



# Confidential Investigative Report

University of California, Berkeley

Report Concerning Eva Hagberg Fisher and [REDACTED]

October 5, 2016



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## I. Brief Introduction

The University of California, Berkeley (“UCB” or “University”) retained Van Dermiden Maddux Law Corporation to conduct an independent investigation into a sexual harassment complaint brought by Eva Hagberg Fisher, (“Ms. Fisher”), a graduate student, against [REDACTED]

[REDACTED] Ms. Fisher submitted her original complaint on March 31, 2016 through the Chair of the Department [REDACTED] **Attachment 1.** The investigation commenced on May 6, 2016.

Ms. Fisher alleged that [REDACTED] engaged in sexually harassing conduct while she was a graduate student from approximately 2012 through May 2014. She explained that his behavior began gradually with special attention in class, which eventually led to verbal comments professing love for her, and touching her leg in a way that implied the opportunity for a sexual relationship. Ms. Fisher alleged she endured his “grooming” behaviors, including his efforts to isolate her from other professors, which made her feel intimidated and more reliant upon [REDACTED] to help her achieve her goals in graduate school.

This is the Confidential Investigative Report (“Report”) of my findings. It contains detailed information, witness accounts, relevant documentation, analyses and findings relating to the allegations.

## II. Summary Of Findings

This section summarizes the findings for the convenience of the readers. The remainder of the Report details the evidence and analyses supporting each finding.

After a thorough review of the evidence, I sustained most of Ms. Fisher’s claims. As an overall matter, I find by a preponderance of the evidence that:

[REDACTED] largely engaged in the conduct attributed to him. As Ms. Fisher’s professor, chair of the Ph.D. committee, and as a committee member for her Ph.D. examinations, he engaged in inappropriate conduct that included:

- Escalating personal interactions with Ms. Fisher;
- Engaging in a pattern of communication that intimidated and isolated Ms. Fisher from other faculty in her Department, and made her beholden to him as her protector;
- Physically touching her in an overly personal and/or sexual manner.

Based on these behaviors, and others outlined in this Report, I find that [REDACTED] conduct violated the University’s policy prohibiting Sexual Harassment and Sexual Violence. For these reasons, I find there is sufficient evidence to refer this matter to the Vice Provost for the Faculty or the appropriate administrator for review under the Faculty Code of Conduct.

### III. The Investigative Background

#### A. Witnesses

I conducted 24 interviews the following 18 individuals<sup>1</sup>:

Name of Interviewee	Title	Date(s) of Interview
[REDACTED]	[REDACTED]	August 25, 2016 August 26, 2016*
[REDACTED] <sup>2</sup>	[REDACTED]	June 8, 2016 September 14, 2016
[REDACTED]	[REDACTED]	August 31, 2016
[REDACTED]	[REDACTED]	September 9, 2016*
[REDACTED]	[REDACTED]	June 20, 2016*
[REDACTED] <sup>3</sup>	[REDACTED]	August 25, 2016
[REDACTED]	[REDACTED]	September 27, 2016*
Eva Hagberg Fisher	Graduate Student, Interdisciplinary Ph.D. candidate, former graduate student, Department [REDACTED]	May 9, 2016 June 17, 2016 September 29, 2016*
[REDACTED]	[REDACTED]	October 4, 2016*
[REDACTED]	[REDACTED]	September 27, 2016*
[REDACTED]	[REDACTED]	August 30, 2016*
[REDACTED]	[REDACTED]	August 30, 2016* September 1, 2016*
[REDACTED]	[REDACTED]	June 16, 2016* August 25, 2016
[REDACTED]	[REDACTED]	August 25, 2016
[REDACTED]	[REDACTED]	June 17, 2016

<sup>1</sup> [REDACTED] provided me with a list of 11 student names related to sharing coffee, drinks, meals and hugs. I attempted to reach seven of them through email, social media messaging and/or other forms of communication. I interviewed four students and achieved a balance between gender, current students and former students. I was unable to reach three of the students because they did not respond to my communications. Since I received ample information from the four students I interviewed, I did not find it necessary to contact the other four students on his list since I anticipated duplicative, general testimony.

<sup>2</sup> [REDACTED] was represented by his attorney, Dan Siegel of Siegel and Yee.

<sup>3</sup> [REDACTED] told [REDACTED] that he would be in contact with me. In August 2016, [REDACTED] asked to meet with me. I met with him on August 25, 2016, and he had several questions about the investigation process, confidentiality, and potential liability if he spoke with me. I generally responded to his questions and referred him back to the policies or to his own legal advisors. Since he was not named as a witness to any events, I told him I may have general questions for him later if there was a dispute related to something he may have knowledge about. I did not, however, need to interview [REDACTED].



Name of Interviewee	Title	Date(s) of Interview
[REDACTED]	[REDACTED]	September 1, 2016
[REDACTED]	[REDACTED]	June 16, 2016*
[REDACTED]	[REDACTED]	June 17, 2016

Interviewees were admonished that they should not interfere with the investigation or attempt to influence witnesses; and, that they were subject to governing policies prohibiting retaliation for either bringing a claim or participating in an investigation.

The conclusions in this Report are drawn from the totality of the evidence and a thorough analysis of all the facts, and where necessary, credibility determinations are made.<sup>4</sup> Witness statements were not recorded. Quotations in this Report are not verbatim recitations of witnesses' statements. Quotations are cited as accurately as possible from my notes.

## B. Documents

I reviewed hundreds of pages of documents. This Report does not purport to include every detail described by witnesses or specified in documents. Instead, it assesses the important facts as they pertain to the specific claims. The documents must be read in their entirety in conjunction with this Report to fully understand the underlying reasoning and findings herein.

Attachment	Document
1	Eva Fisher's eight page, typed complaint titled "NARRATIVE."
2	Sexual Violence and Sexual Harassment Policy, effective January 1, 2016.
3	University of California Policy On Sexual Harassment, dated May 2008.
4	Sexual Violence and Sexual Harassment Policy, effective February 25, 2014.
5	Letters to [REDACTED] and Eva Fisher dated July 22, 2016 regarding Extension of Investigation Timeline.
6	Letter dated October 1, 2012 from [REDACTED] to [REDACTED] on behalf of Eva Fisher.
7	Email from Paula Raffaelli to Eva Fisher dated April 1, 2016 titled "'*Private* OPHD Introduction and Resources."
8	Emails from Paula Raffaelli to Eva Fisher dated April 4-7, 2016 titled "'*Private* Meeting Date."
9	No Contact Directive dated June 8, 2016 from Denise Oldham to [REDACTED] and Eva Fisher.
10	Agreement for facility use dated July 21, 2016 from [REDACTED] and [REDACTED] to [REDACTED] and Eva Fisher.
11	Agreement for facility use dated August 29, 2016 from [REDACTED] and [REDACTED] to [REDACTED] and Eva Fisher.
12	Notice of Allegations to [REDACTED] dated May 10, 2016.
13	Summary of Allegations delivered to Eva Fisher and [REDACTED] on June 1, 2016.
14	Emails between Eva Fisher and [REDACTED] dated May 14, 2014 and titled "My reply to [REDACTED]."

<sup>4</sup> I considered and gave appropriate weight to information that might be considered to be hearsay in legal proceedings.

Attachment	Document
15	Email chain between Eva Fisher and [REDACTED] dated November 3-6, 2014. (Redacted by Eva Fisher.)
16	Email chain between Eva Fisher and [REDACTED] dated December 10-14, 2014 "titled "workplace dynamics – from the binder."
17	Email dated March 9, 2015 from Eva Fisher to [REDACTED] and [REDACTED] with an attached document, titled "Conflict/ethical issue."
18	Miscellaneous emails from 2010-2014 between Eva Fisher and [REDACTED] (Received from Ms. Fisher and [REDACTED])
19	Email from [REDACTED] to Ms. Fisher regarding admission to the Ph.D. Program in [REDACTED], dated April 11, 2011 and titled "proposal draft."
20	Email chain dated April 3-11, 2012 between [REDACTED] and Eva Fisher titled "update," "update on the update," and "tomorrow."
21	Email chain dated April 17-22, 2012 between [REDACTED] Eva Fisher and [REDACTED] titled "Meeting with [REDACTED]."
22	Email chain dated August 6-9, 2012 between [REDACTED] and Eva Fisher titled "two things."
23	Email between Eva Fisher and [REDACTED] dated August 27, 2012, titled "three-part faculty club party!"
24	Email chain between [REDACTED] and Eva Fisher dated August 30, 2012 and titled "ad hoc."
25	Emails between [REDACTED] and Eva Fisher dated September 8, 2012 titled "ad hoc proposal," and dated September 20, 2012 titled "edited interdisciplinary proposal."
26	Emails between [REDACTED] and Eva Fisher dated September 21, 2012 titled "edited interdisciplinary proposal" and forwarded to [REDACTED] on September 21, 2012.
27	Emails between [REDACTED] Eva Fisher and [REDACTED] dated October 25, 2012 titled "Draper fund for lecture series," dated October 29, 2012 titled "Meeting with [REDACTED]," and dated November 1, 2012 titled "Draper Lecture Series."
28	Email chain dated March 3-4, 2013 between Eva Fisher and [REDACTED] titled "Update."
29	Email chain dated April 2-17, 2013 between Eva Fisher and [REDACTED] titled "Message from [REDACTED] to Ph.D. Advisees only."
30	Email chain dated April 18-19, 2013 between Eva Fisher and [REDACTED] titled "thank you."
31	Emails dated April 18 and April 25 between [REDACTED] and [REDACTED] titled "Eva" and "PhD Alumni lecture series."
32	Email chain between Eva Fisher and [REDACTED] dated May 18-23, 2013 titled "small gathering tomorrow."
33	Email between [REDACTED] and Eva Fisher dated June 2, 2013 titled "Sooooo?"
34	Email chain dated June 3, 2013 and September 13-October 3, 2013 between Eva Fisher and [REDACTED] titled "thank you."
35	Email dated October 3, 2013 between Eva Fisher and [REDACTED] titled "very casual question." (Redacted by [REDACTED])
36	Email dated October 4-16, 2013 between Eva Fisher and [REDACTED] titled "Too sick, have to cancel" and "rescheduling."
37	Email chain dated March 3 – May 1, 2014 between Eva Fisher and [REDACTED] titled "update," "exam – list and date," and "exam."
38	Report to the Graduate Division on the Qualifying Examination for Eva Fisher dated May 7, 2014.

Attachment	Document
39	Email chain between Eva Fisher and [REDACTED] titled "Congrats" and dated from May 7-8, 2014.
40	Email chain dated May 14, 2014 between Eva Fisher and [REDACTED] titled "June."
41	Email dated May 15, 2014 between Eva Fisher and [REDACTED] regarding [REDACTED]'s email titled "Eva H's committee."

### C. The Policies

University of California's Sexual Violence and Sexual Harassment policy prohibits, among other things, sexual harassment.<sup>5</sup> The university-wide policy issued on January 1, 2016 set forth the following summary:

#### University of California Policy SVSH Sexual Violence and Sexual Harassment

##### I. POLICY SUMMARY

The University of California is committed to creating and maintaining a community dedicated to the advancement, application and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Every member of the community should be aware that the University prohibits sexual violence and sexual harassment, retaliation, and other prohibited behavior ("Prohibited Conduct") that violates law and/or University policy. [...]

##### II. DEFINITIONS

[...]

##### *B. Prohibited Conduct*

[...]

##### 2. Sexual Harassment:

a. Sexual Harassment is unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical conduct of a sexual nature when:

i. *Quid Pro Quo*: a person's submission to such conduct is implicitly or explicitly made the basis for employment decisions, academic evaluation, grades or

<sup>5</sup> The conduct attributed to [REDACTED] by Ms. Fisher took place over the course of the 2011-12 and 2013-14 academic years. During that time several versions of the UC policy prohibiting sexual harassment and sexual violence were in effect. **Attachments 2-4.** The definition of sexual harassment remained fairly consistent from 2008-2015, and there was a revision in 2016. The standard by which the University measures sexual harassment did not change; rather, it was clarified in the policy language. In this investigation, we analyzed the alleged conduct under the definition of sexual harassment set forth in the current Sexual Violence and Sexual Harassment Policy. We also follow the investigation procedures enumerated in the current policy.



advancement, or other decisions affecting participation in a University program;  
or

*ii. Hostile Environment:* such conduct is sufficiently severe or pervasive that it unreasonably denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment or other programs and services of the University and creates an environment that a reasonable person would find to be intimidating or offensive.

b. Consideration is given to the totality of the circumstances in which the conduct occurred. Sexual harassment may include incidents:

i. between any members of the University community, including faculty and other academic appointees, staff, student employees, students, coaches, residents, interns, and non-student or non-employee participants in University programs (e.g., vendors, contractors, visitors, and patients);

ii. in hierarchical relationships and between peers; and

iii. between individuals of any gender or gender identity. [...]

### III. POLICY STATEMENT

#### *A. General*

The University of California is committed to creating and maintaining a community free of sexual violence and sexual harassment. Sexual violence and sexual harassment violate both law and University policy. Any member of the University community may report conduct that may constitute sexual violence, sexual harassment, retaliation, and other prohibited behavior ("Prohibited Conduct"). The University will respond promptly and equitably to such reports, and will take appropriate action to stop, prevent, and remedy the Prohibited Conduct, and when necessary, to discipline the Respondent.

In addition to sexual harassment, discrimination based on sex, gender, gender identity, gender expression, sex- or gender-stereotyping, and sexual orientation violates law and other University policies. Such discrimination may also contribute to the creation of a hostile work or academic environment based on sex and thus constitute or contribute to sexual harassment. Harassment that may not be sexual, but still contributes to a hostile work or academic environment, may also violate the University's other non-discrimination policies.

#### **Attachment 2.**

**D. Scope of Findings**

In this Report, I make factual findings and policy determinations only.<sup>6</sup> I do not reach legal conclusions. The University's policies are interpreted to prohibit behavior even if not unlawful under legal principles.

**E. Evidentiary Standard**

Measuring it against the policy language, the evidence was reviewed, compared and analyzed under a preponderance of the evidence standard to determine whether the allegations were with or without merit. "Preponderance of the evidence," for purposes of this Report, means that the evidence on one side outweighs, or is more than, the evidence on the other side. This is a qualitative, not quantitative, standard.

**F. Independence**

Independence is an important component of this investigation. The University and its representatives allowed me discretion to conduct the investigation as determined to be necessary. I was given complete access to all requested witnesses and documents. No party interfered with, or attempted to influence, the findings in this Report.

**G. Timing**

I note that this investigation took longer to complete than originally anticipated, largely due to the number of witnesses and the delays caused by witness unavailability. The investigation was originally delayed because [REDACTED] was out of the country from May 17 to June 8, 2016 and from June 10 through June 20, 2016. [REDACTED] Attorney, Dan Siegel, was unavailable to meet before [REDACTED] departure on May 17, 2016. Further, several witnesses were unavailable to meet over the summer, and the number of witnesses expanded as both parties provided information to support their version of events. In response to these delays, the investigation timeline was extended until October 5, 2016. This extension was approved by Title IX Officer Denise Oldham on July 19, 2016 and was communicated to the parties on July 22, 2016. **Attachment 5.**

**IV. Factual Background**

The following facts provide relevant background and context to Ms. Fisher's allegations.

**A. Department and Parties**

*The Department [REDACTED] at the University of California, Berkeley.* The Department offers undergraduate and graduate degree programs designed to provide students with foundational knowledge and the flexibility to adapt their education to their own interests. According to the Department website, "At the graduate level, we offer a Master [REDACTED] (a professional

<sup>6</sup> I utilize a legal analysis in reaching the factual and policy determinations in this Report. These findings are intended to facilitate the rendering of legal advice by the University's counsel.



