming's favorite and to have the provided that frequently convince.	of Fleming had an inner circle amongst his direct of the circle, was perceived the most sway over him. Various examples were sed Fleming to agree with her on various matters, bunted that she was Fleming's favorite.
The investigation also revealed (Fleming) and his subordinate	I an unusually close relationship between a boss In addition to the incidents described in these

Although herself held a position of significant responsibility and stature, she nonetheless directly reported to Fleming and thus, they were in a boss/subordinate work relationship.

findings, had access to Fleming's work emails that other senior staff did not know about (whereby she was able to read sensitive information that others believed only Fleming would read), and other senior staff did not feel they could be critical of

2. Some of Fleming's Behaviors Towards Indicated His Sexual Interest

The investigation revealed that some of Fleming's behaviors towards reflected his sexual interest in her. Several witnesses observed that Fleming seemed to be in love with, infatuated by and/or attracted to . I note that denied that Fleming had more than a "friend crush" on . However, I find it significant that Bolivar, who observed Fleming and together on a regular basis and who disliked both Fleming and described Fleming as behaving like an adolescent boy around . I also find it significant that who was part of Fleming's inner circle, described Fleming as being attracted to . I note that while had a long relationship with through daughter, I do not find to have any

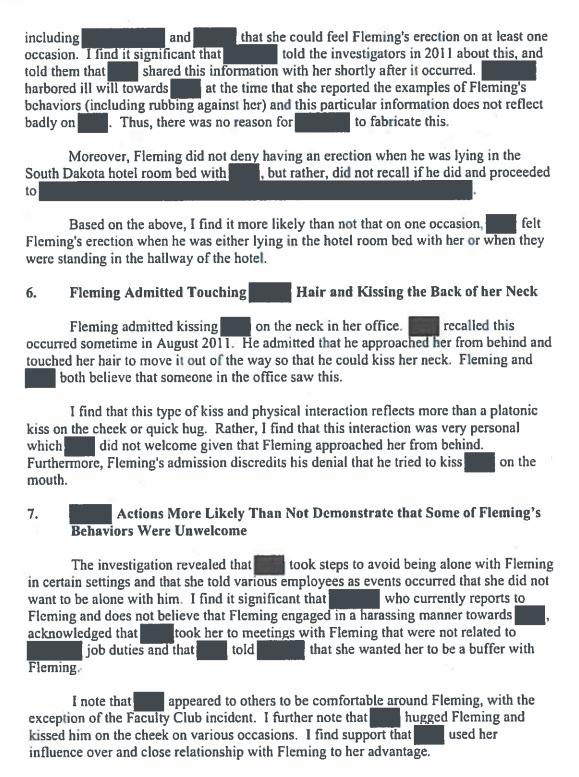


particular grudge against Fleming and she has not been in close communication with since late 2012. I find that that Fleming said he was in love with and wanted to told . Moreover complained to that Fleming made more than sleep with one sexual advance towards I note that has close professional ties to Fleming. I find the email exchange between Fleming and on December 4, 2011 significant and indicative of Fleming's personal feelings about . In this exchange, that he did not want her to lose too much weight so that he would Fleming wrote to have something to hang onto. Although this email could be viewed as an isolated comment made in jest, when taken in the context of the other emails from Fleming on this date, I find that he made a variety of comments about how much meant to him, that he loved her and wanted her to stay (presumably to continue working for him). The statement that she offered to resign or transfer in 2011 but Fleming latter supports would not let her. While it is undisputed that Fleming valued as an employee, I do not find Fleming's explanation credible that his use of the word "love" to or about reflected job performance feedback. Moreover, Fleming had to be instructed not to after her termination and he was reportedly distressed that he communicate with was not allowed to be in contact with her. Fleming Admitted Saying He Wanted to Molest , and He More Likely 3. Than Not Touched or Grabbed Breasts at the Faculty Club to turn around so he could molest Fleming admitted telling when the three of them were having drinks at the Faculty Club in approximately May 2009. I find it significant that Fleming recalled specific details of this incident, including the date. In contrast, when he was interviewed in 2011, he said he did not have a clear recollection of the incident. I find this comment, even if made in jest, to be inappropriate and sexual in nature. I further find this comment to be supportive of rendition of events that Fleming then grabbed her breasts. I find it more likely than not that Fleming grabbed breasts based on the following. Although stated that witnessed Fleming grabbing breasts, I assume that did not given that she told the investigators in 2011 that told her directly after the incident that Fleming grabbed her breast. Otherwise, descriptions of the event are very consistent. have believed that Fleming grabbed because told the investigator that she



felt guilty that she had gone with also to be a buffer with Fleming but yet, she could not do anything to help also recounted the incident to two different investigators in 2011 and never said that had fabricated the grabbing part of the incident to get back at Fleming. At the time of the incident, had no motivation to fabricate or embellish anything regarding Fleming to protect herself against future discipline. At the time that raised the issue in 2011, she intensely disliked and it was grievance that triggered the investigations into conduct. Thus, it is is unlikely that and compared notes about the incident. Moreover, told some of her co-workers that Fleming commented on and complimented her breasts.
4. Fleming Admitted Massaging Feet, Lying in Bed with Her, and Putting his Arm Around Her
Fleming admitted, and described in specific detail, an incident in 2009 wherein he offered to and did massage feet with lotion and then laid down next to her on her hotel room bed fully clothed. He admitted that he put his arm around her and the two discussed very intimate life experiences. Fleming denied that he touched in any other way and could not recall if he had an erection at the time. I note that Fleming recalled more details about this incident than did.
I note that during the incident, the door to their adjoining hotel room was open and when Fleming returned to his room, he did so through the adjoining door. I find it significant that it was Fleming's suggestion to rub feet. During this same trip, stated that Fleming told her he wanted to sleep with her.
I find that Fleming's acts reflect more than simply bad judgment as Fleming has characterized them, but rather, they are reflective of his sexual interest in
I further note that stated that she went along with Fleming giving her a foot massage because she hoped he would leave her alone afterwards. I assume that the following day kissed Fleming on the cheek in front of her husband. However, I do not find that such act directly reflects her consent to Fleming's actions in her hotel room.
I find it significant that she told and and about this incident around the time that it occurred. Moreover, supported that took steps thereafter to stay in different hotels than Fleming, to book different flights and otherwise to avoid having a hotel room near Fleming's room.
5. More Likely Than Not Felt Fleming's Erection on One Occasion
allegation that she felt Fleming's erection when he hugged her in the hallway of the South Dakota hotel is supported by her complaints to several co-workers,







