

Report of Independent Investigation:
Allegations of Sexual Misconduct by Martin A. Philbert

July 31, 2020



WILMER CUTLER PICKERING HALE AND DORR LLP ®

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I. Executive Summary

In 1995, Martin Philbert joined the University of Michigan School of Public Health (“SPH”) as an assistant professor of toxicology. For the next twenty-five years, he rose to positions of greater authority and influence. In 2004, he became a full professor and the SPH Associate Dean for Research; in 2010, he was selected as Dean of SPH; and, in 2017, he became the University’s Provost and Executive Vice President for Academic Affairs. The Provost occupies the University’s second highest-ranking position and has primary responsibility for academic and budgetary affairs. Over the course of his employment by the University—while he was an assistant professor, an associate dean, Dean of SPH, and Provost—Philbert sexually harassed multiple members of the University community, including both graduate students who worked in his research lab and University employees. Some allegations and other information about Philbert’s conduct reached University officials; others never came to their attention.

In his early years at the University, including while he served as an associate dean, Philbert harassed women (including graduate students) who worked in his research lab in SPH. He made comments about women’s bodies; redirected conversations with women to the topic of sex; and insisted on getting hugs. Before some women began working for Philbert, they were warned of his reputation for such conduct and not to be alone with him.

In 2003, a male lab employee told University officials that Philbert was terminating him, rather than a female lab employee, because of Philbert’s close personal relationship with that employee. The male lab employee also provided other information about Philbert—specifically, that Philbert had shown up uninvited at the home of a graduate student, and that he had “boundary issues.” A senior SPH faculty member questioned Philbert about the alleged relationship with the female lab employee. The faculty member did not find any indication that Philbert had an improper relationship with the female lab employee, and subsequent litigation brought by the male employee in 2004 did not uncover any such evidence. It does not appear that the University questioned Philbert about his conduct toward any other woman. The male employee’s lawsuit ultimately settled.

In 2005, after Philbert had become Associate Dean for Research at SPH, specific allegations arose that he had engaged in sexual harassment. Two women who worked in Philbert’s lab—a graduate student and a research assistant who had recently graduated from SPH—told an SPH professor that Philbert had kissed their necks. The graduate student called Philbert a “bad man” who did “bad things.” The research assistant said that Philbert had propositioned her for sex, asked her to marry him, to run away together, and to “have caramel colored babies” with him, and that he had talked to her about “chocolate syrup sex.” The professor alerted multiple University officials, including SPH Dean Ken Warner; Vice Provost for Academic and Faculty Affairs Lori Pierce; and Anthony Walesby, Director of the Office of Institutional Equity (“OIE”), which was responsible for investigating sexual harassment complaints against faculty.

Walesby made several attempts to speak with the women. Both women declined to speak with him or to report Philbert; they were concerned about retaliation. Walesby also spoke with another graduate student and a male SPH professor, both of whom suggested that Philbert had a bad reputation with women. The graduate student also told Walesby that she had heard of

Philbert propositioning another student for sex. In light of the unwillingness of the two women to speak with Walesby, OIE did not open an investigation. Warner, the SPH Dean—who assumed the conduct had happened as alleged—later “read [Philbert] the riot act” and counseled him.

In October 2010, when Philbert was a finalist for SPH Dean, both University Provost Philip Hanlon—who had ultimate responsibility for recommending a final candidate for Dean—and Paula Lantz, the Chair of the Dean’s Search Committee, learned of the 2005 allegations against Philbert. Lantz spoke with Dean Warner; she recalls him saying that the allegations had been investigated and that the “investigation” had not substantiated any wrongdoing. Lantz, not wanting to prejudice Philbert based on what she understood to be unsubstantiated allegations, did not raise the specific allegations with the full Committee. But the Committee had other concerning information about Philbert’s conduct. A graduate student representative on the Committee stated that, in 2006 or 2007, Philbert had made a crude joke in class—that women have high rates of urinary tract infections because “the playground and the trash heap are too close together.” The Committee also noted, in a summary document it prepared regarding the candidates, that Philbert had made women uncomfortable through behavior that was perceived to be overly flirtatious and inappropriate. And the Committee had access to survey feedback on Philbert after he had participated in a campus visit; one response detailed Philbert’s “inappropriate comments and behaviors with respect to female students, staff, and faculty” and the anonymous author’s own experience being “subject to [Philbert’s] inappropriate and unwanted sexual comments and suggestions.”

Hanlon took steps to learn additional information about Philbert’s conduct, including about the 2005 allegations. He received a summary prepared by Walesby detailing the allegations, and he later met with Walesby to discuss them. He alerted University President Mary Sue Coleman about the 2005 allegations and reached out to multiple SPH faculty members to conduct reference checks on Philbert. A member of his staff collected enrollment and contact information for the students and witnesses involved in the 2005 allegations. He also asked Vice Provost Lori Pierce—who had been aware of the allegations in 2005—to speak with women in SPH about Philbert. Pierce informed Hanlon that, apart from her conversation with the SPH professor who had reported the allegations to OIE in 2005, she learned nothing negative about Philbert. A few days later Hanlon recommended Philbert as the next Dean of SPH, effective January 1, 2011.

Philbert served as Dean of SPH for the next six and a half years. He was generally viewed as successful and was renewed for a second term in 2015 by then-Provost Martha Pollack. But he sexually harassed several women, this time with a focus on the Dean’s office, including junior members of his staff. He continued making sexual comments around staff and insisting on hugs. And he went further with some women—making targeted sexual comments and comments about their appearances.

Philbert re-directed his attention away from some women to others on his own accord, or because the women took steps to evade him. For some, his advances led to relationships. While Dean, Philbert was in sexual relationships with at least three staff members at SPH. These relationships overlapped—and included sexual relations in University offices and explicit photos that Philbert stored on his University-owned devices. One of the women was in a relationship

with Philbert for roughly a year and a half. In the course of the relationship, she received a promotion. When the relationship had ended, she felt that Philbert made her work environment more difficult.

In 2013, the allegations from 2005 surfaced for a third time. In the fall of 2012, while Philbert was serving as Dean, the research assistant who in 2005 told the SPH professor that Philbert had kissed her neck and propositioned her for sex reenrolled as a student at SPH. Afraid that she would run into Philbert, she decided by the spring of 2013 to withdraw from her classes. She submitted petitions for a tuition refund and removal of the “withdrawal” notation from her transcript, explaining that she had previously been subjected to sexual harassment by Philbert that was causing her to experience “anxiety, fear, and panic attacks.” The University ultimately granted her petitions.