**Educational Relationship Between Eva Fisher and [REDACTED]** The focus of this investigation involves the relationship between Ms. Fisher and [REDACTED] from fall 2010 through May 2014. In this section, I briefly outline their educational relationship to provide context to the reader.

In fall 2010, the first semester of her master's education, Ms. Fisher enrolled in [REDACTED] with [REDACTED]. It was a mandatory course, and she received an A- in his class. By all accounts Ms. Fisher was an intelligent student who actively interacted with [REDACTED] in class. While [REDACTED] was not her advisor in the department, he helped Ms. Fisher with her application to become a Ph.D. candidate in the Department of [REDACTED]. In fall 2012, Ms. Fisher enrolled in [REDACTED] seminar called "[REDACTED]". She received an A+ in the course, which was rarely given by [REDACTED].

Ms. Fisher also came to know [REDACTED] when she and [REDACTED]<sup>11</sup> served as [REDACTED]. [REDACTED] and Ms. Fisher would go to the Faculty Club to discuss their roles as "[REDACTED]," the dynamics in the department, and how to secure the Draper funds for a lecture series highlighting former students.

When Ms. Fisher decided to leave the Department of [REDACTED], [REDACTED] wrote a letter of support for her so she could become an Interdisciplinary Ph.D. candidate at UCB. **Attachment 6.** [REDACTED] served on Ms. Fisher's Ph.D. examination committee in May of 2014. However, Ms. Fisher did not ask him to serve on her Ph.D. dissertation committee. [REDACTED] and Ms. Fisher did not interact with each other after May 15, 2014.

## B. Interim Measures

On April 1, 2016, Paula Raffaelli, Complaint Resolution Officer, sent Ms. Fisher an email titled to inform her of the resources available to her during the course of the investigation. Ms. Raffaelli also offered to meet with Ms. Fisher to discuss her concerns. A link to the Sexual Violence and Sexual Harassment policy was also provided within the email to Ms. Fisher. **Attachment 7.** On April 4, 2016, Ms. Fisher called Ms. Raffaelli to schedule a meeting for April 26, 2016. On April 7, 2016, Ms. Raffaelli emailed Ms. Fisher to propose an earlier meeting date. **Attachment 8.** This meeting would materialize as an initial intake meeting between Ms. Oldham, Elizabeth Rome, Complaint Resolution Officer, and Ms. Fisher on April 20, 2016. I conducted my initial interview with Ms. Fisher on May 9, 2016.

Between May 9 and August 29, 2016, I acted as an intermediary between Ms. Fisher, Ms. Oldham, and Department Chair [REDACTED] regarding Ms. Fisher's concerns about the scope of the No Contact Directive. On June 10, 2016, Ms. Fisher confirmed with me she received the first No Contact Directive from Ms. Oldham. **Attachment 9.** Ms. Fisher felt the No Contact Directive should be more comprehensive for [REDACTED]. Chair [REDACTED] worked with the parties and issued an agreement about when [REDACTED] and Ms. Fisher could use the Department facilities. He forwarded the agreement to both [REDACTED] and Ms. Fisher on July 21,

<sup>11</sup> [REDACTED]  
[REDACTED]

2016. **Attachment 10.** The agreement detailed that [REDACTED] was not to use the [REDACTED] Library from 1:00 until 5:00 p.m. on Mondays, Wednesdays, and Fridays between July 18 and August 23, 2016. Subsequently, on August 29, 2016, a second agreement was communicated to the parties in alignment with the investigative timeline. **Attachment 11.** This agreement restricted [REDACTED] from using the [REDACTED] Library from 1:00 until 6:00 p.m. between August 30 and October 5, 2016.

### C. Notice To [REDACTED]

On May 10, 2016, Ms. Oldham sent a Notice of Allegations to [REDACTED] explaining that a complainant brought forth concerns that he “engaged in unwelcome advances, comments and physical contact with a graduate student between 2012 and 2014.” **Attachment 12.** The Notice provided a link to UC Berkeley’s Sexual Violence and Sexual Harassment policies, set forth various procedures, and provided resources for the Respondent. Subsequently, on June 1, 2016, I prepared and sent a letter titled “Summary of Allegations” to [REDACTED] which outlined Ms. Fisher’s allegations in greater detail. **Attachment 13.** He received the summary seven days before his first interview with the undersigned.

Based on my conversations with Attorney Siegel, [REDACTED] and [REDACTED], [REDACTED] was aware that Ms. Fisher was the complainant before he received the Notice of Allegations. According to Attorney Siegel, Ms. Fisher was contacting “past and present students” of [REDACTED] in an effort to “conduct her own investigation.” Attorney Siegel stated that some of these students approached [REDACTED] to alert him to Ms. Fisher’s actions, as a show of support to [REDACTED].

## V. Overview of Allegations and Response

### A. Eva Fisher’s Complaint

Ms. Fisher filed a formal complaint with Chair [REDACTED] on March 31, 2016. She participated in two interviews with me and answered follow-up questions. Ms. Fisher submitted dozens of documents for my review.

#### 1. Overview of Eva Fisher’s Perspective

According to Ms. Fisher, [REDACTED] subjected her to inappropriate attention and “grooming” her towards intimacy with him over the course of several years. She described how he paid attention to her, told her she was brilliant, and made note of her writing accomplishments in front of others. His attention made Ms. Fisher feel special at first. However, over time, their interactions escalated to become more personal, and [REDACTED] blurred customary student-faculty boundaries by commenting on how he loved her, offering to come to her home, and asking to take her out. His interactions also became more physical, culminating in his touching her upper thigh while telling her that he wanted them to be closer friends. Ms. Fisher felt uncomfortable, but was unsure if [REDACTED] was just being nice to her. Because he was a powerful figure in her educational environment, Ms. Fisher did not immediately recognize [REDACTED] behavior as inappropriate.

Ms. Fisher further alleged [REDACTED] subjected her to a pattern of isolation and intimidation related to her educational program by providing special assistance and promises of support while at the same time speaking negatively about other faculty members in the Department of [REDACTED]. [REDACTED] often told Ms. Fisher that other faculty members were “skeptical” of her and did not consider her to be a scholar, but he supported her and valued her as an academic. He spoke and behaved as if he was protecting her from other professors in the Department. This pattern created a division between Ms. Fisher and key people in her educational environment, which contributed to her decision to leave the [REDACTED] Department. [REDACTED] conduct caused Ms. Fisher to believe she was and should continue to be [REDACTED] confidante in order to maintain professional connections to further her education and career opportunities.

## 2. Requested Resolution

In her complaint, Ms. Fisher noted the following:

I have suffered emotional pain and a sense of isolation from being repeatedly told that my department did not support me, as well as the trauma of having someone who is meant to be an educator repeatedly violate boundaries.

### Attachment 1, pg. 8.

Ms. Fisher stated she contemplated filing a lawsuit, but she wanted to make the most of her time at UCB. She stated that “compensation cannot be restitution.” Ms. Fisher felt that it “will never be okay” the way [REDACTED] treated her, but more importantly, she wanted to “make this ok for [her]self.”

As noted above, Ms. Fisher demanded a comprehensive “No Contact Directive.” She felt physically uncomfortable encountering [REDACTED] on campus when she was trying to study or work. When she asked for further clarification of the directives, she stated that she had hoped that, as a result of her complaint, [REDACTED] would *not* be teaching during the fall semester of 2016. This was an indication that Ms. Fisher felt [REDACTED] behavior towards her warranted a strong consequence from the University.

## 3. Timing of the Complaint

Ms. Fisher filed her formal complaint almost two years after the last incident she experienced. She was aware that someone may question why she did not file a complaint against [REDACTED] earlier. Ms. Fisher wrote in her complaint:

I did not speak up earlier because I was frightened of [REDACTED] ability to potentially ruin my career, which he intimidated by the way in which he talked about my work and his being there to support it. I also continually questioned the validity of my discomfort because he escalated in such a slow way over such a long time.

### Attachment 1, pg. 8.



Ms. Fisher articulated that, because of the gradual, yet escalating nature of [REDACTED] conduct, she was unsure of what was happening. She explained she wanted to believe [REDACTED] intentions were good since she needed [REDACTED] professionally. Ms. Fisher contemplated filing a complaint on several occasions over 2014-2015. She noted that, in late 2014, she learned about allegations that [REDACTED] had been unfaithful to his wife, [REDACTED]. Ms. Fisher admitted that this information about what she called his “fuckery” caused her to look at the way he treated her. Ms. Fisher decided to file a complaint in March 2016 because it was “the right thing to do,” and the culture on campus seemed open to her story since other female students were raising similar allegations against male faculty at the University.

Ms. Fisher explained, however, that she was concerned about [REDACTED] inappropriate behavior well before she filed her March 31, 2016 complaint. For example, she called [REDACTED] and told her about her discomfort with [REDACTED] on October 18, 2013, the same evening it occurred.<sup>12</sup> Similarly, within 24 hours of her May 13, 2014 Faculty club meeting with [REDACTED] Ms. Fisher told her friend, [REDACTED] about how badly she felt because of [REDACTED] confusing comments. Attachment 14.

A day later, Ms. Fisher told her [REDACTED] that she did not want [REDACTED] on her dissertation committee. Within two weeks of that decision, she told [REDACTED] that she removed [REDACTED] from her committee because of his comments, including his commentary about loving her.

In the beginning of November 2014, Ms. Fisher and [REDACTED]<sup>13</sup> engaged in a lengthy email discussion about whether Ms. Fisher should file a complaint.<sup>14</sup> Attachment 15. When [REDACTED] asked her if she considered filing a complaint against [REDACTED] Ms. Fisher responded in several ways:

I’m appalled at my own silence, my own wanting to protect myself and so just putting up with it until finally the limit was broken, and the only way he broke the limit was when he actually got in my head by implying that other profs had wanted to fail me....

[...]

I’m wondering now if I should file a complaint. Maybe it’s just shouting in the empty wind, but it’s something. He definitely harassed me and implied power-for-“close friendship.”

[...]

<sup>12</sup> Ms. Fisher did not have her old cell phone to check her phone logs. She offered to obtain telephone records from her provider, but as of the date of this Report, she had not received any such records.

<sup>13</sup> [REDACTED] is a former graduate student. [REDACTED] and Ms. Fisher both had [REDACTED] for [REDACTED] in [REDACTED] [REDACTED] confirmed the authenticity of the email provided to me by Ms. Fisher.

<sup>14</sup> The discussion was triggered by another friend who forwarded a video link of [REDACTED] related to patriarchy and her husband’s infidelity. [REDACTED] was married to [REDACTED]

I've been stopping myself [because] I kept thinking I was overreacting.

[...]

Honestly, I'm reading this policy right now, and I'm like "it wasn't that bad" and then I'm like "Eva, don't make a fuss," and then I'm like "he would retaliate."

#### Attachment 15.

██████ encouraged Ms. Fisher to talk to someone at the University about her complaint options. From ██████'s perspective, she felt ██████ had engaged in a "pattern" of "inappropriate attention" towards Ms. Fisher. However, she also said that Ms. Fisher was "right to fear retaliation." Two days later, when ██████ again asked Ms. Fisher about filing a complaint, she responded:

[T]hinking about it, but got myself scared that it would be perceived as MORE problems from me and I should just keep my mouth shut.

#### Attachment 15.

While Ms. Fisher did not immediately file a complaint, she did not "keep her mouth shut." Instead, she described her experience without using ██████ name. For example, when she learned about ██████'s "post looking for people" to talk about "male-dominated workplace stuff," Ms. Fisher decided to participate. She provided information to ██████ via email on December 12, 2014 about her difficulties with an unnamed professor. **Attachment 16.** Ms. Fisher confirmed in her interview with me that her written description to ██████ described her interactions with ██████

Similarly, when asked by two professors to prepare a document regarding an ethical issue, Ms. Fisher wrote about how one of her "committee members" began acting "funny" and put her in an uncomfortable position. **Attachment 17.** Ms. Fisher confirmed to me that the "conflict experience" in her paper was about ██████ Ms. Fisher submitted her assignment to ██████ and ██████ on March 9, 2015.<sup>15</sup>

#### B. Professor ██████ Response

██████ participated in two interviews with me, and he submitted dozens of documents for my review.

##### 1. Overview of ██████ Perspective

During our first interview, Attorney Siegel expressed "a few thoughts" on behalf of ██████. He stated they agreed to the interview because they "had to do so." ██████ was prepared to be "forthright" and answer questions "honestly." Overall, ██████ position was there was "absolutely nothing inappropriate" about his relationship with

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<sup>15</sup> Ms. Fisher's various descriptions of her experience with ██████ are generally consistent. Where there are differences in any of the disputed areas listed below, I will review the various iterations to determine if the differences are material.

Ms. Fisher. [REDACTED] described it as a “normal relationship between faculty and a graduate student.” He noted that [REDACTED] was “supportive and friendly,” and there was “nothing romantic or sexual between them on the part of either party.”

[REDACTED] explained that he acted in “a very human way” with Ms. Fisher; not in a harassing way. He noted that:

Male faculty often engage in behavior that may be perceived as sex harassment.  
But not me, I understand that. I am a victim in this, because I had no intent  
whatsoever.

[REDACTED] asserted that his interactions with her were normal, and he had no indication that she was uncomfortable. He intimated that that, based on Ms. Fisher’s behavior and personality, there was “no way” she was “uncomfortable” for so long without saying anything. Moreover, he disputed that Ms. Fisher considered [REDACTED] to be “essential to her.”

[REDACTED] reported he was “flabbergasted” that Ms. Fisher would be intimidated by him in any way, especially just seeing him at [REDACTED] Library. He stated he had a right to be “shocked” by how Ms. Fisher “construed” him, because of the kindness he showed her related to her “condition.”

## 2. Requested Resolution

[REDACTED] asserted that he did not engage in any sexual harassment, and he intended to continue teaching. He stated he had been “gravely harmed by this” complaint in several ways. Specifically, he described the harm caused by Ms. Fisher sending emails to other students in April and early May of 2016 with “an innuendo about her complaint.” [REDACTED] further expressed objections to the No Contact Directive, which he viewed as “unacceptable” and having impacted him “so negatively.” He also noted that aspects of the complaint process have been known to others, which also affected him negatively and may have caused one student to drop him as an advisor. He stated he wanted to see what he “could do about that.”

## 3. Timing of the Complaint

[REDACTED] stated in his first interview that he was disturbed to “have these allegations come up so long after the fact.” He noted that perhaps Ms. Fisher came forward because of the “hyper environment” which currently existed at UCB. He noted he was speculating, but he thought maybe Ms. Fisher “reflected on these events” and now she saw them differently. He said he could “not imagine another reason.”

During his second interview, [REDACTED] consistently noted that his statements to Ms. Fisher were being “retroactively interpreted differently.” I asked [REDACTED] if he had any knowledge of Ms. Fisher’s motive to interpret things differently. He said that some people noted that Ms. Fisher was in the process of writing a book, and the “theme is victimhood.” [REDACTED] reflected on the medical difficulties Ms. Fisher experienced during graduate school, and he noted that he showed “kindness towards her.” He argued that his “acts of kindness” did “not indicate sexual interest.” [REDACTED] ultimately felt the complaint was based on the “climate on campus” and Ms. Fisher’s “feelings of victimhood.”