Fleming offered several examples of engaging in sexual innuendo with him. I find that these incidents demonstrate comfort level with Fleming and the level of banter described by and that the "inner circle" engaged in at times. I note that Fleming did not object to comments at the dinner in 2006 nor did he say he was offended by them. I taking Fleming's wallet from inside his suit jacket indicates an unusual level of familiarity between them. I find it inappropriate and sexual in nature for to pull her pants down to show Fleming her tattoo. However, it occurred nine years before her termination and several years before the first incident identified as harassment. I find that conduct in 2003 did not indicate that she welcomed Fleming's expressions of sexual interest and the physical acts described in these findings.
I further note that commented to in August 2011 that she hoped she did not have to sleep with Fleming to keep her job. I find that this comment supports statement that she did not welcome those behaviors of Fleming that were sexual in nature.
8. Explanation for Denying Any Wrongdoing by Fleming in 2011 is Plausible
I find it significant that Oldham believed that Fleming had communicated in advance with about the subject matter of his interview in 2011. I find this supports statement that she told Fleming that she denied what happened at the Faculty Club. This further supports explanation that if she told the truth, Fleming would not support her and she would lose her job.
Fleming exercised significant control over career and had assigned her to a series of high-profile projects over the years. At the time of Oldham's interviews of and Fleming, Fleming was clearly making an effort to protect from receiving significant disciplinary action.
B. Did Graham Fleming more likely than not create an actual or potential conflict of interest arising from his relationship with University's sexual harassment policy?
To the extent that consented to any of Fleming's behaviors of a sexual or personal nature, the investigation revealed that Fleming more likely than not created a potential conflict of interest under the University's sexual harassment policy. This finding is based on the following.
Fleming and both deny having or having had a consensual sexual affair or relationship. As noted above, I find that Fleming had a personal interest in that



went beyond valuing her as a trusted direct report and that he engaged in certain conduct that was sexual in nature. Fleming provided examples of engaging in sexual innuendo with him as well as physical interactions such as hugging him and kissing him stated that she went along with Fleming when he on the cheek. Moreover. massaged her feet and laid in bed with her in her hotel room. To the extent behavior reflected that she consented and otherwise welcomed Fleming's attention and interest in her, I find the following. As of August 2011, conduct was scrutinized regarding her conflict of interest arising from her consensual relationship with During this same time frame, Fleming kissed neck, which I have found was sexual or very personal in nature. Given Fleming's high-level position at UCB, it is reasonable to assume that he should have recognized that his relationship with may be a potential conflict of interest. The investigation revealed that Fleming undertook significant efforts to prevent from being terminated or receiving significant negative repercussions as a result of the 2011 investigations. He formally objected to Rittling's investigation report and wanted it to be rewritten or retracted. 1 find that he attempted to influence Frank Yeary's decision about Rittling's conclusions as evidenced by Fleming's emails to on December 4, 2011. He conveyed his displeasure with the 2011 investigations to campus counsel and Linda Williams and informed them of his intent to appoint position of Research Development Director. I find that Fleming provided with the Rittling report and obtained her feedback. I further find that he shared with specific information about his discussions with campus counsel as to her discipline, as well as whether others would be disciplined. He disclosed to that a Public Records Act request had been made regarding her. Following counsel's recommendations for to receive a significant reduction pay by approximately \$13,000 per year. I do not find this in pay, Fleming reduced to be significant given total salary. Moreover, the "demotion" that was the position to which Fleming said he would appoint her months earlier. I find it significant that Fleming threw away an anonymous complaint he received without reporting it to anyone. I further find that Fleming and Bolivar's interaction about who approved the salary actions reflects Fleming's efforts to protect



The investigation revealed that Fleming objected to being terminated and acquiesced only after the public backlash from faculty and alumni occurred following the newspaper articles.

* * *

In the event that more specific incidents or additional specific witnesses are identified, further investigation may be warranted.

If you have any questions, please feel free to contact me.

Very truly yours,

Mary L. Topliff

Encl. (Exhibits 1-2)

EMAIL SENT TO TITLE IX OFFICER DENISE OLDHAM (TO WHOM I WAS DIRECTED) REGARDING HOW TO ADDRESS ERRORS IN TITLE IX REPORT BEFORE RELEASE – I DID NOT RECEIVE A RESPONSE TO THIS EMAIL EVEN AFTER PHONE CALL FOLLOW-UPS

From:

Date: January 3, 2012 8:38:47 AM PST

To: dwoldham@berkeley.edu

Bcc: Grileming
Subject: Re: Request

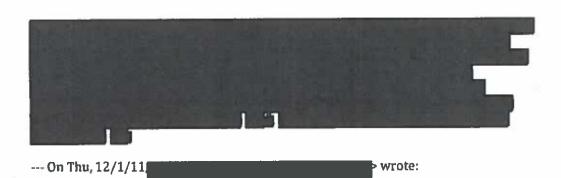
HI Denise.

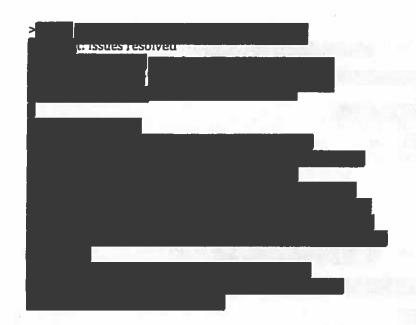
Thank you, I have one question regarding the end of the investigation. In the redacted report that I was given, there were two factual errors having to do with salary actions. I'm assuming that the information was based on information provided to you because the errors are identical to those in another report. I'm off today and I don't have the redacted report with me but the errors were 1) that was going to receive a stipend in 2009 that was not provided because she took a leave and 2) that there were 5 salary in a year. Both of these are factually incorrect. was going to increases for receive a 10% stipend in 2010 and took a leave the month it was to begin. She received instead in that month a 10% salary increase. I don't have the specifics with me on salary actions but will provide them to you tomorrow. Basically he received a stipend following the transition of all of the units beginning Sept '09. When that stipend ended, his salary was increased - the only salary increase he received from 9/1/2009 through 6/30/2011. The only other salary action was when he received the same stipend that was going to be provided to - 10% in Sept 2010 through December 2010 for the OE projects that they were participating in. In light of the public information requests, I think it important that the documentation accurately reflects the actions that were or weren't taken.