OIE Director Walesby met with the student while she was preparing her petitions. As in 2005, the student declined to provide additional details or report Philbert, and, as in 2005, OIE did not investigate her allegations. But Walesby did inform other University officials, including Provost Hanlon and incoming Provost Pollack, of the student’s tuition refund and transcript amendment petitions. He also informed Vice Provost Pierce—who had learned of the allegations in 2005, and who in 2010 had, at Hanlon’s request, reached out to women in SPH to learn more about Philbert’s conduct.

Four years later, in 2017, Pierce, along with ten other individuals from across the University, was a member of the Provost Search Committee, chaired by current University President Mark Schlissel. The Committee was tasked with selecting a slate of finalists from which President Schlissel could recommend the University’s next Provost. Philbert was the favorite among the internal candidates—described by some on the Committee as the “choice of the deans.” At no point during the Provost search process did the Committee as a whole, or President Schlissel individually, learn any information about Philbert’s problematic conduct toward women. Pierce, in 2005, had learned of the allegations against Philbert when she met with the SPH professor to whom the allegations were raised and directed her to report the information to OIE; she called women in SPH about Philbert’s conduct when the allegations resurfaced during the 2010 Dean’s search; and she received information that the allegations were at issue in a student’s petition for a tuition reimbursement in 2013. Pierce did not raise the allegations with the Committee or with President Schlissel.¹ The Committee did not seek information about past allegations and Pierce “did not think about it,” in part because, to her recollection, there had been no evidence to support the allegations. President Schlissel ultimately recommended Philbert to the Board of Regents. On June 15, 2017, the Board of Regents approved, and Philbert was named the University’s next Provost, effective September 1, 2017.

After Philbert’s selection but before the beginning of his term, President Schlissel learned from a member of the Board of Regents that Philbert may have been involved in a lawsuit involving allegations of sexual misconduct. President Schlissel immediately requested more information from the University’s Office of the Vice President and General Counsel (“OGC”).

¹ We received a second-hand report that another member of the Committee had heard “rumors” about Philbert’s conduct. We were unable to identify that person or the content of the “rumors.”

OGC gathered information about the case—that is, the 2004 employment litigation described above. President Schlissel learned that the facts, which came in large part from sworn deposition testimony, did not show that Philbert and the female lab employee had an improper relationship. President Schlissel found no reason to reverse Philbert’s appointment.

Philbert’s misconduct continued as Provost. He directed his behavior toward women who worked in both the SPH Dean’s Office and in the Provost’s Office, including one woman he encouraged to move from the Dean’s Office to the Provost’s Office. Among other sexual comments, he told three different women that he wanted to see below their tan lines; told one woman that he was “aching” for her, and that they could have “beautiful coffee-colored babies” together; and told another woman that “if I wasn’t married, I would really go after you.” Philbert was persistent at times, texting at least one woman frequently, inviting her to travel with him, and arriving at work early apparently because she did.

Philbert also continued to engage in multiple sexual relationships with University employees. For nearly his entire tenure as Provost, he was in simultaneous sexual relationships with at least two University employees, sometimes more. He pressed some of these women to send him explicit photos, which he stored on his University-owned devices. And he engaged in sexual contact with them in University offices, including with one woman on a near-daily basis for a time. These relationships took a toll on the environment in the Provost’s office and created uncomfortable dynamics among some staff.

While Philbert was Provost, the President’s Office received information about his conduct on three occasions. First, in the fall of 2017, shortly after Philbert became Provost, an SPH employee met with Liz Barry, the Special Counsel to the President, to discuss a position that she was considering in the Provost’s Office. The SPH employee recalled expressing some hesitation about working for Philbert and “insinuate[ing] something around Me Too.” Barry recalled that the SPH employee referred to Philbert’s “issues with women” and stated that part of her job would be to “coach” him on interactions with women. Barry understood the issue to be Philbert’s management style, particularly because she did not associate the term “coaching” with addressing sexual misconduct and more generally because of her colleague’s apparent enthusiasm about working in the Provost’s Office. Barry did not discuss what she had heard from the SPH employee with anyone else in the President’s Office.

Second, in April 2019, President Schlissel received the results of a survey through which University faculty submit anonymous feedback to high-level University leaders regarding their performance. President Schlissel’s survey, which included 161 comments totaling 27 pages, included a comment stating, in part, “Re: your administrative appointments: Martin Philbert was/is a notorious sexual predator, physically cornering and emotionally coercing his female graduate students in his toxicology lab.” President Schlissel did not recall having reviewed the comment, and there is no indication that he (or anyone else at the University) did.

Third, on January 16, 2020, President Schlissel received an anonymous letter, in which the author stated: “I am writing on behalf of a group of women who have recently connected . . . to corroborate and share our stories of emotional and sexual abuse perpetrated on us within your University by your provost Martin Philbert over the past twenty years.” On January 16 and 17,

several women came forward to University officials to detail their allegations of sexual harassment against Philbert.

* * *

On January 18, 2020, the University retained WilmerHale to conduct an independent investigation into these allegations. Philbert was directed not to report to work and was placed on administrative leave without pay on January 21, 2020, pending the results of our investigation. Our investigation presented two questions: (1) whether Philbert engaged in conduct that violated University policies in effect at the time of such conduct; and (2) what information of Philbert’s conduct was known to the University during his tenure and whether the University took or failed to take action in response to that information.

Over the past six months, we have conducted an exhaustive investigation of Philbert’s conduct, what information about his conduct reached the University, and what actions the University took in response to that information. In total, we collected over 6 million documents and reviewed relevant emails, handwritten notes, materials associated with the Dean and Provost search processes, and other University records. We also reviewed the contents of Philbert’s University-owned devices, which contained thousands of text messages and hundreds of thousands of photos. And we interviewed 128 individuals, some multiple times. Philbert did not participate in our investigation; he declined to be interviewed, and he declined our request to identify witnesses with relevant information or provide relevant evidence.

Throughout our investigation, the University placed no restrictions on our fact-gathering, our analysis, or our independence. We had sole discretion to employ investigative resources, techniques, and processes appropriate to complete the investigation and this Report. The facts, findings, and recommendations set out in this Report are our own and are based on our evaluation of the evidence we have collected and reviewed.