## VI. Chronology of Undisputed Facts and Key Events

Because of the extensive email communications between [REDACTED] and Ms. Fisher, their interactions with each other were well documented from September 2010 through May 2014.<sup>16</sup> Therefore, many of the facts and details in this investigation are not in dispute. In several instances, the conduct attributed to [REDACTED] was directly corroborated by documentary evidence, (i.e., within written email communications between him and Ms. Fisher).

However, after conducting extensive interviews with both parties, it became clear that Ms. Fisher and [REDACTED] disagree about *the nature and intentions of their interactions*. Whereas [REDACTED] argued that the nature of their interactions constituted normal professor-graduate student relations, Ms. Fisher disagreed and felt that, over time, [REDACTED] treated her more like a woman instead of a student, and he manipulated her to stay close to him.

### A. Description of Chart

In the chart below, I set forth the general content of the relevant documents and email communications in order to organize the undisputed facts and key events in a chronological time line. I have also highlighted the incidents that are in dispute in the right column so the reader can see where they fit within the timeline of their relationship. The most relevant emails and email chains are set forth as separate attachments. The more general emails submitted to me by [REDACTED] and Ms. Fisher are grouped together and contained in one attachment, **Attachment 18**.

Date	Event	Attachment
<b>2010-11 School Year</b>		
Fall 2010	Ms. Fisher began as a MS student in the Department of [REDACTED] at UCB, and enrolled in [REDACTED] with [REDACTED]	
September 29-October 2, 2010	[REDACTED] responded to Ms. Fisher's email questions about a research project. He said, "Oh, you are expending again! This requires either an office hour meeting or Coffee at Strada when I come back." Ms. Fisher responded, after clarifying her research project, that "...coffee or office hours sounds good! More clarity = always better."	<b>Attachment 18.</b>
October 13, 2010	[REDACTED] and Ms. Fisher met to discuss her research.	
October 14, 2010	Ms. Fisher thanked [REDACTED] for meeting with her, and she presented a new research objective. [REDACTED] responded favorably to Ms. Fisher's revised paragraph.	<b>Attachment 18.</b>

<sup>16</sup> [REDACTED] and Ms. Fisher turned over many duplicate emails. I compared the email documents received from both parties, and I did not discover any tampering with the content of their email conversations. Therefore, through this comparison, I was able to authenticate their email correspondence.

Date	Event	Attachment
October 27-28, 2010	<p>██████████ and Ms. Fisher continued to discuss her research objective and some publishing opportunities. He said, "Let's talk to see how to proceed."</p> <p>Ms. Fisher responded, "Do you mean email talk or strada/office hours talk?" He responded, "Either is fine by me." They ultimately decided to meet Wednesday after class.</p>	Attachment 18.
December 9, 2010	<p>Ms. Fisher initiated an email conversation with ██████████ thanking and complimenting him for his ██████████ course.</p> <p>He responded positively, stating: "It was a pleasure having you in class. You are a very bright woman and you will go places. I would love to work with you at the Ph.D. level, and I would be happy to have you as a GSR or GSI next year."</p>	Attachment 18.
December 18-19, 2010	<p>Ms. Fisher responded to the December 9<sup>th</sup> email, expressed her interest in seeking a Ph.D., and asked him why she received an A-.</p> <p>██████████ responded that the grade was "simply a cumulative grade of all your assignments but you are an A student in my book."</p>	Attachment 18.
December 2010	<p>██████████ shared with Ms. Fisher that ██████████ told ██████████ that ██████████ does not like ██████████</p>	
February 14, 2011	<p>Ms. Fisher initiated seeing ██████████ for office hours. They scheduled a meeting for Thursday, February 17, 2011 at 11:00 a.m.</p>	Attachment 18.
February 17, 2011	<p>Ms. Fisher and ██████████ met during his office hours.</p>	
April 11, 2011	<p>Ms. Fisher was admitted to the Ph.D. program in the Department ██████████</p> <p>██████████ sent Ms. Fisher an email informing her of her admission, setting forth dates, and informing her of the goal of qualifying for a full "██████████ fellowship"</p>	Attachment 19.
2011-12 School Year		
November 16-17, 2011	<p>Ms. Fisher emailed ██████████ stating she "would love to come catch up," and inquired about his schedule.</p> <p>██████████ responded that he could meet her on Monday and Tuesday afternoons. They agreed to meet on Monday, November 21, 2011 at 4:00 p.m.</p>	Attachment 18.
November 21, 2011	<p>Ms. Fisher and ██████████ met during office hours.</p>	
December 6, 2011	<p>Some classmates organized efforts to show support of ██████████ related to a pending surgery. Ms. Fisher declined to participate in giving a gift to ██████████. She said she already had a "great chat" with ██████████ and they briefly discussed his medical condition. She stated that was as far as she felt comfortable going.</p>	Attachment 18.
March 3-6, 2012	<p>██████████ sent Ms. Fisher an email informing her of a potential job opportunity.</p> <p>Ms. Fisher responded positively and confirmed how long it had been since they saw each other. She informed ██████████ that she and ██████████ were the ██████████</p> <p>██████████ responded, "Ok."</p>	Attachment 18.
Spring 2012	<p>Ms. Fisher felt that faculty in the Department ██████████ did not like her based on ██████████ comments. She felt disillusioned and wanted to leave graduate school.</p>	HIS COMMENTS ARE DISPUTED

Date	Event	Attachment
April 3, 2012	<p>Ms. Fisher informed [REDACTED] via email that she "decided to leave the program and pursue" her writing career. She thanked him for his support over the last two years.</p> <p>[REDACTED] expressed his understanding. He said, "I would love to take you out for coffee or drinks before the end of this semester to wish you good luck on your future endeavors."</p> <p>Ms. Fisher responded positively to his message. [REDACTED] suggested drinks in the Faculty Club bar.</p> <p>They agreed to meet on April 11, 2012 at 4:00 p.m. [REDACTED] suggested Ms. Fisher stop by his [REDACTED] office and they would walk to the Faculty Club.</p>	Attachment 20.
April 7, 2012	<p>Ms. Fisher explained to [REDACTED] how she told [REDACTED] in confidence about leaving the program, and then it got out to others. She stated she was not really ready to leave the program.</p> <p>[REDACTED] said he was "glad" and suggested they could talk more on Wednesday, April 11, 2012.</p>	Attachment 20.
April 11, 2012	Before their meeting, Ms. Fisher asked to invite [REDACTED] to come along. [REDACTED] agreed, but he carved out time with Ms. Fisher to consult with her on her Ph.D. topic without [REDACTED]	Attachment 20.
April 11, 2012	<p>Ms. Fisher, [REDACTED] and [REDACTED] met at the Faculty Club for drinks.</p> <p>They discussed, among other things, their student representative roles on the Ph.D. committee.</p>	
April 17-22, 2012	<p>[REDACTED] emailed Ms. Fisher and [REDACTED] regarding his discussion with [REDACTED] about their concerns as student representatives.</p> <p>[REDACTED] said, in an email, "I told you before that [REDACTED] considered the other two as the reps not you and Eva. So you can either claim your proper role and deliver your message or simply resign your roles and tell him that."</p>	Attachment 21.
Late Spring 2012	<p>Ms. Fisher spoke with [REDACTED] about her desire to leave the Department. [REDACTED] suggested Ms. Fisher consider an Interdisciplinary Ph.D. program at UCB.</p>	
<b>2012-13 School Year</b>		
August 6, 2012	<p>Ms. Fisher emailed [REDACTED] about having "coffee or something" to discuss her changing to an "ad hoc" program and whether he would have a role.</p> <p>He responded that he would be happy to be involved in her dissertation and he could meet for "coffee or drinks."</p> <p>They planned to have coffee on August 21, 2012.</p>	Attachment 22.
August 21, 2012	[REDACTED] and Ms. Fisher met to have coffee. Ms. Fisher spoke with [REDACTED] about an Interdisciplinary Ph.D.	
August 23, 2012	Fall Semester instruction began. Ms. Fisher took a "[REDACTED]" seminar with [REDACTED]	
August 27, 2012	<p>Ms. Fisher emailed [REDACTED] and [REDACTED] to schedule a "get-together."</p> <p>[REDACTED] agreed.</p>	Attachment 23.



Date	Event	Attachment
August 30, 2012	██████████ told Ms. Fisher that ██████████ announced in the Ph.D. committee meeting that two students would be leaving the program. He asked Ms. Fisher to consult with and he wrote: "So be very careful about the name that you give the hybrid field, as it will have future implications. Consult with me about it. I want to make sure that you will still be able to teach in art history, ██████████ and comp lit programs after your PhD."	Attachment 24.
September 8-20, 2012	Ms. Fisher worked with ██████████ on her "ad hoc" Ph.D. proposal and asked for a letter of support. ██████████ critiqued her proposal and offered to meet Ms. Fisher in his office on Monday morning to discuss. She agreed. They met and Ms. Fisher edited her proposal, submitted it to ██████████ and provided ██████████ with guidelines for the letter of support.	Attachment 25.
September 21, 2012	██████████ sent an email to Ms. Fisher about how, in his letter of support, he would not mention "anything about protecting" her from the "two vultures in the ██████████ program who have [targeted]" her. He also hoped that Ms. Fisher's move to the interdisciplinary program would "end this nonsense." Ms. Fisher immediately forwarded the email to ██████████ with the comment, "VULTURES?! oh christ."	Attachment 26.
October 1, 2012	██████████ wrote a letter for Ms. Fisher's application to the Interdisciplinary Ph.D. Program.	Attachment 6.
October 8, 2012	Ms. Fisher returned from a conference in Portland, Oregon. She attended the conference with ██████████ and other students in the Department. ██████████ introduced her as one of his best students.	HIS COMMENT IS DISPUTED
October 25, 2012	Ms. Fisher and ██████████ experienced difficulties as student representatives related to their attempts to allocate Draper funds for a lecture series. ██████████ suggested a meeting with Ms. Fisher and ██████████ to strategize how to proceed and he offered to write something on their "behalf ██████████ to submit to the chair." They agreed to meet later that day. Ms. Fisher, ██████████ and ██████████ met at the Faculty club to discuss the ██████████	Attachment 27.
October 29, 2012	██████████ and Ms. Fisher continued to reach out to ██████████ related to their meeting with Chair ██████████ about the ██████████. They agree to meet again on November 1, 2012 to go over various proposals.	Attachment 27.
November 1, 2012	██████████ sent his ██████████ document to Ms. Fisher and ██████████. They met to discuss the proposal.	Attachment 27.
December 2012, End of Fall Semester	██████████ took Ms. Fisher and ██████████ to the Faculty Club. ██████████ told Ms. Fisher she received an A+ in the class. He told her she was only one of two students that received an A+ from him.	Attachment 1, pg. 2.
January 2013	Ms. Fisher was accepted into her Interdisciplinary Ph.D. program and officially left the Department ██████████	Attachment 1, pg. 2.
Late February 2013	Ms. Fisher was hospitalized for a serious medical condition and testing.	Attachment 1, pg. 2.

Date	Event	Attachment
March 3, 2013	Ms. Fisher reported to ██████████ that she may need to postpone her qualifying exams by a month or so for medical reasons. They openly discussed their health and medical issues.	Attachment 28.
March 4, 2013	Email from ██████████ noted Ms. Fisher's Ph.D. exam was set for May 13, 2013. Rescheduled for August 22-28, 2013.	Attachment 28.
April 2, 2013	Ms. Fisher asked ██████████ questions about whether a generic email from him was related to her. She revealed the status of her medical condition. ██████████ responded that his initial email was not related to her. In terms of her medical condition, he asked if there was "anything he could do." He also asked Ms. Fisher to come see him sometime and several hours later he said he would like to see her "any time she was available," in school or elsewhere, stating, "Can you have a drink with me." Ms. Fisher responded positively in email and suggested two dates that she was available to meet.	Attachment 29.
April 17, 2013	Ms. Fisher and ██████████ met at the Faculty Club.	
April 18, 2013	Ms. Fisher thanked ██████████ for "everything yesterday" in an email at 11:48 p.m. She discussed her health and relationship "break up." ██████████ asked ██████████ via email, if she was aware of what was happening with Ms. Fisher and asked about her illness. ██████████ shared this with Ms. Fisher.	Attachments 30-31.
April 19, 2013	Ms. Fisher and ██████████ continued to discuss her health via email. Ms. Fisher asked ██████████ if he would hire her as a 25% GSR in spring 2014 so she could stay enrolled and keep her insurance. ██████████ stated he would be on sabbatical during Spring 2014, but he agreed to help in "every way" if he is at Berkeley.	Attachment 30.
April 25, 2013	██████████ emailed ██████████ to ask her to "Please stay in touch with Eva. She needs our support more than ever. I am very concerned about her possible surgery."	Attachment 31.
May 11, 2013	Ms. Fisher scheduled her Ph.D. oral examination for August 28, 2013, but rescheduled again until spring 2014 semester. ██████████ stated he was available in spring 2014 to serve on the examination committee.	Attachment 18.
Around May 17, 2013	The last day of spring semester. ██████████ hugged Ms. Fisher at the end of the 2013 spring semester.	
May 18, 2013	Ms. Fisher emailed ██████████ to invite him to her "brain-themed gathering" on May 19, 2013 in anticipation of her brain surgery on Tuesday, May 21, 2013. She noted that her "philosophy professor mother" would be there. ██████████ did not respond.	Attachment 32.
May 21, 2013	Ms. Fisher had brain surgery.	

Date	Event	Attachment
May 23, 2013	<p>██████████ responded to Ms. Fisher's invitation by noting he was out of town. He told her he would "eagerly await good news, and you will be in my thoughts until you recover. You are a wonderful woman and a good friend, and I would be very glad to do anything to help you when I get back."</p> <p>Ms. Fisher responded and apprised him of her medical status. She thanked him for his friendship and support.</p> <p>He responded and said he would be "back in town" on May 29 and 30, and he asked to "come and visit" her.</p> <p>Ms. Fisher responded, "Yes, I would love that!!!" She warned him she would be recovering but to get in touch when he would be free.</p>	Attachment 32.
May 29 or 30, 2013	<p>██████████ visited Ms. Fisher in her home after her hospitalization. He gave her a gift and he hugged her while she was in bed, with her mother present.</p>	
June 2, 2013	<p>In an email between ██████████ and Ms. Fisher, ██████████ told Ms. Fisher that ██████████ emailed ██████████ and said Ms. Fisher "looked great" and she is "truly a fabulous woman."</p>	Attachment 33.
June 3, 2013	<p>Ms. Fisher thanked ██████████ for visiting her and stated she was looking forward to seeing him "next time."</p> <p>██████████ responded that it was his "real pleasure" seeing her and he asked her to "stay in touch."</p>	Attachment 34.
<b>2013-14 School Year</b>		
September 13, 2013	<p>██████████ emailed Ms. Fisher, saying, "Can I see you soon, perhaps for a drink, coffee, or a meal?"</p> <p>Ms. Fisher described her medical problems, but noted she was available towards the end of the next week, and it "would be great" to "get together."</p> <p>██████████ asked Ms. Fisher if he can help in any way or if he could take her "out for a meal or a drink." He wrote, "I would love that." Ms. Fisher did not respond until September 24, 2013.</p>	Attachment 34.
September 24, 2013	<p>Ms. Fisher responded to ██████████ offer to take her out for a meal or a drink. She said "it would be great" and she was "pretty much always free except for Tuesday afternoons."</p>	Attachment 34.
September 26, 2013	<p>██████████ emailed Ms. Fisher and said, "Can I take you out to dinner sometime next week. How about Friday?"</p> <p>Ms. Fisher responded, "Friday Oct 4<sup>th</sup>? Works for me!"</p> <p>Ms. Fisher let him know that she does not drive, "so either somewhere close or bus-able or if you're driving you could pick me up?"</p> <p>██████████ responded: "I would be happy to pick you up and we can do somewhere close or even the City if you want to cross the bridge. It is a Friday evening. Your choice."</p> <p>Ms. Fisher said she preferred to stay in the East Bay. She noted she is "SO TIRED all the time, good to stay close to home."</p> <p>██████████ recommended the Bistro Liaison, and when she said "meet there" he responded, "Or I pick you up at 6:20?"</p> <p>Ms. Fisher wrote that was "perfect" and provided her address and telephone number.</p>	Attachment 34.
October 2, 2013	<p>██████████ explained via email that they could not get reservations at Bistro Liaison, so he scheduled dinner for 6:30 p.m. at <i>Five</i> in the Shattuck Hotel.</p>	Attachment 34.

