

**CONFIDENTIAL**

**OFFICE FOR THE PREVENTION OF HARASSMENT AND DISCRIMINATION**

**REPORT OF INVESTIGATION AND FINDINGS**

Complainants:



Respondent: Geoff Marcy, UC Berkeley Professor of Astronomy

Investigator: Will Mallari, OPHD Assistant Director/Deputy Title IX Officer

Date of Report: June 22, 2015

Conclusion: Finding of Policy Violation- Sexual Harassment

**I. Background and Reported Behavior**

On July 23, 2014, a UC Berkeley Astronomy faculty member forwarded to the Office for the Prevention of Harassment and Discrimination ("OPHD") two separate accounts from women of unwelcome behavior to which UC Berkeley Professor of Astronomy Geoff Marcy ("Respondent") had reportedly subjected them many years earlier. Subsequently, two other women also contacted OPHD to report additional incidents of unwelcome behavior from Respondent. In total, four women reported interactions with Respondent spanning from 2001 to 2010. OPHD investigated the reported behavior as potential violations of The University of California policies on sexual harassment in effect at the time of the alleged behavior. It was reported that:

- In 2001-2002, Respondent subjected a female undergraduate student to sexual harassment. Specifically, it was reported that:
  - after a brief conversation with her on campus, Respondent kissed her on the forehead;
  - on another occasion, after a brief conversation with her on campus, Respondent hugged her and kissed her on the cheek;
  - during a class that respondent was teaching, Respondent "stared" at the buttocks of another female undergraduate student;
  - Respondent "patted" the bare knee of another female undergraduate student.
- In 2005, Respondent subjected a female undergraduate student to sexual harassment. Specifically, it was reported that that:
  - while meeting with the student at a coffee shop, Respondent discussed specific sexual encounters he had during a former relationship;

- Respondent invited the student to attend a Cal athletics game with him;
  - after meeting with the student during office hours, Respondent drove the student home and placed his hand on her neck and massaged it.
- In 2006, Respondent subjected a female graduate student at another university to unwelcome sexual conduct. Specifically, it was reported that:
  - while seated next to her at dinner, Respondent placed his hand up her skirt and “grabbed” her crotch.
- In January of 2010, Respondent subjected a female graduate student in the Astronomy Department at UC Berkeley to sexual harassment. Specifically, it was reported that:
  - while seated in a taxi cab with the graduate student and a female undergraduate student at UC Berkeley, Respondent placed his arm around the undergraduate student and placed his hand on the undergraduate student’s thigh;
  - while at a club, Respondent bought the undergraduate student multiple drinks and then, on the dance floor, grinded his body into hers from behind;
  - Respondent pursued the undergraduate student, who was intoxicated, back to her hotel room and got into bed with her where he then gave her a massage;
  - Respondent tried to persuade the undergraduate student to go back to his room with him.

## **II. Jurisdiction**

The Office for the Prevention of Harassment and Discrimination has campus-wide responsibility for responding to incidents of sex discrimination, including sexual harassment and sexual violence, and implementation of the University of California Sexual Harassment and Sexual Violence Policy, which includes the investigation and resolution of incidents involving faculty. OPHD evaluated the allegations as a potential violation of the applicable University of California sexual harassment policies in effect at the time of the alleged behavior. The Office of the Vice Provost for the Faculty is responsible for reviewing allegations of violations of the Faculty Code of Conduct. Information and facts gathered during OPHD’s investigation is included in this report for consideration by the Vice Provost for the Faculty in accordance with the Faculty Code of Conduct.

## **III. Applicable Policies<sup>1</sup>**

The Policy on Sexual Harassment and Complaint Resolution Procedures, in effect April 23, 1992 to February 9, 2004, defined sexual harassment as:

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<sup>1</sup> The incidents reported span the course of ten years, from 2001 to 2010. Two different (but substantively similar) UC sexual harassment policies were in effect at the relevant times. Definitions contained in the then-existing policies were applied based on the time period of the reported behavior. However, OPHD followed current procedures (contained in the Sexual Harassment and Sexual Violence policy issued on February 25, 2014) to investigate the allegations.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of instruction, employment, or participation in other University activity;
2. Submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting an individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile, or offensive University environment.

In determining whether the alleged conduct constitutes sexual harassment, consideration shall be given to the record of the incident as a whole and to the totality of the circumstances, including the context in which the alleged incidents occurred.

The University of California Policy on Sexual Harassment, in effect February 10, 2004 to February 24, 2014, defined 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 or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment. In the interest of preventing sexual harassment, the University will respond to reports of any such conduct.

Sexual harassment may include incidents between any members of the University community, including faculty and other academic appointees, staff, coaches, housestaff, students, and non-student or non-employee participants in University programs, such as vendors, contractors, visitors, and patients. Sexual harassment may occur in hierarchical relationships or between peers, or between persons of the same sex or opposite sex.

In determining whether the reported conduct constitutes sexual harassment, 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.

In evaluating allegations of sexual harassment and sexual violence, the “preponderance of the evidence” standard is used. Under this standard, individuals are presumed not to have engaged in the alleged conduct unless a “preponderance of the evidence” supports a finding that the conduct occurred. This “preponderance of the evidence” standard requires that the evidence supporting each finding be more convincing than the evidence offered in opposition to it. In other words, the alleged conduct must be “more likely than not.”

#### **IV. Summary Findings**

Based upon the evidence, the Investigator determined that the alleged behavior did violate the sexual harassment policies in effect at the time. A detailed discussion of the finding is included in Sections VI and VII.

#### **V. The Investigation**

I interviewed the following parties:

<b>Party</b>	<b>Name</b>	<b>Affiliation</b>
Respondent	Geoff Marcy	UC Berkeley Professor of Astronomy
Complainant 1	[REDACTED]	Former UC Berkeley student
Complainant 2 <sup>2</sup>	[REDACTED]	Former UC Berkeley student
Complainant 3	[REDACTED]	Former University of Hawaii student
Complainant 4	[REDACTED]	Former UC Berkeley student
Witness 1	[REDACTED]	Former UC Berkeley student
Witness 2	[REDACTED]	University of Hawaii Professor
Witness 3	Imke de Pater	Chair of the UC Berkeley Astronomy Department

I also reviewed three OPHD files from 2011, 2013, and 2014 in which Respondent had also been reported for sexually harassing behavior. Each prior matter was addressed under OPHD’s early resolution process, as discussed in section D below.