Philbert’s Conduct

As to the first question, we found significant evidence that Philbert engaged in conduct that violated the University’s Sexual Harassment policy, Standard Practice Guide (“SPG”) 201.89-0, which prohibits sexual harassment by employees, as well as other University policies.

The University’s Response

As to the second question, we identified numerous times when University personnel received information about Philbert’s sexually harassing conduct. We analyze each of them in order:

2003. In 2003, a male employee in Philbert’s lab alleged that Philbert was in a close personal relationship with a female lab employee. The University’s initial investigation of the allegation was superficial—one meeting between an SPH professor and Philbert—but the ensuing litigation examined the issue and did not bring to light any evidence of an improper relationship. We did not identify additional steps that the University should have taken to investigate the alleged relationship. The same male lab employee also provided limited information about Philbert giving potentially unwanted attention to a graduate student working in

his lab; we do not believe that information triggered an obligation for the University to investigate further.

2005. In 2005, an SPH professor received two first-hand accounts of sexual misconduct by Philbert from a female graduate student and a female research assistant. Each woman separately reported to the professor that Philbert had kissed her without her consent; one of the women reported that he had propositioned her for sex. The professor reported the information to several University officials, including OIE Director Walesby. Two other individuals made statements to Walesby suggesting there was an issue with Philbert's conduct toward women. The University decided not to investigate after the two women declined to speak with Walesby and declined to file reports.

We conclude that the University should have taken further steps to investigate Philbert in 2005. The women were entitled to decline to participate in an investigation, but the University was still obligated to take all reasonable steps to investigate sexual harassment reports in order to provide a nondiscriminatory environment. OIE had reasonable avenues of investigation available; for example, it could have attempted to interview other employees and students in Philbert's lab. There is no way to know what information such interviews would have yielded. But OIE's decision not to conduct an investigation meant that the University was not in a position to obtain potentially relevant information about Philbert's interactions with female students and staff.

2010. In 2010 Philbert was a candidate for Dean of SPH. Both the Chair of the Search Committee, Paula Lantz, and then-Provost Hanlon learned of the 2005 allegations against Philbert. Lantz informed the Provost's office of the information. Lantz also met with then-SPH Dean Warner, who she recalls saying that an investigation in 2005 had not substantiated the allegations against Philbert. Lantz wrote in a contemporaneous email that she did not want to inform the Committee about the 2005 allegations "as a specific instance because the investigation revealed no wrongdoing."

Hanlon had more information about the 2005 allegations than Lantz. He met with OIE Director Walesby and received an email summary Walesby prepared about the allegations. A staff member in the Provost's office also gathered information about the students and witnesses involved in the 2005 allegations. Hanlon later informed University President Mary Sue Coleman about the allegations.

Lantz, members of the Search Committee, and Hanlon also had other information regarding Philbert's conduct toward women, including access to a confidential survey in which one anonymous participant stated, "I was subject to inappropriate and unwanted sexual comments and suggestions."

Based on the above, we reach the following conclusions:

Committee Chair. Given the information before her and the Committee, and that she had conveyed the information about the 2005 allegations to the Provost's office, we believe Lantz exercised reasonable judgment in choosing not to raise those specific allegations with the full Committee. We do, however, believe that Lantz (or anyone else on the Committee) should have

forwarded the confidential survey results—specifically, the comment regarding Philbert’s “inappropriate and unwanted sexual comments and suggestions”—to OIE.

Provost Hanlon. In addition to the 2005 allegations, Hanlon received the Committee’s confidential summary about Philbert’s conduct, and he had access to the anonymous survey comment about Philbert’s “unwanted sexual comments and suggestions.” Hanlon did not dismiss the information he received about Philbert’s alleged misconduct. He took multiple steps to learn more, including meeting with Walesby about the 2005 allegations. He also made reference calls to SPH faculty and asked about Philbert’s conduct, and asked Vice Provost Pierce to speak with women in SPH about Philbert. These steps suggest that he may have had lingering concerns about Philbert’s conduct toward women. But, to the extent Hanlon believed that a closer look at allegations against Philbert was warranted—particularly in order for him to reach a judgment as to whether Philbert was fit to serve as Dean of SPH—he should have turned to trained investigators in OIE to pursue that inquiry.

President Coleman. Coleman does not recall the email from Hanlon about the 2005 allegations or being otherwise aware of any allegations regarding Philbert’s conduct toward women. She acknowledged that she may not have weighed or viewed this information in 2010 in the same way that she would today. We believe that Coleman should have asked questions to understand fully the allegations about Philbert’s conduct. Absent a complete record of her conversations with Hanlon or others, we are unable to reach conclusions about whether she did so.

2013. In the fall of 2012, the research assistant who in 2005 had told an SPH professor about Philbert’s conduct reenrolled as a graduate student. In the spring of 2013, she filed petitions requesting a tuition refund and transcript amendment when she withdrew from SPH based on emotional distress she was experiencing related to Philbert’s alleged sexual misconduct in 2005. Walesby alerted multiple University officials, including Provost Hanlon, Vice Provost Pollack, and Vice Provost Pierce. Walesby met with the former research assistant, but, as in 2005, she declined to provide additional information.

The former research assistant’s petitions were the third time in eight years that the 2005 allegations came to the attention of senior University administrators. Since the former research assistant provided no new information and the senior administrators who were briefed on the petition believed, albeit mistakenly, that her allegations had been fully investigated by OIE in 2005, it is understandable that none of them thought to ask OIE to investigate the allegations in 2013.

2017. In 2017, President Schlissel recommended and the Board of Regents approved Philbert as University Provost.

President Schlissel. We found no evidence that information about Philbert’s alleged misconduct reached President Schlissel in advance of Philbert’s selection. During the summer of 2017—after Philbert had been selected as Provost but before he had taken office—President Schlissel learned of the 2004 employment lawsuit. With the assistance of OGC, President Schlissel gathered information about the lawsuit and found no reason to reverse Philbert’s

appointment. We did not identify any further steps that should have been taken in response to the information President Schlissel learned.

Provost's Committee. We similarly found no evidence that information about Philbert's alleged misconduct reached the Provost's Committee during its deliberations. Vice Provost Pierce was a member of the Provost's Search Committee. She told us that she did not recall being asked, as a member of the Committee, whether she was aware of any allegations of misconduct against Philbert, and she simply "did not think about it." She also explained that, to her recollection, there had been no evidence to support the allegations.