Date	Event	Attachment
October 3, 2013	Ms. Fisher responded to [REDACTED] that she would meet him at <i>Five</i> so there was no need for him to pick her up. He agreed. (Afternoon.) Ms. Fisher told [REDACTED] that she is having dinner at <i>Five</i> in the Shattuck Hotel. "Weird! But they have butterscotch pudding, which I'm obsessed with." (Evening.)	Attachments 34-35.
October 4, 2013	Ms. Fisher cancelled dinner because of medical problems. [REDACTED] offered to get her food and bring it to her house. Ms. Fisher did not respond.	Attachment 36.
October 15, 2013	Ms. Fisher asked to "reschedule" their "meeting" for Tuesday, Wednesday or Friday evenings or in the afternoon/early evening. [REDACTED] asked if she was "up for a dinner" on Friday or Saturday. Ms. Fisher responded that dinner was "too much for her" but she could manage an hour or so. [REDACTED] offered drinks at <i>Five</i> at 6:00 p.m. on Friday, October 18, 2013.	Attachment 36.
October 18, 2013	[REDACTED] took Ms. Fisher to <i>Five</i> for drinks. They spoke of personal matters, including Ms. Fisher's past relationships. [REDACTED] allegedly engaged in sexually harassing verbal and physical behaviors, such as telling her he loved her, he wanted to be closer friends, he wanted to take her to Las Vegas some day with other close friends, and he touched her upper thigh while in his car.	DISPUTED
October 18, 2013	Ms. Fisher called [REDACTED] while walking home from being dropped off by [REDACTED]. She told [REDACTED] what happened that evening with [REDACTED].	
November 11, 2013	[REDACTED] proposed new dates for Ms. Fisher's examinations in March or April of 2014.	Attachment 18.
March 3, 2014	Ms. Fisher emailed [REDACTED] to schedule a time to discuss her "field pre-exams" and recommended the week of March 10. [REDACTED] responded that he was booked on March 10, but he would be "glad to visit" Ms. Fisher at her home any time in the evening that week or next. Ms. Fisher responded that she wanted to come by his office, and [REDACTED] scheduled March 11, 2013 at 3:30 p.m. at the [REDACTED]. Ms. Fisher had trouble confirming and [REDACTED] stated, "You are difficult indeed."	Attachment 37.
April 16, 2014	[REDACTED] asked Ms. Fisher via email to confirm May 7, 2014 as her exam date. She confirmed. He responded by explaining that it was an easy decision to skip the award ceremony and reception for his [REDACTED] to meet his commitment for a Ph.D. exam "particularly for" her, which is "much more important." Ms. Fisher responded that she was "honored" that he chose to do the exam instead. [REDACTED] said he was "honored" to be on her exam committee. He told her she would get a [REDACTED] one day as well.	Attachment 37.

Date	Event	Attachment
April 30-May 1, 2014	While preparing for the exam, Ms. Fisher said she owed [REDACTED] and [REDACTED] for believing she could come back from her medical condition. [REDACTED] responded that she was "not the kind of person that decent people" would "give up on."	Attachment 37.
May 7, 2014	[REDACTED] allegedly hugged Ms. Fisher and kissed her on the cheek right before her Ph.D. examinations. He told her, "I hope you feel as good as you look."	DISPUTED REGARDING THE KISS AND COMMENT
May 7, 2014	Ms. Fisher passed her Ph.D. examinations.	Attachment 38.
May 7-8, 2014	[REDACTED] emailed Ms. Fisher about her "confident and brilliant performance." He offered Ms. Fisher a GSR position summer of 2014 and asked her to meet for coffee or drinks to discuss.	Attachment 39.
May 13, 2014	[REDACTED] and Ms. Fisher meet at the Faculty Club. He informed Ms. Fisher that some of the faculty members on her exam committee did not support her, but he loved her.	DISPUTED
May 14, 2014	In an email, Ms. Fisher described to [REDACTED] the comments [REDACTED] made before her examination and when she met with [REDACTED] at the Faculty Club.	Attachment 14.
May 14, 2014	Ms. Fisher declined [REDACTED] offer for a GSR position because of her illness. [REDACTED] responded that was acceptable, but he still wanted to talk to her about his two books. He said, "Let me know if and when I can take you out again to drinks, lunch or dinner." Ms. Fisher did not respond to [REDACTED] request to take her out again.	Attachment 40.
May 15, 2014	Emails between [REDACTED] and Ms. Fisher announcing Ms. Fisher would not have [REDACTED] on her dissertation committee. He responds to Ms. Fisher about how [REDACTED] said negative things about Ms. Fisher's project.	Attachment 41.
June 2, 2014	Ms. Fisher met with [REDACTED] regarding her dissertation. Ms. Fisher verbally reported to [REDACTED] that she did not ask [REDACTED] to be on her committee because of his comments, including his commentary on loving her.	
July 1, 2014-August 1, 2015	[REDACTED] went on sabbatical for the 2014-15 school year. He and Ms. Fisher had no contact.	

### B. Factual Findings Based on Undisputed Facts

As noted above, Ms. Fisher claimed that [REDACTED] interactions with her slowly escalated from professional to personal and were because of her status as a female student. Based upon a review of the email documents, I made the following factual findings:

**Factual Findings. Sustained.** I find by a preponderance of the evidence that [REDACTED] interactions with Ms. Fisher slowly became more personal and related to her status as a woman. Specifically:

- The documents demonstrate that [REDACTED] and Ms. Fisher met at least 18 times over the course of four school years, with many of the meetings during 2012-13, which was Ms. Fisher's third year at UCB.
- The documents demonstrate that, while some of their meetings were initiated by Ms. Fisher or [REDACTED] the majority of the meetings were initiated by [REDACTED]
- The documents demonstrate the frequency of the communications, both in writing and in person, which indicated a high level of attention to Ms. Fisher.
- The documents demonstrate that the language used by [REDACTED] to initiate a meeting with Ms. Fisher changed over time from his professional role as a professor to something far more personal. For example, on April 3, 2012, after Ms. Fisher said she would leave the program to pursue her writing career, he stated, "I would love to take you out for coffee or drinks before the end of this semester to wish you good luck on your future endeavors." By contrast, his language in 2010 and 2011 more often used phrases such as "office hour meeting" or a "talk."
- The documents demonstrate that [REDACTED] interest in seeing Ms. Fisher increased over time, was more personal in nature and often unrelated to her education. For example, on April 2, 2013 [REDACTED] said to Ms. Fisher, "I would love to see you any time you are available, zombie or not, in school or elsewhere. Can you have a drink with me?"
- The documents demonstrate that, after April 2012, [REDACTED] often suggested they meet in a more social atmosphere, instead of an academic one. Several times Ms. Fisher suggested otherwise and tried to keep their meetings on campus or in a less social arena. On other occasions, Ms. Fisher expressed enthusiasm for his suggestions to take her out.
- The documents demonstrate that [REDACTED] appeared comfortable speaking to others about Ms. Fisher on a personal level and complimenting her as a woman. For example, On May 23, 2013, he told Ms. Fisher she was a "wonderful woman and a good friend." On June 2, 2013, [REDACTED] spoke to another student about Ms. Fisher, calling her a "fabulous woman." On September 13, 2013, [REDACTED] asked to see Ms. Fisher because he "heard" from someone else that she would be in surgery again soon.

I make these findings for the following reasons:

First, the documentation speaks for itself to a great extent. The emails demonstrate an escalation of meetings between the two of them which become unrelated to Ms. Fisher's academics or [REDACTED] role on her examination committee. [REDACTED] language escalated to wanting to see her regardless of where she was or how sick she was.



While ██████████ claimed he engaged in normal faculty/student interaction with Ms. Fisher, none of Ms. Fisher's other professors or committee members visited her at home or pursued time alone with Ms. Fisher because she was ill. For example, her advisor, ██████████ inquired about Ms. Fisher's health, but she did not pursue Ms. Fisher's attention in the midst of her medical crises.

Second, while ██████████ acknowledged the email documentation, he disagreed with Ms. Fisher's characterization that he became more personal and was treating her more like a woman, and less like a graduate student. In general, I acknowledge that email conversations can be perceived differently by the sender and receiver. However, I find Ms. Fisher's perception about ██████████ escalating interactions to be reasonable.

One consistent argument presented by ██████████ was that he did not have any romantic or sexual feelings for Ms. Fisher, and therefore he did not intend for his interactions with her to be viewed as such. He also noted that he had no indication from her that she was concerned or uncomfortable by his style of communication or their meetings. In fact, he asserted that because she waited so long before complaining, she must be retroactively interpreting his intentions.

However, I note that the documents corroborated how ██████████ increasingly commented on Ms. Fisher's appearance by saying she "looked great," she was "beautiful," and she was a "fabulous woman." Instead of referring to her as a student or in reference to her academic skills, he instead repeatedly referred to her gender or used language that is more often attributed to females than males. ██████████ admitted that he made those comments about Ms. Fisher's appearance, but he denied that the comments were related to Ms. Fisher's gender or sex. However, during the investigation, he did not demonstrate that he referred to male students' appearances (i.e., he did not tell the male students that they were bright and *beautiful* men with a great career ahead of them). Therefore, I again find Ms. Fisher's perception to be reasonable.

I also find Ms. Fisher's explanation for her lack of objection to ██████████ to be reasonable and understandable. She explained her impression that ██████████ was her supporter and protector, so she did not recognize the slow escalation of his behavior. Upon reflection, Ms. Fisher acknowledged that she may have allowed some of his behavior because she needed to stay close with him so he could help protect her from those who were not as supportive of her work in the Ph.D. program. I noted that some of her emails demonstrated her enthusiasm for staying close and visiting with ██████████. She admitted that his attention made her feel special, but she also felt she needed to keep him as a committee member, supporter and resource..

Three email exchanges were notable because they demonstrated why Ms. Fisher felt she had to rely upon ██████████. In emails dated April 17, 2012, September 21, 2012 and April 19, 2013, respectively, ██████████ suggested that Chair ██████████ did not recognize her as a Student Representative, ██████████ was protecting her from two faculty "vultures" who were targeting her, and he would consider her request to work a part-time schedule in order to maintain her enrollment and her insurance. This, coupled with the inherent power and authority that he, as a Professor, had over Ms. Fisher as his student, makes it reasonable for Ms. Fisher to feel she needed to stay close to ██████████.

For these reasons, I find by a preponderance of the evidence that [REDACTED] interactions with Ms. Fisher slowly escalated and became more personal and gender related.

## VII. Summary of Disputed Allegations

Based upon a review of the undisputed facts compared to Ms. Fisher's complaint, I determined that the following material allegations are in dispute:

- Whether [REDACTED] intimidated and isolated Ms. Fisher from approximately 2011 through May 15, 2014, when he conveyed messages to her that other professors in the Department were against her, but he was her "protector" and would defend her from those that were unsupportive of her work.
- What occurred on October 18, 2013, including whether they engaged in personal discussions related to romantic or sexual relationships, whether [REDACTED] deliberately touched Ms. Fisher's upper thigh, and whether he indirectly propositioned her by letting her know he wanted to take her to Las Vegas someday.
- Whether [REDACTED] kissed Ms. Fisher's cheek on May 7, 2014 before her exams and told her he hoped she "felt as good as she looked."

Each of these disputed matters will be reviewed and analyzed below.

## VIII. Evidence, Analysis And Findings Related to the Disputed Allegations

### A. [REDACTED] Communication Pattern with Eva Fisher which Caused Her to Feel Intimidated, Isolated and Reliant Upon Him

**Overview.** Ms. Fisher felt intimidated and isolated when [REDACTED] engaged in a pattern of conveying negative information about other professors and how they perceived her, while at the same time making it appear that he understood her true value as a student. This allegation culminated in [REDACTED] comments to Ms. Fisher on May 13, 2014. This pattern caused Ms. Fisher to feel vulnerable and more reliant upon [REDACTED]

[REDACTED] denied any such pattern or intentions to isolate Ms. Fisher. He denied making some of the comments or he claimed his communications about other faculty members were normal and appropriate. Two female students corroborated Ms. Fisher's description of [REDACTED] pattern, but other students did not experience such a pattern.

Several faculty members stated that while it is acceptable for faculty to talk about students within their confidential meetings, it is not acceptable or customary to speak to students about what faculty members say in those meetings.

## 1. Eva Fisher's Perspective

Ms. Fisher provided several examples where ██████ spoke disparagingly about faculty and how faculty perceived her negatively.

**Initial Comments about Other Faculty in the Department** ██████ Ms. Fisher's first recollection was when a fellow student, ██████ explained that ██████ said ██████ was "out to get" ██████ but ██████ was "protecting" her from ██████ ██████ conveyed this to Ms. Fisher in late 2010. Ms. Fisher wondered if she could trust ██████ who was her advisor at the time. Ms. Fisher felt this was the "beginning of a pattern of isolation and separation" created by ██████  
**Attachment 1.**

**Comments Related to Eva Fisher's Ph.D. Application and Skeptical Faculty.** In the middle of her first year, ██████ offered to read Ms. Fisher's Ph.D. application. He told Ms. Fisher he would "support" her and "fight" for her, while "reiterating that other faculty members were skeptical" about Ms. Fisher and her potential as a "scholar." ██████ often told Ms. Fisher in fall of 2010 that her writing was perceived as "journalistic" yet he also told her in December of 2010 that she was a "very bright woman" and he would "love to work" with her at the Ph.D. level. Ms. Fisher described her experience in her complaint:

Throughout the next three semesters he continually reiterated to me about how everyone else in the department didn't get along with each other and wouldn't work with me and didn't want to work with me. He also created division between me and the rest of the faculty - saying and implying that he and I were on a team against the rest of the department. For instance, in an email to myself and another student regarding our status as reps on the PhD committee: "I told you before that ██████ considered the other two as the reps not you and Eva. So you can either claim your proper role and deliver your message or simply resign your roles and tell him that."

### Attachments 1 and 21.

**Development of a Pattern that Harmed Eva Fisher.** Ms. Fisher felt that ██████ had a pattern of conduct: He would build her up and compliment her work, he would then bring her down by telling her how she was negatively perceived in the Department, and then he would reassure her that he supported her.

