

April 22, 2016

**VIA E-MAIL AND FIRST CLASS MAIL**

Vern Paxson  
Chair of the UC Berkeley Privilege and Tenure Committee  
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Dear Members of the UC Berkeley Privilege and Tenure Committee (“P&T Committee”):

I file this grievance in accordance with Bylaw 335 of the Academic Senate of the University of California for violations of the Faculty Code of Conduct (FCC) as set forth in Section 15 of the Academic Personnel Manual (APM).

Specifically, several members of the administration of the University of California and the UC Berkeley campus have violated my right under the FCC “to be judged by [my] colleagues, in accordance with fair procedures and due process, in matters of promotion, tenure, and discipline, solely on the basis of [my] professional qualifications and professional conduct.” APM-015.

This right has been violated by the launching of a second disciplinary process against me, which has as its ultimate goal the stripping of my tenured faculty position. As discussed below, this second procedure has been initiated by the Vice Provost for the Faculty, Janet Broughton, under the direction of President Janet Napolitano and Chancellor Nicholas Dirks, many months after a first disciplinary process against me was undertaken and completed in its entirety. I cooperated fully in the first disciplinary process and accepted the sanctions imposed upon me as a consequence of that process in July 2015, as part of a settlement. The second process now launched against me is duplicative, breaches multiple written and verbal assurances previously provided to me by the University, and blatantly violates the University’s own disciplinary procedures. In addition, the second process has been indelibly tainted by the manner in which it was launched by President Napolitano, who has flagrantly and repeatedly breached the most basic rights to due process held by every Senate Faculty member at the University of California.

Both the grievance and disciplinary processes are conducted by the P&T Committee. The only effective remedy for the breach of my rights described in this grievance is termination of the second and duplicative disciplinary process in my case because there is no legitimate legal basis on which it may do so and because of the tainted manner in which this matter has come before it.

## **I. FACTUAL BACKGROUND**

### **A. The First Disciplinary Process**

On Thursday, March 19, 2015, I received an e-mail from my Executive Assistant, Tyann Sorrell, complaining to me, for the first time, that I had made her feel uncomfortable by hugging and kissing her on the cheek, and, at times, touching her on her shoulders and arms. On or about Friday, March 20, 2015, I received a phone call from my Chief of Staff, Areca Smit, who informed me that Ms. Sorrell's complaint would trigger the OPHD process.<sup>1</sup> On April 16, 2015, I received notice that OPHD was commencing an investigation into the conduct complained of by Ms. Sorrell.

On May 11, 2015, Andrea LaCampagne, a Complaint Resolution Officer for OPHD, along with one other OPHD staff member, interviewed me. I was fully cooperative throughout this interview. During the interview, I acknowledged that I had hugged and kissed Ms. Sorrell on the cheek (though I disagreed with how often it had occurred), and I expressed sincere and deep remorse for the stress and unhappiness that I had caused Ms. Sorrell, which was entirely unintentional.

On July 7, 2015, OPHD released its Report of Investigation and Findings ("the OPHD Report"), which concluded that I had violated the sexual harassment provisions of the UC Policy on Sexual Harassment and Sexual Violence. The OPHD Report noted that I had acknowledged my conduct and that the only dispute was over how often it occurred. The OPHD Report stated, "[t]he Respondent was unconscious of his actions." OPHD Report at 10. Significantly, OPHD did not find that my actions were motivated by any sexual intent or desire, nor was such an intent even alleged by Ms. Sorrell. Indeed, in Ms. Sorrell's March 19, 2015 e-mail, she said, "I know you do not mean anything by [your actions] other than, perhaps, a warm and friendly greeting," and acknowledged that I had "pure intentions."

Finally, OPHD noted that its report would be "forwarded to the Provost's Office for further review under the Faculty Code of Conduct." *Id.* The OPHD Report was, accordingly, subsequently provided to the now-former Executive Vice Chancellor and Provost (EVCP) of UC Berkeley, Claude Steele, and Vice Provost Broughton. *See* E-mail from A. LaCampagne to S. Choudhry, April 16, 2015 (Respondent's Notice of Allegations).

### **B. Acceptance of Proposed Sanctions**

On July 31, 2015, at his request, I met with Provost Steele. The purpose of that meeting was to discuss the sanctions that he proposed in response to OPHD's findings. Provost Steele gave me a letter (the "Sanctions Letter," attached as Exhibit A), outlining the "course of action"

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<sup>1</sup> Apparently, it took OPHD nearly two weeks to get in touch with Ms. Sorrell regarding her complaint. In the meantime, human resources allegedly told Ms. Sorrell to use her accrued vacation days and sick leave if she did not feel comfortable returning to work.

that he believed was “warranted and appropriate for this situation.” The Sanctions Letter indicated that Provost Steele had reviewed the OPHD Report and “discussed it with Chancellor Dirks, Vice Provost Broughton, and Chief Campus Counsel Patti.” The sanctions were the following:

- A 10% salary reduction for one year, effective immediately;
- One-on-one training and coaching beginning no later than September 1, 2015 and continuing for 6 to 12 months to address appropriate workplace conduct;
- Financial responsibility for the cost of coaching;
- A written apology letter to Ms. Sorrell to be provided to Provost Steele no later than August 17, 2015; and
- Periodic monitoring by OPHD of my behavior and reports to Provost Steele on its findings.

The letter did not state or suggest that the sanctions attached only to my administrative position as Dean, or that any additional sanctions, related to my deanship or my faculty position, were under consideration on the basis of the findings in the OPHD Report. It did not state or suggest that separate discipline could or would be imposed in my capacity as a faculty member. On the contrary, the only reference to any additional sanctions at all was a warning that if Provost Steele received “any credible evidence that [I had] again violated the UC Policy on Sexual Harassment and Sexual Violence, [I might] be subject to immediate further disciplinary action, up to and including [my] termination as Dean.” The letter made clear that the “course of action” that Provost Steele, Chancellor Dirks, Vice Provost Broughton, and Chief Counsel Patti believed to be “warranted and appropriate” for the violation of the *FCC* consisted, in its entirety, of the sanctions described above.

Provost Steele’s verbal representations during our meeting reinforced that the Sanctions Letter set out my complete and final sanction. He stated that the sanctions that I faced were contained in the Sanctions Letter. He said absolutely nothing to imply that I might face a second disciplinary process or any prospect of further sanctions in my capacity as a faculty member, immediately or at some future undetermined date, on the basis of the OPHD Report.