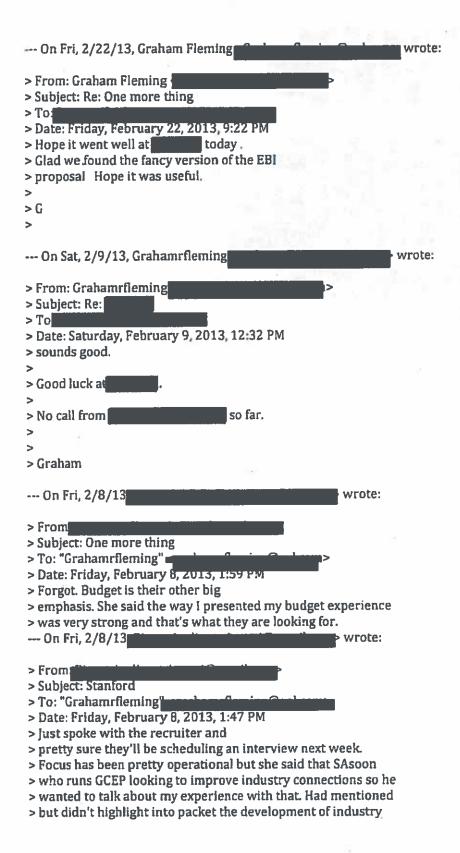
I have one other issue that I would like to have a short conversation with you about when you return before everything is formally closed.

I can provide the back up for both of the salary issues tomorrow.