Because of this pattern, in spring 2012, Ms. Fisher felt "disillusioned" with her ability to put together a Ph.D. committee from the Department ██████ because of "the strength" of ██████ messages to her about how other faculty perceived her to be "too journalistic" and not a "scholar." Ms. Fisher considered dropping her graduate studies altogether to pursue her writing career. **Attachment 20.** However, upon speaking with ██████ Ms. Fisher considered pursuing an interdisciplinary Ph.D., which would make her less reliant on the Department ██████ Ms. Fisher spoke to ██████ about the idea. **Attachment 22.** During this process, Ms. Fisher again felt there was a pattern in how ██████ kept her close to him. Ms. Fisher wrote:

I talked to [REDACTED] who I had taken some seminars with and told her that I was leaving graduate school. When she asked why, I said that I felt disappointed that I had come for open intellectual inquiry and seemed to be constantly just trying to navigate intra-faculty political issues and was frightened to come forward and work on what I was interested in. She validated my worth as a scholar and brought up the possibility of doing [an] interdisciplinary PhD. By this point I felt that [REDACTED] was my protector, and she said I would need someone from [REDACTED]. I naturally turned to him as [a] possibility.

[...]

[REDACTED] also set himself up as someone who would protect me in my future, writing [in an email]: "So be very careful about the name that you give the hybrid field, as it will have future implications. Consult with me about it. I want to make sure that you will still be able to teach in [REDACTED] [REDACTED] and [REDACTED] programs after your PhD."

He said that he would be on my committee but only after I took a class with him, so I enrolled in his seminar on [REDACTED]. When he introduced me to the rest of the seminar, he said "Eva has published two books" - setting me apart from the other students and also strengthening the sense that he was someone who truly respects me.... I wrote to my mother on 10/8/12: "Just back from a conference in which [REDACTED] introduced me as one of the best PhD students he has EVER had. I'm sure he says that about all the girls, but still, it's always nice to hear."

#### Attachment 1, pgs. 1-2.

**Comments to Eva Fisher Related to Being a Student Representative.** Ms. Fisher experienced a significant amount of negativity and "faculty politics" in her experience being a student representative, and [REDACTED] played a significant role. For example, [REDACTED] emailed Ms. Fisher and [REDACTED] frequently regarding their role as student representatives. He stated that [REDACTED] and [REDACTED] "orchestrated 4 reps to deny you voice" which is a "major issue." He stated that [REDACTED] did not view Ms. Fisher and [REDACTED] as the student representatives on the Ph.D. committee. [REDACTED] also advised them what to do to avoid "retaliation" from the faculty, and he hoped that he helped them so that they would not be "subject to any possible future abuse." **Attachment 21.** Not only did he email Ms. Fisher about these matters, he also talked to her about it at the Faculty Club. While Ms. Fisher enjoyed being in the know through [REDACTED] it also caused her anxiety about how people perceived her in the [REDACTED] Department.

**Comments to Eva Fisher About Protecting Her from "Vultures" in the [REDACTED] Department.** As Ms. Fisher was seeking [REDACTED] assistance in writing her a letter of support to get into an interdisciplinary Ph.D. program, she asked him if he could say something in the letter about providing her with a workspace in the [REDACTED] Department. [REDACTED] responded as follows in an email dated September 21, 2012:

Yes of course, and I may mention something about hiring as a GSR in the future, a real option if you want. I don't think I will say anything about protecting you

from the two vultures in the [REDACTED] program who have target[ed] you. I hope your formal move to the interdisciplinary program will end this nonsense.  
NA

**Attachment 26.**

Ms. Fisher had a negative reaction to [REDACTED] description of vultures, which she immediately shared with [REDACTED] in an email of the same date. **Attachment 26.**

**Preparation for May 7, 2014 Oral Examinations.** According to Ms. Fisher, [REDACTED] told her to put him last in the order of her examiners so he could “save” her. Specifically, she recalled:

After [March 3, 2014], we met at his office before exams and went over my reading list. Then we exchanged more emails, and he told me to let him know what questions he should ask me during the examination. He also told me to put him at the end of the questioning, “So I can save you.” He made it sound like, “You need me to save you at the end.”

Ms. Fisher articulated this in an email to her friend, [REDACTED] on May 14, 2014. She wrote:

He set himself up as The One Who Understands. [REDACTED] even used “savior” terminology earlier – saying in the exam I should put him last so he could “save” me if I started messing up.

**Attachment 14.**

**May 13, 2014 Meeting with [REDACTED]** After her oral exams, [REDACTED] congratulated Ms. Fisher on her “confident and brilliant performance,” he asked her if she could hire her as a GSR, and they agreed to talk about it. They met at the Faculty Club on May 13, 2014. Ms. Fisher described [REDACTED] comments as follows:

We met up at the Faculty Club the week after my exams and [REDACTED] told me that in the discussion immediately after my exams, [Professors] [REDACTED] and [REDACTED] had both said I was not a scholar, and that I should not have passed my exams. [REDACTED] said, “[REDACTED] loves you, as do I, so I fought for you.” He told me that [REDACTED] was uninterested in my topic, not convinced by my project. He told me that [REDACTED] said that I was a “writer, not a scholar,” and that she did not believe that I should pass.

This immediately shattered my self-confidence - I had thought my exams went well and I was proud of myself - and he again positioned himself as my protector.

He also said that they said that I am “not a scholar” - something he has said others think about me and my work. I had told him when I started school that I felt insecure about my abilities as a scholar because of my professional background as a journalist and writer. He consistently told me that almost everyone else thought that I was a writer, not a scholar, but that [he] believed that I was a valuable scholar. This undermined my confidence in my academic work and I believed that I could not perform well within prescribed disciplinary boundaries.

A day later, I had a meeting with [REDACTED] who told me that my exam was "90% very well done" and that everyone in the room felt very comfortable. However by this point I was so used to him telling me that everyone else is lying that I didn't know who to believe. My insecurities were stronger than my self-esteem at this point.

#### Attachment 1, pg. 5.

Ms. Fisher characterized this as the event which prompted her to sever her reliance on [REDACTED] and to recognize that he was manipulating her. Ms. Fisher recognized the pattern again where [REDACTED] complimented her, brought her down, and then positioned himself as her protector and savior.

Ms. Fisher articulated her thoughts the next day in emails with her friend, [REDACTED] **Attachment 14.** Ms. Fisher described the meeting to [REDACTED] as "fucked-up" because [REDACTED] told her the following:

- Two professors "had been totally skeptical" about her.
- One of them said, "I don't even know why I'm on this committee and I'm not convinced by this project."
- The other one said, "There are way too many gaps in her knowledge."
- One of the professors "did not want to work with" her at all.

[REDACTED] comments left Ms. Fisher "spinning." She felt "embarrassed and ashamed" because she had told people that she thought she did a "good job" on her exams. Because of [REDACTED] comments, Ms. Fisher decided to decline the offer to work for him, and she told her advisor she did not want [REDACTED] on her dissertation committee. On May 15, 2014, when [REDACTED] learned that he would not be on Ms. Fisher's dissertation committee, the two of them exchanged the following emails:

[REDACTED] As I responded to [REDACTED], I do not mind. But I am surprised that you did not mention that to me when we met (on May 13)! [REDACTED]

[Eva Fisher] I did not yet know! Only met with [REDACTED] yesterday (May 14). Glad you are on board – stay tuned for progress reports once I have made some progress! E

[REDACTED] But why did [REDACTED] say he is not interested and felt irrelevant. Anyway case closed. [REDACTED]

#### Attachment 41.

##### 2. [REDACTED] Response

As an initial matter, [REDACTED] noted he was not Ms. Fisher's advisor when she was a MS student in the Department [REDACTED] and he generally argued that he was a "nonessential"



faculty member for Ms. Fisher. [REDACTED] admitted he played some role with reviewing her application to be a Ph.D. candidate in the Department [REDACTED]. He could not recall if he offered to review her application or if Ms. Fisher asked him to do so, but he pointed out that she did not apply to work with him. Ms. Fisher continued to work with either [REDACTED] or [REDACTED]. [REDACTED] summarized his response as follows:

I was supportive of Eva, but I did not create a situation of being her protector. Pretty early on, she made the decision to be in an interdisciplinary program. I was never in a position of power over her. I was a nonessential faculty member. When she decided to move to the interdisciplinary program, I wrote a letter for her, and I agreed to serve on her exam committee.

**Initial Comments about Other Faculty in the Department** [REDACTED] In terms of his commentary about [REDACTED] he denied telling Ms. Fisher that [REDACTED] was not supportive of her. [REDACTED] explained further:

I remember Eva talked to me about how she felt [REDACTED] was not supportive of her. [Did she say why she felt that?] No. But looking at our emails, Eva said [REDACTED] would not be supportive of her. [Any knowledge whether [REDACTED] was supportive or not?] No. [Any impressions?] I can't remember if [REDACTED] was supportive or not.

**Comments Related to Eva Fisher's Ph.D. Application and Skeptical Faculty.** I asked [REDACTED] if he told Ms. Fisher that he would "fight" for her to make it into the Ph.D. program. He responded, "No, I told her I would support her when the committee came to discuss it." I also asked him if he told Ms. Fisher that other faculty were skeptical of her as a scholar. He responded, "Yes," and elaborated as follows:

We (the faculty) discussed students, and we expressed some reservations if students would get into the Ph.D. program or not. I felt Eva was strong. [Who did not?] The only person was [REDACTED]

[...]

Eva was made a Ph.D. candidate. At the time of Eva's application, there was some idea of Eva taking a slot in the [REDACTED] Ph.D. program, when some felt that Eva may go elsewhere. She still needed to have a home department, so there was a concern she would use the Department [REDACTED] for that purpose.

[Did you tell Eva you would fight for her because other faculty not supportive of her since she was not a scholar and she was journalistic?] No. The term journalistic is a statement I used when Eva responded to an assignment with me. Maybe other professors have said it, but I am not aware of that.

[Did you talk to Eva about how people in the [REDACTED] Department) don't get along?] Yes, I did. I did not talk to Eva specifically about any faculty member. Or any specific issue. I talked to students.

[...]

[In general did you talk to students about the conflicts in [REDACTED] Department)?] No, students come to me about it. Eva and another student were student reps to the MS/Ph.D. committee. They wanted to bring up things in the committee. I encouraged them to do so. They had a meeting with [REDACTED]. Both Eva and [REDACTED] were not pleased with the meeting. Disgusted with the meeting. Humiliated. Wanted a lecture series and [REDACTED] was reluctant. They ultimately got the lecture series.

**Comments to Eva Fisher Related to Being a Student Representative.** [REDACTED] maintained that his discussions with Ms. Fisher were “normal” for faculty and graduate students. He consistently denied telling Ms. Fisher and [REDACTED] that [REDACTED] did not want them as student representatives on the Ph.D. committee. He responded:

[Did you tell (Eva and [REDACTED] [REDACTED] didn’t want them as reps?) No, I did not say that. Several faculty wanted to change student reps, and they discussed not having reps two years in a row. I don’t know if it was specific to Eva and [REDACTED] or general. I recall [REDACTED] making a comment about that.

**Comments to Eva Fisher About Protecting Her from Vultures in the [REDACTED] Department.** [REDACTED] denied making any comments about some professors being “vultures.” He stated:

[Eva said you told her there were faculty “vultures” in the [REDACTED] program who were not supportive of her.] Is that accurate? No. I did not say that. I never said that. That is not a term I would use. [Did you say something like that, that other faculty were not supportive of her?] No, but I am not sure the issue of faculty support was relevant. She was not a student in the department. We are talking about Spring – not fall 2012. Talking about faculty support is irrelevant if she is out of the [REDACTED] Department.

After our first interview, I reviewed a copy of an email I received from Ms. Fisher. The email was dated September 21, 2012 from [REDACTED] to Ms. Fisher regarding “two vultures.” I showed him a copy of the email and asked him to respond. He stated:

This is 2012. [Tell me what this means, vultures.] She was working with a few people. One was not very supportive of Eva in her application. My recollection was that Eva did not like [REDACTED] and was not happy with her. Eva was not getting along with her advisors, and she conferred with me about it. She became a student representative for [the MS/Ph.D.] committee. She wanted to talk about inter-disciplinary program. You can do that. Her interest was mainly in the literature of wives of male [REDACTED] When she presented me with that, to move to an inter-disciplinary program, I was very supportive. I said, I think you will succeed and you are very bright and capable.

Maybe the language was inappropriate to use with a student. She was having problems in the department, regarding the committee and student reps.

[Who did you refer to as vultures?] [REDACTED] and [REDACTED] Or [REDACTED] and [REDACTED] Because of stuff Eva had told me. This was not stuff I learned from them, but from her. What I learned from [REDACTED]

██████████, ██████████ and ██████████ was that Eva was indecisive about her work and not easy to get along with. That was it. I did not think it was a proper reading of [Eva]. I supported her move to Ph.D. for ██████████ and for another department.

[What actions did you take to protect her from these vultures?] Nothing at all. But I supported her moving to interdisciplinary, which they would not have supported because it would be losing a student....

[What triggered the comment in the email?] She decided to apply to an interdisciplinary program. My letter for her was dated October 1, 2012. I gave it to her within 10 days of her request for the letter.

***Preparation for May 7, 2014 Oral Examinations.*** During our second interview, I asked ██████████ ██████████ about whether he told Ms. Fisher to place him last during the exam so he could save her. He responded, "Probably not in the exact same words." ██████████ explained:

In our exam process, the student can choose the order of the exam. I tell them: choose my location in the exam based on your level comfort with me. I may have said something like that, but not that I would "save her." That is a phrase from a good writer. [Are you saying she is elaborating as a writing technique?] No, but she is a very good writer. Allows her to use words to express things in a different way than I would. Save me for last, I would have said, not that I was going to save her. I often say save me for #4. I could come back to it to [a topic and] approach it in a different way, to help them demonstrate knowledge.

I don't think students should take the oral exam unless I think that they are ready to pass. Not all my colleagues are that way. Some colleagues have tricks, ██████████ ██████████ I will help at the end.

[Eva's concern is that you have set yourself up as her savior. Is that accurate?] That is her perception. I am not her savior. She is competent and a good student. I did the same thing for her as others. If you think there will be ██████████ issues that another professor brings up in ██████████ put me last or second to last. I was not her savior. If she screws up, she screws up. I can see why she would think that, but this is what I do all the time.

***May 13, 2014 Meeting with*** ██████████ ██████████ admitted that they discussed her examinations on May 13, 2014, but he denied that he said anything inappropriate. Specifically:

[How did Eva do on her exams?] She did well. She passed without any problems. [Did you meet with Eva at the Faculty Club after her exams?] Maybe, but maybe to celebrate her passage and talk about her next phase. [Did you tell Eva that two faculty members did not think she should have passed her exams?] No, absolutely not. What I may have said, was that two people were more tough on her than the other three. I did not have any intention with that. [Who was more tough?] I don't remember. The professor from comparative literature, and maybe the professor from history. I am not sure why I said it. Her exam was still

fresh in my mind. Not unusual at all [for] faculty to discuss the student performance in exam.

I asked [REDACTED] about his reaction to not being on her dissertation committee. He said he was surprised, but not upset. Specifically:

[How did you respond to Eva?] I said it was okay. Fine by me. [Were you concerned she hadn't told you at the May 13<sup>th</sup> meeting (with Eva)?] It was fine by me. This happens all the time. 5 to 3 – always a sensitive issue. No expectation to be on [Eva's] committee, mainly because of the direction of her dissertation. It became more about writings by women, not my expertise.

[...]

Students have a right to constitute committee any way they want. I was surprised she did not have me on her dissertation committee. I felt I had been so supportive of her all along. But I had no right or authority to be involved in that 3 person committee.

### 3. Student Witness Perspectives

[REDACTED] [REDACTED] generally corroborated Ms. Fisher's perspective that [REDACTED] spoke negatively about other professors and talked about the politics in the Department [REDACTED]

[Tell me about your interactions with [REDACTED] and the effect on you.] I felt that his word was gold, and he had my best interest in mind. It felt like he would only tell us things if for [the] greater good. He made it sound like we had an ally in him, and we were lucky that we had him as a friend. When talking to him, it felt like you were "in" on something; you were in the fold. I remember we would go to the Faculty Club and he would say stuff about other faculty members, and I don't remember the details, but I remember lots of talking. [REDACTED] general goal was to make us allied to him and feel protected by him and alienated from others.