**In reliance on the Sanctions Letter and my meeting with Provost Steele, I accepted the sanctions imposed upon me in full and declined to contest the findings or proposed sanctions.** I wrote Ms. Sorrell an apology letter, and delivered it to Provost Steele in a timely fashion; I commenced my one-on-one coaching sessions; I accepted my salary reduction; and I agreed to OPHD monitoring.

Two months later, I learned that Provost Steele *still* had not delivered the apology letter that I had drafted over the summer to Ms. Sorrell. It is my understanding that Ms. Sorrell was only given my apology letter in a meeting with Provost Steele on October 27, 2015. Ms. Sorrell has alleged that she left this meeting with Provost Steele “hurt and demoralized.” *See* Complaint ¶ 34, *Sorrell v. Regents of the Univ. of California*, No. RG16806802 (Cal. Super. Ct. Alameda Cnty. March 8, 2016). Her lawyer has also since revealed that these feelings were exacerbated by the University’s failure to offer her continued employment in spite of repeated promises and the

submission of no less than ten job applications.<sup>2</sup> At no time did I resist Ms. Sorrell's return to work at the University, or even to the law school. I made it clear that Ms. Sorrell's position at the law school was open, should she choose to return, and I authorized my Chief Operating Officer, Georgia Giatras, to pay for a recruiter to help Ms. Sorrell in her job search.

In late December 2015, Provost Steele discussed with me the controversy that had erupted over the University's handling of Geoffrey Marcy's sexual harassment case. He reiterated that the disciplinary process was "over" for me.

### **C. Initiation of the Second Disciplinary Process**

On March 8, 2016, Ms. Sorrell filed a civil complaint against the University and me in Alameda County Superior Court alleging sexual harassment.

On the morning of March 9, 2016, I met with Provost Steele and his Chief of Staff, Phyllis Hoffman, at their request. Provost Steele asked me to take an indefinite leave of absence as Dean, pending the resolution of the civil suit. He informed me that he had drafted a statement that he wished to release in which he defended my sanction on the basis that it was proportionate to my conduct, which he described as not having been predatory in nature. After I left my meeting with Provost Steele, I stopped by Vice Provost Broughton's office. Vice Provost Broughton told me that she also stood by the original sanction imposed. Later that day, Provost Steele released a statement indicating that there had been a "thorough investigation" of the matter, and that "based on the findings of the investigation I believed that a combination of disciplinary actions, monitoring of his behavior and formal training would be an appropriate and effective response, and would produce the necessary changes in his behavior."

At 7:45 a.m. on March 10, 2016, I spoke with Provost Steele and informed him that I wished to resign from my position as Berkeley Law's Dean, which I believed would be in the best interest of Berkeley Law. Provost Steele declined to accept my resignation and said that he believed that he could justify the sanction to the Berkeley Law community. Provost Steele commenced a meeting with the Berkeley Law faculty at 8:00 a.m., accompanied by Chancellor Dirks. At approximately 9:00 a.m., during that meeting, he informed the faculty that I had offered to resign as Dean. At approximately 9:45 a.m., Provost Steele called me to accept my resignation and thereafter announced it to the Berkeley Law faculty.

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<sup>2</sup> Ms. Sorrell's lawyer stated, "The university was so concerned about what might happen to Choudhry's career . . . Well, what about her career? She wants to work." He further stated, "All of [the discipline against Dean Choudhry] is so light for what he did . . . That is why we're here [in litigation]. She was already infuriated by that decision." See Cheryl Miller, "Berkeley Dean Scandal 'Infuriating' to One Who's Seen It Before," *The Recorder*, March 11, 2016, available at <http://www.therecorder.com/id=1202752078971/Berkeley-Dean-Scandal-Infuriating-to-One-Whos-Seen-It-Before?mcode=0&curindex=0&curpage=ALL>.

On March 12, 2016, I learned, via a *Los Angeles Times* article, that President Napolitano had reported to the press the previous day that I had been, or would be, “banned” from campus, and that she had directed Chancellor Dirks to pursue further disciplinary action against me. She also mischaracterized my conduct in a defamatory fashion as “groping.” I did not receive advance notice, in writing or otherwise, of these decisions and declarations regarding a second disciplinary process and my right as a Senate faculty member to go to campus. Indeed, I have still not been provided with any written notice of these matters by the University, with one minor exception brought about only through the efforts of my own legal counsel. On March 11, 2016, my lawyer in Ms. Sorrell’s state court action called the University’s Office of General Counsel to discuss the civil suit. The Office of General Counsel did not return the phone call until March 14, 2016, after President Napolitano had made her statements to the press. In that call, the Office of General Counsel affirmed that there was actually was no campus “ban” in place (and indeed, none is still in place), but that the University requested that I informally agree not to be on campus through the end of the semester due to the highly charged atmosphere. In addition, the Office of General Counsel informed my attorney that my case would be referred for discipline in my capacity as a faculty member.

Not until the next day (on March 15, 2016) did Vice Provost Broughton e-mail me a “preliminary notification” informing me of the disciplinary measures that I had learned of through the press. The preliminary notification stated:

[T]he report of July 7, 2015, prepared by the Office for the Prevention of Harassment and Discrimination has been referred to me for assessment under the Faculty Code of Conduct. In accordance with campus procedures, I will be appointing one or two faculty members to investigate possible violations of the Faculty Code of Conduct [(“FCC”).]

E-mail from J. Broughton to S. Choudhry (March 15, 2016).

On March 18, 2016, my counsel, William Taylor, sent a letter (attached as Exhibit B) to President Napolitano demanding, *inter alia*, that she stop the second disciplinary process initiated to strip me of my tenured faculty position. On March 29, 2016, having received no response from President Napolitano’s office regarding the status of the second disciplinary process, Mr. Taylor sent a letter (attached as Exhibit C) to Vice Provost Broughton’s office with the same demand. On April 6, 2016, Chief Campus Counsel Patti sent a letter (attached as Exhibit D) on behalf of President Napolitano and Vice Provost Broughton, stating, “the FCC expressly permits the faculty disciplinary process to be invoked in this situation.” Mr. Patti asserted that the disciplinary measures previously taken against me were “administrative actions taken in connection with [my] appointment as Dean of the Berkeley Law School.” He then cited to and quoted from APM-016, in arguing that “if the faculty disciplinary process determines that Prof. Choudhry violated ethical standards set forth in the FCC, he may be subject both to prior administrative actions and to additional faculty discipline under the Code.”