We recognize that, as a general matter, prior unsubstantiated allegations of misconduct should not be considered in the University's selection processes. However, in light of the nature of the allegations against Philbert (e.g., unwanted kissing and a proposition for sex), we believe that had Pierce recalled those allegations, it would have been appropriate for her to raise them with the Committee or with President Schlissel for their consideration.

Other Information Received by the President's Office

The President's Office received two additional pieces of information regarding Philbert's conduct.

Information Received by Liz Barry. In the fall of 2017, a SPH employee met with Liz Barry, the Special Counsel to President Schlissel, to discuss a potential job with Philbert. We do not find that Barry received a report of sexual misconduct, or that there were any further steps that she should reasonably have been expected to take.

President Schlissel's 2019 Survey. One comment on the survey received by President Schlissel included allegations that Philbert was a "sexual predator." President Schlissel does not recall reading the comment, and there is no evidence that he did. President Schlissel acknowledged that had he reviewed the comment, he would have routed it to OIE. We believe that would have been the correct course of action.

* * *

The Report concludes with recommendations for actions to ensure the University has access to reliable information regarding sexual misconduct and other inappropriate behavior, and that such information is systematically considered when important decisions are made. Our recommendations fall into three categories:

First, much of Philbert's conduct, as well as his many sexual relationships, never came to the attention of University officials. We thus make recommendations that are intended to ensure that the University receives the information it needs to identify and respond to sexual misconduct and other prohibited behavior. Specifically, we recommend that:

- The University establish a standalone policy regarding consensual relationships between employees that requires notice and recusal and/or mitigation of possible conflicts of interest;

- The University ensure that students and employees are aware of the avenues for reporting sexual misconduct;
- The University enhance the visibility and training of University personnel who are required to report information about sexual harassment that is reported to them or that otherwise comes to their attention;
- The University provide alternative oversight of sexual misconduct allegations involving members of the Provost's office, which is ordinarily responsible for overseeing OIE; and
- The University conduct a climate survey regarding sexual misconduct for faculty and staff.

Second, a central issue in our investigation was the University's decision in 2005 not to investigate two women's allegations of misconduct after the women declined to file complaints or provide information to OIE about their allegations. We believe additional investigative avenues were available to OIE and should have been pursued. We thus recommend that:

- The University evaluate OIE investigative practices to ensure that OIE is identifying and, as appropriate, pursuing additional investigative avenues when complainants decline to participate in an investigation; and
- The University establish a process for formally reviewing OIE investigative files to provide quality assurance and confidence in investigation procedures and outcomes.

Third, our investigation revealed opportunities to improve the University's vetting procedures in significant hiring decisions—specifically with respect to decisionmakers' consideration of substantiated findings of sexual misconduct. We recommend that:

- The University ensure that findings of policy violations and other misconduct by internal candidates are collected and accessible, and establish a formal written process for obtaining and considering such findings in promotion, tenure, appointment, reappointment, and other hiring decisions involving internal candidates; and
- The University review its procedures for vetting external candidates for faculty and staff positions, and consider implementing a pilot program that enhances its ability to identify findings by previous employers of sexual or other misconduct.

II. Independent Investigation

A. Engagement and Independence

On January 18, 2020, the University retained WilmerHale to conduct an independent investigation into allegations of sexual misconduct by Martin A. Philbert, its Provost and Executive Vice President for Academic Affairs. We were also asked to identify areas for modification or enhancement of University policies, procedures, and practices, particularly with respect to whether any gaps in those policies, procedures, and practices could have prevented or detected Philbert’s alleged misconduct.

As set forth in our engagement letter, our investigation was independent from the University. The University did not conduct, direct, or otherwise manage or influence our investigation in any manner. The University did not impose any limits on our access to information, nor did it require or prohibit any specific investigative steps. We had sole discretion to employ investigative resources, techniques, and processes appropriate to complete the investigation and this Report. The University did not impose a deadline for the completion of the investigation or the issuance of this Report. On the contrary, the University encouraged us to take the time we needed to conduct a comprehensive and thorough investigation and prepare this Report.²

The facts, findings, and recommendations set out in this Report are our own and are based on our evaluation of the evidence we have collected and reviewed. No changes or edits were made to this Report by anyone outside of the WilmerHale investigative team at any time, and no draft or advance copy of the Report was shown to or reviewed by anyone at the University, including any member of the Board of Regents (“the Board”).

We received full cooperation from the Board and from the Office of the President, the Office of the Vice President and General Counsel (“OGC”), and the Office of Institutional Equity (“OIE”). The University provided us with full and timely access to all available relevant documents and witnesses within its control.

The engagement did not involve any undertaking to represent the University or its interests in any other matter. WilmerHale did not (and will not) represent the Board, the University, or any University employees in any matters involving the defense of any potential claims that are related to the allegations about Philbert.

B. Investigation Methodology

We conducted extensive document and data review, and a significant number of witness interviews. Each informed the other—that is, we used our document review to identify witnesses

² The University Board of Regents was our principal point of contact. Over the course of our investigation, we updated the Board twice a month on process issues, including the number of interviews we had completed and the number of documents we had collected and reviewed.

and inform our interviews, and we learned of additional documents to collect and review based on the interviews we conducted.

1. Interviews

We interviewed 128 people—some multiple times—including current and former employees, former students, and current and former senior University officials. No current or former senior University official declined to be interviewed.

The University announced our investigation on January 22, 2020, along with several avenues for submitting information to our team.³ If we received information that an individual may have been subjected to or aware of misconduct by Philbert, we contacted that person.

Further, to identify other individuals who may have experienced or had knowledge of potential misconduct by Philbert, we contacted broad categories of individuals with whom Philbert is likely to have interacted during his employment by the University. As part of this outreach, we attempted to contact every person who worked in Philbert’s lab in the University’s School of Public Health (“SPH”); every student for whom Philbert served as an assigned mentor on a training grant; every employee in the SPH Dean’s office during the period in which Philbert was Associate Dean of Research and then Dean; and every employee in the Office of the Provost during Philbert’s time as Provost.⁴ In total we contacted several hundred current and former University students, administrators, faculty, and staff.⁵ And, as further described below, some individuals we contacted did not respond to our outreach or declined to be interviewed.

