



**COLLEGE OF LAW**

504 East Pennsylvania Avenue  
Champaign, IL 61820

**Vikram David Amar**  
Dean  
Iwan Foundation Professor of Law

February 3, 2020

VIA ELECTRONIC TRANSMISSION

Ms. Heidi Johnson  
Director  
Office for Access and Equity (OAE)  
616 E. Green Street, Suite 214  
Champaign, Illinois 61820  
[johnso19@illinois.edu](mailto:johnso19@illinois.edu)

Re: Complaints against Professor Jay Kesan

Dear Ms. Johnson,

In my role as Dean of the College of Law, I have reviewed the reports from your office dated November 22, 2019 following your investigations into allegations of sexual misconduct that were made against College of Law Professor Jay Kesan. I have also reviewed the decision of the OAE Appeals Committee, dated January 21, 2020, and I have discussed these materials with my College of Law Executive Committee.

In light of the findings and conclusions in the reports, which were affirmed on appeal, and with regard to the employment actions that were recommended in each report, the College of Law believes that it would be appropriate to levy significant sanctions that are beyond the College of Law's authority to impose. Accordingly, the College of Law urges the University to consider pursuing those more serious sanctions, up to and including dismissal pursuant to Section 1 (Tenure of Academic Staff), Paragraphs c, d and e, of Article X (ACADEMIC FREEDOM AND TENURE) of the *University of Illinois Statutes*, as amended. The College of Law reserves judgment on the imposition of any sanctions that are within the College's authority and that might be appropriate after any university process that may ensue has run its course.

Thank you for your assistance in this important matter.

Sincerely,

Vikram D. Amar  
Dean  
Iwan Foundation Professor of Law

c: Chancellor Robert J. Jones  
Provost Andreas Cangellaris

# HUSCH BLACKWELL

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**CONFIDENTIAL**

## I. Summary

This matter involves allegations by a former law student, [REDACTED] for Jay Kesan, a professor in the College of Law (“COL”) at the University of Illinois at Urbana-Champaign (“University”). [REDACTED] alleges that Kesan engaged in a series of unwelcome, offensive actions that violated University policies, detailed further below.

[REDACTED] lodged her complaint with the Office for Access and Equity (OAE) in November 2018 but was at first reluctant to serve as a named complainant. OAE initiated an investigation by referring this matter to Husch Blackwell LLP, and [REDACTED] agreed to serve as a named complainant in February 2019. Kesan was notified of the allegations on March 26, 2019. Kesan provided his written response to the allegations on April 16, 2019. I shared Kesan’s written responses to [REDACTED]’s allegations with her, and she was given an opportunity to rebut Kesan’s written response and provide additional information.

On May 2, 2019, I reached out to Kesan to schedule a meeting. My colleague, Katelan Little, and I met with Kesan and Kesan’s counsel, Jonathan Ksiazek, on May 7, 2019. The meeting lasted approximately three hours. Following the meeting with Kesan, and at the request of Kesan as well as certain witnesses, we conducted third-party interviews by phone. A preliminary report was shared with Kesan and [REDACTED] on July 19, 2019. Kesan sought additional time and submitted a written response on August 8, 2019; pertinent comments are incorporated into discussion below. [REDACTED] was contacted several times but did not submit any response.

## II. Allegations

[REDACTED] During that time, she worked with [REDACTED] nt from the start of the Fall 2013 semester until the conclusion of the [REDACTED] focusing on renewable energy policy and natural resources law. [REDACTED] and decided to put a hold on the research in which [REDACTED] was involved. [REDACTED] was aware of this and knew from taking a course with Kesan that Kesan also did renewable energy work. In the Spring 2014 semester, she connected with Kesan about possible research assistant opportunities.

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Specifically, on May 2, 2014, ██████ attended the Energy Biosciences Institute Biofuels Law and Regulations Conference. During the conference, she sat at a table with several fellow and former law students who worked with Kesan, and Kesan. ██████ recalled that ██████, who co-taught the course she had previously taken with Kesan, was also at the table at the time and noted that ██████ was another law student who was a ██████ for Kesan. ██████ introduced herself to Kesan and expressed interest in research assistant work. She noted that she had an ██████ (a one month position) after she expected to be finished with the bar exam. Instead of discussing potential research assistant work, Kesan focused on her temporary teaching position and inquired whether she wanted to teach at the law school level. ██████ explained that she did not believe she would be competitive in law school hiring, but ██████ alleged that Kesan insisted that they get together in person for lunch to talk about law school hiring further. ██████ recalled that she felt like Kesan's insistence was bizarre, particularly when she had not asked about law school hiring.

On the evening of this conference, ██████ alleged that she was invited to a dinner with the other ██████ (all female, and none of whom wished to be named when ██████ inquired), and ██████. At the dinner, for the time when Kesan was at her table, Kesan encouraged the group of ██████ and ██████ to drink alcoholic beverages saying repeatedly that "they were already paid for." After the dinner, Kesan asked all of ██████ to go to a bar with him. ██████ alleged that he asked each of them several times. When each of the ██████ refused, Kesan was persistent in asking ██████ including by grabbing her hands and trying to dance with her, as she refused. Specifically, as all of the women from the table were walking out to the bathroom together, ██████ was at the end of their group, and Kesan grabbed her hands. ██████ said "not right now" or "not again," which led ██████ to think that Kesan touched ██████ with some regularity. Kesan then said "come to the bar with me ladies," and ██████ was saying "no, been here all day" or something similar. This exchange between Kesan and ██████ lasted as long as 20 -30 seconds with Kesan holding ██████ hands and trying to get her to dance, as she repeatedly tried to politely stop his conduct.

Two days later, on May 4, Kesan emailed ██████ with an article about entry level law professor hiring, noting that "post-graduate fellowships" and post-grad publications was what "matter[ed]" in that kind of hiring. ██████ replied, again acknowledging that she did not think it was a reasonable goal but that she nevertheless would like to take him to lunch to talk about his research needs and perhaps undergraduate teaching. ██████ alleged that they made plans over email to have lunch the next day, May 5.

On May 5, ██████ explained that Kesan asked her to meet him at his office, and when she did, he offered to give her a ride, which she accepted. At the lunch, much of the conversation again turned to law professorship opportunities and Kesan degrading ██████, with whom Kesan knew ██████ had been working previously. ██████ contended that, at this point, she felt strongly that Kesan was overtly lying to her about what he believed her law professor chances

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were and trying to convince her that it was possible in order to gain some sort of advantage over her, which did not make sense to her. At various points during the lunch, Kesan made references to how often and what he does to work out, asked about whether [REDACTED] was in a relationship, and discouraged her from leaving to [REDACTED] after the bar exam for the clerkship she had accepted the previous August. [REDACTED] alleged that it was difficult to guide the conversation back to the purpose of the lunch.

On the drive home, Kesan continued to discourage her departure to [REDACTED] allegedly noting that “a clerkship would be a waste of time.” [REDACTED] recalled that she made some reference to being excited about getting healthier in [REDACTED] because of the outdoor culture. Kesan parked outside of the law school lot on Pennsylvania Avenue facing a cemetery in a spot where no one could see them. Kesan again made references to how much he works out and other personal issues and lingered in the car with [REDACTED] for a few minutes. [REDACTED] alleged that while the two of them were still in the car, parked outside of the law school, and while Kesan commented about the future of them working together, Kesan ran two fingers from about two inches above [REDACTED] knee to very close to her hip. Kesan did this on her bare skin (she was wearing a knee-length dress), right in the middle of her left leg, starting on her skin. If his hand had been on the inside of her leg, she thinks he would have touched her crotch. He moved slowly enough that it was clear he was trying to be sexually suggestive, and she estimates that his fingers were on her bare leg for a full 6-8 seconds. [REDACTED] believes that Kesan was looking at her and was seeking eye contact during that time, while she was avoiding looking at him or what he was doing. This was very unwelcome to her. She tried to laugh it off, thanked him for lunch, and tried to end the conversation, then got out of the car, leaving in a matter of seconds after he touched her.

After this lunch, on May 5, [REDACTED] submitted materials for Kesan to consider in offering her a research position. Kesan replied on May 7, stating that “[he] would like to offer [me] a post-doctoral associate position in my group, but I do have to conduct a proper search and advertise the position. That is the process” and asking if we could “talk sometime soon in person?” [REDACTED] did not want to have another one-on-one meeting with Kesan, and she explained that chatting after or closer to graduation made a little more sense for her so she could finish her work with the classes she was serving as a teaching assistant for and also recover from a cold.

On May 20, Kesan reached out via email to ask about meeting again, and [REDACTED] offered to stop by his office that afternoon. Instead, Kesan offered to meet [REDACTED] “somewhere” near north campus after 6:30, or have breakfast the next morning. [REDACTED] responded late, and said that she could do breakfast in the morning, but suggested a different time because she had to drop her “partner” off at work. [REDACTED] alleged that she had hoped the reference to her partner would dissuade some of the behavior that [REDACTED] had thus far felt was inappropriate. The two ended up having a phone meeting to discuss the research role. After the email exchanges on May 20, 2014 in which [REDACTED] referenced her “partner,” she says that Kesan never hit on her again, at least not as overtly as he did in the car earlier that month. But she said she made sure not to be alone with Kesan for longer than a few seconds.

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Shortly after taking the position, [REDACTED] also noted that she had lunch with [REDACTED] who became viscerally distraught when [REDACTED] said that she was taking a position with Kesan. [REDACTED] explained that she had had a “traumatic” experience with him (without elaborating) and she discouraged [REDACTED] from taking the position. After this conversation with [REDACTED] [REDACTED] ensured that all subsequent interactions with Kesan were either over the phone or in group meetings with the [REDACTED]. Nevertheless, Kesan still insisted on talking very closely to her and others (reportedly because of his “hearing problem”), there was frequent casual touching of hands and arms in conversation, and frequent discussions of personal lives (including fitness regimen, relationships, and, at times, veiled sexual references).