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<sup>2</sup> I gave each complainant the choice of participating in OPHD’s investigation as either a “named complainant” or as an “anonymous witness.” I explained that complainant names would be shared with Respondent, but that witness names would not. I also explained that the implementing procedures for the UC Sexual Harassment and Sexual Violence Policy allow a complainant to request a redacted copy of OPHD’s investigative report, but that witnesses do not have that opportunity. Given these options, Complainant 2 opted to participate as an “anonymous witness.” This report uses the nomenclature, “Complainant 2” to designate her as someone directly impacted by Respondent’s behavior, rather than that of an eyewitness. Complainant 2’s name was not shared with Respondent.

### A. Complainants' Statements

Each of the complainants professed awareness of a potential UC Berkeley investigation of Respondent regarding sexual harassment. Each complainant expressed the desire to have their respective accounts of prior interactions with Respondent evaluated in conjunction with any current sexual harassment investigation involving Respondent.

#### 1. Complainant 1

I interviewed Complainant 1 via telephone on September 5, 2014. She described several prior interactions with Respondent from her time as a UC Berkeley undergraduate student in 2001 that she found "uncomfortable." Complainant 1 said that she had not previously shared any of these interactions with UC Berkeley administrators. Instead, Complainant 1 said that the issue recently arose after being contacted by Witness 1. Witness 1 told Complainant 1 that he was attempting to improve the climate for women within the field of astronomy, and asked her to share with him any unwelcome experiences she may have had during her time at UC Berkeley. Complainant 1 emailed Witness 1 in April 2014 with details of the following interactions with Respondent, which she confirmed and/or elaborated upon during her interview.

#### Forehead Kiss

In 2001, Complainant 1 took an astronomy class taught by Respondent. Complainant 1 explained that Respondent was "familiar with" her because she periodically utilized his office hours to discuss coursework. On one occasion that year, she encountered Respondent on campus while walking to her residence. Complainant 1 told Respondent that she was sick and would need to miss class. Respondent expressed concern for Complainant 1 and ended the brief conversation by kissing Complainant 1 on her forehead. Complainant 1 stated that she "felt conflicted," not knowing whether Respondent was "being caring and nice," or something else. However, as a result of the kiss, she "felt awkward."

#### Cheek Kiss

Approximately one month later, Complainant 1 encountered Respondent late one evening in Campbell Hall, while she was studying with other students in the Astronomy lounge. Complainant 1 stated that she left the other students to use the restroom and ran into Respondent in the hallway. Complainant 1 shared with Respondent that her parents were separating. Respondent then shared with Complainant 1 that [REDACTED] At the end of their conversation, Respondent leaned in and hugged Complainant 1 while also kissing her on the cheek. Complainant 1 said that the "hug would have been fine," but that the "kiss felt inappropriate."

## Stare

Complainant 1 recounted another occasion in which she observed Respondent “staring” at a female undergraduate student’s buttocks. She recalled that her friend “with a large behind” walked into Respondent’s class late and that Respondent stared at the woman’s behind as she walked to her seat. Complainant 1 did not recall witnessing Respondent behave similarly on other occasions.

## Knee Pat

On another occasion, Complainant 1 observed that Respondent “patted” the bare knee of a female undergraduate classmate. Complainant 1 stated that she later asked the classmate about it. The classmate indicated to Complainant 1 that “she took it as a sign of support and affection.” Complainant 1 stated that it still appeared “inappropriate” to her (Complainant 1).

## 2. Complainant 2

I interviewed Complainant 2 via telephone on September 23, 2014. She described behavior that Respondent exhibited to her in 2005, during her time as a UC Berkeley undergraduate student. She said that she “felt traumatized” by Respondent’s behavior at the time. When asked why she decided to report the behavior now, Complainant 2 explained that she attended a “Women in Astronomy” conference in 2011 where another graduate student spoke on the topic of sexual harassment. Complainant 2 disclosed to the student speaker her own experience of being sexually harassed by Respondent during her time at UC Berkeley. The student speaker told her that [REDACTED] was “gathering” such accounts. Later that year, the [REDACTED] contacted Complainant 2 and encouraged her to share her account, which she then did via email. Several years later, in early 2014, the student speaker from the conference and [REDACTED] contacted Complainant 2 to seek her participation in “a UC Berkeley investigation” of Respondent.<sup>3</sup> Complainant 2 forwarded the 2011 email, in which she had previously detailed her account, to a UC Berkeley faculty member, who then provided the email to OPHD. The email account is consistent with Complainant 2’s account to me.

During the spring semester of 2005, Complainant 2 was a [REDACTED] undergraduate student at UC Berkeley and enrolled in Astronomy [REDACTED], which was taught by Respondent. Later in the semester, Complainant 2 helped to organize a campus “Take Back the Night” anti-sexual violence rally and march. Complainant 2’s roommate had been listed on flyers as an organizer. Respondent emailed the roommate, stating that he had attended the rally and expressed his support. In doing so, he mentioned that he was an astronomy professor on campus. The roommate shared Respondent’s email with Complainant 2 because Complainant 2 was an astronomy student.

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<sup>3</sup> At the time, there was no UC investigation of Respondent. [REDACTED] used this label inaccurately, despite the subsequent investigation in which Complainant 2 did knowingly participate.

Complainant 2 said that she emailed Respondent to thank him for attending the rally. Complainant 2 reported that, “[Respondent] wrote back to me almost immediately, encouraging me to call his home that night so that we could discuss the issue in more detail.” Complainant “felt very strangely” about Respondent’s email and did not respond until the following day, indicating that she had been busy. Nevertheless, Complainant 2 described that this initial interaction “kick started a few months of a steady pattern of behavior.” Complainant characterized the behavior as Respondent “expressing special interest in me as a student, and offering very flattering and encouraging remarks about my potential in astronomy, while also cultivating a relationship of going out to cafes, just the two of us (ostensibly to discuss my career in astronomy).”

#### Sexual Discussion

Complainant 2 recounted one such café meeting, during spring of 2005, in which Respondent told Complainant 2 about a former relationship he had had in college “with a woman who, although she was outwardly very conservative, was actually sexually voracious.” Complainant 2 recalled Respondent telling Complainant 2 about having sex with this former partner “hurriedly outside.” Complainant 2 said that she began to realize that there was something “strange and off” about the association Respondent had formed with her, though she continued to meet with Respondent outside of classroom or office hours.

#### Social Invitation

During the same spring 2005 café meeting, Respondent invited Complainant 2 to go to a Cal Women’s tennis game with him. Complainant inferred that the intended outing would only involve her and Respondent. She declined.