Thanks







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> partnerships like synbercs membership program, ventures
> connections and activities and the incubator. So I talked to
> her about those. She asked if the people talking to Sally
> and SAsoon would emphasize that I had a successful 30 year
> and career and now looking for something new. And I told her
> yes (she saw my answer so she knows there was an issue but
> made it clear what should be emphasized)
--- On Wed, 2/6/13, Grahamrfleming
> From: Grahamrfleming
> Subject: Re: Interview with
> To:
> Date: Wednesday, February 6, 2013, 8:11 AM
> 643 5621 or 642
> 7540.
>
> g
> ----Original
> Message-----
> From
> To: Graham Fleming
> Sent: Tue, Feb 5, 2013 7:51 pm
> Subject: Re: Interview with
> Don't know where your phones ring now but they have
> 2735 number
> On Feb 5, 2013, at 6:04 PM, Graham Fleming
> wrote:
> Glad it went well. I am in Arizona until friday
> morning. I will us ti if and when they
> call.
> I will have to alert Mary to that name so a call
> doesn't get bounced.
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```
> g
>
> Sent from my iPad
> On Feb 5, 2013, at 5:55 PM
> wrote:
> The interview went well and you will probably be hearing
> from her. The focus of the position is institutional
> development - basically corporate and foundation and then
> some government grants on the side. They are in a growth
> mode and looking for someone with energy and new ideas. They
> been growing a lot the last two years and have a lot of
> growth opportunity in the foundation/corporate area. I
> think we hit it off well so we'll see.
> She asked (of course) why I left and I told her the same
> thing - that I disclosed a personal conflict of interest
> that was mitigated but unfortunately it continued to become
> more of a problem and distraction and I have moved on. Took
> this time to handle personal stuff and figure out what I
> wanted to do. Have been a longtime supporter of
             - volunteered for a number of years when I was in
> College. She did not ask me any follow up questions on why
> I left. The public aspect did not come up and I assume it
> probably wont and her questions will be around skills and
> ability. I am using and and in its is nowhere in their
> knowledge bank.
--- On Sun, 2/3/13
> From
> Subject: Re:
> To: "Grahamrfleming"
> Date: Sunday, February 3, 2013, 8:54 PM
> got confused. Don't even think I was thinking hydrogen
> had liquid nitrogen in my head.
> On Feb 3, 2013, at 7:58 PM, Grahamrfleming
> wrote:
> oh then helium for
> sure.
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> g
>
> -----Original
> Message-----
> From:
> To: Grahamrfleming
> Sent: Sun, Feb 3, 2013 5:44 pm
> Subject: Re:
> Thanks ill double check. It was for the nmr's
> On Feb 3, 2013, at 5:17 PM, Grahamrfleming
> was it hydrogen or helium use in Stanley? seems
> more likely it was helium, but I have no direct memory of
> this.
>
> g
> -----Original
> Message----
> From:
> To: Grahamrfleming
> Sent: Sun, Feb 3, 2013 3:36 pm
> Subject: Re:
> From:
> Grahamrfleming
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> Sent: Sunday,
> February 3, 2013 11:04 AM
> Subject: Re:
> nothing attached...?
> was flying back from London yesterday so
> didn't see it till now.
> g
--- On Sat, 2/2/13
> From:
> Subject:
> To: "Graham Fleming"
> Date: Saturday, February 2, 2013, 9:43 PM
> Talking
> next week would be fine. The number is the same. I'd
> like to wait until after my interview with
            which is on Tuesday since if it goes well I'm
> sure they'll be contacting you. I'm attaching the
> questions and a draft of my responses for the
> position. I'll be sending it to them tomorrow
> evening.
                                                                    wrote:
--- On Wed, 1/30/13, Graham Fleming
> From: Graham Fleming
> Subject: Re: Stanford Update
> Date: Wednesday, January 30, 2013, 9:52 PM
> I thought you were
> sending me a new email address so I was waiting for that.
> I got a message that this one had been
> hacked....?I'm in London coming back Saturday
> -are you willing to talk next week? Is it the same
> number. Graham
> Sent from my iPad
> On Jan 30, 2013, at 8:29 PM
> wrote:
> a call today from an HR recruiter at
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> helping Sally recruit for the the Precourt position.
> She is sending written questions for me to respond to.
> She said that they had not filled the position because the
> job duties had been expanded to include 40% time supporting
> their Global Climate and Energy Project. I filled in the
> blank that in the first round of apps they didn't have
> anyone that they felt qualified for the expanded duties.
> She asked if I knew anyone at Precourt and I explained
> the connections with Sally (I knew of her but had not met
> her but that you and others (like knew her well), that
> Chuck was on the
> Advisory Board and that I knew of the Precourt because of
> my involvement in the energy initiatives at
> Berkeley.
> haven't received the questions yet. I'm assuming
> after I return them the next conversation will
> happen.
--- On Sun, 10/14/12, Grahamrfleming
> From: Grahamrfleming
> Subject: Mike
> To:
> Date: Sunday, October 14, 2012, 12:39 PM
> Hi
> I don't know if you want to hear from
> me but I wanted to let you know that
> our entire office was devastated
> Please accept my best wishes and thoughts for
> a full recovery.
> As you may know Ann and Lisa are gone and we have a happy
> office.
> But I miss you.
> Graham
--- On Wed, 3/28/12
> Front
> Subject: Re: a lavor
> To: "Grahamrfleming"
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> Date: Wednesday, March 28, 2012, 12:20 PM
         has spoken with about my working
         was great and said I would be an asset and they
> would work out things if need be. I think that was the gist
> of it. said it went well with him.
>
> On Mar 28, 2012, at 12:01 PM, Grahamrfleming
> I'll call Roger.
> Graham
> ----Original
> Message----
> From:
> To: Graham Fleming
> Sent: Wed, Mar 28, 2012 11:56 am
> Subject: a favor
> The ALS has a Sr Administrator position open, I just
> applied. Would you mind calling Roger on my behalf? was
> going to touch base with him also but I thought if you
> called him it would be helpful.
> I'm attaching the resume and cover letter I
> submitted.
> Thanks
--- On Thu, 2/2/12, Grfleming
> From: Grfleming
> Subject: Re: HHMI - in agreement
> To
> Date: Thursday, February 2, 2012, 12:32 PM
> You still at symposium? Me
> going to cal hall for a couple of hours g
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> Sent from my iPhone
> On Feb 2, 2012, at 12:21 PM,
> wrote:
>>
>> BTW - in total agreement with the suggestion on moving
> HHMI completely to Jeanene Greer. The faculty have been very
> frustrated with response time and I think it was only for
> historical reasons that it was with Ann. I think it makes
> complete sense to have it all rest with Jeanene.
>>
--- On Thu, 2/2/12, Graham Fleming
> From: Graham Fleming
> Subject: Re: List
> To:■
> Date: Thursday, February 2, 2012, 5:38 PM
> Oh ok. No
> prob.G
> Sent from my iPad
> On Feb 2, 2012, at 4:50 PM
> wrote:
> By here I
> meant with the global change people.
> On Feb 2, 2012, at 4:52 PM, Graham Fleming
> wrote:
> l'm
> in cal hall 8-10. G
> Sent from my iPad
> On Feb 2, 2012, at 4:44 PM
> wrote:
> Yes it
> is!!! Just realized that ... Sigh. Im here in the
> morning. I can come to hildebrand if can when I'm
> On Feb 2, 2012, at 4:40 PM, Grfleming
> wrote:
> Tomorrow
> is Friday. Plan to be in morning only And with
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> 10-12. G
> Sent from my iPhone
> On Feb 2, 2012, at 4:24 PM,
> wrote:
  and I went through it
> and made a first pass at assignments. I was going to take it
> and reorganize it because it is a bit scattered as an
> example - IDC is on there twice.. there are some things that
> go together. On the budget, the issue is not the complexity
> because it isn't overly complex but rather getting from
> Ann an understanding of where things stand on the various
> issues like IPIRA, RES funding, etc. Some things like HSI
> Getty funding oversight should not be a big deal. Some of
> them and I agreed we should do as a team (Kaja)
> me) like Cabinet prep, etc.
> We thought we'd touch base with
> you and review what we came up with tomorrow or Friday when
> we have a minute.
      From: Graham Fleming
>
             @lbl.gov>
> Thursday, February 2, 2012 4:11 PM
> Subject: Re:
> List
> Asked Lisa to start on job
> description. It's only the first two
> bullets where the in house capability may not be there.
> ( with due deference to
                              ). This is
> separate from the workload issue where in house capability
> may not be there.G
> Sent from my iPad
> On Feb 2, 2012, at 12:18 PM
> wrote:
> I don't see any big
> worries. I thin and I can review and give you plan
> pretty easily. Anything concern
```