## **II. Grievance and Relief Sought**

**A. The initiation of a second disciplinary process is unfair, unjust, and contrary to the University's own policies.**

The disciplinary process that was launched in 2015, and which culminated in my acceptance of the settlement containing sanctions in the Sanctions Letter, was final and complete. Any further disciplinary process or action breaches that settlement and is a violation of University procedures; a breach of the University's promises to me, upon which I reasonably relied in accepting the imposed sanctions; and a violation of my due process rights as a member of the Berkeley Academic Senate.

The FCC and Disciplinary Procedures for the Berkeley Campus ("Berkeley Procedures") state that when the EVCP receives an investigative report, "[b]efore filing formal charges with P&T [the P&T Committee], the EVCP may offer a settlement involving a proposed sanction. If the settlement is accepted by the accused faculty member, a hearing before P&T shall not be necessary." Berkeley Procedures at 11; *see also* APM-015 at 11 (providing for informal disposition of allegations of faculty misconduct prior to initiation of disciplinary proceedings); UC Academic Senate Bylaw 336(C) (also providing for early resolution of disciplinary cases).

That is precisely what occurred here. Provost Steele was presented with the OPHD Report for "further review under the Faculty Code of Conduct" in July 2015. Provost Steele – in consultation with Campus Counsel, Vice Provost Broughton, and Chancellor Dirks – elected to offer me a settlement instead of proceeding by referring the OPHD Report to faculty investigators to determine if there was probable cause to file formal charges with the P&T Committee. At no time was the settlement presented to me as being solely related to my role as an administrator, with a second disciplinary process in the wings, or even potentially in the wings. The Sanctions Letter did not refer to *any* additional potential disciplinary measures based upon the same underlying conduct upon which the sanctions were based. The only reference to any additional sanctions was the statement that if the Provost received credible evidence that I had engaged in *further* violations of UC's Policy on Sexual Harassment and Sexual Violence, I would be subject to further disciplinary action.

Absolutely no suggestion was made – in the Sanctions Letter, in the meeting during which it was delivered to me, or in any subsequent meeting or communication – that the settlement offered to me addressed my conduct solely in my administrative role as Dean of Berkeley Law, and that a second disciplinary path remained open against me as a faculty member. Had such a suggestion been made, I would have never accepted a partial settlement that left open the possibility of the extraordinary additional sanction of stripping me of my tenured faculty position, especially if that second process was to occur at the option of the Berkeley administration at some future and uncertain date of its choosing.

In detrimental reliance on the University's policy and assurances, I accepted the full sanction imposed upon me and I complied with all the conditions. **If I had known or expected that the University would attempt to reverse its decision nearly a year later, I would not**

**have agreed to the conditions in the letter.** I had a number of alternatives at the time. I could have appealed the OPHD’s factual findings, rejected the proposed sanctions, and/or even proceeded with a hearing before the P&T Committee (untainted by President Napolitano’s subsequent public and unprecedented disparagement of me). All of those options are foreclosed to me now, particularly in light of President Napolitano’s decision to address my discipline in the national press, mischaracterize my conduct, and direct the preordained outcome of stripping me of my tenured position.

My reliance on the Sanctions Letter and the assurances provided to me is supported by the version of the OPHD Policy Sexual Harassment and Sexual Violence that was in force at the time of the investigation and discipline. It provided that after an Investigative Report is completed (emphasis added):

The report is submitted to a designated University official with authority to implement the actions necessary **to resolve the complaint.** The report may be used as evidence in other related procedures, such as subsequent complaints, grievances and/or disciplinary actions.

After receiving the OPHD Report, Provost Steele chose “to implement the actions necessary to resolve the complaint” by issuing a Letter that contained sanctions he felt were “warranted and appropriate for this situation.” He sought and received the approval of Chancellor Dirks in deciding upon the appropriate course of disciplinary action, consistent with the Standing Orders of the UC Board of Regents, which expressly provide, “[t]he Chancellor of each campus shall . . . be responsible for . . . its discipline . . .” Standing Order 100.6(a). As such, any suggestion that the decision was Provost Steele’s alone rings hollow.

Likewise, that the decision rendered by Provost Steele and Chancellor Dirks was final, and never intended to be an interim or preliminary measure, is also made clear by both the explicit language of the Sanctions Letter, and by the Standing Orders themselves. Standing Order 100.6(a) explicitly states that “decisions made by the Chancellor in accordance with . . . policies established by the Board or the President of the University shall be final.” The decision made by Provost Steele in consultation with Chancellor Dirks and consistent with University policy was, therefore, final, and I reasonably relied on the sanction being the final resolution of the matter. That decision cannot legitimately be reopened pursuant to an edict by President Napolitano,<sup>3</sup> who, as the Standing Order makes clear, lacks any authority over an individual disciplinary decision, and cannot undermine its finality.

These policies of UC Berkeley and the University of California are reinforced by general legal principles. It is a basic principle of disciplinary processes that sanctions must expressly put the accused individual on notice, in writing, of what potential jeopardy he faces, what decisions

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<sup>3</sup> See Letter from J. Napolitano to N. Dirks, March 11, 2016, attached as Exhibit E (“I expect you [Chancellor Dirks] to take the following actions: . . . Institute disciplinary proceedings against Mr. Choudhry through the Privilege and Tenure process.”).

have been taken, what sanctions have been imposed, and what, if any, decisions have yet to be made. It is also a basic principle of disciplinary procedure that any silences (such as the failure by Provost Steele or any member of the Campus Administration to inform me of the possibility of a second disciplinary procedure) should be read in favor of the accused, and not the prosecutor. Those principles, coupled with the language of the Sanctions Letter and numerous subsequent interactions I have had with Provost Steele and others, underscore the illegitimacy of President Napolitano's eleventh hour attempt to revisit the original sanction.