#### Neck Massage

Complainant 2 also reported that, in August of 2005, she met with Respondent at Café Strada, which is adjacent to campus. After their meeting, Respondent offered to drive Complainant 2 home, which was a short distance away. Complainant 2 said that she accepted the ride upon feeling “an impulse to avoid an awkward refusal of what might just be a harmless gesture.” Complainant 2 recounted that, at this point in the conversation, they had been discussing her new dating relationship with someone else. Complainant 2 expressed concerns to Respondent about the new relationship.

Respondent drove Complainant 2 home and parked in a parking lot next to her apartment building. Complainant 2 said that she then began to feel “uncomfortable.” An email Complainant 2 wrote describes, in her words, what happened next and her thoughts at the time:

Though it was still light out, I felt uncomfortable enough that I actually open [*sic*] the door on the shotgun side \*just\* to put my

legs out of the car. It was at this point that I knew something was really wrong; it was a flight impulse that led me to do that. I remember my thinking at the time was that I could just run if something happened; I could always get out. The conversation continued, and I tried to extricate myself from it naturally. I felt very conflicted still, despite my discomfort, because of the pressure I felt not to be rude to a very senior person, and not to lose, though an awkward interaction, the academically supportive relationship I had achieved with him. At some point, he reached his arm out to me and began to massage my neck, telling me to relax (apropos of our discussion about my new relationship, which was bumpy at the time). I got out of the car soon after that. I recognized at that point that things had really escalated, and that something was wrong.

Complainant 2 elaborated that Respondent told her to “relax” when he touched the back of her neck, which was on bare skin. Complainant 2 described that Respondent’s physical contact lasted “no more than a few seconds” and that she successfully “shrugged it off.”

Complainant 2 described that she resolved to confront Respondent about his unwelcome behavior towards her. This caused great anxiety for Complainant 2, in part because she believed such a confrontation would effectively forfeit any opportunity of receiving a letter of recommendation from Respondent, a high profile astronomer. However, prior to confronting Respondent, she learned that another graduate student had confronted Respondent for similarly unwelcome behavior of which the graduate student was aware Respondent had exhibited toward another student. According to Complainant 2, Respondent “immediately cooled toward [her]” and their “relationship changed without any cost to [her] personally.” Complainant 2 also confirmed that Respondent did write her a letter of recommendation that she “suspect[s] was “strong.”

### 3. Complainant 3

I interviewed Complainant 3 via telephone on September 8, 2014. Complainant 3 is not affiliated with UC Berkeley; however, she encountered Respondent during her time as an astronomy student at another University where Respondent gave a colloquium talk. Complainant 3 said that she decided to report her experience with Respondent because she heard that “many people” had similar experiences with him. Complainant 3 said that Witness 1 emailed her an introduction to [REDACTED] in March or April of 2014. [REDACTED] told Complainant 3 that she was “gathering these accounts,” and asked Complainant 3 to share her experience, which she did. Witness 1 then put Complainant 3 in touch with a UC Berkeley faculty member who forwarded her account to OPHD.



Complainant 3 relayed an incident that happened in 2006, during her [REDACTED] as a graduate student in the Department of Astronomy at the University of Hawaii. In April of 2006, the Institute for Astronomy at University of Hawaii hosted Respondent to give a colloquium talk.<sup>4</sup> After the talk, Complainant 3 went out to dinner with Respondent, Witness 2 (a University of Hawaii faculty member), Witness 2's wife, and two other University of Hawaii graduate students.

#### Crotch Grab

Complainant 3 recalled that she was seated next to Respondent at dinner. She stated that, "towards the end of dinner, [Respondent] put his hand up my skirt (or dress) and grabbed my crotch." Complainant 3 elaborated that Respondent first "grabbed" her inner thigh. She described that Respondent placed his open hand on her inner thigh and then slid his hand up to her crotch. She "slapped his hand away" and then "physically pulled his hand off [of her crotch]." Complainant 3 recalled that, during this act, Respondent was talking to someone else and that he carried on with his conversation without looking at Complainant 3 or otherwise reacting. She estimated that Respondent's unwelcome grab, from thigh to crotch, lasted four to five seconds. She said that Respondent did not touch beneath her underwear, nor did he try to touch her again.

Complainant 3 expressed that the unwelcome grab so "upset" her that she left the table right away and went to the restroom to try to regain her composure. When she returned to the table, the people in the dinner group had already left. She then walked out to the parking lot where Respondent and Witness 2 were waiting. Everyone else had gone. Complainant 3 explained that Witness 2 had driven her from the lecture to the dinner.

In the restaurant parking lot, Witness 2 told Complainant 3 that Respondent would drive her home. Complainant 3 stated that Respondent had "pushed to take [her] home" and that Witness 2 seemed happy about it. Complainant 3 expressed that the prospect of being alone with Respondent both panicked and infuriated her. Complainant 3 said that she got upset with Witness 2 and insisted, "No. You brought me here. Take me back." Witness 2 did drive Complainant 3 back to her car and Complainant 3 did not see Respondent again.

Complainant 3 said that she was "pretty sure" she did not tell Witness 2 about Respondent's actions, although she stated that it was possible. Complainant said that she did not know who to talk to because Respondent was not a University of Hawaii faculty member. Complainant 3 heard from post-doctoral candidates at the University of Hawaii that "nothing had happened" when sexually harassing behavior (involving others) was reported. Accordingly, Complainant decided, at the time, not to report the behavior to the University of Hawaii or to UC Berkeley.

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<sup>4</sup> Complainant 3 stated that she had briefly met Respondent once before, when he gave a talk at California Technical Institute in 2001.

#### 4. Complainant 4

Complainant 4 was a UC Berkeley graduate student in 2010 at the time of the reported behavior. On July 31, 2014, Complainant 4 emailed me, indicating that Witness 1 had referred her to me in order to “contribute information” related to “sexual harassment problems in the Astronomy Department.” I spoke with Complainant 4 via telephone on August 4, 2014. She described attending a national astronomy conference, that Respondent also attended, in which she observed Respondent’s interactions with an undergraduate student. Complainant 4 expressed that, although the student was the apparent target of Respondent’s behavior, Complainant 4 was personally impacted by the behavior she observed. Complainant 4 opted to provide a written account of the unwelcome behavior she experienced, observed, and later discovered surrounding Respondent’s attendance at the conference. Her written account follows.

In January 2010 I was at the American Astronomy Society national meeting in Washington DC. I was a [REDACTED] year graduate student at the time. The meeting traditionally has a “party” which is organized by astronomers at a nearby bar/club. A few of us from Berkeley were at a cocktail reception the evening of the party (before-hand).