The witnesses we interviewed fell into the following categories:⁶

- *Witnesses with information about Philbert’s conduct.* These witnesses included individuals who had direct experience with Philbert’s conduct or had knowledge of his conduct.⁷
- *Witnesses who held positions of authority over Philbert.* These witnesses included, among others, a former University President; the University’s current President; three

³ The University’s announcement appears at Appendix 1.

⁴ We obtained contact information for current and former University employees and students from the University’s Human Resources Records and Information Services.

⁵ We were unable to find current contact information for some former University employees or students.

⁶ Among these 128 witnesses, some witnesses also provided information about relevant University policies, procedures, and practices. We also spoke to additional University personnel (beyond the 128 witnesses) about relevant policies, procedures, and practices.

⁷ We discovered that several witnesses had discussed with each other their experiences with and impressions of Philbert. We considered the potential for those discussions to have affected certain witness accounts and, as set forth further below, we evaluated those statements against contemporaneous written accounts and other information about Philbert.

former University Provosts; a former SPH Dean and two former Chairs of the Environmental Health Sciences Department; and current and former staff members in the Office of the President, Office of the Provost, and SPH Dean’s office.

- *Witnesses involved in the University’s reviews or inquiries regarding allegations of Philbert’s misconduct, and witnesses who are or were in a position to have received allegations of misconduct.* These witnesses included, among others, senior personnel in OIE, OGC, Academic Human Resources (“Academic HR”), and SPH.
- *Witnesses involved in the University’s selection of Philbert to serve as Dean of SPH and as Provost.* We interviewed 12 of the 14 members of the Dean’s Search Advisory Committee and then-Provost Philip Hanlon; we also interviewed personnel who managed the selection process. We interviewed 10 of the 11 members of the Provost’s Search Committee; we also interviewed personnel who managed the selection process.⁸

2. Document and Data Review

We collected over six million documents from the University and from witnesses, including both electronic and hard copy records. These documents included all available emails of current and former senior University administrators who held positions of supervisory authority over Philbert.⁹

We used a variety of means to identify and review any and all relevant documents. We ran broad search terms across all collected emails. We also reviewed all of the email correspondence between certain University officials during key timeframes. We also used predictive coding—a tool that searches for additional documents connected to documents already determined to be relevant, but that do not contain any search terms. We validated the thoroughness of our searches by randomly sampling collected documents, as well as by conducting manual queries and reviews.

Our document and data review fell into the following categories:

- *Philbert’s records.* Immediately after Philbert was placed on leave in January 2020, the University took possession of his University-owned devices, including two Apple desktop computers, two Apple laptops, an iPad, and four external storage drives. We retained a forensics expert to image those devices. Our review of these devices included photographs, videos, and text messages (including iMessages and WhatsApp messages).

⁸ The two Dean’s Search Advisory Committee members and one Provost’s Search Committee member who we did not interview did not respond to our outreach.

⁹ The University’s information technology team provided invaluable support in this effort. It responded to our collection requests with speed and thoroughness.

We also collected and reviewed Philbert’s University email and multiple personnel files.¹⁰ In addition, we reviewed relevant calendar, parking, and building entry records.

- *Witnesses’ records.* We reviewed numerous records provided to us by individuals who alleged that Philbert subjected them to sexual harassment, sexual misconduct, or otherwise inappropriate behavior, or who otherwise had knowledge of such conduct. These records included text messages (including iMessages and WhatsApp messages), Facebook messages, LinkedIn messages, photographs, voicemails, and emails. We also collected and reviewed available emails from these individuals’ University email accounts. These records included the individuals’ communications with Philbert, as well as contemporaneous communications with others regarding Philbert’s conduct toward them.
- *Records related to Philbert’s selection as Dean of SPH and as Provost.* We reviewed all available University records related to the search process for and selection of Philbert as Dean of SPH in 2010. We also reviewed emails of individuals involved in the Dean search and selection process, including then-President Mary Sue Coleman, then-Provost Philip Hanlon, multiple staff in the Provost’s office, and 11 of the 14 members of the Dean’s Search Advisory Committee.¹¹

We reviewed all available feedback provided to then-Provost Martha Pollack in connection with Philbert’s renewal as Dean in 2015.

We reviewed all available records related to the search process for and selection of Philbert as Provost in 2017. We also reviewed emails of individuals involved in the Provost search and selection process, including President Schlissel and 10 of the 11 members of the Provost’s Search Committee.¹²

- *Records from key University officials, including records related to University reviews or investigations.* We reviewed the emails of individuals who held positions of authority over Philbert throughout his employment by the University—including multiple Presidents and officials within the President’s office, multiple Provosts and officials within the Provost’s office, and multiple SPH Deans and senior officials in SPH—to determine whether any of those individuals had received allegations regarding Philbert’s conduct. We also reviewed emails and records from officials in University offices in which allegations of Philbert’s conduct may have been raised, including OIE, Academic HR, and OGC.

¹⁰ Philbert had personnel files at several University offices: Central Human Resources, Academic Human Resources, SPH Dean’s office human resources, and SPH Department of Environmental Health Sciences.

¹¹ Emails were no longer available for three members of the Dean’s Search Advisory Committee.

¹² We were unable to secure consent to collect emails from one member of the Provost’s Search Committee.

As described in this Report, certain University officials became aware of allegations regarding Philbert’s conduct toward employees and students at different points in his employment. We reviewed all available records related to any review or investigation of such allegations, including the emails of the individuals involved, handwritten notes, and any other available files. We also reviewed the litigation file from a lab employee’s 2004 wrongful termination lawsuit against Philbert and the University.

3. *Investigative Gaps*

Our Report describes actions and events that we found to be supported by the evidence collected in our investigation. In some instances, the Report points to the absence of evidence or conflicts in the evidence about a particular fact or event. Our Report does not detail every piece of information that we collected in our investigation; rather, it contains the information we determined necessary to explain the events at issue, our findings, and our recommendations.¹³

Our investigation did not always yield a complete record of events. Some individuals did not respond to our inquiries, and some individuals no longer affiliated with the University would not speak with us. For example, one former student who, based on the evidence we reviewed, likely had a relationship with Philbert, declined an interview. Others—including several former students who we believe experienced or had knowledge of potential misconduct by Philbert—did not respond to our outreach efforts. We learned that at least one of those students chose not to respond to us because she feared retaliation by Philbert or others. Philbert himself also declined to be interviewed.¹⁴

Many of the events under investigation happened some time ago—one key sequence of events, for example, occurred in 2005. Various witnesses provided incomplete information about such events because they could not recall them clearly or fully. Some of the events fell outside the University’s records retention period, and thus emails may not have been retained.¹⁵ We also found that several individuals, Philbert among them, communicated with non-University applications that feature encryption or that do not provide for long-term data retention. In such cases, we were not always able to corroborate witness statements through comparison to contemporaneous communications or to fully question witnesses about past statements.