[REDACTED] believes that, after she created distance between herself and Kesan, he was frustrated and conveyed that sentiment in work-related communications. She admitted that she was not a great employee for him because of personal circumstances, but that his frustration was both with her work and her unwillingness to have more personal interactions with him. When she informed Kesan that she was unable to do much work for him until after her teaching role ended and that her assignments with him involved more work than she had expected, she believes he responded in a manipulative manner. He wrote to her: “You seem to be signing on to work without investigating the people, the work environment, and the responsibilities involved by talking to people who have done the work before or have been at in that group, or firm, etc.... Like your [REDACTED] [referring to her role with [REDACTED]]. I hope your state court clerkship is not another such situation.” [REDACTED] also alleged that Kesan would frequently insist on [REDACTED] calling him “Jay,” including in email; [REDACTED] discouraged her staying in [REDACTED] and the possibility of working remotely; and, Kesan also insisted on frequent in-person group meetings while [REDACTED] was still in Illinois.

[REDACTED] further alleged that Kesan used promises of career assistance to manipulate and force close interaction and dependence. The inappropriate comments, dinner and breakfast invitations over formal meetings, and instances of touching, together, created a setting in which [REDACTED] understood that she would not be furthered in the group or in the role if she did not participate in the way Kesan was accustomed, which she refused to do.

[REDACTED] said that she talked with a member of [REDACTED] who noted Kesan’s reputation for interacting inappropriately with women. She noted that about 80% of women who worked at the law school would talk to her, behind closed doors, about making sure she knew what Kesan was like when they learned that she was working for him. It was a very common experience.

### III. Respondent’s Response

Kesan responded to [REDACTED] allegations in a six-page written response, attaching e-mail exchanges between the two of them, as well as an interview. Discussion of his specific

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responses to factual allegations from [REDACTED] in writing and in person is presented below. Before addressing those details, however, Kesan sought during his interview to emphasize the context of his current situation and perspective he has gained via counseling.

Kesan noted that he has been on leave for the 2019 calendar year and that, during that leave, he has attended counseling at the University's direction. Through counseling, he has learned that he needs to be more cognizant of how he is perceived, including appreciating some of the power dynamics that are at issue with his interactions with people and that he needs to have a greater appreciation for physical space in the work place. He admitted that it is "very clear" that he placed people in uncomfortable places "based on what people have said" and "that is an issue that I am working on." He explained that he grew up in Mumbai, India, that the appreciation of personal space is much less there, and that there are "cultural differences" with how people interact. Counseling has helped him with this, as Kesan reported: "Sometimes I say things without really thinking...I'm not really thinking much about [statements like] let's have lunch or dinner and I realize that those kinds of actions can kind of be coercive because it goes to the power differential." He also admitted that he had a habit of discussing private life and dating life with women, and that he "would discuss these topics and I would continue to pursue it." Kesan commented that he now realizes that saying these sorts of things not only makes people uncomfortable but also can create situations that ultimately undercut his ability to be seen as a good faculty member. When asked why he thinks that women are raising complaints as opposed to men, Kesan responded, "It could be that the problem is me."

With respect to [REDACTED] specific allegations, much of Kesan's written response was focused on [REDACTED] work for Kesan as a [REDACTED] and noticeably avoided addressing the details of her allegations about Kesan's inappropriate physical touching, manipulation, use of power, and unprofessional comments that she cited. Those details were addressed directly during Kesan's in-person interview. His written and in-person responses to the specific episodes [REDACTED] alleged are discussed together below.

*May 2, 2014 conference and dinner:* Kesan's written response acknowledged his attendance at the conference and follow-up dinner and drinks at a bar, stating that "it became somewhat customary to head over to Houlihan's at the I-Hotel to celebrate a job well done since we often had presentations at the conference." During his interview, Kesan said that, while at Houlihan's, he likely encouraged others to drink because he was picking up the tab. When asked whether he was encouraging women to drink more than men, Kesan did not deny doing so, and instead explained that there were a bunch of tables with men and women and it would not surprise him if he told others to have a drink. In both Kesan's written response and in his interview, he stated that it would not surprise him if he had asked [REDACTED] to dance. Kesan said he did not have a memory of it but it would not be surprising to him because, "I knew her and her family and I knew she loved to dance; she was in her fifties." When asked whether he thought about his efforts to convince [REDACTED] to dance with him would impact other women in attendance, Kesan acknowledged that he "should have been more careful" and that other people may not have known he and [REDACTED] were friends. He also stated, "This was clearly a mistake."



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*May 5, 2014 lunch with [REDACTED]* Kesan acknowledged that he had lunch with [REDACTED] on May 5, 2014 to discuss the possibility of doing research in his group either as a post-doc or as a research assistant. Kesan admitted that they probably did discuss [REDACTED] and included in his written response that she mentioned her partner and their desire to move to [REDACTED]. He also noted in his interview that he “knew about her partner all along.” Kesan stated that it would not surprise him if he said that [REDACTED] is much nicer than Illinois and that he likes to run.

With respect to the alleged physical contact during lunch and during the time in his parked car as [REDACTED] described it, Kesan reported that he lacked specific memory of the interactions but that “...although I don’t recall doing this, I don’t want to dismiss what she is saying. Whatever contact we had clearly made her uncomfortable. That’s what I don’t like, is that I put her in that spot, that I made her uncomfortable.” More specifically, Kesan was asked multiple times during his interview about [REDACTED] allegation that he touched her leg inappropriately in his car after parking in an isolated location and while attempting to talk to her about personal issues. Kesan did not admit or deny [REDACTED] specific allegations, saying at first that “given my nature, it would not surprise me if I put my hand on her leg, and said, what you’ve told me is great, let’s work together.” When asked whether he thought it was appropriate to engage in the touching as alleged, Kesan said he believes putting two fingers on a woman’s thigh and moving them up toward her hip would be “inappropriate” but that “I don’t remember this at all” and that he did not remember his interactions with [REDACTED] being anything other than “cordial and professional.” He was directly reminded, through multiple questions and a physical demonstration on the conference room table, that [REDACTED] alleged that he caressed her leg with two fingers, on her skin, slowly moving them up her leg all the way to her hip and even with her crotch in a suggestive way in an isolated setting, and asked point blank if he denied doing that; he repeated only that he did not remember the incident. Following a break in the interview, Kesan was again asked about the alleged physical touching, and he said that he had “no recollection of touching her inappropriately...if she would have said ‘no,’ then I would have taken a step back.” Kesan also stated, “This is a big wake up message to me. In a way, I wish [REDACTED] had told me something.” When asked whether he thought that she would have made up the allegation that Kesan put two fingers on her thigh and ran them all the way to even with her crotch, Kesan stated, “I simply would not do that, that is not the thing that I would do. And, on the same day she sent a very nice note saying she enjoyed lunch.” Kesan did not, however, assert that [REDACTED] would lie or fabricate the incident, nor did he ever outright deny that he did what she alleged he had done.

In his second written response (responding to the preliminary report noting his lack of denials), Kesan quoted an e-mail [REDACTED] sent him after the lunch that failed to express discomfort and continuing to express interest in applying for the research position with Kesan. He wrote “[t]his e-mail, in my view, supports my position that I did not touch her in a sexual manner in the car.” This is the closest Kesan comes to a denial, which still does not address whether he touched her leg in the manner [REDACTED] alleges or not.





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[REDACTED]

[REDACTED]

When asked to describe his relationship with Kesan, [REDACTED] responded that, “All of this is why I left.” Then, when asked whether [REDACTED] was aware of the allegations about Kesan’s behavior toward women in particular, [REDACTED] said yes, and that he had in fact pushed one of the female [REDACTED] as well as [REDACTED] to report the conduct, but they insisted that they would be able to handle it on their own accord.

As to the other [REDACTED] [REDACTED] recounted that she had an incident in which she was at a conference with Kesan, and her car was parked far away. Kesan offered to drive her to her car. [REDACTED] accepted, and in the car, Kesan put his hand on her leg and asked if she had a boyfriend. She then said do not ask me that and pushed his hand away. According to [REDACTED] that [REDACTED] shared that a similar incident happened a second time as well. Unfortunately, we were unable to speak with this female [REDACTED] and [REDACTED] was unwilling to share further detail.

As to the allegations surrounding the 2014 conference, [REDACTED] confirmed that he attended and that Kesan did promote drinking, but he said it was directed toward both genders. [REDACTED] did not recall anything else specific about the conference, including the dancing. When asked about [REDACTED] other allegations, [REDACTED] said he was not personally aware of any of them, but he said he had no reason to doubt her and “100% believes [REDACTED]”

When asked about his overall impression of Kesan after working with him for [REDACTED] [REDACTED] stated that Kesan does not understand physical space barriers and would speak very close to [REDACTED] and even touch him. Nothing inappropriate ever occurred with respect to Kesan’s interactions with [REDACTED] in [REDACTED] view, but [REDACTED] found Kesan’s behavior unprofessional. [REDACTED] also recalled that Kesan would always tell [REDACTED] to join him in the bathroom if they were having a conversation so that they could continue the conversation, which [REDACTED] found unprofessional as well.

[REDACTED] shared that “all the girls think of him as the creepy guy.” In fact, [REDACTED] stated that when he attended a dinner when he was working for Kesan, one of the women who had graduated from the COL was there and told him she could not believe [REDACTED] accepted a job to work for Kesan. She then told a story about how she accepted a job in [REDACTED], and, when Kesan was in [REDACTED] he contacted her and tried to take her out. She declined, but [REDACTED] characterized this as a “known move of Kesan.” [REDACTED] could not recall the name of the female.

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Kesan's second written response addressed [REDACTED] comments about leaving the University because of Kesan by noting that [REDACTED] reported a different reason to Kesan and others when he left ([REDACTED]).

[REDACTED]

[REDACTED] was a colleague of [REDACTED]s and in the same graduating class at the COL. [REDACTED] was a [REDACTED] in his third year at the law school. [REDACTED] noted that Kesan offered him a permanent job after graduation but he turned it down in large part because he did not feel comfortable being around Kesan. [REDACTED] denied that Kesan ever sexually harassed [REDACTED] but stated that he felt that Kesan was manipulative, lacked physical boundaries, and overall, it was "not a healthy employer-employee relationship." [REDACTED] explained that, when he was around Kesan and [REDACTED] felt uncomfortable because of the way in which Kesan was interacting with the [REDACTED]. When pressed, [REDACTED] was reluctant to provide any further detail about his observations.

[REDACTED] had no recollection of the 2014 conference at issue with [REDACTED] allegations.