##### Hand on Thigh

I was talking to several people including Berkeley Astronomy professor [Respondent] and a female undergraduate student who I knew from the Society of Women in the Physical Sciences (SWPS). This student had worked on a project with [Respondent] and we were talking about her presentation. I noticed that [Respondent] was very familiar with the student. He touched her when he talked to her and stood very close to her. He bought her a drink at the cocktail reception. As the reception was wrapping up he suggested we all share a cab to the party at the nearby club. The three of us were in the back seat of the cab. This student was in between me and [Respondent]. He put his arm around her in the cab ride and put his hand on her thigh. She was wearing a skirt, and his hand was quite high on her thigh.

I felt incredibly uncomfortable seeing him touch her this way. I would have felt weird being next to a married couple who was being this physical in such close proximity to me, however seeing a professor touch his student in this way, and seeing the student squirm and adjust her position as he leaned into her, was very

awkward. I didn't really understand [Respondent's] relationship with the student at the time, so I didn't know what to do or say.

### Dancing/Grinding

When we got to the club I noticed that [Respondent] kept buying the student drinks. She was on the dance floor with a bunch of other students and he came up behind her and started gyrating and rubbing up against her. She tried [to] move away [from] him, but was also pretty drunk at this point. I noticed a few of her friends try and separate her from [Respondent], but he kept following her around. At one point I suggested that someone keep an eye on her and make sure she get home ok.

### Hotel Room

The rest of this story I know by talking to the student afterwards, but I did not witness myself:

By the end of the evening a friend saw [Respondent] walking the student out of the club and getting into a cab with her. The student was so drunk she could barely walk. Her friend grabbed her and put her in a different cab to get her away from [Respondent]. Apparently [Respondent] then followed her back to her hotel room and asked to enter the room. He got into bed with her and started massaging her. The other student she was sharing a room with came home and walked in on him in bed with the student. He tried to convince the student to come back to his room with him, but she said she was too drunk to move, so he left.

After the incident I emailed the student recounting what I witnessed in the cab and at the club and asking her if she was ok or needed help. She said that [Respondent] was writing her letters of reference for graduate school, and while she did feel very uncomfortable with what happened, she didn't want to do anything about it because she really needed his letters. I reached out to her again recently and told her that several other people were filing complaints about [Respondent] to the Title IX office at Berkeley and she said that she did not feel comfortable filing a complaint.

After witnessing this incident I felt incredibly uncomfortable around [Respondent]. Every time I was in the same room with him my heart would race and my stomach would churn. Knowing that

[a] professor in the astronomy department would treat a student like this was incredibly upsetting to me and affected the rest of my graduate experience at Berkeley. I talked to other students about this experience, and was told that everyone knew that [Respondent] was creepy and frequently touched, kissed, and tried to start inappropriate relationships with his female (undergraduate) students. All attempts to address this behavior with either [Respondent] directly or the department went nowhere. The perception among student[s] in the astronomy department is that the only way to address this issue was to warn female students to avoid him. This is easier to do with graduate students who are part of a community and interact with older students, however consider[ing] [Respondent] tends to target undergraduates that he is teaching (many of whom are not even majoring in astronomy) it is hard to protect those students from his behavior.

**B. Witness Statements**

**1. Witness 1**

I interviewed Witness 1 via telephone on July 31, 2014. Witness 1 stated that he was a graduate student in the UC Berkeley Astronomy Department from [REDACTED]

[REDACTED] Witness 1 stated that, at the time, he was “ignorant” as to what behavior constituted sexual harassment. However, looking back, he now believes that Respondent’s behavior was sexually harassing in nature, to women. Witness 1 said that his goal is “to have the behavior addressed to help current and former students.”

Witness 1 described a “pattern” of behavior that Respondent reportedly displays. He stated that Respondent “hits on pretty women that he is around.” Witness 1 characterized Respondent’s approach as beginning with “small talk,” then “ratcheting up to career talk,” then progressing to having “dinner,” then “driving home,” and then “insisting on being in a relationship.” Witness 1 stated that, if women “rebuff” Respondent, Respondent will “then talk to others, criticizing [the women’s] intellectual abilities.” Witness 1 said that he has personally witnessed Respondent “acting flirtatious” to women at conferences. Witness 1 conceded that he “cannot state with knowledge that the behavior was unwelcome [to the women].” Witness 1 also recalled hearing “male students joking that female students get more attention” from Respondent.

Witness 1 said that he was aware of eight different women “at all levels,” including undergraduates, graduate students, and post doctorates who had experienced some form of sexual harassment from Respondent. Witness 1 provided the names and contact information for Complainants One and Three. He indicated that both had shared their accounts with him and were willing to participate in a UC Berkeley sexual harassment investigation involving

Respondent. Witness 1 said that he had personally heard from two other potential complainants, but that they were “wavering about coming forward.” Witness 1 speculated that the “fear of retaliation is preventing others from coming forward.”

## 2. Witness 2

I interviewed Witness 2 via telephone on January 27, 2015. Witness 2 has been a Professor of Astronomy at the University of Hawaii since [REDACTED]

Witness 2 said that he did recall Respondent giving a colloquium at the University of Hawaii in 2006. Witness 2 also stated that he recalled Complainant 3, who was a student at the time. He said that he did not recall if Complainant 3 attended the colloquium, but that it was likely. Witness 2 did not have any specific recollection of attending a dinner with Respondent and Complainant 3 after the colloquium. He did say that it was “plausible,” as it would not have been unusual for the setting.

Witness 2 said that no student had ever expressed to him concern about Respondent. Witness 2 said that such an expression “would have registered” with him. When asked, Witness 2 replied that he had no specific recollection of driving Complainant 3 to the dinner or of Complainant 3 insisting that he also drive her back to campus. Witness 2 again stated that it was possible.

I informed Witness 2 that Witness 2’s wife was also reportedly in attendance at the dinner. Witness 2 indicated that he would speak to his wife to ask about her recollection of the evening. The following day, Witness 2 emailed me to express that neither he nor his wife were able to recall specifics of Respondent’s visit to the University of Hawaii in 2006, or any associated dinner.

## 3. Witness 3

I interviewed Witness 3 via telephone on January 12, 2015. Witness 3 is the current Chair of the Astronomy Department at UC Berkeley. Subject to this investigation, Witness 3 was generally aware of the reported behavior. She did not recall prior knowledge of the behavior reported by Complainants. Instead, she recalled addressing, in May 2013, reports of behavior involving Respondent in prior years. Witness 3 said that one report arose from an incident in 2010 when a graduate student told Witness 3 that she was “uncomfortable” with the way that Respondent interacted with undergraduate students. In the other incident, it was reported that, “five to seven years ago,” Respondent kissed a graduate student, [REDACTED], on the cheek. Witness 3 stated that these previously reported incidents were addressed by Title IX Officer Denise Oldham as “early resolutions.”