In summary, when I accepted the findings contained in the OPHD Report and the Sanctions Letter, I did so explicitly in reliance on: (1) the provision of the FCC stating that acceptance of sanctions offered to settle a disciplinary matter "shall" obviate formal charges being filed with the P&T Committee, and the accompanying process and hearing; (2) the Letter itself; (3) the OPHD process that granted Provost Steele the power to resolve the complaint; (4) repeated assurances, consistent with that written provision, that the sanctions were deemed appropriate and proportionate by the Chancellor, Provost, Vice Provost, and Campus Counsel; (5) repeated assurances by the Provost and Vice Provost that the settlement and sanctions would, and did, end the disciplinary process; and (6) general legal principles governing disciplinary processes. The promises above were made to me at the time, and on multiple occasions in the last several months. The University may not now reverse course.

In defending the second disciplinary process in his letter to Mr. Taylor, Chief Campus Counsel Patti cites APM-016, which states:

Faculty members in administrative roles may be subject to disciplinary sanctions under this policy in addition to administrative actions, if the faculty member's misconduct in the role of an administrator also violates the ethical and professional standards for faculty set forth in the Faculty Code of Conduct.

To suggest that Provost Steele, in consultation with Chancellor Dirks, Vice Provost Broughton, and Chief Campus Counsel Patti, chose to discipline me solely in my role as an administrator in July 2015, and reserved **in secret** the right to initiate additional disciplinary measures against me in my role as a faculty member **nearly one year later**, is a bizarre revision of history. It is simply untenable and frankly disingenuous. Provost Steele was directed to assess the OPHD findings under the FCC. Both he and the other administrators considered the FCC and believed that the sanction they proposed in the Sanctions Letter was "warranted and appropriate for [the] situation." Vice Provost Broughton—who has initiated the second disciplinary process, apparently at the direction of Chancellor Dirks and President Napolitano—approved the sanction imposed in July 2015. Provost Steele made repeated assurances to me that the disciplinary process was over. Those assurances are consistent with UC Berkeley's disciplinary procedures. Accepting Mr. Patti's justification for the second disciplinary process would mean that the UC Berkeley administration's conduct in the past year has been in bad faith.

There is also no legitimate basis to assess my conduct a second time under the FCC, much less to impose an infinitely harsher result as to my tenured faculty position than was

imposed with respect to my administrative role (which was the context in which this matter arose). The University has not suggested that the OPHD investigation that took place from March to July 2015 was procedurally inadequate in any way. To the contrary, Provost Steele himself described the investigation on March 10, 2016 as “thorough.” The investigators spoke with the relevant parties, presented their assessment of the facts, and reached their conclusions consistent with their factual findings. The only thing that has changed is the context: the heightened political climate surrounding campus sexual harassment issues and the media spotlight on the UC administration.

It is a violation of the University’s procedures, my due process rights, and basic fairness to impose a second disciplinary process under these circumstances.

**B. If the second disciplinary process goes forward, President Napolitano has sealed my fate through her baseless and incendiary statements to the press.**

Given President Napolitano’s public statements over the last two months, there is simply no possibility that an impartial assessment of my conduct can be made should the second disciplinary process go forward. In particular, President Napolitano has grossly mischaracterized my conduct, wrongly stated that I am or shall be barred from campus, and clearly signaled that she hopes for a stiffer sanction to be imposed on me as a result of the second disciplinary process. Her actions to date have been reckless, unprofessional, and incredibly damaging to my reputation as an academic, a colleague, a husband, a father, and a friend.

In an interview with *The Sacramento Bee*’s editorial board on March 9, 2016, President Napolitano referred to my conduct with Ms. Sorrell as “groping.” This characterization is defamatory. At no time has it even been *alleged* that my contact with Ms. Sorrell was informed or motivated by sexual intent or the desire for sexual gratification. The terms “grope” and “groping” connote, in common parlance, fondling someone for sexual pleasure, yet nowhere in Ms. Sorrell’s March 2015 e-mail, which triggered the OPHD investigation, nor in the civil complaint, nor in the OPHD Report, is there any suggestion that I “groped” Ms. Sorrell.

Furthermore, President Napolitano’s statement to the press that I have been ordered banned from campus is false and furthers the narrative emanating from her office and various advocacy groups, that I am some type of predator. That is untrue and unfair. I functioned in my position as Dean of the law school for almost a full year, following the commencement of the OPHD proceeding, without any further complaints or incidents. As a practical matter, I have remained off campus since resigning from my position as Dean out of concern for the best interests of the law school and campus community. But President Napolitano has fueled public hysteria by making blanket statements about recent cases of sexual harassment, without any attention to the distinctions in degree and kind of the allegations and investigatory findings against each of the accused individuals.

It is false and unfair to me for President Napolitano to equate my case with that of Geoffrey Marcy, Graham Fleming, or any other individual on campus found to have engaged in

sexual harassment. Each case involves unique factual circumstances and presents policy violations of varying types and degrees. As a result of President Napolitano's reckless actions, several publications have reported on my alleged "ban" from campus and on her characterization of my behavior as "groping."<sup>4</sup> Indeed, *The American Bazaar* took President Napolitano's comments a step further, running an article with the headline: "Nicholas Dirks unveils new rules to combat *sexual predators* like Sujit Choudhry."<sup>5</sup> (emphasis added).

It is clear, based on President Napolitano's inaccurate and disparaging statements, that she spoke to the press about my case without having read the findings of the OPHD Report. Her behavior has harmed me professionally and personally. President Napolitano has preordained the outcome of the second so-called "disciplinary process"; she has shown that she will not rest until I have been stripped of my tenured faculty position. To permit a second disciplinary process to go forward under these circumstances would deny me the rights to fair process and fair judgment guaranteed by the FCC.

## Conclusion

Before President Napolitano used the power of her position to publicly condemn me, portray my conduct falsely, and make me a pariah at UC Berkeley, I would have had the chance to preserve my academic career. But her decision to shame me in the press and direct my ouster has destroyed my professional reputation. While the road forward for me as a faculty member at UC Berkeley is challenging, to say the least, the conduct of university officials in this grievance has made that road even rockier. President Napolitano's conduct in my case should serve as a

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<sup>4</sup> See, e.g., "UC President Janet Napolitano is appalled by latest groping case," *The Sacramento Bee*, March 9, 2016, <http://www.sacbee.com/opinion/california-forum/article65086572.html>; "Yes means yes for UC law school deans, too," Editorial, *The Sacramento Bee*, March 9, 2016, <http://www.sacbee.com/opinion/editorials/article65087237.html> ("In a meeting with The Sacramento Bee editorial board, UC President Janet Napolitano said that UC deans are normally disciplined at the campus level. But she added: "How often you have to say, 'It's a workplace'? People ought to be able to come to work without being groped, as a minimal standard."); "UC President Wants Choudhry Banned from Campus," Cheryl Miller, *The Recorder*, March 14, 2016, <http://www.therecorder.com/id=1202752176835?slreturn=20160225093058> ("University of California President Janet Napolitano has ordered former UC-Berkeley School of Law dean Sujit Choudhry barred from campus for the rest of the semester following allegations that he sexually harassed his executive assistant for months."); "Sexual Harassment Cases Tarnish Berkeley's Image as a Center of Social Activism," Thomas Fuller, *The New York Times*, March 24, 2016, <http://www.nytimes.com/2016/03/25/us/sexual-harassment-cases-tarnish-berkeleys-image-as-a-center-of-social-activism.html> ("In an interview, Ms. Napolitano said she stood by her order to keep Mr. Choudhry off campus.").