[REDACTED]

[REDACTED] joined the University in 2007, working part time, and became full time in or around January 2008, at which point she became a [REDACTED]

[REDACTED] described her working relationship with Kesan as always professional, happy, and rewarding. Kesan was appreciative of the work that she did, never nagged, and never had "crazy deadlines," despite being busy.

When asked whether anything inappropriate ever occurred when she worked with him, she noted that when she first began working for Kesan, she was warned by other faculty assistants that Kesan may "get a little in your personal area." She remarked that, at first, she did not see what they were talking about but then noticed that he did on occasion get a little close, but it did not made her feel uncomfortable. [REDACTED] noted that Kesan "does wear a hearing aide," apparently explaining Kesan's habit of being closer to people than might usually be expected as resulting from his hearing issue.

As to specific instances of touching, the only instance that [REDACTED] recalled was that Kesan had given her a "side hug." She said that Kesan never "looked her up and down" or commented on her physical appearance. She also stated that the only time he would have asked about her personal relationships would have been in response to her offering information. She did

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remember that Kesan occasionally mentioned working out but not in any way she found unusual or troubling.

When asked about the allegations of inappropriate conduct toward women that have been made about Kesan to date, [REDACTED] commented that she has not observed any of this behavior and that she was “blind-sided” by the OAE’s initial report.

As to whether she has observed Kesan with students, [REDACTED] remarked that she has seen him with students in connection with journal meetings a couple times per semester. The journal is primarily staffed by male students, and there have only been two female editors in the entire time that she has served as [REDACTED] of the journal.

[REDACTED] said she did not really observe Kesan interact with female faculty but acknowledged that she has observed female assistants trying to avoid Kesan.

When asked whether she has seen any change in Kesan since the allegations came out, [REDACTED] denied seeing any change, but noted that she had not observed a problem before the allegations became known. She did state that she believes Kesan is capable of change and has mentioned attending therapy and “needs to watch his behavior around here.”

[REDACTED]

[REDACTED] She supports [REDACTED] faculty members within the College of Law. She does not work for Kesan. She has never had any issues with any of her faculty and stated, “I couldn’t pick a favorite.” She said that she has not observed any inappropriate contact.

[REDACTED] recalled that, when she first met Kesan in 2005, he made the following comment: “I can tell you work out, you look good.” This comment was made in a hallway, after they had been formally introduced, and in the context of talking about exercise. [REDACTED] stated that Kesan has never made her feel uncomfortable, but she also stated that sometimes he “gets a little close” and “invades your space a little bit.”

[REDACTED] In the past two years, she has seen him more frequently in the hallway or in the office [REDACTED] with [REDACTED] [REDACTED] reported that Kesan talks to her and [REDACTED] about personal things, but she explained that she believes that is just because he “cares about how you feel.”

When asked whether [REDACTED] has observed Kesan engage with other faculty, she noted that “on this end of the building, it is all men.” She also stated that she never saw him engage in any inappropriate conduct with [REDACTED]

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As to her reaction to the allegations from other women about Kesan, she said that she hates to hear any of it, and that it is all very unfortunate. She noted that she has never witnessed any inappropriate conduct from Kesan towards other women, but she has no reason to doubt the truth of the reports of issues from other women.

Regarding whether Kesan is capable of change, she opined that she believes he would be capable of changing, but has not seen any change nor has he mentioned anything about changing to her.

#### **IV. Applicable Policies**

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

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

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

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

Campus Administrative Manual §IX-B-6.

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

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

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

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

[https://www.ethics.uillinois.edu/compliance/university\\_code\\_of\\_conduct](https://www.ethics.uillinois.edu/compliance/university_code_of_conduct).

Our responsibility, then, is to decide both (1) whether Kesan's alleged conduct satisfied either the University's definition of sexual harassment; and (2) whether Kesan's alleged conduct violated the University's standards of professional conduct. In addressing both these questions, we reviewed the evidence utilizing a preponderance of the evidence standard. A preponderance of the evidence requires that the evidence supporting a finding is more convincing than the evidence to the contrary.

## V. Analysis and Findings

### A. *Sexual Misconduct Policy*

Determining whether Kesan's conduct violated the *Sexual Misconduct Policy* requires assessing whether it created a hostile environment for ██████, as ██████ does not allege any *quid pro quo* arrangement or requests. The assessment of a potentially hostile environment involves evaluating whether (1) the conduct occurred, was unwelcome, and was of a sexual nature or based on gender, and (2) if any such conduct was sufficiently severe or pervasive to unreasonably alter the conditions of ██████ educational or work environment.

#### 1. Conduct at Issue

██████ alleges that Kesan engaged in a series of actions in 2014 of a sexual or gender-based nature that she found unwelcome, including: (1) during a May 2014 professional conference, encouraging female subordinates and ██████ to drink alcohol and then insisting they stay and dance with Kesan, including grabbing one of the women present despite her repeated rejections; (2) arranging for a one-on-one lunch and car ride shortly after the conference relating to a potential hiring arrangement that Kesan used to discuss personal issues, raise dating life questions, and touch ██████ bare leg in sexually suggestive manner; (3) for a couple weeks

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after the lunch in May 2014, repeatedly seeking private meetings with [REDACTED]; (4) for several months thereafter, repeatedly talking very closely to [REDACTED] and other women, casually touching their arms and hands during work conversations, and discussing personal topics including veiled sexual references; and (5) expressing frustration with [REDACTED] rebuff of his advances in work-related communications.

First, I find that that evidence presented during our investigation makes it more likely than not that, during the May 2, 2014 conference at the i-Hotel, Kesan inappropriately talked to and physically touched female colleagues. [REDACTED] and one other witness consistently described Kesan's repeated encouragement for several female [REDACTED] to consume more alcohol; Kesan admitted that did so and did not deny focusing such efforts more on women than men. [REDACTED]s description of Kesan's post-dinner repeated invitations to join him at the bar and physical efforts to get them to dance with him are also unrefuted, including that Kesan grabbed [REDACTED] held her arms for an extended period of time seeking to get her to dance with him, while [REDACTED] repeatedly refused and said "not again." Kesan said only that it would not surprise him if he asked [REDACTED] to dance and acknowledged that doing so despite her protestations in front of other women "was clearly a mistake" and that he "should have been more careful." I find that Kesan's alcohol and dancing invitations were unwelcome to [REDACTED] and sexual or gender-based in nature, and that [REDACTED] was fearful Kesan would grab her as he did [REDACTED]

Second, I find that the evidence presented during our investigation makes it more likely than not that, during a May 5, 2014 lunch and post-lunch shared car ride, Kesan inappropriately talked to and physically touched [REDACTED], and that Kesan manipulated circumstances of their interactions that day to facilitate private one-on-one time between them. Kesan and [REDACTED] agree that Kesan invited [REDACTED] to his office and then offered her a ride to lunch designed to discuss a potentially hiring [REDACTED] for a job, during which Kesan discussed personal topics including [REDACTED] dating life and Kesan's desire for her to remain in Illinois instead of moving to [REDACTED]. [REDACTED] explained details of Kesan discussing a potential faculty position for her that she thought was completely unrealistic and that Kesan raised only to gain some type of advantage over her. Then, after Kesan had driven them back and parked by the law school, I find that Kesan touched [REDACTED] bare leg in a manner designed to be sexually suggestive and bordering on sexual assault. Specifically, Kesan ran two fingers up [REDACTED] thigh, on her bare skin, from her knee to her hip within inches of her crotch for approximately 6-8 seconds while seeking eye contact with [REDACTED] and discussing only personal topics. [REDACTED] left the car in a matter of seconds. Kesan agreed that such touching "would be inappropriate" and never denied doing it. He was given multiple opportunities during his interview but never denied this specific conduct and said "I don't recall doing this, but I don't want to dismiss what [REDACTED] is saying," but also that "if she would have said 'no,' then I would have taken a step back." I find these statements from Kesan leave unconstested and actually confirm [REDACTED]s credible reports of the conduct, which I find was extremely unwelcome to [REDACTED], was sexual in nature, and led her to fear that Kesan might touch her crotch. I also find that [REDACTED] belief that Kesan manipulated the circumstances of their lunch and post-lunch time in the car to facilitate this attempt at intimate physical contact was supported by her testimony and not squarely refuted by Kesan



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(either during his interview or in response to the preliminary report expressly stating this assertion). Indeed, Kesan's response to the preliminary report did not address this parked car incident in any way, leaving unrefuted the statements in that report.

Third, I find that the evidence presented during our investigation makes it more likely than not that Kesan made continued and repeated efforts after the May 5, 2014 interactions to convince ██████ to meet with him in private settings despite her repeated rejections of such invitations. Specifically, Kesan asked ██████ to "talk sometime in person" on May 7 and, on May 20, for her to meet "somewhere" near north campus or at a restaurant the following morning rather than meeting in his office. Kesan admitted during his interview that such invitations implied his intention to engage ██████ in issues or goals unrelated to work. ██████ fear of Kesan's intent to continue seeking sexually-charged discussion or conduct led her to reference her "partner" in response e-mails, which she says stopped Kesan's ongoing efforts to meet with her. I find that ██████ considered Kesan's efforts to meet privately unwelcome and that they were part of Kesan's ongoing efforts to seek sexually-related discussion or interactions with ██████

Fourth, I find it more likely than not that, for months while ██████ worked with Kesan during the summer of 2014, Kesan repeatedly touched ██████ hands and arms, raised personal topics (fitness regimen, dating relationships, and veiled sexual references), as well as talking to her in unnaturally close proximity. Kesan also did the same with other female administrative staff in his office in a manner that ██████ observed. A male employee observed Kesan's habits of treating women in this manner, tried to convince two different women to report it, and left the University to get away from inappropriate conduct. Indeed, Kesan admitted that these events occurred, including touching ██████ hands and making sexually-charged jokes. Although Kesan denied ever "hitting on" ██████, he also said that she had that "perception," and "Now that I look back on it, I think it was bad choices for sure" because of the power dynamic. I find that ██████ found such conduct and conversations unwelcome and that they were of a sexual or gender-based manner, as there is no evidence that Kesan touched any male workers' hands or arms during conversations.