### C. Respondent's Statement

I interviewed Respondent at OPHD on December 18, 2014 and conducted a follow-up interview with him on January 12, 2015. Prior to answering any questions, I allowed Respondent to review the written statement of allegations, as presented in section I, above. Respondent provided the following responses to the reported behavior.

#### 1. 2001-2002 Reported Behavior

Respondent immediately recalled Complainant 1 and the reported behavior. He stated that "these things all happened" and "have been discussed a thousand times."

#### Forehead Kiss

Respondent acknowledged two incidents similar to the behavior Complainant 1 reported. Regarding the Campbell Hall kiss, Respondent recalled entering the lounge in the Astronomy Department with "mostly students present." Respondent said that the atmosphere "seemed social" and that "everyone was very friendly." Respondent recalled, "I came in and gave [Complainant 1] a kiss on the forehead." When asked why, Respondent replied, "She is a wonderful person. She is the life of the party. Everybody likes her. I like her. I was feeling like, what a great person and gave a kiss on the forehead."

Respondent said that Complainant 1 later came to his office and told him that she was "uncomfortable" with the [Campbell Hall] kiss. Respondent said that he apologized to Complainant 1. Complainant 1 then told Respondent, "I know that you didn't mean anything by that." Respondent acknowledged, "It was inappropriate of me to kiss her on the forehead." Respondent continued, "It was a mistake on my part. She was courageous to come to me and generous."

#### Cheek Kiss

Respondent did not specifically recall the other reported kiss. I provided Respondent with additional context that Respondent had reportedly crossed paths with Complainant 1 on campus and learned that she was sick. Respondent said that it was possible that he displayed empathy and affection to her by kissing her on the cheek or forehead. He said that this reported incident was "consistent with the first" and "could have easily happened." Respondent added, "But I am no longer warm and feeling towards undergraduates."

#### Stare

When asked about reportedly staring at a female student's buttocks as the woman walked into his classroom, Respondent replied that the insinuation was "absurd" and "ridiculous." Respondent said that he "would never have done this." Respondent conceded that "someone might have

thought I was [staring at her buttocks], but I wasn't." Respondent emphasized that he "couldn't care less" to look at a woman in such a manner.

#### Knee Pat

In response to the report that he had patted the bare knee of a female undergraduate student, Respondent replied, "This I think is possible." He said that it "would be consistent with my old behavior that I no longer do, at all." Respondent explained that any such gesture would have been in the context of "connecting with somebody" as a "gesture of friendship and connection." He stated that "whatever it was, [it] was brief." Respondent also volunteered that he "might tap someone's shoulder to make a connection." However, he conceded that "patting on the knee is inappropriate" and he no longer does this. Respondent concluded, "I'm regretful that we don't have a society where we can offer support."

## 2. 2005 Reported Behavior

#### Sexual Discussion

I described to Respondent that he reportedly discussed a former sexual relationship with an undergraduate student by describing the former partner as "outwardly conservative," but "voracious" in the bedroom, according to Complainant 2. In response, Respondent stated, "There's no way that [report] could be false, because [the description of the prior relationship] is exactly true." He conceded, "I almost certainly did it." Respondent explained that, "a conversation like this would have only been shared if in context of what [the student] might have been sharing." Respondent speculated, "I might have been offering a touchstone in my life to share, based on what the undergraduate was sharing."

Respondent acknowledged the fact that a student might feel "uncomfortable" with him sharing such a detail about his own life and now finds such conversations "inappropriate." He no longer engages in these types of discussions with students. Respondent explained that, "Undergraduates sometimes confide in me very personal things." However, he now refers people to the Tang center.

#### Social Invitation

When asked if he invited a student to attend a Cal Women's tennis game with him, Respondent stated, "This probably happened. This is something that I do fairly often. I'm a tennis player and know two coaches on the Cal team very well." Respondent explained that, if tennis had come up in conversation, he might have offered, "If you are interested in Tennis, come and watch with me." Respondent clarified that he "would never do this today." He also expressed that he "regret[s] having done it," that it "was a mistake," and that he "won't do it again."

### Neck Massage

Respondent did not immediately recall an incident, as reported, in which he drove a student home and placed his hand on her neck and massaged it. However, he characterized this reported incident as “the most serious one.” Upon further reflection, Respondent recalled a former student who sometimes asked for “special time, not office hours, to talk about things in her life.” Respondent explained that the student sometimes talked about academics and other times talked about her personal life. Respondent stated that he “would always leave it up to her” and “never initiated [the discussions].”

Respondent said that he did remember a time when he drove the student a short distance home from a nearby cafe. Respondent recalled that the student had invited him, via email,<sup>5</sup> to meet at Café Strada.<sup>6</sup> He explained that the student “was trying to decide in her life if she wanted to be an astronomer.” Respondent then speculated, “It’s possible that my hand touched her neck and stayed there for a few moments in a gesture of solidarity and support.”

Respondent recalled that he “dropped her off” at her residence, but said, “I don’t remember touching her. To be honest, it wouldn’t have been beyond me to put my arm on her shoulder, maybe near her neck in saying ‘this was a good conversation.’” Respondent conceded, “It was still wrong on my part.” He also noted that touching someone on the neck is “worse” than touching on the shoulder. He stated that, although he did not recall the reported touching, it was possible that there was “a squeeze that [she] misinterpreted,” though he found it “unlikely.” He also noted, “Whatever it was, it was brief and in wide open space in a parking lot.”

Respondent volunteered, “I remember that when she left the car, there was a moment of pause and I think she felt uncomfortable.” Respondent clarified that he still didn’t recall if he had touched her; however, he speculated that there may have been “ambiguity in her mind that he wanted to go further.” He emphasized that he “would never do anything like that again.”

### 3. 2006 Reported Behavior

#### Crotch Grab

In response to the report that he had “grabbed” the crotch of a student after giving a talk at another University, Respondent immediately characterized it as “completely, totally absurd” and “plainly false.” He stated, “I just would never have an interest in doing this.” He expressed that the report was “completely out of left field.”

When asked if he recalled the reported dinner, Respondent explained that he “always get[s] asked out to dinner after giving a talk” at another University. He conceded, “The dinner almost certainly happened.” He also stated that it was “plausible [that the dinner] included students.” He

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<sup>5</sup> Respondent stated that he would no longer have the email invitation.