[...]

[REDACTED] thrived on power and the idea of power. It is crazy, it is so palpable that I don't have to give details to feel it.

[...]

Eva helped me relax and have a joking relationship with [REDACTED]. We mostly talked about politics in the department. We sat and listened to him talk, which is how he liked it to be. [REDACTED] is quite the showman. He would talk specifics, but [I have] no memories. Basically [he spoke] about how [he was superior to his colleagues.]

[...]

██████████ liked Eva better. He was amused by her. When she was sick and unable to hang out anymore, he did not make any effort to hang out with me. I think Eva also felt special by his attention.

██████████ *Response to ██████████'s Perspective.* ██████████ admitted that he told ██████████ that ██████████ did not support her. Specifically:

[Did you tell ██████████ that she was not supported by ██████████ True. ██████████ was against her. ██████████ opposed ██████████'s application to the MS and PhD programs. I was very supportive of ██████████ I was chair of Ms and PhD committee. In no way could I have made ██████████ feel that I was exacting anything for her support. I have supported her through GSI programs.

I recognize that your questions suggest I make the guru for these women. I want them to feel they can talk to me about anything they want that relates to their work. I am the only one on the faculty who has a Distinguished Teaching award. I am surprised ██████████ told you this. Many would have told you she was my favorite student in the world.

██████████ came forward to report her own experience related to the complaints made by Ms. Fisher against ██████████ By way of background, ██████████ has been friends with Ms. Fisher since fall 2011, and she learned about Ms. Fisher's complaint after it was filed in spring 2016.

██████████ explained that her concerns about ██████████ were similar in how Ms. Fisher felt ██████████ manipulated her by isolating her from other faculty. While ██████████ did not allege that ██████████ touched her or spoke to her in a sexual nature, he did inform her that a faculty member was "against her admission" into the ██████████ Ph.D. program.

Specifically, ██████████ During that time, ██████████ pulled ██████████ into his office and told her that ██████████ was against her admission to the Ph.D. program. He was the Chair of the Ph.D. committee and ██████████ was on the committee as well. She recalled he said to her, "Don't trust ██████████" ██████████ described herself as a "vulnerable" new student, and she believed ██████████ This caused her to have self-doubts and questions about her work as a ██████████ class. After ██████████ was admitted to the Ph.D. program, she received an email from ██████████ from his iPhone, which made her feel that she had to thank him for standing up for her against a faculty member who "had it out" for her. ██████████ said she arranged to be released from ██████████ advisory shortly thereafter. ██████████ felt that, because of his comments, ██████████ felt isolated from at least one potential ██████████ mentor.

Five years later, ██████████ spoke to ██████████ and told her what happened. ██████████ was disappointed and she told ██████████ that she had supported her admission into the Ph.D. program. ██████████ has decided not to work in academia, which she believes was a decision influenced by ██████████ words about how she was not supported by a potential mentor.

██████████ *Response to ██████████'s Perspective.* I asked ██████████ if he pulled ██████████ into his office to say that ██████████ was against her admission and not to trust her. ██████████ responded, "I could have said that, yes." I asked him if he had a recollection of saying it, and he said he did not. He explained:

I speak to a lot of students. I am a very senior person [in] a department where many people do not get along. ██████████ either likes a student or hates a student. I feel that it is my responsibility to protect my students, male or female, if subject to this behavior. [Any recollection that ██████████ was against ██████████ application?] Yes, for the MS program, not Ph.D.

I tried to explain to ██████████ that these three women felt that he had manipulated them to make them closer and more reliant upon him. He responded as follows:

I disagree with that interpretation. Three different individuals. These people [are] telling me they are upset with ██████████. ██████████ is very aggressive with people, but then calms down later and only after puts them through hell. I don't accept that from a faculty member. No reason to be so against ██████████. My support of ██████████ is that she was being treated unfairly by ██████████. [Have you talked about this with ██████████] No. ██████████ does not talk about these things. She does not attend the PhD committee meetings. This issue is about a colleague that has a grudge. [██████████ has a grudge?] Yes. I don't have any information about that. But if these ██████████ have changed their view of ██████████ that she was now a supporter, they have changed their mind. ██████████ was not fond of Eva or ██████████. I don't have evidence for that, but I am certain that is the case.

#### 4. Other Student Perspectives

I asked other students if ██████████ engaged in this communication pattern with them. I interviewed four students provided on a list from ██████████. None of the four students (two male and two female) had experienced this communication pattern with ██████████ and he did not speak disparagingly about other faculty with them.<sup>17</sup>

#### 5. Faculty Perspectives

I also spoke with all of the professors on Ms. Fisher's examination committee. I asked questions to determine if the committee members made the comments as ██████████ reported to Ms. Fisher.

***Faculty Discussions After Eva Fisher's May 7, 2014 Examination.*** The chair of the committee, ██████████ reviewed her notes from Ms. Fisher's examination on May 17, 2014.<sup>18</sup> ██████████ noted that there was a unanimous vote to pass Ms. Fisher at the outset, before any discussion. In terms of their discussion about Ms. Fisher's exam, she said, "Generally speaking,

<sup>17</sup> The four students were ██████████, ██████████, ██████████ and ██████████.

<sup>18</sup> While ██████████ agreed to send me her notes from Ms. Fisher's examination, she did not do so and she did not respond to my numerous email, phone and text messages requesting the document.



the comments were extremely positive.” She recalled that one professor found Ms. Fisher to be glib and maybe too comfortable; another professor noted that Ms. Fisher was a bit sloppy with some of the material. According to [REDACTED] most all of the examiners noted that Ms. Fisher performed especially well with [REDACTED] questions, but not as well with [REDACTED]. One professor noted that “there was a great deal of skepticism expressed in Ms. Fisher’s exams compared to other” students’, but most of the concerns were raised by two faculty members. Regardless of any concerns, no one said Ms. Fisher should not pass. None of the committee members felt that they were being lobbied or convinced to pass Ms. Fisher, but some noted that [REDACTED] spoke strongly about Ms. Fisher in a professionally “normal” way for that process. Except for [REDACTED] all four members of the committee expressed some amount of concern that [REDACTED] allegedly spoke to Ms. Fisher about the committee’s discussion.

[REDACTED] **Representation to Ms. Fisher about [REDACTED]** [REDACTED] told Ms. Fisher that [REDACTED] was not interested in her dissertation. I showed [REDACTED] the email from [REDACTED] to Ms. Fisher dated May 15, 2016. [REDACTED] denied making the comments about being “irrelevant” and “not interested” in Ms. Fisher’s dissertation. He explained that his expertise with “Live Writing” was relevant to her project, but as time went on, the relevance of his expertise was “diminished.” He denied ever saying he did not want to work with Ms. Fisher. [REDACTED] was not particularly concerned about [REDACTED] email characterization of him. He wondered if [REDACTED] suspected some sort of rejection by Ms. Fisher and was somewhat upset about it.

[REDACTED] also mentioned that [REDACTED] spoke about Ms. Fisher when they were in the elevator together some time after her exam. [REDACTED] allegedly told him that Ms. Fisher had a “difficult time” in the [REDACTED] Program, and a few colleagues did not like her, while naming [REDACTED] and [REDACTED]. According to [REDACTED] [REDACTED] seemed “happy and somewhat proud” to have Ms. Fisher continue with her “worthy project” at UCB.

[REDACTED] **and [REDACTED] Lack of Support of Ms. Fisher.** [REDACTED] confirmed she worked with [REDACTED] on the Ph.D. committee in the [REDACTED] Department. She denied being unsupportive of Ms. Fisher, but she confirmed there was some discussion with the Ph.D. committee about whether Ms. Fisher would make the transition from a journalist to a scholar. I asked [REDACTED] about the nature of these discussions among faculty. She stated it was her understanding that the conversations were supposed to be “totally confidential.” She noted that she would hesitate to discuss students openly in those meetings if the discussions were shared with students.

## 6. Analysis and Findings

This finding relates to Ms. Fisher’s allegation that [REDACTED] engaged in a pattern of communication that intimidated and isolated her, while making her more reliant and beholden to him as her protector.

**Factual Findings. Sustained.** I find by a preponderance of the evidence that [REDACTED] engaged in an inappropriate and detrimental pattern of communication which intimidated and

isolated Ms. Fisher and made her more reliant upon him. Specifically, I find by a preponderance of the evidence that:

- [REDACTED] regularly shared negative information about faculty members in the [REDACTED] Department.
  - [REDACTED] told Ms. Fisher that other faculty members were skeptical of her ability to be a scholar, because she was more of a journalist.
  - [REDACTED] spoke negatively to two female students<sup>19</sup> about how a female professor<sup>20</sup> was not supportive of them. Ms. Fisher was aware of this. [REDACTED] also intimated that the same female professor was not supportive of Ms. Fisher, when he referred to her as one of the two “vultures” in the Department<sup>21</sup> targeting Ms. Fisher. [REDACTED] did not dissuade Ms. Fisher from believing that the female professor was against her.
  - [REDACTED] stated he would “protect” Ms. Fisher from these “vultures.”
  - [REDACTED] made comments to let Ms. Fisher know that he was looking out for her as a student representative in order to protect her from abuse and retaliation from other faculty members in the [REDACTED] Department.
  - [REDACTED] told Ms. Fisher to place him last during her oral examinations so he could save her if she did not perform well with another committee member.
  - [REDACTED] told Ms. Fisher that two faculty members on her examination committee said she should not have passed her exams, the two members discussed how Ms. Fisher was not a scholar, and one of the professors was uninterested in her project.<sup>22</sup> He also told Ms. Fisher that he and her [REDACTED] loved her, and he fought for her during the deliberations after her exams.
- [REDACTED] engaged in the following pattern with Ms. Fisher:
  - He complimented Ms. Fisher about her intelligence, ideas, writing, personality, and appearance.
  - He triggered her insecurity by sharing with her that other faculty members were skeptical of her scholarly abilities, her commitment to the department, and her projects.
  - He reminded her that he valued her as a student and loved her, and he offered to help her by guiding her, serving on her committees, offering her work and protecting her from other faculty.

<sup>19</sup> These students were [REDACTED] and [REDACTED]

<sup>20</sup> The female professor was [REDACTED]

<sup>21</sup> The two faculty were [REDACTED] and [REDACTED]

<sup>22</sup> The two committee members were [REDACTED] and [REDACTED]

- Based on this pattern of communication, Ms. Fisher felt intimidated, isolated, disillusioned and confused about her role in graduate school at the University. She also felt more reliant upon [REDACTED]

I make these findings for the following reasons:

First, [REDACTED] admitted to many of the comments. He felt that the students should know whether other faculty members were against them. He denied, however, that he did so to draw them closer to him or to be their protector. I noted that despite his denial in this regard, [REDACTED] used the term “protect” in his emails, and he characterized other faculty as out to “abuse” or “retaliate” against students. This language contradicted his assertion that he did not want to be their protectors or draw them to rely upon him.

Second, there was a significant amount of corroborating evidence to support Ms. Fisher’s allegations. Not only did [REDACTED] own emails corroborate many of her allegations, but Ms. Fisher’s emails to her friends and family also corroborated her version of events. Moreover, there was corroborating evidence that Ms. Fisher negatively reacted to his commentary. For example, Ms. Fisher immediately reacted negatively to several of [REDACTED] comments by sharing them with her friends and family.

On the other hand, I considered Ms. Fisher’s comment to her mother about how [REDACTED] speaks about “all the girls” as his “best” students. This comment appeared to undermine the idea that [REDACTED] paid special attention to Ms. Fisher. However, Ms. Fisher’s language did not indicate that she had witnessed him speaking highly of “all” the female students, and the tone of her message to her [REDACTED] was that Professor made it sound that she was the “best ever” which she welcomed, especially if it was genuine.

Third, [REDACTED] was inconsistent in his responses to some of my questions, which reduced his credibility. I took note that he initially, adamantly denied calling anyone a “vulture” or being Ms. Fisher’s “protector.” However, when confronted with his own email documents, he tried to characterize his comments as being normal communication about the realities of graduate school. He eventually admitted that perhaps the “vulture” language was not appropriate to use with students.

The evidence revealed that [REDACTED] believes that graduate students should know where they stand among the faculty, and he was willing to provide them with this information. The evidence also revealed that [REDACTED] positioned himself as a protector for Ms. Fisher. Therefore, I found it plausible that [REDACTED] revealed information to Ms. Fisher that other faculty would deem confidential. This appeared to be the case with the examination committee’s deliberations related to Ms. Fisher. [REDACTED] denied telling Ms. Fisher that two faculty members did not think she should have passed. But given the totality of the circumstances, it is likely he expressed his opinion to Ms. Fisher that two members questioned whether she should pass, yet he felt she gave a “brilliant performance.”

[REDACTED]’s recollection of the committee’s discussion corroborates this likelihood. She noted that those same two professors were the most vocal about Ms. Fisher’s missteps in her performance, and she surmised that [REDACTED] may have opined that one or both of

them questioned whether Ms. Fisher should pass. ██████████'s recollection of ██████████ ██████████ comments in the elevator further corroborated the allegation that ██████████ revealed his colleagues' negative opinions about students. Moreover, ██████████ appeared to be proud to have played a role in Ms. Fisher's success, despite his assertion that ██████████ and ██████████ did not "like" Ms. Fisher. ██████████ was "struck" by ██████████ candor in revealing other colleagues' negative opinions. Several faculty members expressed surprise that they were being asked to disclose discussions from post-examination deliberations, further demonstrating that ██████████ may have been straying from examination "norms."

One witness, ██████████ presented a theory about ██████████ communication style that I took under consideration. ██████████ has worked with ██████████ for ██████████, and she has observed his communication style compared to other professors. ██████████ theorized that ██████████ communication style was more direct, likely because of cultural differences. She explained that the American professors were more "gentle" and "couched things in softer, kinder words." For example, ██████████ may say, "This faculty member is wrong," instead of saying, "I disagree with his opinion." Her theory explains and corroborates the likelihood that ██████████ bluntly expressed his opinions and observations with Ms. Fisher.

While ██████████'s observation may be helpful in understanding ██████████ and others' reaction to him, it does not minimize the impact that ██████████ words and statements may have on students. For one thing, ██████████ is in a position of power and influence in the ██████████, which students cannot help but notice. Moreover, his desire to disclose information to students does not take into account the typical meeting "norms" which consider such deliberations to be confidential. All in all, I find the evidence weighs in favor of Ms. Fisher's allegation that he told her that two faculty members did not think she should have passed her exams.

In summary, based on ██████████ escalating personal attention paid to Ms. Fisher, his remarks about Department faculty's lack of support for Ms. Fisher, and his comments that he would protect her and save her, I find a preponderance of evidence to support Ms. Fisher's allegation that ██████████ engaged in an inappropriate pattern of communication with her which led her to feel intimidated, isolated and reliant upon ██████████

## **B. ██████████ Verbal and Physical Interactions with Eva Fisher on October 18, 2013**

### **1. Eva Fisher's Perspective**

Ms. Fisher described an intimate, personal gathering with ██████████ at the *Five* restaurant in the Shattuck Hotel during the early evening of Friday, October 18, 2013:

We rescheduled to meet Friday October 18th, to discuss my upcoming exams. I agreed to meet him at Five because I felt it was important that I have this pre-exams meeting and he was insisting on it being after regular school hours. Because the atmosphere was social, I went along with him when he began talking about relationships and he was clearly very interested in a previous relationship of mine, which was with a mentor figure. I engaged in this conversation because I

was aware of [REDACTED] position of power as a member of my committee, and I felt that I needed to keep him on my side. I had fears about my status as a grad student because of my continued postponement of my exams because of illness.