¹³ For example, our report does not detail information about allegations from 2008, and 2009. We received information about conduct in those years, but it was not necessary to explain our findings and recommendations. We also did not include facts that may reveal the identifies of women who experienced misconduct by Philbert.

¹⁴ Before Philbert submitted his letter of resignation, we met by video conference with him and his attorney to inform them of the status of our investigation, to provide an overview of the allegations and evidence, and to ask him to participate in an interview. We also provided Philbert and his counsel with written information regarding our process and the nature of the allegations we were investigating.

¹⁵ The University also changed email platforms in 2012. Under certain circumstances, that meant email sent or received before 2012 was no longer available.

Finally, as of mid-March 2020, the COVID-19 pandemic prevented us from gaining access to University offices and facilities. Although we had already collected records from numerous University sources by that time, it is possible that additional hard copy records exist that we did not collect.

Accordingly, while our Report embodies factual findings we believe, with a high level of confidence, to be accurate and complete, we cannot rule out that information that was unavailable to us would shed additional light on some of the events we describe in this Report.

4. *Names and Appellations*

We name in this Report those witnesses and individuals who served in University leadership positions and played a material role in the events described. We refer more generically to other University personnel and witnesses. We anonymize all individuals who were allegedly subjected to sexual misconduct by Philbert to preserve their privacy. We do not describe or name the specific positions held by these individuals to avoid revealing their identities.

5. *Investigation Team*

Our investigative team was headed by WilmerHale partner Danielle Conley, co-chair of the firm's Anti-Discrimination Practice and a former Associate Deputy Attorney General at the U.S. Department of Justice, and WilmerHale partner Aaron Zebley, a former federal prosecutor who served as the Deputy Special Counsel for the investigation of Russian interference in the 2016 election. They were assisted by several other WilmerHale lawyers, including Tania Faransso, a counsel in WilmerHale's higher education practice, as well as outside computer forensics experts retained by WilmerHale. The team has significant prior experience investigating sensitive matters, including, in particular, sexual misconduct.

III. Facts

A. 1995 to 2004: Professor in the School of Public Health

In 1995, Philbert joined the SPH Environmental Health Sciences Department (“EHS”) as an Assistant Professor of Toxicology. He became an Associate Professor in 2000 and full Professor in 2004. From 2000 to 2003, Philbert served as the Associate Chair for Research and Development in EHS.

1. *Philbert’s Conduct Toward Women in His Lab*

Philbert ran a lab on the sixth floor of the Thomas Francis Jr. Building, known as SPH-2. He directed the lab’s work and was the principal investigator on multiple projects funded by its research grants. Philbert’s lab included as many as sixteen undergraduate lab assistants, graduate students, postdoctoral fellows, and professional research technicians. In 2003-2004, approximately ten people worked in Philbert’s lab. Philbert also taught classes during this time.

We interviewed more than a dozen individuals—including faculty and former students—who worked with or around Philbert during this time. Many of these individuals told us that Philbert had a reputation for making comments about women’s bodies or about sex and, as a result, women felt uncomfortable in his presence. Some female graduate students were warned not to be alone with Philbert when they began working in his lab. Three women described first-hand experiences with Philbert:

- In the late 1990s, Philbert was introduced to a new student employee in his lab. He commented that she had “the face of an angel,” but that he would “have to see about the rest.” The student remembered Philbert looking her “up and down” throughout her year and a half working in his lab.
- During the same period, Philbert frequently visited a suite of offices used by several female research scientists. Philbert made sexual propositions to the women or engaged in conversations about sex, their bodies, or their clothing. On one occasion, Philbert suggested having a threesome with one of the women and her partner. The woman never reported Philbert’s comments, which continued throughout her time at SPH, in part out of fear that doing so would jeopardize her career.
- A research assistant (hereinafter “E-1”) began working in Philbert’s lab in 2003, shortly after graduating from a master’s program. Philbert often hugged her, and, when she sought him out to ask a work question, he sometimes closed his office door and changed the topic to sex. E-1 wrote emails at the time to lab colleagues describing some of Philbert’s conduct. In a December 2003 email she wrote, “[Philbert] was giving me a hug and then leaned toward me like he was going to kiss me on my lips and then kissed me on both cheeks. Then he said, why don’t I marry him and take him away from this place and have carmel [sic] colored babies with him.” Philbert’s conduct towards E-1 continued after he became Associate Dean.

Another female student working in another SPH faculty member’s lab around the same time never heard Philbert make sexual comments about her; but a male fellow student told her that Philbert had asked him sexually explicit questions about her.¹⁶ On several nights while she was working late, Philbert looked through the windows of her lab, apparently to see if she was there, prompting her to ask a male classmate to stay with her when she worked late.

We heard second-hand accounts of other students’ experiences in Philbert’s lab as well.¹⁷ Four separate witnesses described hearing from or about a student who worked in Philbert’s lab beginning in the late 1990s (hereinafter “Jane Doe”).¹⁸ According to these accounts, Philbert paid disproportionate attention to Jane Doe. One witness heard directly from Jane Doe that Philbert cornered her while she was working alone in the lab late one night and that Jane Doe grabbed a broom and waved it at Philbert. On another night, according to another witness, Philbert turned up at Jane Doe’s home uninvited. Jane Doe ultimately described having “issues” with Philbert’s conduct to an SPH faculty member, who encouraged her to speak to the Office of Student Affairs. The faculty member could not recall what Jane Doe had told him or whether she had provided details about her concerns. We found no record that Jane Doe did so.