<sup>5</sup> The editors of *The American Bazaar* have since agreed to retract the headline but traces of it remain in republications throughout the internet. The original article appeared on March 24, 2016, at <http://www.americanbazaaronline.com/2016/03/24/nicholas-dirks-unveils-new-rules-combat-sexual-predators-like-sujit-choudhry-543534/>.

warning to all University of California faculty and staff whose careers and livelihoods are considered secondary to the leadership's need to deflect public criticism and respond to public controversy. At the most basic level, I am an employee of the University of California, and the head of our university chose to pillory me publicly without first attempting to learn and understand the facts of what occurred, and then to fairly assess how the university's own processes had been followed and applied in my case, including the sanctions that the UC Berkeley administration had offered and I had accepted as part of a settlement. Had I known that my fate could turn on her reckless conduct, I could and would have pursued other options to preserve my future and protect my wife and children.

To be sure, I fully understand the University's need to address the concerns that have emerged on campus as a result of recent events. But those concerns do not justify pretending that fiction is fact and denying me the rights guaranteed to every tenured member of the faculty. University administrators have abandoned fundamental principles of fairness in the face of criticism. The second "disciplinary process" initiated at President Napolitano's command sends an ominous message that the retention of one's position as an administrator or tenured faculty member is subject to the court of public opinion, not the policies and protections guaranteed to every faculty member of this institution.

This Committee has the power and solemn duty to protect the due process rights of all members of the Academic Senate, lest those rights cease to have any meaning at all. It should do so now at this stage of the disciplinary process, as the administration and its legal counsel has asserted that the referral of the OPHD Report to faculty investigators will result in a probable cause finding that will lead to the referral of my case to the P&T Committee for discipline. By declining to proceed with this arbitrary and unfounded second process, the P&T Committee will safeguard its role as an impartial, independent committee whose considerable authority is invoked only in accordance with the norms of procedural fairness, and not at the mere whims of administrators or in the name of political expedience.

Please note that I reserve the right to make additional written submissions that elaborate upon these arguments, and to make additional arguments, with respect to this grievance.

Sincerely,

A handwritten signature in black ink that reads "S. Choudhry". The signature is written in a cursive style with a long, vertical tail on the letter 'y'.

Sujit Choudhry

Cc: Robert Powell, Chair, UC Berkeley Academic Senate  
Andrea Green Rush, Executive Director, UC Berkeley Academic Senate  
Members of the UC Berkeley P&T Committee: Steven Beissinger, Mary Berry, Jennifer  
Chatman, Lisa Garcia Bedolla, Martin Head-Gordon, Sharon Inkelas, Christopher Kutz,  
Samuel Otter, Jonathan Simon

# Exhibit A

## “Sanctions Letter”

July 30, 2015

Dean Sujit Choudhry  
215 Boalt Hall, # 7200

**Confidential and Personal**

Dear Sujit,

This letter is my response to the Finding of Policy Violation – Sexual Harassment as reported to me on July 7, 2015 by the Office for the Prevention of Harassment and Discrimination (OPHD). I have reviewed the report and discussed it with Chancellor Dirks, Vice Provost Broughton, and Chief Campus Counsel Patti.

OPHD found that your conduct toward one of your subordinates, which included repeated hugging, kissing on the cheek, and touching on shoulders and arms, was unwelcome and violated the UC Policy on Sexual Harassment and Sexual Violence. I regard this conduct as a serious violation of University policy and as demonstrating a significant failure of judgment on your part. I have valued your contributions as our Law School Dean in your first year, yet this behavior shows a troubling lack of leadership and supervisory experience.

Based on the OPHD findings, I have decided on the following course of action, which I believe is warranted and appropriate for this situation:

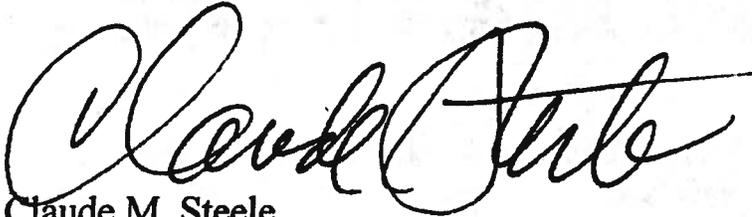
- Your salary will be reduced by approximately 10% to \$373,500 for one year, effective immediately.
- You will begin a course of one-on-one training and coaching no later than September 1, 2015. You will choose a coach from a list of names of several trusted professionals which we will provide to you. You will work with that person on maintaining appropriate standards of behavior in the workplace, conducting yourself appropriately in your contact with co-workers and subordinate employees, and avoiding sexual harassment. The training must last for 6-12 months, with the mandatory time period determined upon assessment of progress by the coach, who will periodically report to me. You will be financially responsible for the cost of the coaching.
- You will prepare a written apology to Ms. Sorrell and provide it to me no later than August 17, 2015; I will ensure that it is transmitted to her.
- The Office for the Prevention of Harassment and Discrimination (OPHD) will conduct periodic monitoring of your behavior and will report back to me on its findings.
- If I receive any credible evidence that you have again violated UC Policy on Sexual Harassment and Sexual Violence, you may be subject to immediate further disciplinary action, up to and including your termination as Dean.

Per Presidential policy on Sexual Harassment and Sexual Violence Policy (clarified by memo on August 15, 2014), Ms. Sorrell is entitled to know the sanctions described in

this letter, and we will communicate this information to her. Also, it is possible that we will need to disclose the investigative findings and contents of this letter to others, and we will do so at our discretion.