```
> you?
>
      From: Graham Fleming
> <grfleming@lbl.gov>
> To:
                (@Ibl.gov
> Sent:
> Thursday, February 2, 2012 12:06 PM
> Subject: Fwd:
> List
> Sent from my iPhone
> Begin forwarded message:
> From: "Ann
> Jeffrey" <ajeffrey@berkeley.edu>
> Date: February 2, 2012 11:55:52 AM PST
> To: "'Graham Fleming'" <grfleming@lbl.gov>
> Subject: List
> Graham Here's what I have for my
> list. I think that it is reasonably complete. If
> anything else comes to mind, I'll let you know. Ann
--- On Mon, 1/16/12,
                                                      wrote:
> From
> Subject: Re: BRDO budget
> To: "Grfleming"
> Date: Monday, January 16, 2012, 5:11 PM
> Made me
> think. The ssl guys were horrible too.
> On Jan 16, 2012, at 4:37 PM, Grfleming
> wrote:
> Oh boy
> those computer scientists need help presenting G in
> seat 2A
> Sent from my iPhone
> On Jan 15, 2012, at 7:40 PM
> wrote:
>:)
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> --- On Sun, 1/15/12, Grahamrfleming
> wrote:
> From: Grahamrfleming
> Subject: Re: BRDO budget
> To:
> Date: Sunday, January 15, 2012, 7:38 PM
> well I occasionally have them, too
> bad they're no always when the issue is first
> discussed.....
> g
> ----Original
> Message-----
>
> From
> To: Grahamrfleming
> Sent: Sun, Jan 15, 2012 6:21 pm
> Subject: Re: BRDO budget
> Good idea. I'll think about it and come up with
> something.
> On Jan 15, 2012, at 4:51 PM, Grahamrfleming
> wrote:
> I think this should show explicit out
> years with growth based on some sensible metrics for
> success: number of proposals submitted over $X M, for
> instance, number of external awards with IDC in Soc Sci, %
> success with and without BRDO involvement, requests for help
> with proposals, demonstrated life after death for STCs and
> ERCs. What else?
> g
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> go over to Alan Kolling, who will, of course, be in contact
> with your office. In the mean time, is there some chance you
> could give me some background---over the phone---so we can
> be prepared for whatever is coming down the pike....assuming
> there is some actual substance to this.
> Thanks,
> Dan
> ----Original Message-----
> From: Krupnick, Matt [mailto:mkrupnick@bayareanewsgroup.com]
> Sent: Tuesday, December 06, 2011 2:21 PM
> To: Claire Holmes
> Cc: atk@berkelev.edu;
> Krupnick, Matt
> Subject: Records request, Dec. 6, 2011
> Claire.
> This correspondence is a formal petition under the
> California Public Records Law, California Government Code
> §6251, and the Constitution of the State of California as
> amended by the passage of Prop 59 on Nov. 3, 2004, for
> inspection of the following public information. This is not
> an immediate request for copies. I will ask for copies of
> specific documents after inspecting them. I also ask that
> all correspondence regarding this request be sent via email
> to my address and that all communication about this request
> be conducted in writing.
> I wish to inspect the following records:
> - All notices of adverse actions (or other notices of
> discipline imposed) pertaining to
                                            since January
> 1, 2010. This request includes all underlying documentation
> of each disciplinary case. I will remind you that in
> American Federation of State etc. Employees v. Regents of
> University of California (1978) 80 Cal.App.3d 913, 146
> Cal.Rptr. 42 the First District Appellate court ruled that
> in such cases a member of the public is entitled to
> information about the complaint, the discipline, and the
> "information upon which it was based."
> I will remind you that if portions of the information I have
> requested are exempt from disclosure by express provisions
> of law, government code section 6253 (a) additionally
> requires segregation and deletion of that material in order
```

THIS WAS SENT TO ME THE EVENING THAT GRAHAM ASKED ME AND TO LEAVE THE HOLIDAY PARTY WITH HIM AND HE TOLD ME OF THE PRA REQUEST. THE DATE HE TOLD ME WAS 12/15/11

```
--- On Thu, 12/15/11, Grahamrfleming
                                                                  vrote:
> From: Grahamrfleming
> Subject: Fwd: Confidential
> Date: Thursday, December 15, 2011, 5:31 PM
> -----Original
> Message----
> From: Graham Fieming <grfleming@lbl.gov>
> To: Grahamrfleming
> Sent: Tue, Dec 6, 2011 6:23 pm
> Subject: Fwd: Confidential
   ----- Original Message -----
       Subject:
       Confidential
       Date:
       Tue, 6 Dec 2011 16:38:16 -0800
       From:
       Dan Mogulof <dmogulof@berkeley.edu>
       To:
       Graham Fleming <fleming@cchem.berkeley.edu>
    Graham,
> Claire just received the PRA request below, and it relates
> to one of your employees. As per standard practice this will
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> that the remainder of the information be released. If you
> determine that an express provision of law exists to exempt
> from disclosure all or a portion of the material I have
> requested, Government Code Section 6253(c) requires
> notification to me of the reasons for that determination not
> later than 10 days from your receipt of this request.
> Government Code section 6253(d) prohibits use of the 10-day
> period, or any portions of the Public Records Act, "to
> delay the access for purposes of inspecting public
> records." Please note that the 10-day period for
> compliance with this request begins today, Dec. 6, 2011, the
> day it was e-mailed to you.
> In addition, be advised that the constitution of the state
> of California, as amended by Prop. 59, requires that you
> take the broadest possible position to disclose these
> records when reviewing this request. It is also your
> constitutional duty to take the narrowest possible view of
> any exemptions to disclosure of these records.
> I also draw your attention to Government Code section
> 6253.1, which requires a public agency to assist the public
> in making a focused and effective request by (1) identifying
> records and information responsive to the request, (2)
> describing the information technology and physical location
> in which the records exist, and (3) providing suggestions
> for overcoming any practical basis for denying access to the
> records or information sought. I expect your full compliance
> with 6253.1 should the need arise.
> Thank you for your assistance with this routine request.
> Matt Krupnick
> Higher-education reporter
> Bay Area News Group
> - Contra Costa Times / Oakland Tribune
> 510-208-6488
> mkrupnick@bayareanewsgroup.com
> www.twitter.com/mattkrupnick
--- On Wed, 12/7/11
> Fron
> Subject: Wilton - this one will work
> Date: Wednesday, December 7, 2011, 10:42 AM
> Sorry - I keep hitting something that sends
```

> prematurely.