Fifth, I find that the evidence gathered during our investigation is insufficient to make it more likely than not that Kesan conveyed frustration with ██████ work as retaliation or in response to her rejection of his various advances. The e-mails submitted by ██████ and confirmed by Kesan address ██████ acknowledged work-related communication deficiencies, and ██████ does not identify any tangible work opportunities that Kesan either deprived her of or took away from her. I find that, while ██████ legitimately disliked such communication and thought it was related to her unwillingness to allow the relationship to become more intimate, this conduct was not sexually related or gender based.

## 2. Severe or Pervasive

The final part of the analysis is to determine whether Kesan's conduct that was found to have occurred as explained above was sufficiently severe or pervasive to have unreasonably altered

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the conditions of [REDACTED] educational or work environment. I find that, based on the evidentiary findings above, Kesan's conduct toward [REDACTED] was severe and pervasive enough to alter [REDACTED] work environment to a degree that created a hostile environment. While [REDACTED] was seeking Kesan's approval to hire her, Kesan subjected [REDACTED] to overt commentary seeking to discuss personal and dating issues and then physical conduct that clearly attempted to engage in intimate, sexual touching. The touching in the parked car was manipulative and sexual in nature because Kesan came so close to and made [REDACTED] fear that he would keep running his hands on her bare skin to her crotch, under her dress. He did so in a secluded, private location that he created by offering to drive [REDACTED] to and from lunch, and which followed his efforts during the conference days earlier to touch her and during lunch that day to engage [REDACTED] in conversation about personal topics. [REDACTED] interpreted Kesan's conduct as clearly hitting on her and attempting to touch her in sexual way, while she was unable to express herself freely because of her interest in Kesan hiring her.

In an ongoing way following this incident and while [REDACTED] was still applying for a job, Kesan first sought to arrange for additional one-on-one private meetings that she rejected. After she was hired, Kesan continued to discuss personal topics with [REDACTED] to touch her hands and arms in inappropriate ways in the work environment, and to discuss personal topics that included yield sexual jokes. All of that behavior continued for several months after Kesan's overt and inappropriate touching of [REDACTED] in his car, which led [REDACTED] to fear Kesan would repeat such conduct if an opportunity to do so arose. That fear led [REDACTED] to avoid being alone with Kesan and to interpret his promises of career advice as efforts to manipulate her and force close interactions and dependence. [REDACTED] fear also led her to talk with other female employees who noted Kesan's reputation for inappropriate interactions with women; she estimated that 80% of women who worked in the law school would talk to [REDACTED] privately to make sure she knew of Kesan's tendencies once they learned she worked with him.

I find that, based on all of this evidence, it is more likely than not that Kesan's interactions toward [REDACTED] included sexually-related and gender-based conduct that created a hostile environment for [REDACTED]. By a preponderance of the evidence, I find that Kesan violated the *Sexual Misconduct Policy*.

## B. Code of Conduct

In addition to determining that Kesan's conduct violated the *Sexual Misconduct Policy*, I find that his physical and verbal interactions with [REDACTED] and conduct toward other women of which [REDACTED] was aware implicate violation of the *Code of Conduct* as well. In particular, such conduct as found above fails to satisfy standards of "professional conduct" because Kesan's conduct towards [REDACTED] and other women did not practice "respect by treating others with civility and decency." There is no professional standard that would excuse, in a secluded private setting, touching [REDACTED] leg and running his hand up her bare leg, under her dress, all the way to parallel to her crotch, as well as Kesan's other physical touching of her arms and hands and ongoing comments about dating life, personal topics, and sexually-charged jokes. It is also

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unprofessional to create a work environment in which female employees warn each other not to be alone with Kesan and had legitimate concern of ongoing sexual or gender-based behavior of a similar nature. As Kesan himself reported, he had a habit of discussing private life and dating life with women, such “actions can kind of be coercive,” he “would discuss these topics and . . . continue to pursue it” in ways that made people uncomfortable, and that “it could be that the problem is me.” He also said that “Now when I look back on it, I think it was bad choices for sure. I should be much more careful. Bad choices because of the power dynamic but also it undermines my effectiveness as a professor.”

Accordingly, I find by a preponderance of the evidence that Kesan violated the *Code of Conduct*.

## **V. Conclusion**

As explained above, the preponderance of the evidence supports a finding that Kesan violated the *Sexual Misconduct Policy* and the *Code of Conduct*. Given the nature of Kesan’s conduct, I recommend that significant employment action be taken.

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**CONFIDENTIAL**

## **I. Summary**

This matter involves allegations by as many as 14 different people with a variety of work-related relationships against Jay Kesan, a professor in the College of Law (“COL”) at the University of Illinois at Urbana-Champaign (“University”). The allegations are that Kesan engaged in a series of unwelcome, offensive actions with female students, faculty, and staff with whom he taught or worked over a period of as long as 15 years that violated University policies, including: discussing his dating life and the extent to which other women were interested in him sexually; asking questions about many females’ dating lives or relationship status; flirting with women; inviting women to spend time with him in private settings outside of the work environment (coffee, breakfast, lunch, dinner, drinks, at conferences, in hotels, and in his condominium unit in Chicago); ogling women in a sexualized manner; and (with respect to at least four different people<sup>1</sup>) touching women in a variety of ways they found offensive.

Based on the aforementioned information shared with the Office for Access and Equity (OAE), including specific concerns raised in late 2018, OAE initiated an investigation on behalf of the University and referred the matter to Husch Blackwell LLP for investigation. OAE also informed Kesan of the allegations by written notice on March 26, 2019. Kesan provided his written response to the allegations on April 16, 2019. My colleague, Katelan Little, and I shared information from Kesan’s written responses to the allegations with the relevant witnesses, and the witnesses were given an opportunity to rebut Kesan’s written response and/or provide additional information.

On May 2, 2019, we reached out to Kesan to schedule a meeting. Ms. Little and I met with Kesan and Kesan’s counsel, Jonathan Ksiazek, on May 7, 2019. The meeting lasted approximately three hours. Following the meeting with Kesan, and at the request of Kesan as well as certain witnesses, we conducted third-party interviews by phone.

Kesan provided a written response to the allegations at issue (described in more detail below) and addressed the allegations during his in-person meeting with Husch Blackwell. In both settings, Kesan offered some general information explaining his perspective about the allegations

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<sup>1</sup> Three women addressed in this report assert that Kesan touched them in ways they found offensive; the fourth woman filed her own complaint, and her allegations are addressed in a separate preliminary report concurrently with this one.

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that help frame consideration of the specific issues. He noted that he has been on leave for the 2019 calendar year, and during that leave, he has attended counseling, at the University's direction. During his interview, he discussed that through counseling he has learned he needs to be more cognizant of how he is perceived, including appreciating some of the power dynamics that are at issue with his interactions with others as well as having a greater appreciation for physical space in the work place. He admitted that it is "very clear" that he placed people in uncomfortable places "based on what people have said" and "that is an issue that I am working on." He explained that he grew up in Mumbai, India and that the appreciation of personal space is much less in that location. In addition, there are cultural differences. Counseling has helped him with understanding boundaries that should apply to his interactions with women. Kesan also noted that, as a result of counseling, he has recognized that "sometimes I say things without really thinking...I'm not really thinking much about [statements like] let's have lunch or dinner and I realize that those kinds of actions can kind of be coercive because it goes to the power differential." He also admitted that he would discuss private life and dating life with people he worked with, and that he "would discuss these topics and I would continue to pursue it." Kesan commented that he now realizes that saying these sorts of things not only makes people uncomfortable but also can create situations that ultimately undercut his ability to be seen as a good faculty member.

When asked why he thinks that women are raising complaints as opposed to men, Kesan responded, "It could be that the problem is me."

Kesan received a preliminary report on July 19, 2019. He sought an extension of time before submitting a 2-page written response to that report on August 8, 2019. This "second written response" is incorporated into discussion of Kesan's responses as appropriate below.

## II. Specific Allegations

As noted above, as many as 14 different people shared specific accounts of what they believed to be inappropriate behavior from Kesan. This section seeks to summarize those accounts, organized by witness. For ease of reference, Kesan's response to each witness account is provided immediately following their allegations.

██████████  
*Allegations:* ██████████

██████████ she was referred to Kesan to seek advice about choosing between two summer work experiences, one of which was a fellowship in Tokyo, Japan. Kesan advised ██████████ to take the Tokyo fellowship, offered to arrange research opportunities for her there, and talked about helping write an article with her to encourage her to go to Tokyo.

During the summer of 2012, ██████████ worked in a ██████████ in Tokyo. Kesan arrived in Tokyo shortly after ██████████ and helped arrange for research space for her in a research institute.

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According to ██████ he also invited ██████ to a breakfast meeting in his hotel, and the conversation turned personal very quickly. After breakfast, Kesan invited ██████ to see his hotel room. She accompanied Kesan to the floor and stood in the doorway but did not enter the room.

██████ alleged that, over a period of several weeks, she had dinner with Kesan and that he arranged for other one-on-one meetings under the auspices of talking about her research and ongoing work. During such meetings, Kesan asked her about her relationship status, relationship history, and her personal life in general. ██████ also alleged that Kesan would say that ██████ was of similar age to him, discussed his condo in Chicago and place in Washington D.C., and suggested that she could spend time there. ██████ thought Kesan was hitting on her, attempting to convert their relationship to something romantic. In addition to being hit on by Kesan, ██████ alleged that Kesan touched ██████ in various ways. Specifically, she alleged that Kesan hugged her hello and goodbye most times that he saw her. He also touched her arm while they were working together or meeting in various locations, including lingering with his hand on her arm or otherwise petting her and touching her in ways that were not professional.

██████ recalled that she took a day trip to Mt. Fuji with Kesan and, on the bus ride back, he sat too close to her, so she moved to the seat across from him and pretended to sleep. Kesan also allegedly invited ██████ to a different weekend trip in Tokyo, but after that invitation, she started trying to avoid Kesan, despite continuing to work on a paper for him.

One night, ██████ had drinks with Kesan for approximately two hours. Kesan became more flirtatious than before by talking about how much the two of them had in common, that he felt a connection with ██████ because she was an older student but young in life, and by touching her in various ways. ██████ alleged that Kesan touched her arm repeatedly in more than a friendly way, sat side by side with her, leered at her, and led her to feel defensive and interested in leaving but concerned about doing so because of Kesan's position of authority within the law school and with respect to her research assignment. At the end of the evening, Kesan hugged ██████ for an extended time, lowered his hands during the hug and touched her butt. Thereafter, ██████ arranged to travel alone to a different city in Japan because of her level of discomfort with Kesan's action.