Please be aware that University policy strictly prohibits retaliation against either the complainant or anyone else who may have been involved in the investigation and that consequences for violation of that policy would be severe.

Sujit, I hope it is clear how seriously I take this matter, and I sincerely hope that this plan of action immediately alters your behavior. You have a very promising career as Berkeley's Law School Dean with your innovative ideas, high energy, and enthusiastic citizenship, and I trust that you will grow into the kind of leader that we both know you can be.

A handwritten signature in black ink, appearing to read "Claude Steele". The signature is fluid and cursive, with a large initial "C" and "S".

Claude M. Steele  
Executive Vice Chancellor and Provost

# Exhibit B

Letter from W. Taylor,  
III to J. Napolitano

WILLIAM W. TAYLOR, III  
Partner  
202.778.1810  
wtaylor@zuckerman.com

March 18, 2016

**VIA E-MAIL**

President Janet Napolitano  
Office of the President  
University of California  
1111 Franklin Street, 12th Floor  
Oakland, CA 94607  
University of California

Re: Professor Sujit Choudhry

Dear President Napolitano:

This firm represents Sujit Choudhry, I. Michael Heyman Professor of Law, in connection with the matters involving his employment as a tenured faculty member of the University of California, Berkeley School of Law.

We write to introduce ourselves and to express grave concern at the manner in which Professor Choudhry is being treated. The measures your office has taken in the past ten days, or so, with respect to him violate his rights as a faculty member and California citizen, and offend any notion of fairness or due process. Equally troubling, your false characterization of Professor Choudhry's conduct in public statements has caused, and continues to cause, irreparable harm to him. Under these circumstances, there is virtually no possibility that Professor Choudhry will be treated fairly in the unprecedented, second disciplinary process instituted at the direction of your office.

Even in a highly charged political climate, facts should still matter. The undisputed facts are these.

In March 2015, Professor Choudhry received an email from his Executive Assistant, Ms. Sorrell, notifying him that his conduct of hugging her and kissing her on the cheek, and at times touching her on her shoulders and arms made her extremely uncomfortable. In accordance with procedure, the matter was reported to Berkeley's Office for the Prevention of Harassment and Discrimination ("OPHD"), which initiated an investigation. Professor Choudhry fully

President Janet Napolitano

March 18, 2016

Page 2

cooperated with that investigation, disputing some of Ms. Sorrell's claims as to the frequency of the alleged conduct, as well as her characterization of his actions, but maintaining that his conduct was in no way motivated by any sexual intent or desire. Significantly, although OPHD ultimately concluded that Professor Choudhry's actions constituted a violation of the University's sexual harassment policy, it did *not* find that his actions were motivated by any sexual intent or desire. Another staff member, who was interviewed by OPHD, reported being hugged by Professor Choudhry, but stated that she took those gestures as "familial" and was not offended by them. OPHD Report at 6. Indeed, Ms. Sorrell herself told Professor Choudhry, in the email in which she, for the first and only time, complained to him about his actions, that "I know you don't mean anything by it other than, perhaps, a warm and friendly greeting." Email from T. Sorrell to S. Choudhry (Mar. 19, 2015). She also described him as an "unaware boss" who had "pure intentions." *Id.* Nonetheless, Professor Choudhry deeply regretted, and regrets, both his conduct and its effect on Ms. Sorrell. He apologized to her, took full responsibility for his actions, and underwent management training.

At the conclusion of OPHD's investigation, the matter was then remitted to the Vice Chancellor and Provost, Claude Steele, for a disciplinary decision. After reviewing the OPHD report and deliberating with Chancellor Nicholas Dirks, Vice Provost of Faculty Janet Broughton, and Chief Campus Counsel Christopher Patti, the Provost imposed a disciplinary sanction on Professor Choudhry that was calibrated, in the judgment of those administrators, to address the conduct at issue: a reduction in his salary, executive coaching at his expense, a written apology from him to Ms. Sorrell, and monitoring of his behavior going forward.

The University's policies call for proportionality in imposing discipline. *See* University Policy on Faculty Conduct and the Administration of Discipline (APM-016) at 3 ("The severity and type of discipline for a particular offence must be appropriately related to the nature and circumstances of the case."). His punishment was imposed by the Provost in consultation and deliberation with the Chancellor, the Vice Provost of Faculty, and Chief Campus Counsel, all of whom apparently took the position that the sanction was proportional. Professor Choudhry played no role in determining or shaping the discipline imposed on him. He appealed no part of either the OPHD findings or the sanction and complied with each aspect of the sanction. Upon learning of Ms. Sorrell's concerns, he immediately addressed and corrected the conduct that led to previous missteps and failure of judgment both before and after the discipline, and he has served both as Dean and a member of the tenured faculty for the past year without incident. Throughout the disciplinary process and in the period thereafter, Professor Choudhry reasonably relied on the repeated assurances from every administrator empowered to decide the issue that his sanction was appropriate and consistent with University policy.

In sum, Professor Choudhry's conduct was fully adjudicated through an investigation and disciplinary process that the Provost, and several other administrators who joined him in

President Janet Napolitano  
March 18, 2016  
Page 3

deliberating and issuing the sanction decision, presented as final and complete. At no time did the Provost, or anyone else in the administration, suggest that a second disciplinary process relating to Professor Choudhry's tenured faculty position was being contemplated, much less that one would be initiated. Indeed, until the recent announcement in the press of Ms. Sorrell's lawsuit and the media attention it generated, every participant in that completed disciplinary process stood by both the process and the sanction.

With that factual background, we take issue with specific actions taken by your office that are injurious to Professor Choudhry, including the following.

*First*, while there is no plausible basis whatsoever for the suggestion that Professor Choudhry is a physical or harassment threat to anyone, it was widely reported that he either should be or was "banned" from campus. This notion apparently emanated from your office, in the days after Ms. Sorrell's civil lawsuit was filed. See "UC President Wants Choudhry Banned from Campus," The Recorder, Mar. 14, 2016.<sup>1</sup> Professor Choudhry first learned of your office's decision to pursue such a ban and further disciplinary action through a *Los Angeles Times* article published on Saturday, March 12. See "Multiple Sex Harassment Cases Against UC Faculty Prompt New Review Process" Los Angeles Times, Mar. 12, 2016.<sup>2</sup>

Indeed, despite the gravity and importance of this matter to Professor Choudhry, and the due process to which he is entitled, he did not receive *any* written notice of the measures being taken, or possibly being taken, against him before you announced them in the national press.