During our conversation he said "I love you very much."

He offered me a ride home. My intuition was not to accept, but I ignored this intuition. As I later emailed a friend: "I figured that I could "handle" [REDACTED] [REDACTED] attempting to be so intimate with me [because] I was like "Oh, I've been here before with older dudes trying to bone me," but actually I couldn't."

We got in the car and as we were driving down Shattuck Avenue, he said that he considered me a friend and that he would like to consider me a very close friend. He described how he takes his very close friends to an all-expenses paid trip to Las Vegas every year, and perhaps I can join this trip one day. Then he put his hand on my upper thigh while he was driving. I did not say anything about his hand being there as I was surprised and also scared of potential retaliation. I did ask him to drop me off immediately instead of my final destination, as I was very uncomfortable. I pretended that I remembered that I needed to get something at Whole Foods and he dropped me off.

#### **Attachment 1, pgs. 3-4.**

Ms. Fisher alleged that [REDACTED] essentially created a "date-like" scenario on a Friday night. For example, when they were trying to plan the get-together, [REDACTED] offered to take her across the bridge to San Francisco, even on a Friday night. During their planning, Ms. Fisher told [REDACTED] that her dinner plans with [REDACTED] were "weird," but she appeared to be going along with it because Five had "butterscotch pudding" which she was "obsessed with." **Attachment 35.**

I reviewed Ms. Fisher's email to [REDACTED]. **Attachment 16.** I noted that Ms. Fisher was consistent in her brief description of what happened in the car and his comment about Las Vegas. She also stated [REDACTED] told her that he loved her, but she said she did not really pay attention because it was dropped so casually into conversation, as in, "Oh, your other advisor loves you and so do I."

In her paper for [REDACTED], her written description varied regarding the car. Ms. Fisher wrote:

[W]hile we were in the car he put his hand on my leg and said, "I love you and hope that we can become very close friends." Then he said he takes all of his close friends to Las Vegas every year and pays for everything and that I should come on one of those trips one day.

#### **Attachment 17.**

## 2. [REDACTED] Response

[REDACTED] did not recall their October 18, 2013 outing as alleged by Ms. Fisher. In our first interview, he answered the following questions:

[What led up to dinner at *Five* on October 18, 2013?] Gear up for her exams. Told me about her book. Happy about that. She asked me to pick her up from [her] house, which I recall I did. She said she felt tired. A few weeks earlier she had a major medical procedure.

[What did you talk about at dinner?] Only thing I remembered was difficulties with all surgeries.

[Did you talk to her about your personal relationships?] No, I don't think so. I talked to her about my medical condition. Only because that was the main topic of conversation.

[Did she tell you about how she had a relationship with a mentor figure?] She may have, but I don't recall in any detail.

[Did you tell her you loved her very much?] Absolutely not....I recall it was a short meal. Early meal. I had things to do. If I mentioned anything, [it] may have been, "Of course I love all of my students." I did not say I love you or love you very much. I did not have any romantic feelings for this student whatsoever.

[Offered to give her a ride home?] Yes, I may have. Again, I had picked her up. I had expected to take her back. [To home or elsewhere?] She asked me to drop her off somewhere else, like a Safeway or Whole Foods.

[Did you say you consider her a friend, but want to be a close friend?] I would not have said that. I would have said I consider you to be a close friend. Which I said before. [Did you talk to her about your trip to Las Vegas?] Was this in October or November at dinner? [Yes. October.] I had friends coming into town. [What did you tell Eva?] Going to Vegas with a number of friends. [When?] Probably around Thanksgiving. Vacation time. When [one] can do those things. [Did you tell her you wanted her to go on that trip sometime?] Absolutely not.

[Did you put your hand on her thigh?] No, I did not. [Put your hand on other part of her leg?] No. I only remember hugging her before she left the car. Probably something I did when I first met her. If I had accidentally touched her while hugging...but unlikely. [Anytime in the car ride, did Eva's demeanor change?] Not that I recall.

During our second interview, [REDACTED] wanted to respond more thoroughly to Ms. Fisher's allegations. He explained:

She said I told her I loved her. I may have said something like, I love you like I love other students. I never touched her leg, and if I did, it was accidental when I was hugging her in the car.

[...]



I was leaving the next day (for Las Vegas). I had tickets already. My comment was so casual, it was not an offer. I have never said to a student, "I love you." Categorically deny that. I had the capacity to recall that, if I had said something it was, "You are not my student. I just love you like I love all my students." Eva suffers from the idea that she does not fit. I was trying to build confidence in her.

I then explained to [REDACTED] what [REDACTED] remembered when Ms. Fisher told her about their outing at *Five*: How Ms. Fisher described her "wild" past, and how [REDACTED] said, "You don't know how bad I can be." He responded:

[Does [REDACTED]'s recollection change your response?] Not at all. I said that I was bad? I don't want to minimize their reaction, but that is not like me to say that at all. How bad I can be? I could have said, "Things can be really bad." I can understand Eva may have heard that it's not that bad.

I have no recollection of her talking about being wild when we were at the Faculty Club. [Do you mean at Five?] (Indicated yes.) No, I don't recall them, how could I have recalled her talking about being wild? Maybe there were outrageous things she did, but I know she talks about those things with people. But I don't recall them.

### 3. Witness Perspectives

[REDACTED] confirmed that Ms. Fisher called her around 7:00 or 8:00 p.m. after [REDACTED] dropped her off at Whole Foods. She remembered the following:

Eva had been walking down Telegraph (when she called). [REDACTED] had dropped her off at Whole Foods. I knew she had dinner with him, which I thought was weird. She and I exchanged text messages. [Eva] said she asked him to drop her off early because she was uncomfortable. They were sitting in the car. Eva likes to talk about her wild past. [REDACTED] put his hand on her leg or thigh. And he said, "You don't know how bad I can be." Eva was uncomfortable. She is very bold and not easily uncomfortable. To make Eva uncomfortable, it had to be significant.

[...]

[Did you hear anything about Las Vegas?] Yes, he invited her and implied he had taken other girls, too.

[...]

I did not doubt what Eva was saying; I did not doubt for a moment. [What did she tell you?] When he put his hand on her leg, he said something about how bad he can be. He said it to her, about him being bad. She may have implied she had been bad with what she had done in her youth. He said something like, "You have no idea how bad I can be" or, "I am bad, too."

██████████ acknowledged that she reminded Ms. Fisher about their telephone conversation on April 7, 2016 when they were looking for relevant email documents regarding Ms. Fisher's complaint.

██████████ confirmed that she and Ms. Fisher wrote about what happened between her and ██████████ and she confirmed that the redacted email chain under **Attachment 15** was between her and Ms. Fisher.

#### 4. Analysis and Findings

This finding relates to Ms. Fisher's allegations that ██████████ escalated their personal interactions, and touched her in an inappropriate manner.

**Factual Findings. Sustained.** I find by a preponderance of the evidence that, on October 18, 2013, ██████████ engaged in the following conduct:

- ██████████ planned an early evening where he took Ms. Fisher out to *Five* on a Friday night. While he offered to pick up Ms. Fisher at her home, she stated she would meet him at the restaurant. ██████████ hugged Ms. Fisher before they sat down.
- They spent 2 to 2.5 hours socializing at *Five*. They did not appear to discuss her qualifying exams. ██████████ drank some martinis and they ate some food. They talked about personal matters, including their medical conditions and Ms. Fisher's past. Ms. Fisher described how she had a love affair with one of her writing mentors, who was male. At some point, ██████████ casually expressed his love for Ms. Fisher in relation to how he loved his students. When they left, ██████████ offered to give Ms. Fisher a ride home, and she accepted his offer because it was cold and she did not want to walk. While they were in his car, ██████████ told Ms. Fisher how he often goes to Las Vegas with his close friends. He put his hand on Ms. Fisher's left upper thigh, held it there, and said something like, "I consider you to be a friend, and I hope that we can become close friends." Ms. Fisher was surprised and scared of retaliation from him since he was on her examination committee. She did not object, but she asked him to drop her off at Whole Foods before reaching her final destination.
- Ms. Fisher felt "weird" and "uncomfortable" about ██████████ behavior towards her.

I make these findings for the following reasons:

First, I placed importance on the fact that Ms. Fisher consistently discussed or wrote about what happened on October 18, 2013, even if she did not file a formal complaint right away. The documents and witness recollections corroborated that Ms. Fisher was uncomfortable with what happened. While at least one witness did not realize how much the incident stayed on Ms. Fisher's mind, the witnesses corroborated that Ms. Fisher told them about the incident in a way to indicate concern, not excitement or amusement.

I noted and considered that Ms. Fisher did not initially recall having told [REDACTED] about the incident in the car immediately after it happened. Ms. Fisher confirmed that she remembered walking and talking on the phone with [REDACTED] after [REDACTED] reminded her on April 7, 2016. However, I did not find evidence to conclude the two women fabricated the incident. I noted that [REDACTED] distinctly remembered that Ms. Fisher was uncomfortable because [REDACTED] touched Ms. Fisher on the leg, but her recollection of the details were jumbled in a way that suggested problems with memory recall, not fabrication. In other words, if they fabricated the incident, it is likely their versions of events would have been more consistent. Instead, their versions reflected two people's recollection of something that occurred almost three years ago.

On the other hand, I also considered [REDACTED] statement that Ms. Fisher never indicated she did not want to meet with him. I noted the emails leading to the gathering at *Five* indicated some amount of mutual desire to socialize. While Ms. Fisher said in her complaint that the purpose of the get-together was to talk about her exams, the email documentation did not support that perception. In fact, the exams had been postponed until spring of 2014, and none of their planning mentioned a forum to discuss her examinations. While Ms. Fisher appeared willing to socialize with [REDACTED] in this context, she described their plans as "weird" which corroborated her sense that this get-together had a decidedly different feel.

Second, I considered the respective motives. As for Ms. Fisher, I did not find a compelling motive for Ms. Fisher to fabricate these interactions. The incidents understandably confused her, and there was no evidence that she bragged or advertised the outing to others. She did not appear to be seeking attention when she confided in [REDACTED]. Instead, [REDACTED] noted how unusual it was for Ms. Fisher to express so much discomfort.

[REDACTED] and another witness theorized that Ms. Fisher may have exaggerated these events and filed a complaint in order to sell or promote her new book. I took this theory under consideration. On the one hand, Ms. Fisher was consistently excited about her non-fiction writing career, and she consistently wrote about her life in a compelling and interesting way. It is plausible that she could exaggerate these events to make them more interesting for her audience. However, I also noted that her Kindle book "It's All In Your Head" was already published before the dinner at *Five*, and her new book, "How to Be Loved" had not been sold yet. In other words, a motive to fabricate, to exaggerate or to file a formal complaint did not fit with the timing or the topics of her writing endeavors.

Instead, I found it more likely that Ms. Fisher felt more confident to bring forth her complaint because of the climate at UCB and her increasing security in her career path.

As for [REDACTED] I find he has a reason to deny the allegations to maintain his professional relationship with his students, his colleagues and the University, and to avoid another controversy like the one that involved his former wife, [REDACTED]. In this type of case, it is relatively easy to deny the conduct because the most egregious allegations took place without any eye-witnesses. Moreover, the more subtle allegations could be explained away as normal interactions between a graduate student and a professor.

Third, I find it plausible that ██████████ would “test the waters” with Ms. Fisher because he felt connected to her over shared medical concerns, he had a few alcoholic drinks, and they discussed Ms. Fisher’s “wild” affair with a male<sup>23</sup> mentor. Since he had referred to Ms. Fisher as beautiful, fabulous, and a person worth helping, it is plausible that he would test whether she would be responsive to his hand on her leg and a request to become closer friend.

Also, Ms. Fisher reported the matter without exaggerating the situation. She did not characterize it as an overt sexual proposition, but as a logical next step for ██████████ to escalate and develop a closer relationship with this “fabulous” woman. Moreover, since she did not reciprocate, the behavior did not escalate. Attorney Siegel and ██████████ claimed that, since he did not engage in more overt behaviors, this was an indication that it did not occur at all. Specifically, if ██████████ had an intent to be romantic or sexual with Ms. Fisher, there would have been further manifestations of his intent.

I did not find this reasoning to be persuasive with someone like Ms. Fisher. Ms. Fisher appears to be quite direct and strong. If she did not reciprocate after his subtle attempts, it would likely be risky to engage in more overt behavior because, as a frequently published writer, she could have exposed his actions through a blog, article or other social media.

Another theory is that Ms. Fisher re-characterized his behaviors as romantic or sexual after she heard that he cheated on his wife with more than one woman associated with the University. On the one hand, Ms. Fisher did tell ██████████ that she looked at things differently after she learned about his “fuckery” related to ██████████’s November 2014 Ted Talk. On the other hand, the incident in question took place one year before the Ted Talk and rumors. I placed weight on the fact that Ms. Fisher found the outing at *Five* to be weird, and she told ██████████ about her discomfort right after the event.

All in all, after a review of the totality of the circumstance, I find it more likely that ██████████ ██████████ engaged in the escalating personal behavior and physical touching as alleged by Ms. Fisher, and it was reasonable for her to feel uncomfortable about his comments and the touch on her leg.

### C. ██████████ Verbal and Physical Interactions with Ms. Fisher on May 7, 2014

Ms. Fisher was finally able to take her oral exams to become an interdisciplinary Ph.D. student on May 7, 2014. Before the exams, ██████████ greeted her and touched her in a way that made her feel very uncomfortable. He also commented on her appearance. ██████████ explained that his greeting was a normal greeting given to a student who had gone through a difficult experience getting to the exam.

#### 1. Eva Fisher’s Perspective

In her written complaint, Ms. Fisher described her experience before the examination as follows:

<sup>23</sup> By all accounts, ██████████ and Ms. Fisher talked about the end of her relationship with a woman before her surgery. During their outing at *Five*, Ms. Fisher discussed her affair with a male mentor.

As we met in the hallway before my exams, he gave me a hug and a kiss on the cheek and said, "I hope you feel as good as you look." This was only one of many times that he has forcibly hugged me and discussed my appearance.

**Attachment 1, pg. 4.**

During our first interview, Ms. Fisher elaborated on what occurred in the hallway before her exams. Ms. Fisher recalled that [REDACTED] was with her before the exam. She explained what happened with [REDACTED] in the hallway:

I was super nervous. [REDACTED] gave me a big hug and said, "How are you?" I responded that I was excited. He said, "Well, you look great. I hope you feel as good as you look." That was mixed for me. When I was sick I did not look like it....I felt like he looked me up and down and told me, "You look great." It creeped me out. I thought, "Just get me to the exam."

[...]

The other faculty were around, but they gave me a hug after the exam, after I passed. Otherwise, their behavior was not the same as [REDACTED]. The other professors noticed that I looked well, but other than that they were not talking about my looks.

During our second interview, when I told her that [REDACTED] denied kissing her and he claimed to have made a different comment than she alleged. Eva responded:

My internal camera recalled [REDACTED] said, "I hope you feel as good as you look." He did not say appear. That's ridiculous. I remember my reaction to the cheek kiss, more than the comment. We were standing down the hall from [the] advisors' office. That interaction was really uncomfortable. [I thought], Gross, I wish I had not let him hug me before my exam. I remember there being a cheek kiss, but not as clearly as I remember the car ride. Mostly, I remember the visceral nature of my reaction and how I had to shake off the energy. [Which cheek did he kiss?] Visualizing where we were...I visualize my left cheek.