*Kesan's Response:* Kesan agreed that he encouraged ██████ to work in Japan in the summer of 2012, as she seemed genuinely interested in doing so. Kesan explained in his written response that he had an ongoing collaborative research project collecting data from Japan about their patent system through the Institute of Intellectual Property in Tokyo and, knowing her interest in spending time in Japan, asked whether ██████ would be interested in staying in Tokyo to assist with the research. ██████ did assist in the project and sent Kesan emails thanking him for the opportunity.

When in Japan, Kesan admitted to offering to show ██████ the room he was renting in Tokyo (his second written response clarified this was not a hotel room but a room at a non-profit that



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supports academics), but he explained that he did so because the place he stayed was uniquely available to academics, affordable, and centrally located. He thought it would be helpful to show her “exactly what you get for the money, which included showing her my room so she knew what a typical room looked like.”

Kesan did not recall the specifics of discussing their similar age, but he did recall discussing what it is like generally to go to law school as an older student. In his written response, Kesan also recounted that he recalled telling ██████ that, as a result of going to school as older students, they “shared many common law school and other experiences.” When asked whether he asked her about her relationship status, Kesan said they could have talked about “personal things.”

As to his condos, Kesan denied having a condo in DC but said that he could have told ██████ she was welcome to stay in his condo in Chicago.

Kesan had no recollection of the allegations of touching and petting (but did not deny them), but he did admit that he routinely hugs people and it would not be out of the ordinary for him to have hugged ██████

Kesan lacked recollection as to the bus trip to Mount Fuji and said that if ██████ would have moved on the bus it was because of jet lag. In his written statement, Kesan did recall the trip to Mt. Fuji, writing, “those buses are fairly small as they go up the mountain. I meant no disrespect to ██████ by sitting close to her.”

As to the alleged interactions over an extended time at a dinner or bar, Kesan stated he remembered they had a “nice conversation” and it was her birthday at that time, so they may have discussed zodiac signs. Kesan does not recall it being “like a date.” Kesan said he did not recall being flirtatious and expressive of his feelings toward her, but he also did not deny such discussion. He said, “I don’t think I was coming onto her...I’m sure I was very friendly but I was not thinking of it in terms of a dating situation.” Kesan did not recall touching her arm while they talked but did recall hugging ██████ when they left. When asked whether he touched her butt when he hugged her, he noted as follows, “She was rather short, I do remember giving her a hug, but I wasn’t thinking of it in terms of touching her butt, I probably leaned down; I wouldn’t be surprised if my hand touched the lower part of coat.” In his written statement, he elaborated that, “...since ██████ is short, I may have bent down to give her a hug. I am a person who gives hugs and pats, and I realize that I should be much more careful about physical contact.” Kesan stated he was not attracted to her and that what he remembered most about her was that she went to law school as an older student.

According to Kesan, after Tokyo, ██████ continued to work for him for a year, and he never had the impression that she was uncomfortable. Kesan did lose touch with her after graduation, as there was no reason to stay in touch. Kesan noted that he has a high regard for her and the

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work she did. He wrote, “The fact that she felt uncomfortable in some interactions makes me feel terrible and has given me much to think about and how to improve.”

██████████ who alleged that she was introduced to Kesan around 2009 or 2010 by the Dean of the ██████████ COL due to their similar interests, while Kesan was a visiting professor at ██████████. She emailed Kesan to get coffee, and as Kesan was walking to the car, ██████████ contended that he looked her up and down and commented that she looked like an athlete and proceeded to discuss how he was good at basketball. Kesan then suggested that they get wine, so they went to a wine bar, and she alleged he asked her to split a bottle. She declined. At the wine bar, Kesan commented that ██████████ was young and attractive, and he asked if she had difficulty keeping boundaries with students as a result. Kesan then proceeded to tell multiple stories about how students were obsessed with him, including a story about having to have a secretary run interference because students were sending their underwear to him. When ██████████ tried to change the conversation to scholarship, which had been the plan, Kesan put his hand on ██████████ to prevent her from leaving and said they could talk about scholarship. According to ██████████, Kesan kept getting closer to her over the course of the conversation. At the conclusion, Kesan asked ██████████ whether she was attending a conference in Chicago and invited her to stay in his condo. That weekend, Kesan called her and left her a voicemail inviting her to dinner and expressing loneliness.

██████████ alleged that she has since seen Kesan at conferences and, although she tries to avoid him, he has confronted her about not calling or emailing Kesan. ██████████ has also since observed Kesan talking to a female colleague, who Kesan bear hugged and picked up.

*Kesan’s Response:* Kesan remarked that he remembered meeting with ██████████ in order to get a good sense of what the ██████████ faculty and environment were like because he had an attractive offer from ██████████. According to Kesan, he was trying to understand the environment at ██████████. The two went to some sort of restaurant or wine bar, and he did not recall who had the idea to go there. He could have asked her to split a bottle of wine but he did not recall the specifics.

Kesan did not deny looking her up and down and admitted that he could have told her she looked like an athlete. In his written statement, Kesan said that ██████████ told him she was a star soccer and track athlete. He did not recall spending time looking at her body, but he did recall that she was quite athletic. Kesan denied being attracted to ██████████.

Kesan recalled that the evening was “gossipy” and that they discussed ██████████ students and faculty. He noted that one faculty member had a relationship with a student and that he remembered discussing it. In that context, the boundaries between students and faculty could have come up, but he did not recall asking ██████████ whether she had difficulty keeping boundaries with students as a result of her being young and attractive. He also did not have a specific recollection of talking about students being attracted to him, though he did admit that he once had a student

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slide a note under his door inviting him to a party but that “no one has ever sent me underwear” in reference to [REDACTED] written statement.

Kesan said that the two of them discussed conferences and using the limited amount of budget that you have for travel as a faculty member, and that he could have told her that she could stay at his condo if she would like to. Kesan rationalized this because he has made the same offer to many other students and faculty, both males and females.

Kesan did not admit or deny leaving [REDACTED] a voicemail regarding being lonely, and he did admit that he texted her seeking recommendations for what to do in [REDACTED] and where to stay.

[REDACTED]

*Allegations:* [REDACTED] [REDACTED] who alleged that Kesan once spoke to her about the program, and, as she was walking out of his office, he placed his hand on the small of her back. She contended that she felt very uncomfortable and made a point to never be alone with him again.

*Kesan's Response:* As to [REDACTED], Kesan stated, “All I recall is her coming to my office at the beginning of the program, and I encouraged her. If I did something like a pat on the back, I could have done that; I don't have a specific recollection of it.” Kesan further noted that he could “imagine doing that” and that he sees physical contact as encouraging.

Kesan stated that he believes the publication of the prior investigation through the media could have prompted some of “these further allegations.” After the initial meeting with [REDACTED], Kesan did not have any further one-on-one interactions with her. He did attach four emails to his written response to “show the nature of our interactions.” Tellingly, in one of the emails, [REDACTED] responded to Kesan's request for individuals to submit a paper to a forum, writing, “I would be interested in working on this if with other interested parties. I cannot, however, submit to doing it alone, particularly because of finals.”

[REDACTED]

*Allegations:* [REDACTED] [REDACTED] who alleged that she attended a lunch with Kesan and a friend of hers at Espresso, in which Kesan invited himself to sit with her friend while she was alone before [REDACTED] joined. Over lunch, Kesan told [REDACTED] and her friend things they found inappropriate, including information about his partner choices and preferences for dating partners, not to choose baths over showers, and otherwise talking about his “dating” life. [REDACTED] felt that Kesan was hitting on both of them and stopped only when [REDACTED] told him she was married with children.

[REDACTED] had an interest in intellectual property law but chose not to take patent law because of her discomfort being around Kesan. [REDACTED] also described instances of Kesan talking to women



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very interested in speaking with her. After an event in Chicago, Kesan asked [REDACTED] if she was staying in town and referenced that he had a condo in Chicago.

*Kesan's Response:* What Kesan recalled most about [REDACTED] was that he had a very short conversation with her (no more than two minutes) when she decided to come back to the law school. Regarding the event in Chicago, Kesan did not recall the specifics but then said he did recall saying he was going to stay overnight and could have mentioned his condo, and that he asked her whether she was staying or leaving. He denied offering her the opportunity to stay in the condo when she was staying there too. In his written response, Kesan recalled discussing with [REDACTED] whether "we" were going to drive back to Champaign or Chicago and noted that he thought others were present too.

Kesan did not answer the question of whether he was attracted to [REDACTED]. Instead, he said, "the sum total of our interactions were 10 minutes. We were always very cordial."

[REDACTED]

*Allegations:* [REDACTED] who alleged that, during her first few years at the COL, she noticed that Kesan would stand uncomfortably close during conversations and, at one BLSA dinner, she mentally noted that every time she attempted to create a more reasonable physical distance to converse, Kesan responded by again moving too close to her. [REDACTED] alleged that she speaks quite loudly when needed and that Kesan did not show any signs of difficulty in understanding her nor did he ask her to speak louder. [REDACTED] mentioned the interaction at the BLSA dinner to her husband that evening, and he too recalls the event. [REDACTED] alleged that, given her concerns about Kesan's invasion of her personal space and the potential for unwanted touching, when [REDACTED] encountered Kesan in the parking lot, she would hold her lunch bag/arm out in a defensive manner that would preclude Kesan from coming closer to her.

Also during her first couple years at COL, [REDACTED] contended that Kesan would often come to her office to converse and either stand in front of the door in a way that made her feel like a trapped animal or move around to the side of the desk so the desk was not a barrier, again making her uncomfortable. [REDACTED] noted that other colleagues with whom she did not have close personal relationships never violated professional norms in this manner nor did any of their behavior elicit similar feelings of panic.

After enough of these encounters, [REDACTED] alleged that she began taking evasive measures to avoid Kesan. If she heard or saw Kesan in the hallway, she would maneuver so as to avoid Kesan spotting her. She would wait in her car in the parking lot rather than engage with Kesan. She stopped attending the BLSA banquet as she did not want to be in fancy attire with the risk that she would be physically trapped in a close talking conversation with him. [REDACTED] alleged that the mental energy she spent on avoiding him was time and effort that her male colleagues got to spend on being productive.

