

# An Assault on Due Process at UC Berkeley

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By Peter Berkowitz

RCP Contributor

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On April 22, University of California Berkeley law professor Sujit Choudhry filed an 11-page single-spaced [grievance](#) with the 10-member UC Berkeley Privilege and Tenure Committee. The grievance alleges that “several members of the administration of the University of California and the UC Berkeley campus have violated” his “right under the FCC [Faculty Code of Conduct] ‘to be judged by colleagues, in accordance with fair procedures and due process, in matters of promotion, tenure, and discipline, solely on the basis of professional qualifications and professional conduct.’”

To date, Choudhry—who was dean of the Berkeley law school from July 2014 until mid-March of this year when he resigned amid controversy—has received only a brief reply from committee Chairman Vern Paxson acknowledging receipt of the grievance.

Choudhry’s academic career stands in the balance. So too is the reputation of UC Berkeley for upholding the principles of due process that are essential to free and rigorous inquiry and liberal education.

In July 2015, Choudhry accepted a settlement with the university concerning a complaint filed by his executive assistant, Tyann Sorrell, with the university’s Office for the Prevention of Harassment and Discrimination. In the OPHD [report](#), prepared by Complaint Resolution Officer Andrea LaCampagne, Choudhry acknowledged that between the summer of 2014 and March 2015 he hugged Sorrell and kissed her on the cheek. But he insisted that his aim was to show support and was not motivated by sexual intent. In a March 19, 2015, email to Choudhry, in which she mentioned his conduct for the first time, Sorrell expressed a similar opinion: “I know you do not mean anything by [your actions] other than, perhaps a warm and friendly greeting.”

While the OPHD report notes that Choudhry believed the unwanted conduct did not occur “more than once or twice a week,” Sorrell told university investigators that Choudhry’s hugging and kissing became “a daily event, occurring five to six times a day.” The two witnesses interviewed by OPHD, both Sorrell confidantes, back up Choudhry’s account. Over many months, one witness observed Choudhry kiss Sorrell on the cheek only once. The other saw a single hug. It is hard to understand how the frequent and egregious conduct alleged by Sorrell, utterly out of step with the contemporary university workplace, could have gone unobserved in a busy dean’s suite.

Nevertheless, Choudhry expressed “sincere and deep remorse for the stress and unhappiness that he caused.” And he accepted sanctions proposed by then-University Executive Vice Chancellor and Provost Claude Steele (he resigned last month): a 10 percent pay cut for the year; professional coaching at his expense on workplace conduct; a written apology to Sorrell; and periodic OPHD monitoring. In an official letter, Steele informed Choudhry that these sanctions were “warranted and appropriate for this situation.”

Choudhry’s acceptance of Berkeley’s proposed settlement came at a cost. He waived his right to appeal the university’s findings, challenge the sanctions, and seek vindication in a full-blown university disciplinary procedure. The benefit Choudhry reasonably relied on was resolution of the case.

Although Andrea LeCampagne’s OPHD report declared that “the Complainant has no motive to exaggerate,” on March 8, Tyann Sorrell filed in Alameda County Superior Court a potentially multimillion-dollar lawsuit against Choudhry and Berkeley, alleging, among other things, that he sexually harassed her and that the university failed to protect her.

The next day, UC President Janet Napolitano, speaking to the Sacramento Bee’s editorial board but apparently unfamiliar with the facts, accused Choudhry of “groping,” a significantly more serious charge than any found in the university’s OPHD report. Two days later Napolitano, herself the target of harsh criticism for mishandling a number of high-profile sexual misconduct cases having nothing to do with Choudhry, directed UC Berkeley Chancellor Nicholas Dirks to “institute disciplinary proceedings against Mr. Choudhry through the Privilege and Tenure process.”

Choudhry’s grievance contends that the “initiation of a second disciplinary process is unfair, unjust, and contrary to the University’s own policies.” His arguments are compelling.

Berkeley procedures give the provost power to resolve complaints through settlements. That is exactly what Provost Steele—in consultation with Vice Provost Janet Broughton, Chief Campus Counsel Christopher Patti, and Chancellor Dirks himself who, under UC Board of Regents Standing Orders, is responsible for campus discipline—did with Choudhry. Nothing in Steele’s sanctions letter so much as hinted that his decision was anything but final.

General principles of law and fundamental fairness are on Choudhry’s side.

“It is a basic principle of disciplinary processes,” states his grievance, “that sanctions must expressly put the accused individual on notice, in writing, of what potential jeopardy he faces, what decisions have been taken, what sanctions have been imposed, and what, if any, decisions have yet to be made.”

Having omitted in its formal written--and informal spoken--communications with him the slightest indication that Choudhry would be subject to a second round of proceedings for the same offense, Berkeley cannot nine months after settlement legitimately re-litigate Sorrell’s

complaint.

“It is also a basic principle of disciplinary procedure,” Choudhry wrote to the P&T Committee, “that any silences (such as the failure by Provost Steele or any member of the Campus

Administration to inform me of the possibility of a second disciplinary procedure) should be read in favor of the accused, and not the prosecutor.”

This principle reflects the typically vast imbalance in power between prosecutor and accused—for example, a state university may punish professors up to and including a career-destroying revocation of tenure—coupled with the tendency, everywhere in evidence in human affairs, of those in positions of power to abuse it.

Berkeley claims that its own rules and regulations justify exposing Choudhry to double jeopardy. “The measures previously taken against Prof. Choudhry were administrative actions taken in connection with his appointment as Dean of the Berkeley Law School,” Berkeley’s top lawyer, Christopher Patti, wrote in an April 6 letter to Choudhry’s lawyer.

The new proceedings, Patti claimed, deal with Choudhry in his capacity as a *professor* and are authorized by the Faculty Code of Conduct, which provides for additional disciplinary proceedings “if the faculty member’s misconduct in the role of an administrator also violates the ethical and professional standards for faculty set forth in the Faculty Code of Conduct.”

Weak facts induce lawyers to make fanciful arguments. The provision Patti cites did not fit Choudhry’s case last summer—he dealt with Sorrell, a member of his administrative staff, only in his administrative capacity—when he settled with Berkeley. It is less applicable nine months later, when all that has changed is the intensity of criticism directed at President Napolitano and her willingness to employ dictatorial means to appease her detractors.

It is up to P&T Committee Chair Paxson, committee members, and political science professor Robert Powell, the chair of the UC Berkeley Academic Senate and P&T Committee member ex officio, to promptly reject President Napolitano’s lawless command to subject Choudhry to another disciplinary procedure. To spare Choudhry a grave injustice, and to save its honor, the Berkeley faculty should refuse to collaborate with the UC administration’s betrayal of the university’s obligation to uphold the principles of due process essential to its educational mission.

*Peter Berkowitz is the Tad and Dianne Taube senior fellow at the Hoover Institution, Stanford University. His writings are posted at [PeterBerkowitz.com](http://PeterBerkowitz.com) and he can be followed on Twitter @BerkowitzPeter.*