<sup>6</sup> Located adjacent to campus at College Ave. and Bancroft Way.



said he did not recall this specific dinner, since it would have been “one of many.” However, he stated that he recalled “every situation” in which he had been seated next to a student and insisted, “This behavior never happened, nothing remotely like it. It’s fabrication.” He continued, “Completely not me. Would never do this, have never done this. It’s antithetical to who I am.”

When reminded that he acknowledged possibly touching a student’s bare knee in the past, Respondent clarified, “I would never touch the knee of someone I didn’t know, so it’s not a relevant comparison.”

#### 4. 2010 Reported Behavior

Upon reviewing the reported behavior from the American Astronomy Society national meeting in Washington, D.C., Respondent stated, “I think I know what this is about. This is basically all wrong. It’s rumor-mongering. [REDACTED]

[REDACTED] She hates me. She blogs about me. She has gone out on her own to gather [the accounts].” Respondent continued, “This is somebody attacking me. They are combining false stories.” I shared the name of Complainant 4 with Respondent. He stated that he did not know her and that, to his knowledge, she had not been one of his students.

##### Hand on Thigh

Respondent denied placing his arm around an undergraduate student and placing his hand on her thigh in a taxi cab, as reported by Complainant 4. Respondent speculated that he “maybe shared a cab” with the student. He conceded, “I know the scene. [It was] after the D.C. meeting.” Regarding the reported cab ride and touching, Respondent stated, “I can’t remember. It’s plausible. It would have been a friendly touch if I did it at all. But I would never do it again.

##### Drink-Buying

In response to the report that he bought the undergraduate student multiple drinks, Respondent stated, “I know exactly what is going on here. I think I bought a student, at her strong request and against my advice and wishes, two drinks.” Respondent recalled an undergraduate student from UC Berkeley who was at the conference. He pointed out that she wasn’t taking any of his classes at the time. Respondent recalled that she had asked him to buy her a drink. He stated that he was “disturbed” by the request, but that he agreed. He also stated, “I vaguely remember her asking me to buy her another drink, and I likely did.”

##### Dancing/Grinding

Regarding the allegation that Respondent danced with and grinded against the student, Respondent maintained that it was not plausible that he approached her on the dance floor. He insisted, “I don’t dance.” Respondent also stated, “I had no idea what she was doing. I was standing in the corner like a high school kid at a dance by myself.” Respondent described, “At

the end of the party, she was drunk. Other people were buying her drinks.” Respondent clarified that he had not been drinking that night, as he does not like to drink.

Respondent described that the student “had trouble walking.” He explained, “I walked her out of that club because she couldn’t walk. I was probably holding the student. She is a very nice girl.”<sup>7</sup> Respondent described that he put his “arm around her assisting her to walk out of the room.” He surmised that this “could have been interpreted as ‘grinding,’ if anything at all was interpreted that way, maybe because she couldn’t stand up.” Respondent stated that he did not remember what happened.

### Hotel Room

When presented with the report that he “pursued” the intoxicated undergraduate student back to her hotel room, got into bed with her and gave her a massage, Respondent stated that he “obviously would have helped her back to her hotel room.” He recalled that he took a taxi with her to her hotel. Respondent explained, “She couldn’t have walked back on her own power.” Respondent said that he has a “vague recollection of going to the front desk” where the student determined her room number. Respondent said that he was “holding her because she was going to fall.”

Respondent recalled that he then accompanied the student to her room. He described that the student put the key in the hotel room door. He then walked her into the room, “plunked her down on the bed,” and then left. He said that the student’s roommate was in the room when they arrived and that he was never alone in the room with the undergraduate student. He remembered telling the roommate that the student was drunk. He also insisted, “Nothing could have been interpreted as attempting to give her a massage.”

Respondent expressed that, by escorting the student to her hotel room, he was simply attempting to help the student who was unable to care for herself. He said that it is “sad” because he “will never do this again.”

When asked if he tried to persuade the undergraduate student to go back to his room, Respondent replied, “No. I wasn’t even in the same hotel.”

### Respondent’s Follow-up Responses to 2010 Reported Behavior

In a follow-up interview, Respondent stated that he wanted to provide additional information about the reported behavior from the Washington, D.C. conference. He said that he felt that it was “badly represented.” Respondent offered the following points to counter what he deemed “factual misrepresentations”:

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<sup>7</sup> During a follow-up interview with Respondent, I reviewed my interview notes with Respondent, who asserted that he did not use the term “girl” to refer to the student. Because I typed my notes on a laptop computer during the interview, I find it likely that “girl” is an accurate quote.

- Respondent has never been to a “club.” He explained, “There is a party each year for the American Astronomical Society. Where it was held may have been used as a club otherwise.” However, the Society rents out the entire venue for the party of approximately 500 people.
- The undergraduate student asked Respondent twice if he would pay for an alcoholic drink for her. He emphasized that she approached him. He then walked to the counter with her. She ordered the first drink. An hour or so later, she asked him for another. When asked why she asked Respondent, he replied, “Because she knows me and we were friendly acquaintances.” He said that he “knew that she didn’t have a lot of money in life.” He also stated that “she was a senior at that time.” Although Respondent didn’t know her exact age, he “guessed” that she was 22 - 24. He did not recall the type of drinks he bought for her.
- Regarding the alleged “grinding,” Respondent stated, “I don’t grind. I barely know what that means. I hardly ever dance. I don’t recall dancing at all that evening, but if I did, I don’t grind.”
- Respondent provided additional detail. “At her request, I assisted her back to her hotel room. She seemed to me to be intoxicated. She needed help. I offered her help. I assisted her to get into the doorway.” Respondent explained that he was “holding onto her shoulders so she wouldn’t fall over.” He then “sat her down on the bed.” He also “sat down on the bed with her to stabilize her.” Once he was comfortable she was stabilized, he left. Respondent stated that, “looking back” he suspected she would not remember anything. Respondent estimated that he was in the student’s hotel room for three minutes.
- Respondent did not recall exchanging any words with the roommate. However, he guessed he would have discussed her condition, as a “handoff.” He also believed that the roommate was in the room the entire time, as opposed to in the bathroom or elsewhere.
- Respondent said that he “never got into bed with the student, never lied down with her,” and that “no clothes came off.”
- Respondent recalled that the “party was a seven minute taxi ride away from the hotel.” He then clarified that he “probably was staying in the [same] hotel as the student.” He explained that “Most participants were staying in the same hotel.” He described it as “a giant hotel” with his room “far away from the student’s.”
- This student never took a class from Respondent. Respondent “never had a supervisory role or judgment over her academic life.” Respondent did not write any letters of recommendation for the student. She was an astronomy major. They developed a “casual comradery” running into one another on campus. They never had any social interactions outside of an academic context.