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While on maternity leave, [REDACTED] recalled that she attended a faculty dinner that Kesan also attended. [REDACTED] had a one-on-one conversation with Kesan, during which she alleged that Kesan looked her up and down and said [REDACTED]. [REDACTED] alleged Kesan said this in a sexualized manner. On other occasions, Kesan looked up and down without commentary.

*Kesan's Response:* In his written response, Kesan noted, "I am distressed to hear that [REDACTED] was in any way uncomfortable with me based on my conduct since I have a lot of respect for [REDACTED]. I plan to work hard to regain her trust."

As to the allegations about how he invaded her physical space, Kesan stated that "What I remember is that [REDACTED], and I was always out by the door when I spoke to her."

As to the allegation about baby weight, Kesan did not deny making that statement, said he didn't know if it was in a sexualized manner, and noted that he may have said "Wow" in regard to her losing weight. He thought this was complimentary.

[REDACTED]

*Allegations:* [REDACTED] who alleged that, during her first semester at the COL, Kesan asked her to lunch at the Courier Café and put his hand on her knee. Since that time, she alleged that she has made it a point to only be around Kesan when others are present.

*Kesan's Response:* Kesan did not recall the alleged lunch with [REDACTED] and stated that it was "particularly surprising" to him because they spoke many times after, including one-on-one conversations after the lunch and even going to her house with her husband. As to the specific allegation that he placed his hand on her knee, Kesan said he did not recall that.

Kesan stated that he respects [REDACTED] as a colleague and enjoyed talking to her.

[REDACTED]

*Allegations:* [REDACTED] who alleged that, during interactions in the hallway or at a reception after a lecture, [REDACTED] avoided Kesan because she felt he was invading her space and also because of his close talking. [REDACTED] alleged that once, when [REDACTED] was sitting at her desk wearing a V-neck, Kesan leaned over the desk and seemed to be trying to look down [REDACTED]' shirt. [REDACTED] zipped up her sweater because Kesan was ogling her. [REDACTED] suggested that [REDACTED] would be able to confirm this incident.



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*Kesan's Response:* Kesan stated that he likely interacted with [REDACTED] less than 10 minutes in total and that the interactions were very fleeting (e.g., hello or goodbye). What Kesan recalled most about [REDACTED] is that she was a [REDACTED] and she really liked the job, which he found notable because it was a tedious job.

Kesan admitted that he could have spoken closely to her if in a noisy environment.

Kesan did not recall looking down [REDACTED] sweater and stated that he didn't think he ever did that, and no one would have observed it if it did happen. When asked further questions about the sweater incident, Kesan responded, "I don't know; I don't recall anything about this; I don't recall anything unusual."

[REDACTED]

*Allegations:* [REDACTED] who alleged that Kesan asked her into his office and kept coming close to her while asking questions; thereafter, she decided to never go into Kesan's office again. [REDACTED] described that in her interactions with Kesan, Kesan would stand very close and absentmindedly stare at her chest, and that his eyes would drift all over her body.

[REDACTED] also alleged that at a conference in Bloomington, Indiana, over breakfast at a B&B, Kesan inquired about what [REDACTED] did at the conference and that it was good to get away from one's spouse.

*Kesan's Response:* Regarding [REDACTED], Kesan stated that he recalled having various short conversations in her office or his. For instance, he recalls that they discussed climate change. In response to the question of whether he ever looked at her chest, Kesan stated that "if she was wearing an unusual top, I would notice it by looking at it." Regarding whether he would drift over her body with his eyes, Kesan said he did not recall doing that, and noted "I imagine that would make someone uncomfortable."

As to the allegations surrounding the Environmental Law and Economics Annual Meeting on June 1, 2012 in Bloomington, Indiana, Kesan did not recall the comment about getting away from one's spouse, but he could have said "I'm happy to get away." Kesan also noted that when [REDACTED] first joined the faculty, she and her husband had come to his house.

[REDACTED]

*Allegations:* [REDACTED] who remarked that Kesan often touched people in professional settings in a manner that was not professional, such as touching someone's shoulder or back or hugging for longer than usual. [REDACTED] also alleged that Kesan did not respect personal boundaries, though she had never experienced any

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communication or contact of a sexual nature, which she believed was because she was more senior to him. [REDACTED] noted that she has steered people away from working directly with Kesan.

*Kesan's Response:* When asked about [REDACTED] allegations that Kesan touches people in professional settings in ways that are not professional, Kesan stated that he does tend to give people hugs and realizes now that he needs to be much more aware of these things. Kesan said that [REDACTED] allegations do "not surprise me. This is my culture."

Kesan denied that [REDACTED] was senior to him, and stated that [REDACTED]

As to individuals being "steered away" from working directly with Kesan, Kesan was unaware of that and said it was surprising because he just had a female student go through the dissertation process with him successfully.

[REDACTED]

*Allegations:* [REDACTED] who alleged that, in Fall 2002, Kesan attended a conference in Chicago that [REDACTED] also attended. Following the reception, which Kesan also attended, Kesan asked [REDACTED] if she wanted to walk with Kesan and invited her to stay in his hotel room. She declined, but [REDACTED] alleged that Kesan persisted, until finally they went separate ways after arriving at the appropriate metro stop.

*Kesan's Response:* In his written statement, Kesan acknowledged that he was aware [REDACTED] felt uncomfortable during a conference in Chicago when he had invited a group of students, two females and two males, to his condo, about 17 years ago. During his interview, Kesan explained that he was aware that [REDACTED] was uncomfortable because the associate dean at the time told him that [REDACTED] was uncomfortable, as she had reported the incident to the associate dean. Kesan stated that everyone, including [REDACTED] declined the offer to go to his condo.

In his written response, Kesan also noted that he wrote [REDACTED] a recommendation letter based on her performance in his class.

[REDACTED]

*Allegations:* [REDACTED] who alleged that Kesan stood in "funny spaces" around her, so much so that it felt like at any moment Kesan would grab her. [REDACTED] also alleged that she never felt comfortable around Kesan, so much so that she never socialized with Kesan and avoided him.

*Kesan's Response:* In his written statement, Kesan said, "I had no idea that [REDACTED], who retired many years ago, felt uncomfortable with me since we had just a few very short

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conversations with each other in a 15 year period.” When asked during the investigation why she would have felt like this, he said he thought it related to her sense of physical space.

Kesan said he did not recall engaging with her for more than hour in the 10-15 overlap in years.

██████████  
*Allegations:* ██████████ who alleged that Kesan occasionally would make comments to ██████████, such as “You’re looking hot today” or “did you lose weight? You look great!”

*Kesan’s Response:* Kesan noted that ██████████ office was down the hall from him, and she had lost a lot of weight, so he commented “Wow, you look great,” because the change was drastic and he noticed a big difference. He also wrote in his statement that he told ██████████ “she looked great” in the hallway after noticing she lost a significant amount of weight. He thought it was an encouraging statement. Aside from that, he has not had much interaction with her. Kesan stated he would not make that remark again in the future.

## Anonymous Student

*Allegations:* An anonymous student who is not a US citizen alleged that Kesan lied to her about his wife/marriage status and established a sexual relationship with her. She lives outside the United States. She also alleged that Kesan admitted to her that he had multiple relationships and that it is easy for Kesan to “fuck” anyone. She alleged that Kesan told her about relationships with a Chinese student, a Japanese student, and a Latin American professor.

*Kesan’s Response:* Kesan generally denied the allegations made by the anonymous COL student and said in his written statement, “It is impossible for me to respond meaningfully to this comment, and I have tried hard to think about who this person might be. I do not recall ever having any intimate relationship with a COL student of mine. I do not use vulgar language, and no one has stated that I do, which makes this comment even harder to respond to as it would not be something that I would have said. I do not know any female Latin American professors. I wish to maintain my privacy about my personal life, so I will not comment any further.”

During the investigation, he again said that he did not recall having a relationship with a Chinese student or a Japanese student, or a Latin American professor. He said he is married, coming up on 30 years, and that he never uses vulgar language.

In response to whether he has had a sexual relationship with students after they graduated, Kesan admitted to having a friendship, but denied any sexual relationship. He also denied dating people he worked with.

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### III. Other Witnesses

In his in written response and his interview, Kesan encouraged us to speak with [REDACTED] and [REDACTED]. Accordingly, we spoke with both [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED] described her working relationship with Kesan as always professional, happy, and rewarding. Kesan was appreciative of the work that she did, never nagged and never had “crazy deadlines,” despite being busy.

When asked whether anything inappropriate ever occurred when she worked with Kesan, [REDACTED] noted that, when she first began working for him, she was warned by other faculty assistants that Kesan may “get a little in your personal area.” She remarked that, at first, she did not see what they were talking about but then noticed that he does on occasion get a little close; she said that habit of Kesan’s never made her feel uncomfortable. [REDACTED] noted that Kesan “does wear a hearing aide,” apparently as an explanation for why Kesan stood close to people.

As to specific instances of touching, the only instance that [REDACTED] remembered was that Kesan had given her what she described as a “side hug.” She denied Kesan ever looking her up and down or commenting on her physical appearance. She also stated that the only time he would have asked about her personal relationships would have been in response to her offering information. She admitted that Kesan occasionally mentioned working out.

When asked about the allegations of inappropriate behavior towards women that have been made about Kesan to date, [REDACTED] commented that she has not observed any of this behavior and was “blind-sided by the report.”

As to whether she has observed Kesan with students, [REDACTED] remarked that she has seen him with students in connection with journal meetings a couple times each semester. The journal is staffed primarily with male students, and there have only been two female editors in the entire time that she has served as the [REDACTED]

[REDACTED] denied having observed Kesan interact with female faculty. [REDACTED] admitted that she has observed female assistants trying to avoid Kesan but did not elaborate about who, when, or why. When asked whether she has seen any change in Kesan since the allegations came out, [REDACTED] denied seeing any change but noted that she had not observed a problem from the

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beginning. She did state that she believes Kesan is capable of change and has mentioned that he is attending therapy and “needs to watch his behavior around here.”