```
> The
> meeting with John went well. I think we got the ball
> kicked further down the field on a funding stream for long
> term support. It was a good pre-interview
> exercise.
> Hope
> Darjeeling is much more environmentally enjoyable - sounded
> horrible. We're having bad smog too - guess it
> puts the things perspective.
--- On Tue, 12/6/11, Grahamrfleming
> From: Grahamrfleming
> Subject: tomorrow
> To:
> Date: Tuesday, December 6, 2011, 10:05 PM
> knock 'em dead!
> hugs,
--- On Tue, 12/6/11
                                                            wrote:
> From
> Subject: update
> To:
> Date: Tuesday, December 6, 2011, 2:36 PM
> Hope you're enjoying your
> trip.
> Did the cover for the documentation and Bob was
> going to bring things upstairs. Had to reread the report and
> still boggles me how wrong it is. Oh well....
> Had a good visit with the Senate and NSF
 > staffers. They were engaged. Identified another issue that
 > we could add to the things to take on
 > for developing support - centers that are nearing their
 > termination of funding from their establishing agency. I
 > know of 3 - COINS, TRUST and SynBERC ail nearing end of
 > their 10 year funding cycle and trying to figure how to
 > continue support.
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> Hope all is well. Back to prepping for
> tomorrow.
--- On Sun, 12/4/11, Grfleming
> From: Grfleming
> Subject: Re: Re:
> To:
> Date: Sunday, December 4, 2011, 9:34 PM
> Oh that's good.
> I'm glad we are
> Stuck with each other sorry for going emotional on
> you. Your earlier email was heart
> rending.Love,G
> Sent from my iPhone
> On Dec 5, 2011, at 10:47 AM
> wrote:
> BTW - did you see it looks like Paul Wright will
> be our first official customer.
> --- On Sun, 12/4/11, Grahamrfleming
> From: Grahamrfleming
> Subject: Re:
> To:
> Date: Sunday, December 4, 2011, 8:44 PM
> when we are through this and you are healed a bit more, we
> will have to talk about those decisions. But for now
> your responsibility to me is yourself and your healing. Not
> anyone else. Bob and I will take responsibility for
> them ( we've already
> discussed this). During this I insist that I am
> calling the shots, because I would hate to go to all this
> trouble for no purpose!! I love you very much and i am
> quite determined to work with you on things we are both good
> at. I'm not done on the grievance report, but it
> will do good to obsess over what ifs. Frank ( no
> problem) and Chris need to make up their own minds about
> what I say in my letter. then and only then we can
> make our move.
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> Please tell me you want to work with me too. This is
> hard.
> hugs,
> g
> -----Original
> Message-----
> From
> To: Grahamrfleming
> Sent: Sun, Dec 4, 2011 8:25 pm
> Subject: Re:
> I can see Jean's look now - similar to the one she
> gave when you tried to pretend you knew what the japanese
> characters meant on her good luck charm - that was
> priceless.
>>
> I told you Tuesday but it's actually on Wednesday
> afternoon. I'll be okay - I have to be, so I will. It
> will go well. It's the one thing I'm not worried
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> about!! I've been reviewing things and prepping.
> I'll get with Tuesday afternoon. I've done a
> lot of work with developing the description and the COSED
> presentation and now with the website development so
> I've been thinking a lot about things and how to
> structure the services and the responsibilities. I'm
> going to do the budget tomorrow and go over it with Bob
> before
> meeting with John and his consultant which is Wednesday
> morning.
> Can only imagine what driving across Calcutta must
> entail and to do it more than once is crazy.
> I was worried at first about Keith too
                                                    He
> really was looking good.
> Going to try to find something to eat. Hope your talk
> goes well.
> --- On Sun, 12/4/11, Grahamrfleming
> wrote:
> From: Grahamrfleming
> Subject: Re:
> Date: Sunday, December 4, 2011, 7:31 PM
> think we are there aside from how Chris decides to handle
> that stupid grievance report. And I want you to blow
> 'em away at the interview. I told she had to
> help you. Use her. This is your boss speaking
> sternly. Your boss " who is worshiped in
> India" according to what someone told Jean
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> yesterday. She thought it was funny. Sigh.
> For reasons not entirely clear to me I have to have another
> death defying drive across Calcutta to somewhere where I am
> not speaking and then drive back here to give the talk in
> "Science City" which is about 400 yds away.
> Don't ask too many questions....that's the key.
> What time is the interview? On Tuesday? (
> it's 9 am Monday here now)
> big big
> hug,
> keep telling me stuff, especially about you.
> g
                                                                  wrote:
-- On Sun, 12/4/11, Grahamrfleming
> From: Grahamrfleming
> Subject: Fwd: College of prorogy
> Date: Sunday, December 4, 2011, 6:09 PM
> -----Original
> Message-----
> From: Grahamrfleming
> To: gilless <gilless@berkeley.edu>
> Sent: Sun, Dec 4, 2011 6:06 pm
> Subject: College of biology
> Hi Keith,
> This email is private.
> The college of biology is a pathetic power grab attempt by
> the RO1 gang. the only thing worse would be a Dean of
> science ( aka Mark R)!
> We need the real people to make sure an entrepreneurial dean
> of biology is appointed in L&S, properly financed and
> supported when the backlash comes. Otherwise we are
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> not going to get where we need to be.
> I'm in India until Dec 13. After that let's
> strategize.
> By the way i think my other big issue is essentially
> resolved, and I'd like to bring you up to date on
> that. I guess you'll see
                              this week.
> It's gonna be OK but she needs a while to heal.
> thank god for Frank.
> With great fondness,
> Graham
--- On Sun, 12/4/11, Grahamrfleming
                                                                  wrote:
> From: Grahamrfleming
> Subject: Re:
> To
> Date: Sunday, December 4, 2011, 6:08 PM
> george did well. wrote to keith from AOL. will
> forward.
> Breakfast!!!
> You are a great weight now - I don't want to have
> nothing to hang on too!
> g
> -----Original
> Message-----
> Fron
> To: Grahamrflemin
> Sent: Sun, Dec 4, 2011 6:04 pm
> Subject: Re:
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> Sucks.
> > Banyan trees are very cool. There's a cool one in
> Hawaii but nowhere near that size - can't imagine.
> Just read it. Yep, good for George. Gotta wonder why it
> was ever put in the charge. I thought the large scale
> comments were good too.
>
> --- On Sun, 12/4/11, Grahamrfleming
> wrote:
> From:
> Grahamrfleming
> Subject: Re:
> Date: Sunday, December 4, 2011, 5:47 PM
> How
> now?
> Your worrying friend,
> g
> ps went to see world's largest tree yesterday.
> Amazing banyan tree with a circumference at least a quarter
> of a mile and still expanding out. if you don't
> know about banyan trees check it out. pretty hot still
> - high 80s so after museum and Victoria memorial we were
> pretty much done for and slept for 15 hours or so.
> first talk today - Bose - there's a lot of Boses in
> Calcutta.
> Did you see Keith's emails. Oh my. Good for
> George
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> -----Original