- Respondent stated that, although he still has annual contact with the (then) undergraduate student in the 2010 account, he preferred that no one contact her “to save her the hassle.” He explained, “I want her to live her life in peace.” Respondent also stated that he did not know the identity of the (then) student’s D.C. hotel roommate.

#### D. Other Behavior Addressed as Early Resolutions

In 2011 the Title IX Officer received a written letter from an anonymous third party. The reporter alleged that they saw Respondent rub the bare shoulder of a female undergraduate student in class and told her that she “would be a good professor.” On a separate occasion, the reporter claimed to have seen Respondent secretly take a photo of that same student with a lollipop in her mouth during a lecture delivered by another Astronomy professor. The reporter described that after those incidents, the student had appeared “disengaged” and no longer “happy.” The Title IX Officer worked with the department Chair to address the matter through an early resolution process as outlined in the Berkeley Campus Procedures for Responding to Reports of Sexual Harassment, in effect at the time. The resolution process involved a meeting between the Astronomy Chair and Respondent, in which the accusations were shared, clear admonishments about avoiding retaliatory conduct and the importance of student privacy were delivered, followed by a non-disciplinary discussion about how the described conduct could render Respondent vulnerable to future complaints. The Chair also explained that the inherent power dynamic between students and faculty often results in a fear of objecting to or reporting interactions that are unwelcome, and that Respondent’s intention in being friendly and approachable with students may be different from his impact. The Chair documented the conversation and submitted it to the Title IX Officer.

In 2013 the Chair and the Vice Chancellor for Equity and Inclusion (also a faculty member in the Astronomy Department) reported to the Title IX Officer that faculty from other institutions, [REDACTED] had approached them at conferences with concerns about Respondent. Both faculty members told them that former Berkeley students and researchers had reported incidents of sexual harassment by Respondent. The reporters would not reveal the names of the individuals targeted by the unwelcome conduct. The Chair wrote to the faculty members, asking them to refer anyone with concerns to contact the Title IX Officer directly, and outlined campus procedures for reporting sexual harassment concerns, measures taken to protect the privacy of complaints, and University anti-retaliation policies.

In April of 2014, both the Chair and Respondent separately approached the Title IX Officer to say that yet another colleague from outside UC Berkeley had approached them at a scientific meeting to express concerns about the many rumors circulating in the national astronomy community about Respondent’s inappropriate conduct with students and researchers. Further, the [REDACTED] recently written a blog post on a national Astronomy association website, referencing a “serial harasser” from a large public university

whose conduct was the subject of widespread concern among the Astronomy community nationally. [REDACTED] claimed that in addition to her own unwelcome interaction with him, numerous students had approached her with complaints about this renowned professor, and that her attempts to alert the professor's institution had been ignored. Both Respondent and the Chair presumed that the faculty member referenced in the blog was Respondent. The Title IX Officer, Vice Chancellor for Equity and Inclusion, Chair and Respondent met to discuss these communications. As no details about specific incidents were revealed in the conversations with the colleague or in the blog post, the Title IX Officer asked Respondent whether he had any information to share that might help the University respond to these unidentified concerns. Respondent stated that the only incident that came to mind that might have motivated complaints was an interaction he had had with a female postdoctoral researcher about two and a half years earlier at a dinner during a scientific meeting. He recalled that, while telling him about some personal problems she was having related to a child with disabilities and marital problems, she became quite upset and began to cry, and wanted to go outside of the room. He had accompanied her outside and, because it was cold, they were sitting "shoulder to shoulder" for a period of time. Respondent stated that neither of them engaged in any sexual contact or behavior. He said he only consoled her verbally and platonically. He wondered, however, whether she had mistakenly experienced any "romantic tension." The Chair and the Title IX Officer reiterated to Respondent that he must refrain from any conduct that could be perceived as unwelcome, and err on the side of limiting any contact with students and researchers that was not specifically related to academic issues. Following this meeting the Title IX Officer wrote to [REDACTED] urging her to share details of the concerns and/or to refer the complainants to the campus for investigation. The Title IX Officer also provided a list of complaint resolution contacts, policies, and care and concern resources on the Berkeley campus and asked the faculty member to pass the information along to anyone with sexual harassment concerns. The Vice Chancellor for Equity and Inclusion began working on a department climate survey to be administered to Astronomy students, researchers, faculty and staff in an effort to solicit any other information that could allow the campus to respond appropriately to sexual harassment concerns and take proactive steps to ensure a safe, harassment free environment for all of these groups.

## **VII. Analysis**

### **A. Did Respondent Behave as Reported?**

Respondent did not deny much of the reported behavior. Specifically, he conceded to the behavior reported by Complainant 1, including kissing her on the forehead and possibly on the cheek, on two separate occasions, as well as patting the bare knee of another student. Similarly, he acknowledged behaving as Complainant 2 described, which included discussing details of his sex life with her, inviting her to attend a tennis match with him, and squeezing her neck after driving her home.

Complainant 3's report that Respondent "grabbed" her crotch is the most troubling behavior, based on its severity. Although it did not fall under the jurisdiction of University policies (see discussion below), it is nevertheless probative in determining the likelihood of other reported behavior. On one hand, the incident reportedly occurred over eight years after Complainant 3 reported it to OPHD. Such a gap in time can sometimes diminish the reliability of parties' statements. In fact, Complainant 3 said that she could not recall with specificity whether or not she told Witness 2 about the incident, after it occurred. However, it is not uncommon for people who have been physically assaulted to recall certain details with clarity, while other memories fade. Moreover, Complainant 3 did describe the unwelcome touch with detail. Respondent, as well as Witness 2, did confirm that Respondent gave a talk at the University of Hawaii in 2006, and that a subsequent dinner including students was plausible. I found Complainant 3 to be credible and could discern no apparent reason for her to fabricate this allegation. In fact, Complainant 3, like all complainants who report misconduct, made herself vulnerable to potential reprisals from Respondent, though that was not raised as a concern by Complainant 3.

I found that Respondent's reaction to this allegation lacked credibility. He did not entertain the possibility that he touched the student in any manner, including how he admittedly touched other students in the past. He distinguished Complainant 3 as someone whom he did not know, so therefore, not potentially subject to knee pats or other touching. Likewise, he characterized the behavior as that which he "would never have an interest in," despite its congruency (arguably an extreme example) with other reported unwanted advances. Based on the preponderance of the evidence, I find it more likely than not that Respondent acted as reported by Complainant 3.

