

Berkeley Harassment Case Sparks Due-Process Lawsuit

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RCEd Commentary

On Sept. 15, University of California, Berkeley law professor and former dean of the law school Sujit Choudhry filed a lawsuit in United States District Court for the Northern District of California alleging that the Regents of the University of California violated his constitutional rights to due process and equal protection of the laws. Named defendants include UC President Janet Napolitano in her personal and official capacity, and, in their official capacity, Chancellor Nicholas Dirks, interim Executive Vice Chancellor and Provost Carol Christ, former Vice Provost for Faculty Janet Broughton, and current Vice Provost for Faculty Benjamin Hermalin.

If Choudhry proves his allegations, it will raise serious questions about the capacity of the men and women who lead Berkeley to preside over the liberal education of undergraduates and the instruction of graduate and professional students.

The controversy stems from Choudhry's conduct toward his former executive assistant, Tyann Sorrell. In a March 19, 2015, email she complained to then-Dean Choudhry of his practice of occasionally kissing her on the cheek and hugging her in the office and asked him to stop, which he promptly did. Initially this hardly seemed like a case that would end Choudhry's deanship, produce two lawsuits, and threaten his academic career: In that same email, Sorrell wrote, "I know you don't mean anything by it, other than, perhaps, a warm and friendly greeting."

But Sorrell forwarded her email to the law school's director of human resources, which set a great deal of activity in motion. The human resources department reported the matter to Berkeley's Office for the Prevention of Harassment and Discrimination. The OPHD investigated and determined that Choudhry's conduct violated UC policy on sexual harassment.

In July 2015, then-Berkeley Executive Vice Chancellor and Provost Claude Steele, consistent with his authority under Berkeley's disciplinary procedure guidelines, presented Choudhry with a sanctions letter to resolve the matter. Steele characterized the sanctions—a 10 percent pay cut for one year, one-on-one training concerning proper workplace conduct at Choudhry's expense, a written apology to Sorrell, and periodic monitoring by OPHD—as "warranted and appropriate for this situation."

In the interest of putting the matter behind him, Choudhry accepted the settlement. In so doing, he waived his right under Berkeley bylaws to challenge in a full hearing the OPHD findings, which were not corroborated by witnesses and, in important respects, conflicted with his own version of events.

Senior UC Berkeley leadership, in addition to Steele, repeatedly indicated to Choudhry that the settlement was complete and final. No Berkeley official gave Choudhry any reason to believe that Berkeley would undertake another disciplinary process nor do Berkeley's governing rules contemplate one.

But then, on March 8, 2016, Sorrell filed a civil lawsuit for sexual harassment against Choudhry and the University of California. Three days later UC President Napolitano—under fire in California and nationally for mishandling a number of sexual harassment cases—ordered Chancellor Dirks to initiate a second investigation of the same conduct for which Choudhry had already been sanctioned. Contrary to Berkeley's own findings, Napolitano suggested to the press that Choudhry had "groped" Sorrell, and the UC president's office seems to have disseminated the baseless idea that Choudhry was dangerous and should be banned from campus.

In April and again in August, Choudhry wrote detailed grievance letters to professor of computer science Vern Paxson, who chairs the UC Berkeley Privilege and Tenure Committee. Choudhry asked for a hearing to consider his claim that the duplicative investigation in itself, as well as the secretive manner in which it was conducted, violated the university's governing rules and regulations. Paxson brusquely denied Choudhry's requests.

With his search for remedies inside the university exhausted, Choudhry has turned to the federal courts, contending that Berkeley, which is a state institution, violated his constitutional rights. Federal law (Title 42, Section 1983 of the U.S. Code) provides that persons—such as UC President Napolitano and members of the Berkeley senior administration—who, under the color of state law, cause another person to be deprived of constitutional rights, are liable to the injured party.

According to Choudhry, Napolitano and the other named defendants contravened his 14th Amendment right to due process by launching, contrary to binding Berkeley procedures and solemn agreements into which the administration had entered, a redundant investigation and disciplinary procedure. Without due process, they also impaired his liberty interests in being free from university-generated stigma; infringed his First Amendment right to speak with his colleagues and students; and damaged tangible property interests by separating him from his colleagues, stripping him of teaching responsibilities, and denying him summer salary.

In addition, Choudhry, who is of South Asian descent, asserts that the defendants violated his 14th Amendment right to equal protection. His complaint states that UC Berkeley professor of chemistry and former vice chancellor for research Graham Fleming, and recently retired professor of astronomy Geoffrey March, “who are not members of a protected class, have been found to have committed actual predatory conduct yet been treated more favorably than Professor Choudhry in the context of sexual harassment investigations and discipline.” The disparate and adverse treatment he has suffered, Choudhry alleges, is due to his race, color, and national origin.

Choudhry requests from the court a declaratory judgment that the July 15, 2015 settlement was complete and final and that Berkeley immediately terminate the new disciplinary process. In addition, he asks for actual damages for harms caused by the UC’s unlawful conduct, punitive damages, and reasonable attorney’s fees and costs.

With Berkeley expected soon to announce the results of the second investigation, which threatens to strip him of his tenure, Choudhry’s professional life is on the line. Much is also at stake for higher education in America.

A number of cases that have reached the courts over the last several years, along with many that have not, have demonstrated professors’ and administrators’ disregard for the principles of due process. These principles anchor the administration of justice in a free society. If those who lead our universities are ignorant or contemptuous of due process, how can they be trusted to provide an education befitting free men and women?

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