The SPH faculty member who referred Jane Doe to the Office of Student Affairs told us he never witnessed Philbert engage in misconduct but that he heard a number of students complain about Philbert—he said it was a common sentiment that students did not feel comfortable around Philbert. The faculty member said it was not in his nature to press for details, and he did not know whether the discomfort involved misconduct. Another faculty member recounted private conversations with Philbert from around this time in which Philbert referred to a group of female Epidemiology students as the “epid-honeys,” and another instance when Philbert commented on the breasts of a group of female students, but noted that Philbert was “all business” during his classroom interactions with students. The faculty member thought the comments were odd, but he did not consider reporting Philbert, in part, because he was a new faculty member at the time and believed his career advancement depended on the support of his fellow faculty.

Other faculty members at the time told us they noticed Philbert’s “flirtatious” behavior but did not see it as problematic or did not feel comfortable getting involved. Other faculty members stated that Philbert was known for his informal tone but that they had never witnessed

¹⁶ The fellow student did not recall this conversation and stated that he was unaware of inappropriate conduct by Philbert.

¹⁷ We attempted to contact every student identified as having witnessed or been subjected to Philbert’s sexual comments or conduct; some did not respond or declined our request to interview them.

¹⁸ In 2018, two years before our investigation, Jane Doe corresponded with a witness in our investigation. The correspondence does not describe Philbert’s conduct toward Jane Doe, but when responding to the witness’s statement that “he harassed me when I worked there,” Jane Doe stated, “I was certainly not immune to those behaviors. That said, since I still work within the [public health] world I don’t think I would be interested in joining in any legal case as I fear what that would do to my career.”

behavior that they found concerning. Still others described Philbert as professional and were unaware of any troubling behavior.

Not every student or staff member from Philbert's lab recalled him making comments about sex or behaving in a sexualized manner. Some students told us they appreciated Philbert's mentorship and had never seen him engage in misconduct.

2. *The Provost's Office, the SPH Dean's Office, and the Office of Academic Human Resources Receive Allegations of a Relationship Between Philbert and a Lab Employee*

In September 2003, Philbert notified a male lab employee, Tom Komorowski, that he would be laid off as part of a Reduction in Force ("RIF") due to a loss of grant funding. Later that month, Komorowski met with Jeff Frumkin, Director of Academic HR, to complain that the RIF violated University policy and that he had been discriminated against because of his age. Komorowski also said he believed Philbert was in a close personal relationship with a female employee in Philbert's lab, and that he was being laid off so that the female employee could retain her position.

By early October 2003, the Provost's office had learned of the situation. On October 7, 2003, a staff member in the Provost's office emailed Frumkin: "I updated [Provost] Paul [Courant] on the situation in SPH. He said to be sure to treat the senior faculty member very carefully. Please keep me posted on this one!" Then-SPH Dean Noreen Clark also learned of the situation.

On October 13, 2003, a senior SPH faculty member interviewed Philbert about the alleged relationship. According to an email written by the senior faculty member immediately after his interview of Philbert, he "did not learn anything that would confirm the charges about a personal relationship with [the female lab employee]."

The senior faculty member did not recall investigating allegations about Philbert in 2003. We reviewed his notes from the time, including notes he made in preparation for his interview of Philbert. His notes and the notes of a colleague refer to certain other employees who worked in Philbert's lab at the time. The notes indicate that the information came from Komorowski. One set of notes reads, in part: "[Jane Doe] worked in lab / [Male lab employee] – Martin showed up uninvited at home. / Martin is prone to 'boundary issues.'" The other set of notes reads, in part: "[Male lab employee] (worked in the lab) knows [Jane Doe] where Martin dropped in at their home." We found no record of the University investigating this information. Neither the senior faculty member nor Frumkin recalled this information or taking any follow-up actions.

In June 2004, Komorowski filed a lawsuit against Philbert and another SPH official related to the RIF. The complaint contained no allegations about any personal relationship between Philbert and the female lab employee. Both Philbert and the female lab employee were

nevertheless deposed on the subject, and both testified under oath that there had been no romantic relationship.¹⁹ The lawsuit settled in November 2005.

B. 2004 to 2010: Senior Associate Dean in the School of Public Health

Philbert was promoted to full Professor in 2004. That same year, SPH Dean Noreen Clark selected him as Associate Dean of Research in SPH. Philbert continued in that role when Ken Warner became SPH Dean in 2005.

1. Philbert Kisses E-1's Neck

E-1, the research assistant who began working in Philbert's lab in 2003,²⁰ told us that there was a "gradual build up" of Philbert's attention directed at her. She described him hugging her in his office on multiple occasions and, from time to time, moving toward her as though to kiss her on the lips, before diverting and kissing her on her cheeks. E-1 said that in one encounter Philbert said he wanted to have "hot sex on his desk" with her.

In October 2004, depositions were underway in Komorowski's lawsuit and Philbert was caucusing with counsel. E-1 wrote an email at the time:

[Philbert] was running back and forth to his office to tell his lawers [sic] on the phone. He wanted me to come to his office for a 'hug' after he was off the phone, but I didn't go and then he came back to me for the 'hug' and I had to kind of walk him out into the hall to get him out of there and leave me alone.

At another point in the email E-1 wrote, "Martin is still being the perverted old man that he is. He got a little to [sic] close for comfort recently and since then I have been avoiding him."

In early 2005, a professor in SPH learned about an incident between E-1 and Philbert. E-1 told us about an incident in 2005 in which Philbert hugged her in his office and then leaned down and kissed her neck. As Philbert was kissing E-1, his phone rang. He let her out of his embrace, and E-1 fled his office. Later that day and again that evening, Philbert found E-1 and asked her if she was "freaked out." She told him that she was.

After E-1 left Philbert's office that day, she saw two graduate students she knew who worked in a lab down the hall; she immediately told them what had happened. One of the graduate students (hereinafter "GS-1") confirmed these events when we interviewed her (including that the other graduate student was present for E-1's report). The other graduate student did not respond to our request for an interview.

Shortly after E-1 spoke to GS-1 and the other graduate student, one or both appear to have told an SPH professor (hereinafter "the SPH Professor") about E-1's experience. The SPH

¹⁹ We reviewed the litigation record, including deposition transcripts. The testimony did not establish the existence of an inappropriate relationship between Philbert and the female lab employee.

²⁰ See *Supra* Section III(A).

Professor periodically kept a journal about events at work; she made entries in the journal at the time of the events or within weeks thereafter. The journal contains entries about events in 2005 and 2010 (hereinafter “the Notes”).²¹ Both graduate students’ names appear in the Notes in passages describing Philbert’s conduct. The Notes reflect that March 2005 was the first time the graduate students told the SPH Professor about sexual advances by Philbert toward E-1.