[REDACTED]

[REDACTED]

[REDACTED] She has never had any issues with any of her faculty and stated, “I couldn’t pick a favorite.” She has not observed any inappropriate contact.

[REDACTED] recalled that, when she first met Kesan in 2005, he made the following comment: “I can tell you work out, you look good.” This comment was made in a hallway after they had been formally introduced and in the context of talking about exercise. [REDACTED] stated that Kesan has never made her feel uncomfortable, but she also said that sometimes he “gets a little close” and “invades your space a little bit.”

[REDACTED]

[REDACTED] admitted that Kesan does talk to her and [REDACTED] about personal things but explained that is just because he “cares about how you feel.”

When asked whether [REDACTED] has observed Kesan engage with other faculty, she noted that “on this end of the building, it is all men.” She also stated that she never saw him engage in any inappropriate conduct with [REDACTED]

As to her reaction to the allegations of Kesan treating women inappropriately, she said that she hates to hear any of it and that it is all very unfortunate. She noted that she has never witnessed Kesan interact with women inappropriately, but she has no reason to doubt the truth of the allegations.

Regarding whether Kesan is capable of change, she opined that she believes he would be capable of changing, but she has not seen any change nor has he mentioned anything about changing to her. Kesan’s second written response notes that [REDACTED] has not seen him in person since December 2018, which limits her ability to comment on his changes since that time.

[REDACTED]

[REDACTED] suggested we speak to [REDACTED] to confirm the incident in which Kesan allegedly stared at [REDACTED] chest. [REDACTED] agreed to speak with us and confirmed that Kesan walked by their office and blatantly stared at [REDACTED]’ chest while making small talk. After he walked away, she and [REDACTED] noted something like, “what a gross guy.” [REDACTED] could not recall whether [REDACTED] was wearing a sweater, but she recalled with certainty that the incident

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occurred. When asked whether Kesan looked at her chest, ██████ said no, but that she was “not built like ██████. She also noted that with respect to Kesan staring at ██████ “this was not a one-time thing, he would do this many times.”

We asked ██████ to share anything else she could regarding Kesan, and she remarked that he is “inappropriate” (without being willing to elaborate) and she believes “he likes the sort of attention that this investigation is generating.” Kesan’s second written response contests this, indicating that the months during which he has been under renewed investigation have been the most distressing and painful period of his life.

#### **IV. Applicable Policies**

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

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

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

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

Campus Administrative Manual §IX-B-6.

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

Those acting on behalf of the University have a general duty to conduct themselves in a manner that will maintain and strengthen the public’s trust and confidence in the integrity

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of the University and take no actions incompatible with their obligations to the University.

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

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

[https://www.ethics.uillinois.edu/compliance/university\\_code\\_of\\_conduct](https://www.ethics.uillinois.edu/compliance/university_code_of_conduct).

Our responsibility, then, is to decide both (1) whether Kesan's alleged conduct satisfied the University's definition of sexual harassment; and (2) whether Kesan's alleged conduct violated the University's standards of professional conduct. In addressing both these questions, we reviewed the evidence utilizing a preponderance of the evidence standard. A preponderance of the evidence requires that the evidence supporting a finding is more convincing than the evidence to the contrary.

## **V. Analysis and Findings**

### **A. *Sexual Misconduct Policy***

Determining whether Kesan's conduct violated the *Sexual Misconduct Policy* requires assessing whether it created a hostile environment for any of the witnesses who complained about his conduct, as there are no assertions of any *quid pro quo* arrangement or requests. The assessment of a potentially hostile environment involves evaluating whether (1) the conduct occurred, was unwelcome, and was of a sexual nature or based on gender, and (2) if any such conduct was sufficiently severe or pervasive to unreasonably alter the conditions of each of their respective work or educational environments. Each of the complaining women experienced different interactions with Kesan; however, it is important to also consider each complainant's knowledge of Kesan's conduct toward others and the extent to which such knowledge affected her own work or educational environment.



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In reviewing these issues, based on the factual findings below, [REDACTED] experiences are materially different from the rest of the women evaluated, and discussion of her claims is addressed individually below.

1. [REDACTED]
  - a. Conduct at Issue

[REDACTED] alleges that Kesan engaged in a series of actions during their time in Tokyo in 2012 of a sexual or gender-based nature that she found unwelcome, including: (1) arranging a series of one-on-one meetings while [REDACTED] was vulnerable given her inexperience in Japan during which Kesan raised personal issues and sought to convert their professional relationship into a romantic one; (2) touching [REDACTED] repeatedly while in the Tokyo office or during their meetings in private settings in ways that she perceived as sexual or gender based; (3) combining these efforts in the last dinner [REDACTED] had with Kesan, during which he intensified his discussion of their connection, touched her repeatedly in romantic ways while sitting, and then hugged her and touched her buttocks as they left.

First, I find that evidence presented during our investigation makes it more likely than not that, during [REDACTED] time in Tokyo during 2012, Kesan inappropriately used his position as [REDACTED] faculty sponsor to discuss personal issues including her relationship status and history in what she perceived as an attempt to engage with her sexually or romantically. She was still a student and, thus, reliant on Kesan's opinion as a reference and professional resource. During their initial breakfast after [REDACTED] arrived in Japan, Kesan raised personal subjects very quickly and offered to show [REDACTED] the room in which he was staying, which she reluctantly agreed to do, although she only stood in the doorway. Kesan explained he intended merely to help [REDACTED] understand why the particular place Kesan was staying was uniquely desirable and affordable in Tokyo's market. [REDACTED] found the invitation awkward but felt compelled to accept Kesan's offer to show it to her even though she did not want to do so. In addition, [REDACTED] met with Kesan repeatedly over a period of several weeks, one-on-one, to discuss research related issues but was repeatedly subjected to Kesan's efforts to "hit on" her. Kesan discussed their similar age, other aspects of what he perceived as their "connection," and invited her to go on a weekend trip with him in Japan (which she declined) and to stay in his condo in Chicago after they returned to the United States. Kesan either indicated that he thinks they may have discussed such topics or that he does not recall them, and I find that he did raise such issues repeatedly and that [REDACTED] found such discussion unwelcome and sexually-charged or gender-related. I find her status as a student and reliance on Kesan as her faculty sponsor prevented her from being comfortable enough to express this displeasure and led her to endure ongoing conduct from Kesan.

Second, I find that evidence presented during this investigation makes it more likely than not that Kesan repeatedly touched [REDACTED] in ways that she found unwelcome to further what she perceived as his efforts to attempt to engage in a sexual or romantic relationship with her. Kesan

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would hug her routinely at the beginning and end of nearly every time they were together, touch her arm or hands with his hand in ways that lingered and that ██████ referred to as “petting,” especially when he was seeking to engage ██████ in personal topics. During a bus ride to Mt. Fuji, Kesan also sat so close to ██████ that she moved to the seat across the aisle and pretended to sleep. Kesan lacked recollection of such touching or even the bus ride, said it would not be out of the ordinary for him to have hugged ██████ and did not deny any of ██████ touching allegations. I find that Kesan did touch ██████ as she alleged, that he did so habitually and repeatedly every time they were together over a period of weeks, and that such touching was unwelcome to ██████ and was sexually-charged or gender related in that she perceived it as part of Kesan’s effort to convert his relationship with ██████ into a sexual or romantic one.

Third, I find that evidence presented during this investigation makes it more likely than not that, during a two-hour dinner with ██████ at the end of their interactions in Japan, Kesan intensified his comments about personal issues and touched ██████ in more aggressive and eventually sexual ways. Kesan tried to convince ██████ they had much in common, that their connection was strong, and, as he did so, sat very close to her and touched her arms and hands in ways that she perceived as intended to communicate his interest in touching her more affectionately. She described such touching as lingering for extended periods of time, which was different than what he had done in the office. As they were leaving dinner, Kesan hugged ██████ for an extended, awkward period of time, lowered his hands, and touched her buttocks. Kesan failed to deny any of these key facts, offering what I interpret as indirect responses such as: he did not recall that dinner as being “like a date,” he did not recall being flirtatious, “I don’t think I was coming on to her,” and that he did not recall touching her arm but did recall a hug. He described the hug by noting ██████ short height, that he had to reach down, and that he “wouldn’t be surprised if my hand touched the lower part of her coat.” He never denied touching her buttocks, either in his written responses or his interview. Accordingly, I find that Kesan used the two-hour dinner as an effort to flirt with and convince ██████ to engage in romantic discussion with him, that he touched her repeatedly in ways she interpreted as seeking to build intimacy, and that he touched her buttocks at the end of the night for purposes of his own sexual gratification. ██████ found all of this conduct unwelcome and perceived Kesan’s actions as sexually related. I find that any reasonable person in her position would have found such unreciprocated and uninvited behavior unwelcome and sexually related.

b. Severe or Pervasive

The final part of the analysis is to determine whether Kesan’s conduct that was found to have occurred with respect to ██████ as explained above was sufficiently severe or pervasive to have unreasonably altered the conditions of ██████ educational or work environment. I find that, based on the evidentiary findings above, Kesan’s conduct toward ██████ was severe and pervasive enough to alter ██████ work environment in Japan to a degree that created a hostile environment.

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As an initial matter, I find that Kesan encouraged ██████ to join him in Tokyo as part of his effort to arrange for the context of their interactions to involve a situation where she would be isolated, dependent on his knowledge and power within the research office she worked, and that Kesan used that power dynamic to arrange for ██████ to spend private, one-on-one time with Kesan on a regular basis over a period of several weeks. This context for Kesan's conduct that ██████ found unwelcome and of a sexual or gender-based nature increased ██████ inability to express disinterest or discomfort with Kesan's conduct because she was reliant on his experience and contacts for her position in a country she had never visited.