The first contact to get clarity on the University's position was initiated by Professor Choudhry, not your office. On Friday evening, March 11, Naomi Rustomjee, his counsel in the state court action filed by Ms. Sorrell, called one of the Senior Counsel in the University's Office of General Counsel, asking to discuss matters related to Professor Choudhry. The Senior Counsel returned Ms. Rustomjee's call on Monday, March 14; during that call the Senior Counsel stated that no such campus "ban" is actually in place, but that the University would appreciate Professor Choudhry informally agreeing not to be on campus through the end of the semester due to the highly charged campus atmosphere. As a practical matter, Professor Choudhry has not been on campus since the events of last week when he voluntarily resigned from his position as Dean, believing that doing so would be in the best interest of the law school and the campus community. But Professor Choudhry categorically rejects the idea that he

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<sup>1</sup> Available at <http://www.therecorder.com/id=1202752176835/UC-President-Wants-Choudhry-Banned-from-Campus?slreturn=20160216150231>.

<sup>2</sup> Available at <http://www.latimes.com/local/lanow/la-me-ln-napolitano-harass-20160312-story.html>.

President Janet Napolitano  
March 18, 2016  
Page 4

should be “banned” from campus, either through compulsion or at his election. The very notion that Professor Choudhry merits being banned from campus feeds the false narrative, fueled by statements emanating from your office and advocacy groups, that he is some type of predator. That is untrue and unfair.

**Second**, your office has on multiple occasions referred to Professor Choudhry’s conduct as “groping.” *See, e.g.*, “UC President Janet Napolitano Appalled by Latest Groping Case,” The Sacramento Bee, Mar. 9, 2016.<sup>3</sup> That characterization is defamatory. At no time has it even been *alleged* that Professor Choudhry’s physical contact with Ms. Sorrell was informed or motivated by sexual intent or the desire for sexual gratification. The terms “grope” and “groping” connote, in common parlance, fondling someone for sexual pleasure, yet nowhere in Ms. Sorrell’s March 2015 email, which triggered the OPHD investigation, nor in the lawsuit complaint, nor in the OPHD report, is there any suggestion that Professor Choudhry “groped” Ms. Sorrell. We ask you to cease and desist from any such false characterizations of Professor Choudhry or the conduct at issue.

**Third**, your office has taken the step, unprecedented to our knowledge, of directing the UC Berkeley administration – indeed, the very same persons who oversaw Professor Choudhry’s disciplinary process – to initiate a second disciplinary process aimed at stripping him of his tenured faculty position. On Tuesday, March 15, apparently prompted by the call made by Ms. Rustomjee to the University’s Senior Counsel, Vice Provost Janet Broughton sent Professor Choudhry the first direct notice he has received of the actions set in motion to strip him of tenure. The Vice Provost’s email, styled as a “preliminary notification,” states, in part:

the report of July 7, 2015, prepared by the Office for the Prevention of Harassment and Discrimination has been referred to me for assessment under the Faculty Code of Conduct. In accordance with campus procedures, I will be appointing one or two faculty members to investigate possible violations of the Faculty Code of Conduct.

E-mail from J. Broughton to S. Choudhry (Mar. 15, 2016).

The notion that this development is anything other than a response to negative opinion – whether on or off campus – is not credible. The Provost’s Office reviewed and assessed Professor Choudhry’s conduct under the Faculty Code of Conduct when it received the OPHD Report last year. *See* OPHD Report at 12 (“This report will be forwarded to the Provost’s Office for Review under the Faculty Code of Conduct.”). The idea that the very same conduct,

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<sup>3</sup> Available at <http://www.sacbee.com/opinion/california-forum/article65086572.html>.

President Janet Napolitano  
March 18, 2016  
Page 5

described in the same OPHD report, will be evaluated for a second time under the same policy is patently unfair. In effect, your office has instructed the Berkeley administrators to do whatever it takes to secure the outcome in which Professor Choudhry is stripped of tenure.

The Provost's sanction letter to Professor Choudhry can only be read as the result of a process that was intended to be a single, comprehensive and fully executed one, and the final word on his punishment. That outcome is consistent with the University's directive that duplicate processes are to be avoided, particularly in the context of sexual harassment. The UC Policy on Sexual Harassment states: "Procedures under this Policy shall be coordinated with applicable local complaint resolution, grievance, and disciplinary procedures to avoid duplication in the fact-finding process wherever possible." University of California Sexual Violence and Sexual Harassment Policy at 15. That one of the administrators directly involved in the process, who until very recently assured Professor Choudhry that the discipline he received was reasonable and appropriate, is now spearheading this "do-over" belies any notion that a second assessment of his conduct under the Faculty Conduct rubric, or otherwise, was ever intended.

The facts regarding Professor Choudhry's conduct haven't changed. With the exception of Provost Steele, who has now recused himself, the group of administrators who oversaw the first, conclusive process (and were of one mind about the appropriateness of Professor Choudhry's sanction) hasn't changed. What has changed, undeniably, is the context we find ourselves in: the heightened political climate surrounding campus sexual harassment issues and the media spotlight trained on your office and the administration. But the outcry against the University's handling of disciplinary cases, and the lumping together of Professor Choudhry's conduct with unrelated conduct by other UC faculty and staff, are improper grounds on which to force a different result.

Professor Choudhry has the "right to be judged by one's colleagues, in accordance with fair procedures and due process, in matters of . . . discipline, *solely on the basis of the faculty member's professional qualifications and professional conduct.*" APM-015 at 2 (emphasis added). Allowing this second process to unfold, with a predetermined outcome publicly urged by your office, guts that promise of due process or fairness. This no longer has to do with Professor Choudhry's professional qualifications and conduct as a member of the faculty. He is a scapegoat for any shortcomings, real or perceived, in the University's handling of sexual harassment claims and related policies and procedures.

We would welcome a meeting with you as soon as possible. In the interim, however, we demand that you: (1) put a halt to the process that has been initiated by your office to strip Professor Choudhry of his tenured faculty position; (2) communicate directly with us, rather than through the media, regarding Professor Choudhry's status; (3) refrain from false



President Janet Napolitano  
March 18, 2016  
Page 6

characterizations of Professor Choudhry or his conduct; and (4) issue a public retraction of your statements that Professor Choudhry engaged in groping and that he is banned from campus.