As to the behavior described by Complainant 4 at the Washington, D.C. conference, Respondent conceded it was "plausible" that he touched the undergraduate student's thigh while sharing a taxi. He also admitted to buying her two alcoholic drinks at the after-party. Respondent disputed "grinding" with her, but acknowledged the unlikely possibility that he danced. He surmised that his actions were misperceived when, according to him, he put his arm around the student, to support her, as he escorted her away from the party. "Grinding" is, arguably, a subjective descriptor. Nevertheless, the behavior that Complainant 4 witnessed was alarming enough for her to notice and to later report.

Respondent corroborated the information relayed to Complainant 4 regarding the fact that he took the other student back to her hotel room and went inside with her. I find it unusual that Respondent did not first attempt to find the student's friends at the party or to seek the assistance of others to care for the student, particularly since there were numerous people in the student's peer group at the event, if Respondent's only motive was to assure the student got back to her hotel safely. Respondent also made a point of telling me that the student was not in any of his classes, as if to suggest that any sexual advances (if welcomed) would not have been against policy. Likewise, upon reaching the student's hotel room, Respondent asserted that he helped the student to her room and sat down on her bed beside her, to steady her balance, and stayed in her room for three minutes. Again, I question the Respondent's motives by escorting the student all

the way to her bed, rather than enlisting the help of the roommate upon arriving at the hotel room, if she was in the room as described.

Complainant 4 conceded that she did not personally witness Respondent's behavior after he and the student left the party, and Respondent's characterization of his subsequent actions is quite different than the account that was relayed to Complainant 4. Complainant 4 reported that the former student subjected to Respondent's behavior did not feel comfortable participating in OPHD's investigation. Likewise, the roommate or other potential witnesses were not identified. This lack of corroboration is not uncommon, particularly given the passage of time. Similarly, Respondent did not want me to contact the former student at issue, to "save her the hassle." He also speculated that she would not remember anything. Based on the foregoing, I find it more likely than not that Respondent acted as reported by Complainant 4, at least to the behavior she witnessed. As to the hotel room behavior, the preponderance of evidence does not support the allegation that Respondent was found "in bed" with the student. At a minimum, Respondent exercised poor judgement by first buying the undergraduate student drinks, and then, when she was too intoxicated to care for herself, physically handling her, and then taking her alone via taxi to her hotel room and ultimately sitting with her on her hotel room bed. Moreover, I find it more likely than not that the intoxicated undergraduate student did reasonably perceive Respondent's actions as sexual or romantic advances.

#### **B. Did Respondent's Behavior Violate Policy?**

The most severe behavior, the "crotch grab" reported by Complainant 3, is not analyzed as a potential policy violation because the target of the reported behavior was not affiliated with UC Berkeley and because it did not occur in relation to UC Berkeley activities or programs. Accordingly, the behavior was not subject to UC policy. However, I do find that the behavior more likely than not occurred as reported and relied on this evidence to support the likelihood that the behavior reported by the other complainants also occurred. The discussion below applies to the incidents reported by Complainants 1, 2, and 4.

The relevant University of California sexual harassment policies define 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 or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment.

In determining whether the reported conduct constitutes sexual harassment, consideration is 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.



### Unwelcomeness of the Conduct

Each of the complainants described that the behavior Respondent directed at them was unwelcome. For the few reported incidents where Respondent's behavior was directed at others, it was not always apparent whether the behavior was unwelcome to the recipients. In fact, the subject of Respondent's knee pat, as reported by Complainant 1, stated that she interpreted the gesture as a "sign of support." Still, it was uncomfortable for Complainant 1 to witness.

As to Respondent's behavior towards the unidentified undergraduate student in Washington, D.C., Complainant 4 was not in a position to state with certainty that the student found the advances unwelcome. However, the student did share with Complainant 4 that Respondent's behavior made her "very uncomfortable." She seemingly chose not to confront the behavior out of concern over recommendation letters and other professional considerations. Nevertheless, the behavior did impact Complainant 4, who certainly found it unwelcome.

### Sexual in Nature

All of the reported incidents were interpreted as sexual advances by the targets, or are otherwise sufficiently sexual in nature to meet this element of the sexual harassment policy.

### Impact

Each of the complainant's described how Respondent's unwelcome behavior impacted their learning environments, to sufficiently implicate the sexual harassment policy.

Complainant 1 reported feeling "awkward" around Respondent and that his behavior seemed "inappropriate." She described that it "took a while to get up courage" to confront Respondent about his behavior.

Complainant 2 described an escalation of behavior that culminated with her contemplating having to physically flee from him after he gave her a ride home. She too described the "great anxiety" she experienced when faced with the prospect of confronting Respondent for his behavior. Complainant 2, like others, also expressed the belief that she might forfeit educational and advancement opportunities by confronting Respondent, which she was saved from doing.

Complainant 4 described how, after witnessing Respondent's advances to an undergraduate student, she "felt incredibly uncomfortable" around him and that being in the same room with him made her "heart race" and "stomach churn." She elaborated that the experience was "incredibly upsetting" and "affected the rest of [her] graduate experience at Berkeley."

### Totality of Circumstances

Although the many reported incidents span more than a ten year period, the pervasiveness of Respondent's behavior is unusually high. It's worth noting that no new incidents have reportedly



occurred in the past four years. Likewise, Respondent himself attested to the changes he has made in his own behavior. However, it is also important to note that Respondent's most extreme reported behavior happened away from campus. Additionally, complainants did not come forward in the current investigation until they apparently learned of others who had experienced similar behavior from Respondent.

It cannot be overstated how Respondent's inherent influence and authority over the complainants, real or perceived, heightened the impact of his behavior on those experiencing or witnessing it. Indeed, a student's predisposition to seek approval from faculty members, particularly from a renowned professor in one's chosen area of study, makes for a vulnerable target. Respondent established a pattern of exploiting such vulnerabilities.

For these reasons, it is determined that Respondent's behavior was unwelcome, sexual in nature, and unreasonably impacted the complainants such that it created an intimidating, hostile or offensive learning environment, in violation of the University of California sexual harassment policies in effect at the time.

#### **VIII. Conclusion**

The evidence gathered supports the conclusion that the totality of Respondent's behavior violated the relevant UC sexual harassment policies. Based on this conclusion, I recommend that the Vice Provost for the Faculty evaluate whether these behaviors constitute possible violations of the Faculty Code of Conduct, and if so, pursue the appropriate resolution process according to the Code.