> Message-----
> From:
> To: Graham Fleming
> Sent: Sat, Dec 3, 2011 8:26 pm
> Subject: Re: Re: Re:
> On Dec 2, 2011, at 7:21 PM, Graham Fleming
                                                                             wrote:
> Hey you,
> In Singapore airline lounge at Hong Kong airport
> why.
> Expect the trip to get wilder from now on - my Indian
> friend is crazy as is my Japanese friend - the one I was
> just with in Kyoto. Add the normal chaos of India, the fact
> that our travel plans are nuts and I'm in the mood for
> cheerful lunacy and it should all go out of control almost
> instantly. Excellent!
> Obviously I'm missing you,
> Hugs,
> G
> Sent from my iPad
> On Dec 2, 2011, at 3:19 PM
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> Wow!
> On Dec 2, 2011, at 3:10 PM, Graham Fleming Crahameflemics@aol
> Yesterday Leslie Chung
                         The result was after dinner ( 6
> courses ) on the 102nd floor of the tallest building in Hong
> Kong with the vice chancellor ( = chancellor in US ) of the
> Chinese University of Hong Kong and about 10 of their senior
> faculty and which came after a reception with two
> other wealthy people ( vintage champagne, jamon iberico,
> smoked salmon, melon etc) ( just before dinner!) Leslie took
> me to the place where Jean was having an equally fancy
> dinner with Leslie's wife and two of her friends .
> We waited until they'd finished the main course
       Actually two more deserts I almost
> didn't make it! I'm not sure this makes sense,
> but then by midnight it really didn't
> anyway!
> Crazy,
> G
> Ps very interesting insights about
> Their plans for their money, Not for email.
> Sent from my iPad
--- On Fri, 12/2/11, Graham Fleming
> From: Graham Flemin
> Subject:
> To
> Date: Friday, December 2, 2011, 5:10 F
> Yesterday Leslie Chun
                        The result was after dinner ( 6
> courses ) on the 102nd floor of the tallest building in Hong
> Kong with the vice chancellor ( = chancellor in US ) of the
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> Chinese University of Hong Kong and about 10 of their senior
> faculty and which came after a reception with two
> other wealthy people (vintage champagne, jamon iberico,
> smoked salmon, melon etc) ( just before dinner!) Leslie took
> me to the place where Jean was having an equally fancy
> dinner with Leslie's wife and two of her friends .
> We waited until they'd finished the main course
       Actually two more deserts I almost
> didn't make it! I'm not sure this makes sense,
> but then by midnight it really didn't
> anyway!
> Crazy,
> G
> Ps very interesting insights about
> Their plans for their money. Not for email.
> Sent from my iPad
--- On Sun, 11/20/11, Grfleming
> From: Grfleming
> Subject: Re: not a great day
> To=
> Date: Sunday, November 20, 2011, 11:56 AM
> Get out and do
> something. I need you in one piece. Only have 3 days next
> week then 2 the next week before we go. Lots
> to on many fronts. G
> Sent from my iPhone
> On Nov 20, 2011, at 2:42 PM
> wrote:
> Dropped
> it Sigh....
> On Nov 20, 2011, at 1:1:16 AM, Graham Fleming
> wrote:
> You throw
> something at the tv?Looking forward to seeing you
> tomorrow.Hugs,G
> Sent from my iPad
> On Nov 20, 2011, at 10:58 AM
> wrote:
> Good
> morning. I don't know
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> Hoping getting out will help.
> These all
> look good. I would add policy to social science. You
> don't have anything about participating in the
> national/international debate/policy development.
> Wish I could
> give you more but not really able to concentrate - sorry.
> Don't know why I'm stuck today - might just
> need to get out and be distracted --- pretty
> quiet around here.
> I'm good
> with tomorrow. I think I'm just stuck on thinking about
> what to do next and not looking forward to going through
> every tedious thing again.
> Have a good
> flight.
--- On Sun, 10/23/11
                                                          vrote:
> From:
> Subject: Re: better news
> To: "Grahamrfleming"
> Date: Sunday, October 23, 2011, 6:11 PM
> 0k. Got soup which I
> added at the last minute luckily. Had lamb chops from the
> tapa menu which were good but the fried ricotta tapas were
> so dense and thick I could only get 2 bites down.
> On Oct 23, 2011, at 9:00 PM, Grahamrfleming
> wrote:
> how was dinner?
> g
>
> -----Original
> Message----
> To: Grahamrflemin
> Sent: Sun, Oct 23, 2011 5:56 pm
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> Subject: Re: better news
> Great news!!
> Yes use this one. No junkmail on this one - yahoo
> got too many to manage. This one I just got and I check
> it.
> BTW - thanks for turning me on to the books. They are pretty
> good for the brain. Doesnt turn it off but helps lower the
> volume greatly.
> On Oct 23, 2011, at 8:26 PM, Grahamrfleming
> Jenny called. It seems the
> Chungs want to give us $5M and discuss another $5M.
> Details a bit sketchy as Jenny wasn't there and this
> from conversation with Scott.
> Best to keep to yourself for now.
> hugs,
> g
> ps is this better than yahoo?
--- On Sun, 10/23/11, Grahamrfleming
> From: Grahamrflemin
> Subject: better news
> Date: Sunday, October 23, 2011, 5:26 PM
> Jenny called. It
> seems the Chungs want to give us $5M and discuss another
> $5M.
> Details a bit sketchy as Jenny wasn't there and this
> from conversation with Scott.
> Best to keep to yourself for now.
> hugs,
```

> g > g > ps is this better than yahoo? >

NOTE: MESSAGE BELOW WAS SENT AFTER REQUEST FOR INPUT ON MY PERFORMANCE EVAL WAS SENT TO THIS ADDRESS FOR CONFIDENTIALITY BECAUSE OF OTHER'S ACCESS TO WORK EMAIL

--- On Mon, 9/12/11 wrote:

> From
> Subject: do you need more?
> To:
> Date: Monday, September 12, 2011, 10:24 AM
>

> Supported DUSEL in their PDR development issues including the development of a governance plan through an LLC, reviewing and providing feedback on business services/administrative plan, facilitating the resolution of DUSEL issues with campus service units, assisting with the hiring of key personnel, providing strategy development support to the VCR and representing the VCR at reviews/meetings in his absence.

Supported the closure of the ATA and the complex financial and logisitical issues associated with the closure. Resolved complex historical financial activity with no cost to the campus.

Supported the development of the Berkeley Energy and Climate Institute including development of 10 year strategic budget and plan, energy corp description, development materials, etc. Drafted the energy corp program description.

Provided the VCR with strategic support on the development and implementation of large scale projects, development of strategic plans, and organizational issues. Helped coordinate, authored nontechnical sections and edited successful NCI Physical Sciences Oncology Center proposal.

Managed transition of all units reporting to the VCR to new RES shared services unit. Identified and resolved numerous financial and compliance issues with minimal institutional cost. Oversaw the development of systems, policies and procedures for the efficient operation of a large complex unit providing services from 18 locations across the campus. Initial faculty survey reported over 70% satisfaction in all categories. Developed on-line survey to solicit faculty feedback for performance reviews. Maintained continual purchasing and non-travel reimbursement service expectation of over 90% processing time for requests of 48 hours or less as well as 3-5 day processing for travel of greater than 90%.