[...]

No other faculty member hugged me before my exam. It does not seem to be a standard pre-exam thing.

I asked Ms. Fisher to describe the type of kiss, and she called it "friendly." She reminded me that she did "not have a sharp memory of it happening" but she had a "sharp memory" of how she felt during the "physical exchange." She reiterated how uncomfortable she felt when he touched her.

**2. [REDACTED] Response**

[REDACTED] recalled hugging Ms. Fisher before her exam, but he adamantly denied kissing her cheek, and he denied the wording and tone of the comment he made about how she looked that day. Specifically, during our first interview, he stated:

It is very common to encourage a student before an exam. I definitely told Eva she looked good for a person that went through this. I did not use the wording you gave. I said something like...I hope you feel as good as you appear. That is more accurate wording....I did not ever kiss her on the cheek. We hugged, as is normally done with students and with other female students. Maybe our cheeks touched. I would not have kissed her, I would not have done that.

In the second interview, [REDACTED] again denied that he kissed Ms. Fisher's cheek, but he acknowledged that maybe their cheeks touched during the hug. He remembered seeing her before the examination and thinking, "Finally, she is there to take the exam." Professor knew how hard it was for her to reschedule her exams after her medical struggles. He felt "shocked" at how Ms. Fisher construed him and now thinks of him. [REDACTED] said he had a "right" to be shocked because he "showed her kindness because of her [medical] condition."

In terms of commenting on Ms. Fisher's appearance, [REDACTED] said that he "may have used the term beautiful" to describe Ms. Fisher. He said he may have used it in the context that she was a "very beautiful, bright young woman with a career" ahead of her. He explained that was the "gist" of his comments about her appearance. He also admitted that he may have commented on Ms. Fisher's appearance in relation to her illness, as in she "looked good after brain surgery."

I asked [REDACTED] if he referred to Ms. Fisher as "fabulous," and he twice denied using the term "fabulous" to describe her. However, when I showed him the email from [REDACTED] dated June 2, 2013, he responded, "Yes, I said that." Specifically, the email stated:

[REDACTED]  
How amazing, gypsies in Jordan. Eva looked great, I just hope the problem is solved. Let's wait and see. She is truly a fabulous woman.  
[REDACTED]

#### Attachment 34.

[REDACTED] said the comment did "not imply anything." He further explained:

I think Eva, now it is my personal opinion that she is unbalanced from fighting cancer, trying to maintain relationships, trying to take exams, et cetera.

This is not a sexual or sexist thing. I have said it about males, "You are bright and have potential in your career." I am careful with my words. I don't just throw out my words. I have supervised 67 Ph.D. students, and half of them are women. I have not been told I treat them sexist or badly. I am careful that they understand they have rights. I am not someone to sexually harass someone. I have people who will say that. Other people should have been subjected to this, not me.

### 3. [REDACTED]'s Perspective

[REDACTED] recalled being with Ms. Fisher before her exams. We discussed it during our two back-to-back interviews. During the first interview, [REDACTED] did not remember if [REDACTED] hugged or kissed Ms. Fisher before the exams. She said it would "not be surprising" if he



did, and she noted that he hugged [REDACTED] on occasions, but he did not kiss her on the cheek. During the second interview, I asked her if she recalled anything else while being in the hallway with Ms. Fisher and [REDACTED] before the exam. She stated:

I am sure [REDACTED] hugged her, which is not abnormal....I don't remember it being too out of the ordinary.

[...]

[Any comments about how Eva looked?] Um, not that I recalled. But it would not have been out of the ordinary. But then he can say, she's been sick and just saying she looked well.

[Did you ever get a sexual or physical vibe between them?] I will say [REDACTED] [REDACTED] was very charmed by [Eva]. I did not see her give a sexual vibe. She is an honest, open and a sexual person, yes. I knew he was paying more attention to her. I saw that. I just figured that she is smarter, thinner, prettier, or whatever it is.

#### 4. Other Witness Information

I asked other witnesses about the customs and practices between faculty and graduate students before and after their oral examinations. By all accounts, it was normal for faculty to hug graduate students *after* the examinations, especially if they passed. Several witnesses, however, felt that hugging a student before an exam was not a normal practice, although it may be acceptable depending on the people.

#### 5. Other Documents

I noted that in Ms. Fisher's documents written to [REDACTED] [REDACTED], as well as her email to [REDACTED], she did not mention that [REDACTED] kissed her on the cheek before her exams. **Attachments 16 and 17.**

#### 6. Analysis and Findings

This finding also relates to Ms. Fisher's allegations that [REDACTED] escalated their personal interactions and touched her inappropriately.

**Factual Findings. Sustained in part.** I find by a preponderance of the evidence that, on May 7, 2014, before Eva Fisher began her Ph.D. oral examination, [REDACTED] approached her, gave her a hug and told her that she looked great and he hoped she "felt as good as she looked." His touch and comment made Ms. Fisher feel uncomfortable. I do not find by a preponderance of the evidence that [REDACTED] kissed Ms. Fisher on the cheek, although they may have hugged close enough for their cheeks to touch.

I make these findings for the following reasons:

At the outset, I noted that [REDACTED] admitted that he hugged Ms. Fisher before the examination and he commented on her appearance. However, he explained that his actions had

no sexual or sexist intent. He stated he was simply happy that Ms. Fisher finally made it to exams and that she looked so well after her serious illness.

In terms of the kiss on the cheek, ██████████ consistently denied kissing Ms. Fisher, and I found his denial to be persuasive for several reasons: Ms. Fisher stated she was unsure of her recollection regarding the kiss, a nearby witness did not see it, and Ms. Fisher's subsequent descriptions of the events to ██████████ ██████████, and ██████████ did not mention the kiss. For these reasons, I did not find sufficient evidence that he kissed her on the cheek.

Therefore, the remaining issue is the difference in their perceptions about the hug and comment. He perceived his behavior as normal and platonic, but Ms. Fisher consistently reported to others that the touching and comment made her feel uncomfortable.

Based on the other findings above, I find it to be plausible that Ms. Fisher reasonably perceived his conduct as inappropriate and as a sexual overture. It is understandable she would have a negative reaction to ██████████ touch and comment because of his escalating behavior: communicating on a personal level, commenting on her appearance, referring to her as a woman, expressing love for her, and touching her on the leg while expressing a desire to become closer friends. Under these circumstances, it is reasonable for Ms. Fisher to view any touching from ██████████ even a customary "good luck" hug, to feel exceptionally uncomfortable and sexual. While the hug would have been acceptable in a normal context, it was not acceptable to Ms. Fisher at that point in their relationship. Similarly, the comment also took on more significance because of the escalating commentary about her appearance and the sense that he was looking at her as a woman, and not a graduate student.

## IX. Policy Analysis and Determinations

After a thorough review of the evidence above, I made factual findings that ██████████ engaged in most of the conduct attributed to him by Ms. Fisher, except for the kiss on her cheek. In this section, I will analyze whether his conduct violated the University of California's Sexual Violence and Sexual Harassment Policy which prohibits, among other things, sexual harassment. **Attachment 2.**

I find by a preponderance of the evidence that ██████████ engaged in conduct that violates this policy. I make this finding for the following reasons.

First, I find that ██████████ conduct was sexual in nature. The University of California's Sexual Violence and Sexual Harassment Policy defines sexual harassment as "unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical conduct **of a sexual nature** [emphasis added]."

I recognize that not all of ██████████ behavior was overtly sexual in nature, however, his physical contact with Ms. Fisher increased over time and resulted in touching of a sexual nature. While Attorney Siegel argued that ██████████ did not actively pursue a sexual relationship with Ms. Fisher, I note that a faculty member does not have to be aggressive or predatory to

create an uncomfortable or intimidating environment. In this case, it was sufficiently overt when ██████████ placed his hand on Ms. Fisher's thigh and held it there while expressing interest in becoming closer friends and maybe going to Las Vegas someday. This behavior from a male professor towards a female student, in the close confines of a car, demonstrated physical conduct of a sexual nature as well as the opportunity for Ms. Fisher to provide sexual favors or respond favorably to his subtle sexual advance. Moreover, his comment on May 7, 2014 that he hoped she "felt as good as she looked" demonstrated verbal conduct that could be construed as sexual in nature given the inappropriate timing and focus of the comment. As Ms. Fisher was nervously awaiting her examinations, which had been postponed several times, ██████████ felt compelled to draw attention to her physical appearance while embracing her in a hug. Ms. Fisher persuasively described her reaction as feeling "dirty" and wanting to "brush herself off."

While ██████████ only engaged in limited physical contact, his conduct should be viewed in context of their relationship. ██████████ was Ms. Fisher's professor, confidante, referral source, unofficial advisor for her role with the Department's Ph.D. committee, potential employer, and important member of her Ph.D. committee of examiners who could "save her" if she performed badly. The sense that she needed his help or he could harm her career creates a power dynamic. ██████████ held a position of trust, authority and power over Ms. Fisher. While Ms. Fisher was admittedly experienced in navigating the sexual dynamics of interpersonal relationships, she was insecure about her place in graduate school. By all accounts, Ms. Fisher admitted her insecurity to ██████████ early in her time with the Department ██████████. ██████████ appeared to use the insecurity of an otherwise strong woman to highlight his vast experience in academia. Within this power differential, he engaged in repeated academic compliments, he increasingly complimented her appearance, and he engaged in numerous expressions of care related to her medical condition. His behavior towards Ms. Fisher did not go unnoticed by her or her close friend and colleague, ██████████. She noted ██████████ seemed to be "charmed" by Ms. Fisher. In this context, Ms. Fisher naturally drew herself closer to him and felt honored to receive his special attention, time, assistance and support, while at the same time, she was reminded that her other professors in the Department did not value her as an academic or scholar. Taking all of this into consideration, ██████████ conduct taken as a whole reaches beyond a professional professor-student relationship, and can be seen as an attempt to "groom" Ms. Fisher for the possibility of becoming a romantic or sexual partner. In other words, I find his conduct to be of a sexual nature under the University's policy.

Second, I find that ██████████ conduct was unwelcome to Ms. Fisher. The University of California's Sexual Violence and Sexual Harassment Policy defines sexual harassment as "**unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical conduct** of a sexual nature [emphasis added]." Based on my review of the email communications between Ms. Fisher and ██████████ I note and consider that Ms. Fisher voluntarily interacted with ██████████ and sometimes initiated their personal meetings. By way of example, she invited him to a personal gathering at her home before her brain surgery, and wanted him to meet her "philosophy professor mom." During much of 2012-13, Ms. Fisher did not question the growing closeness between her and ██████████. I also note and consider that Ms. Fisher did not come forward to the University with her concerns or allegations until years after his contact. However, I find this evidence is outweighed by other

factors. I placed greater weight on the evidence which demonstrated that Ms. Fisher found his conduct to be unwelcome: (1) Ms. Fisher described her concerns and discomfort to her friends *at the time* of the more egregious incidents with [REDACTED] (2) Other women in Ms. Fisher's academic world were beginning to question [REDACTED] behavior towards women. This reasonably caused Ms. Fisher to ask herself whether she was comfortable with *all* of [REDACTED] behavior towards her, not just the more overt physical behaviors, and she realized that his behavior towards her was not welcome. (3) Ms. Fisher more freely discussed her concerns and considered a complaint against [REDACTED] during the 2014-15 year when he was on sabbatical, suggesting that his behavior had been tolerated because she did not feel safe to question him while he was an active part of her academic life. By all accounts, Ms. Fisher felt considerably more comfortable to bring a complaint in 2016 as the nation's academic world began to question the prevalence of sexual power dynamics, sexual harassment and sexual violence on college campuses. Her delay in bringing her concerns forward was not likely because she found [REDACTED] conduct welcome, but more likely because she felt safe to come forward as time passed.

Third, I find that [REDACTED] conduct was sufficiently severe and pervasive to create a "hostile environment" for Ms. Fisher. This is defined by the policies as follows: "*Hostile Environment*: such conduct is **sufficiently severe or pervasive** that it unreasonably denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment or other programs and services of the University and creates an environment that a reasonable person would find to be intimidating or offensive [emphasis added]." I find that [REDACTED] engaged in escalating personal interactions with Ms. Fisher over the course of at least two academic years with increasing invitations to meet with him for drinks. In the midst of this escalation, they interacted regularly regarding her class with him, her role as a student representative, her decision about how to pursue her Ph.D. in the Department and then as an inter-disciplinary endeavor, how to secure her workspace in the Department, her graduate student work options, and her preparation for her examinations. These academic connections demonstrate a pervasive amount of contact under the policy. Ms. Fisher had to navigate [REDACTED] confusing pattern of compliments and intimidating comments about how other professors viewed her on a regular basis. Moreover, I find [REDACTED] efforts to take Ms. Fisher on a "date" and then touch her thigh in an intimate setting, to be a bold demonstration of his interest in her as a woman. The fact that Ms. Fisher did not directly rebuff his touch does not negate the objective severity of his behavior.

Fourth, I find that [REDACTED] conduct was such that it meets the following definition of the University of California's policies: "[U]nreasonably denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment or other programs and services of the University and creates an environment that a reasonable person would find to be intimidating or offensive [emphasis added]." The evidence demonstrates that Ms. Fisher was adversely affected by [REDACTED] conduct in the many ways:

- Ms. Fisher avoided [REDACTED] as a potential [REDACTED] mentor because she believed that [REDACTED] was unsupportive of her, consistent with [REDACTED] disparaging commentary about [REDACTED] as a "vulture" targeting Ms. Fisher.

- Similarly, Ms. Fisher contemplated quitting graduate school altogether because she did not feel that she had the support of her Department, based on [REDACTED] consistent commentary that faculty did not view her as sufficiently academic or scholarly.
- Ms. Fisher embarked on the arduous task of forming an inter-disciplinary Ph.D. program, and was isolated as the only student in her Ph.D. program. Again, she gravitated towards this option because she was negatively influenced by [REDACTED] behavior.
- Ms. Fisher felt increasingly insecure about her worth as a graduate student and avoided faculty members because she believed they were not supportive of her, based on [REDACTED] comments.
- Ms. Fisher declined to work with [REDACTED] because of his pattern of compliments, isolation and offers to save her.
- Ms. Fisher risked alienating [REDACTED] and she lost his resources and connections when she chose not to appoint him to her dissertation committee because she could not tolerate his behavior towards her.

I find by a preponderance of evidence that [REDACTED] behavior interfered with Ms. Fisher's education, GSR employment opportunities, and valuable connections with other faculty.

Fifth, I find that a reasonable person would consider [REDACTED] conduct to create an intimidating educational environment. The University of California's policy prohibiting sexual harassment incorporates the following language: "...creates an environment that **a reasonable person** would find to be intimidating or offensive [emphasis added]." Again, the power differential and the disparity in their positions increases the intimidating impact of [REDACTED] behavior. A reasonable person would find him to be a powerful, recognized, influential and highly valued faculty member at UCB and in his field. It is reasonable for a younger, female graduate student to want to maintain this powerful faculty member's attention and protection from the other faculty who allegedly did not support her.

For these reasons, I find that [REDACTED] violated the University of California's policy prohibiting sexual harassment. I also find there is sufficient evidence to refer this matter to the Vice Provost for the Faculty or the appropriate administrator for review under the Faculty Code of Conduct.



This concludes the investigation.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Eve Fichtner".

Eve P. Fichtner