Also, while she was in a position of vulnerability, Kesan subjected ██████ to overt commentary seeking to discuss personal and dating issues and then physical conduct that progressed from daily hugs, gentle touching of her arms and hands, and eventually seeking to engage in intimate, sexual touching of her buttocks. He repeatedly focused discussion not on research ██████ was conducting but her relationship history and interests, his interest in her, and, by the final dinner, his view that they were very connected and had a lot in common. He coupled this progressive series of comments with habitual touching of her body that progressed as well, which ██████ interpreted as Kesan's efforts to encourage her to engage in a sexual relationship with him. She never reciprocated his interest but tolerated it as necessary to her research position, until his efforts became more aggressive at their last dinner. This series of actions and words were pervasive as they were a constant part of Kesan's interactions with ██████. At the end of that dinner, Kesan's conduct also became extreme, as he followed a two-hour dinner of extensive efforts to engage ██████ personally and romantically with an extended hug and touching of ██████'s buttocks. The context of this interaction leads to the conclusion that Kesan did this for his own sexual. The severity of the conduct is exemplified by ██████ refusal to travel with Kesan thereafter. On balance, I find that Kesan's conduct toward ██████ in Tokyo was both severe and pervasive.

I find that, based on all of this evidence, it is more likely than not that Kesan's interactions toward ██████ included sexually-related and gender-based conduct that created a hostile environment for ██████. By a preponderance of the evidence, I find that Kesan violated the *Sexual Misconduct Policy*.

## 2. Other Female Witnesses

### a. Conduct at Issue

The 13 other witnesses who alleged mistreatment by Kesan, besides ██████, alleged the following types of conduct: (1) Kesan ogled women's bodies by looking them up and down, peering down a woman's sweater, and stared at a woman's breasts; (2) Kesan made various comments to women they perceived as "hitting on" them, invited several women to stay at his condo in Chicago in circumstances they found inappropriate, asked people about their dating lives and related personal topics; (3) Kesan habitually stood uncomfortably close to women during conversation and touched three different people (other than ██████) in various ways that

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were not sexual but were allegedly gender based. Kesan's response to these allegations was largely to "not recall" specific instances and thus not to deny them.

Because Kesan had a reported tendency to combine the various conduct at issue with interactions with various women, depending on the context, the findings below address the pattern of alleged conduct toward the group of women instead of on an individual basis.

I find that Kesan had a habit of using introductions to women in professional settings as opportunities to attempt to develop potentially romantic relationships, often by arranging one-on-one meetings in private locations, that started with conversations about personal, dating-related topics and close physical proximity and touching. This pattern involved faculty, staff, and students, and varying degrees of combinations of such conduct. For instance, with a faculty member at another institution [REDACTED] I find that Kesan converted a colleague's request for coffee to discuss similar legal interests into time at a wine bar with suggestions to increase alcohol consumption, discussion of personal life issues, ogling her body and comments about her attractive appearance, stories about students being obsessed with him and sending him underwear, and touching her to keep her from leaving as he sat closer and closer during their interactions. Kesan either lacked memory or did not deny the majority of these details.

With other students [REDACTED] [REDACTED] from the University, Kesan used private settings outside of University space such as restaurants or cafes to discuss dating life and dating partner preferences, or invited them to his condo in Chicago, and, in one instance, touched one of their knees [REDACTED] in a gesture that sought to develop personal intimacy. Again, Kesan either lacked memory of these alleged instances or acknowledged such conduct did or "could have" happened; he did not deny it. Given the pattern of reported conduct and Kesan's lack of memory and failure to deny it, I find that all such conduct reported by these women more than likely occurred and that the each of them found it unwelcome and either sexually-charged or gender related.

I also find that Kesan had a habit, without attempting to develop romantic relations, of ogling, watching, and touching women in ways that made them uncomfortable. [REDACTED] and [REDACTED] reported that Kesan touched women in the small of the back or shoulders and hugged women, all for extended periods of time that created discomfort. Kesan generally acknowledged a habit of hugging women and realized he needed to be more careful. Several University personnel ([REDACTED]) and [REDACTED] reported Kesan's tendency to ogle women's bodies, look them up and down, and either comment on their appearance as he did so or combine such conduct with an invitation to his condo in Chicago. [REDACTED] reported Kesan stood in excessively close proximity to her that created concern he would grab her at any moment. Again, Kesan lacks memory of many of these incidents or agrees generally that they could have or did occur, particularly commentary and invitations to his condo in Chicago. I find that all such conduct reported by these women more than likely occurred and that each of them found it unwelcome and either sexually-charged or gender related.

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At the same time, I find a lack of evidence of Kesan's attempts to engage women in romantic involvement resulting in sexual interactions or any sexual touching of these women, with the possible exception of the anonymous student. Without information about her identity other than her status as a non-citizen of the United States, it is not possible to determine that it is more likely than not that Kesan engaged in a sexual relationship with this student. However, Kesan's statements about this student undermined his credibility generally. For instance, his written response asserted "I do not recall ever having any intimate relationship with a COL student of mine." During his interview, he similarly stated that he "could not recall" having a sexual relationship with a Chinese or Japanese student or a Latin American professor and said that he declined to comment further to protect the privacy of his personal life. Given Kesan's position as a tenured faculty member, one would expect that he would remember if he ever engaged in a sexual relationship with a COL student enrolled in his class or with a student from China or Japan, as such relations would likely be unusual or remarkable and thus memorable. Kesan's inability to outright deny having such a relationship with any student implies that he did at some point, and his express unwillingness to talk about what he termed the "privacy of my personal life" in response to questions about this allegation creates a similar impression that he withheld information that might relate to these allegations. Again, however, given the anonymity of this complaining student and the absence of any reports of sexual interaction between Kesan and any of the complaining female witnesses addressed in this report, I cannot find it more likely than not that any such conduct occurred.

b. Severe or Pervasive

The final part of the analysis is to determine whether Kesan's conduct that was found to have occurred with respect to witnesses other than ██████ as explained above was sufficiently severe or pervasive to have unreasonably altered the conditions of any of their educational or work environment. I find that, based on the evidentiary findings above, Kesan's conduct toward the witnesses other than ██████ was unwelcome and inappropriate but not severe or pervasive enough to alter their work or educational environment to a degree that created a hostile environment.

Most of the women addressed in this section, as found above, experienced episodic interactions with Kesan that occurred on one, two, or a handful of dates over an extended period of time. For instance, several women noted one episode of such inappropriate behavior: he touched ██████ back, stared at ██████ chest, put his hand on ██████ knee, hit on ██████ at a café, and repeatedly sought to convince ██████ to come up and stay in his condo after one conference reception. There was no evidence that these five women experienced any other conduct from Kesan. Four other women were confronted with a few examples of such behavior: Kesan ogled ██████ and engaged in inappropriate conversation at a wine bar on one evening, leered at ██████ and stared her up and down and referenced his condo on several occasions, told ██████ several times that "you look hot" or "you look great," and stood so closely to ██████ on several occasions that she thought he would grab her at any moment. Two women endured more

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consistent conduct: (1) Kesan would regularly stand too close to ██████ absentmindedly stare at her chest, let his eyes ogle her whole body, and told her while they were at a bed and breakfast at a conference that it was good to get away from one's spouse; and (2) he regularly stood too close to ██████ stand in her office in a way that prevented her departure, and commonly ogled her body and once did so while saying she had easily lost baby weight in a way she perceived as sexual. Last, ██████ did not experience any harassment directly from Kesan but observed him often touching other women unprofessionally in ways that impacted her own environment. Nearly all of these women took measures to avoid Kesan or not be alone with or close to him to either stop or minimize such conduct. Every one of them knew generally about how Kesan engaged in this series of behaviors with many other women on campus.

While this pattern of conduct is distressing, the evidence did not reveal that any of the 13 women endured what amounted to "pervasive" conduct because Kesan's comments and other conduct was too episodic instead of occurring on a regular basis toward a particular person. ██████ experience gets the closest to regular harassment but occurred over a period of years and is ultimately too limited in detailed interactions to be considered "pervasive." Kesan's conduct toward these women is also not "severe." Kesan did touch some of the women, but not in sexual ways, and most of his conduct constituted rude, insensitive habits (standing too close, letting his eyes wonder) rather than aggressive efforts to engage them in any directly sexual way.

On the other hand, Kesan's pattern of such conduct toward many different women was rampant and consistent, and it was known to all of them and thus created concerns about future interactions with Kesan that did impact each of the witness' work or educational environment. The extent to which the impact of each woman's uncomfortable personal experiences with Kesan was intensified by their knowledge of his clear pattern of conduct toward other women is an important factor in evaluating the overall environment at issue. However, given each witness' relatively limited personal interaction with Kesan, the evidence does not support a finding that such impact more likely than not altered anyone's work or educational environment to a significant enough degree to violate the *Sexual Misconduct Policy*.

## B. *Code of Conduct*

In addition to determining whether Kesan's conduct violated the *Sexual Misconduct Policy*, I find that his physical conduct toward, verbal interactions with, and overall pattern of mistreating and disrespecting women that each witness involved knew about implicate violations of the *Code of Conduct* as well. In particular, such conduct as found above fails to satisfy standards of "professional conduct" because Kesan's conduct towards the 13 female witnesses did not practice "respect by treating others with civility and decency." There is no professional standard that would excuse: seeking to touch women in secluded settings in sexually suggestive ways, ogling women's bodies and commenting on them, introducing dating or other romantic relationship topics into discussions with students or other staff in uninvited ways, and otherwise habitually using professional relationships in the workplace as opportunities to seek to develop romantic relationships without any reciprocation from large numbers of women. The degree of



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Kesan's unprofessional behavior is exemplified by the extent to which female employees consistently sought to avoid him as much as possible and warned each other not to be alone with Kesan because of legitimate concern of ongoing sexual or gender-based behavior of a similar nature. As Kesan himself reported, he had a habit of discussing private life and dating life with women, he "would discuss these topics and . . . continue to pursue it" in ways that made people uncomfortable, such "actions can kind of be coercive," and "it could be that the problem is me." He also said that "Now when I look back on it, I think it was bad choices for sure. I should be much more careful. Bad choices because of the power dynamic but also it undermines my effectiveness as a professor."

The University does not prohibit consensual romantic relationships among faculty, staff, or students, but the power dynamic between a tenured faculty member, students, and other personnel requires a degree of respect for personal space and professionalism that Kesan clearly lacked. Accordingly, I find by a preponderance of the evidence that Kesan violated the *Code of Conduct*.

## **V. Conclusion**

As explained above, the preponderance of the evidence supports a finding that Kesan violated the *Sexual Misconduct Policy* in his interactions with [REDACTED] and violated the *Code of Conduct* through misconduct directed at all the female witnesses listed in this report. Given the nature of Kesan's conduct, I recommend that significant employment action be taken.