Resolved complex financial, business and personnel issues raised by faculty served by RES. Managed all faculty/costumer complaints.

Identified space to replace 2440 Bancroft space currently occupied by DUSEL and RES. Worked to negotiate rent and donation of furniture to UCB by current tenant.

Responded to a multitude of internal and external audits with no negative findings.

Worked with central campus units to streamline and simplify processes including instituting a new expedited professional services process.

Worked with BFS project team to identify, prioritize and resolve BFS 9.0 implementation issues.

Worked with BearBuy project team to develop new model for receiving and responding to unit input by creating a unit liaison group. Group has made several critical recommendations to the project leadership and led the creation of a new profile management system.

Plans

Oversee the development of a new Research Development Unit with the goal of increased federal and overall extramural funding to the campus. Develop a unit that provides support to individual faculty as well as the development of large scale projects. Services will include funding opportunity identification, new investigator support, training including grantmaking and RCR, online resource development, large scale proposal development support, site visit and review support and large scale project launch support.

Continue to provide support to the DUSEL Project that will be transitioning to a DOE funded project with a complex governance structure. Work with the Vice Chancellor and others to develop a governance structure that will meet agency and operational requirements. Support the Vice Chancellor and project to strategize through the complex political maze that the DUSEL project is required to navigate.

Continue to support the creation of BECI and other VCR research initiatives such as personalized medicine and Value.

Work with Dean Hesse and social science leaders to launch the social sciences institute and work closely to insure research development services that are needed are defined and provided in a coordinated fashion.

Provide support to the launch of new research initiatives and large scale awards such as climate change and the synthetic biology institute.

October 24, 2011-Telephone Conversation with

500

Regarding the Faculty Club Incident: Occurred after work – July or August 2009. invited invited go along with her and Graham for drinks after work. According to the did not want to go alone.
stated that while sitting at a table in the Faculty Club, Graham told her to "turn around so that I can molest " stated that she thought he was joking so she flipped around in the chair quickly but she did not see anything. Following this event, she and walked to the parking lot and Graham got into his own car. Stated a ride home and shared with on the way that Graham touched her boob. Said that said that said to her, "Thanks for having my back." Said that she felt guilty because she was there as a buffer but couldn't do anything. Stated that told her Graham called the next day and apologized. Said that she told more than once that this was not okay.
I asked whether there was anything else, and stated that will did share other things including: information about a business trip that wand Graham took to South Dakota whereby will allowed Graham to massage her feet; Graham and cuddling, lying next to each other, she could feel him getting hard; Graham has kissed will on the back of her neck witnessed by his assistant; email to telling her to go to another email account, Yahoo or AOL, so he could speak more freely. It stated that she heard mixed things from about the situation, and that was not specific about how she felt about it. It stated that she felt will used the situation when she wanted to or needed to, and at other times it was not okay. She stated that told her that she with Graham to keep her job.
I asked to connect the information and situation about and Graham to the concerns she raised about that and the concerns she told her that Graham knew that she had something over him, he would not freely reprimend her. Said that she felt she could not go to Graham to get her situation resolved, which is why she chose to use the other routes (formal grievance and whistieblower). Said that she felt she could her that if Graham ever tried to do anything that would have to serve as a witness for her.
former employee who saw and fixing their clothes when she went to office to get her signature.

Carn	nen C. MCKINES	The same for the same of	The second second second second		
From Sent: To:	•	Wednesday, October 26	i, 2011 8:27 AM		
Subje	ect	RE: Text from re:io	ove (Updated 10/26)	/11)	
she's i	ad my previous emails and on thrown out that she had been saving up documenti Ilmmediately following my is against him.	ng what she perceives as s complaint to Graham on /	ranam ever tried to exual harassment f August 1, 2011, she	has more than once prior to get rid of her she would use the a rom him. During my conversation mentioned again how she might i	emails is with have to
c	to sleep with Graham to The following day, Saturn about the relationship an sort of reprimand for not would be difficult for Graher. I asked would that On Monday, August 8, up the hill so we could talose her job, and how shithat "wouldn't be fronk that were at the faculty dub a	keep her job." day August 6, during our clud that she was going to lot dealing with the hos hos ham to do anything in the occur to him. She respondicalled me at 7:35 and lik. Was distraught at didn't know what she was hat if Graham tried to get the occur is referring to occur of the work. Graham said for work.	conversation se her job. I indicatility issue. way of a reprimancied "oh yeah." asked me to come and going on about is doing was wrong rid of her that she was a me "huro amount July 200 me	o I com made at I in the second	pathy had bund out ect some ried it brassing a drove could inversation is." - am and I)
•	happened. We left short! Graham had grabbed her Following to ask how I've ever done but not as	ly after that. When we got boob. g on Monday, August 8, 20 y the meeting had went.	t in the car state of t	was nothing to indicate that anyth tated to me that when I turned an IR, and Denise Oldham the Title IX se I received " It was the hardest	ning had ound that Cofficer -

Please let me know if you need further information or have any questions.

Thanks.

Carricon C. Michaelis

Frank

Sena: To:

wonday, October 24, 2011 2:50 PM

carmen

Subject

FW: Text from re:love

p.s. To darify, the meeting with Graham included Central HR, and Denise Oldham the Title IX officer. And took place at around noon the same day as the text (8/8). Thanks.

From:

To: ccmck@berkeley.edu

Subject: FW: Text from re:love Date: Mon, 24 Oct 2011 12:28:15 -0700

Hi Carmen,

Per our conversation today, below is the content of the text message from the content of the content of the text message from the content of th

- > Date: Mon, 24 Oct 2011 11:16:39 -0700
- > To:

>

- > It was the hardest thing I've ever done but not as bad as when I was in the car. Good thing is Graham loves me and he made it clear that we were following the first non investigation action. Forgot what it's called. Really tired but ok.
- > Sent from my iPhone