Sincerely,

/s/ William W. Taylor

William W. Taylor

cc: Regents of the University of California  
Chancellor Nicholas Dirks, University of California - Berkeley

# Exhibit C

Letter from W. Taylor,  
III to J. Broughton



WILLIAM W. TAYLOR, III  
Partner  
202.778.1810  
wtaylor@zuckerman.com

March 29, 2016

**VIA E-MAIL**

Janet Broughton  
Vice Provost for the Faculty  
University of California, Berkeley  
200 California Hall, MC 1500  
Berkeley, CA 94720-1500  
broughton@berkeley.edu

Re: Professor Sujit Choudhry

Dear Vice Provost Broughton:

This firm represents Sujit Choudhry, I. Michael Heyman Professor of Law, in connection with the matters involving his employment as a tenured faculty member of the University of California, Berkeley School of Law. We write in response to your e-mail to Professor Choudhry dated March 15, 2016, which stated that the report of July 7, 2015, prepared by the Office for the Prevention of Harassment and Discrimination, had been referred to you for assessment under the Faculty Code of Conduct ("FCC") and that you were planning to appoint one or two faculty members to investigate possible violations of the FCC.

As explained in the attached letter addressed to President Napolitano, there is no basis for a second investigation into Professor Choudhry's conduct, let alone a second disciplinary hearing. A second investigation or proceeding would violate his rights as a faculty member under the FCC. We therefore demand that this process be terminated immediately.

Sincerely,

William W. Taylor, III

cc: Janet Napolitano, President of the University of California  
Nicholas Dirks, Chancellor of the University of California, Berkeley  
Carla Hesse, Professor and Interim Lead on UC Berkeley's Response to Sexual Harassment and Assault

# Exhibit D

Letter from C. Patti to  
W. Taylor, III



OFFICE OF LEGAL AFFAIRS  
200 California Hall #1500  
Berkeley, CA 94720-1500  
510-642-7122  
510-643-5980 FAX  
CHIEF CAMPUS COUNSEL AND  
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510-642-7791



April 6, 2016

VIA EMAIL ([wtaylor@zuckerman.com](mailto:wtaylor@zuckerman.com)) & U.S. MAIL

William W. Taylor, III  
Zuckerman Spaeder LLP  
1800 M Street, NW Suite 1000  
Washington, DC 20036-5807

Dear Mr. Taylor,

This responds to your March 29, 2016 letter to UC Berkeley Vice Provost for the Faculty Janet Broughton. Your letter demands termination of the disciplinary process that Vice Provost Broughton informed Prof. Choudhry has been initiated under the Faculty Code of Conduct (FCC) and asserts that “a second investigation or proceeding would violate [Prof. Choudhry’s] rights as a faculty member under the FCC.” You have made similar claims in a March 18, 2016 letter to University of California President Janet Napolitano. In fact, the FCC expressly permits the faculty discipline process to be invoked in this situation.

The measures previously taken against Prof. Choudhry were administrative actions taken in connection with his appointment as Dean of the Berkeley Law School. Section 016 of the Academic Personnel Manual, which governs discipline under the FCC, expressly provides that

“[f]aculty members serving in administrative roles may be subject to disciplinary sanctions under this policy in addition to administrative actions, if the faculty member’s misconduct in the role of an administrator also violates the ethical and professional standards for faculty set forth in the Faculty Code of Conduct.”

Thus, if the faculty disciplinary process determines that Prof. Choudhry violated ethical standards set forth in the FCC, he may be subject both to prior administrative actions and to additional faculty discipline under the Code.

Regards,

Christopher M. Patti  
Chief Campus Counsel and  
Associate General Counsel

Cc: Janet Broughton, Vice Provost for the Faculty, UC Berkeley  
Allison Woodall, Deputy General Counsel, UC Office of the President

Exhibit E  
Letter from J.  
Napolitano to N. Dirks



1111 Franklin Street  
Oakland, California 94607-5200  
Phone: (510) 987-9074  
Fax: (510) 987-9086  
<http://www.ucop.edu>

March 11, 2016

CHANCELLOR DIRKS

Dear Nick:

Thank you for speaking with me about the current situation at UC Berkeley involving the substantiated findings of sexual harassment against the former Dean of the Berkeley School of Law, Sujit Choudhry. I know you appreciate my level of concern about this situation, and my unhappiness in learning about it through the media. I am confident you are taking steps to address the campus's failure to keep the UC Office of the President apprised. More important, prompt and effective responses to findings of sexual harassment and sexual violence are key to changing behavior. To that end, I expect you to take the following actions:

1. To ensure that the campus is providing a safe and welcoming working and learning environment, immediately take steps to ensure that Sujit Choudhry does not return to campus for the remainder of the term.
2. Institute disciplinary proceedings against Mr. Choudhry through the Privilege and Tenure process.
3. Confirm that all senior leaders on the campus – including but not limited to you, Provosts, Vice Chancellors, Vice Provosts, and Deans – are current in taking their required sexual harassment and sexual violence training. This information should be reported back to Sheryl Vacca, Senior Vice President/Chief Compliance and Audit Officer, by March 25, 2016.
4. Within 30 days, in coordination with Sheryl Vacca, provide a plan for ensuring that all senior managers and administrators receive additional, in person sexual harassment and sexual violence training before the start of the fall term.

You should be aware that the University does not intend to defend or indemnify former Dean Choudhry in the litigation currently pending against him and the University brought by Ms. Sorrell.

Chancellor Dirks  
March 11, 2016  
Page 2

In addition, I understand that the former Vice Chancellor of Research, Graham Fleming, has been given administrative responsibilities related to the Berkeley Global Campus. I expect you to immediately remove Professor Fleming from any administrative positions that he holds with the Berkeley campus or its affiliates.

Finally, as outlined in my letter to all of the Chancellors today, all sanctions arising from substantiated cases of sexual harassment or sexual violence involving senior University leaders at the Berkeley campus, including the Chancellor, Provosts, Vice Chancellors, Vice Provosts, and Deans, will be reviewed and approved by the Systemwide Peer Review Committee that I am establishing.

If you have any questions regarding these expectations please let me know.

Yours very truly,

A handwritten signature in black ink, appearing to read "Janet Napolitano", with a stylized flourish at the end.

Janet Napolitano  
President