2. *The SPH Professor Receives Information that Philbert Kissed Another Student’s Neck, and about E-1’s Encounter with Philbert*

In May 2005, the SPH Professor spoke with another student (hereinafter “Mary Roe”). As recorded in the Notes, and the SPH Professor confirmed to us, Mary Roe cried when describing Philbert’s conduct. Mary Roe told the SPH Professor that Philbert was ““a bad man . . . all he wants to talk about is bad stuff.”” When the SPH Professor asked her for details, Mary Roe said Philbert hugged her and kissed her neck. The SPH Professor asked Mary Roe if she had told Philbert to stop, and she said, ““he knows I hate it.”” Mary Roe insisted that the SPH Professor not report the information.²² Mary Roe did not respond to our requests to interview her.

In a meeting the next day, the SPH Professor told SPH Dean Ken Warner that she had received information that a male faculty member had made “inappropriate sexual comments and advances to students and staff.” She did not name Philbert in this conversation. She wrote in her Notes that Warner responded with words to the effect of “these things sometimes get blown out of proportion,” but that he would address it if the SPH Professor learned something “more specific and direct[.]”

The following month, June 2005, E-1 asked to meet with the SPH Professor. E-1 told the SPH Professor that Philbert had been propositioning her. Specifically, E-1 said Philbert asked her to marry him, to run away together, and ““to have his caramel colored babies’ . . . [and] [l]ast Friday he said ‘something about chocolate syrup sex.’” E-1 asked the SPH Professor to keep the information confidential and not to take any action. The SPH Professor recorded all of the information in her Notes.

3. *The SPH Professor Conveys E-1’s and Mary Roe’s First-Hand Accounts of Philbert’s Sexual Comments and Conduct to the Provost’s Office, OIE, and the SPH Dean*

On August 8, 2005, the SPH Professor met with the Vice Provost for Academic and Faculty Affairs with responsibility for SPH, Lori Pierce.²³ The SPH Professor described to

²¹ The SPH Professor told us she re-read the Notes in advance of our first interview to refresh her recollection. At our request, the SPH Professor later gave us a copy of her journal.

²² According to the Notes, Mary Roe also told the SPH Professor that E-1 has “lots of trouble with Martin,” and that Jane Doe “had similar trouble with Martin.” According to the SPH Professor, Mary Roe feared retaliation by Philbert.

²³ The SPH Professor could not meet with Pierce earlier for personal and professional reasons.

Pierce the allegations she had received about Philbert's conduct. At Pierce's insistence, the SPH Professor identified Philbert during this meeting. Pierce told the SPH Professor that she needed to tell Warner about Philbert's conduct and inform Warner that she intended to report it to OIE.

Later that day, the SPH Professor called Warner, and she met separately with Anthony Walesby, the Director of OIE, and Gloria Hage, a lawyer from OGC.

According to the SPH Professor's Notes, she told Warner that she had "firsthand accounts of inappropriate sexual behavior of a faculty member" and planned to meet with OIE. The precise words that came next are not clear. The Professor's Notes record her understanding that Warner said that she should not have reported Philbert by name if the women were unwilling to do so themselves, and that doing so could result in some form of liability. Warner did not recall the conversation but told us he would never have suggested that the SPH Professor not bring information forward to University officials—on the contrary, he would have encouraged her to do so. He told us that he was concerned only about public accusations in the absence of evidence, and that it was plausible that he suggested that the SPH Professor be careful if that were the situation.

In any event, the SPH Professor received explicit direction later that day from both Walesby and Hage that she was required to report the information, with Philbert's name, to OIE.²⁴ The SPH Professor thereupon reported to OIE the information that she had received from GS-1, Mary Roe, E-1, and potentially information about Jane Doe.

The next day, August 9, the SPH Professor informed Warner in an email that she had met with OIE to fulfill her reporting obligations and did not intend to pursue the matter further.

4. *Walesby Attempts to Speak to E-1 and Mary Roe*

Walesby had no recollection of the specific steps he took to follow up on the allegations conveyed by the SPH Professor. He recalled only that there had been no formal complaint and that the alleged victims did not come forward personally or cooperate in the inquiry.

We recovered three emails written by Walesby describing the steps he took to follow up on the allegations. He wrote two emails in late August 2005, "Update" and "Update II," to Warner, Pierce, Frumkin (Director of Academic HR), and Daniel Sharphorn (a lawyer from OGC). He wrote a third email in October 2010 to Pierce and others, purporting to summarize "the file from August 2005."²⁵ We reviewed the files maintained by OIE and were unable to find a formal case file, which is consistent with Walesby's memory that there were likely to be only informal notes in the absence of a formal complaint.

²⁴ Neither Walesby nor Hage recalled the meeting with the SPH Professor.

²⁵ Walesby wrote this summary at the request of Pierce when the 2005 allegations about Philbert surfaced during the SPH Dean's search. *See infra* Section III(C).

The paper record shows that Walesby contacted the three witnesses named by the SPH Professor, and that only one of them provided any information to him:

- A graduate student²⁶ told Walesby she had no first-hand experience of inappropriate conduct by Philbert. But she said that Philbert had a “bad reputation” among female students, and she identified another student who reported being hugged twice by Philbert and, possibly, that Philbert requested the other student to “sleep w/him if not married.” She said she was otherwise not comfortable sharing second-hand information.
- Mary Roe cried when Walesby spoke to her, and she refused to tell him anything. The SPH Professor told us she recalled that Walesby told her about Mary Roe’s reaction to his outreach and that he commented, ““that doesn’t happen if everything is ok.”” The SPH Professor told us that Mary Roe was furious with her for having reported the information to OIE.
- Walesby made numerous attempts to talk to E-1 between August 23 and September 6, but, other than one brief exchange about having a later conversation, E-1 declined to talk with him.

In Walesby’s 2010 email, he said that he also spoke with another SPH faculty member on September 6, 2005.²⁷ That faculty member told him that he had heard rumors about Philbert’s “women’s issues” but did not know details. (The same faculty member had referred Jane Doe to the Office of Academic Affairs,²⁸ and told us about a common sentiment that students did not feel comfortable around Philbert.) In addition, Walesby tried to locate a former SPH graduate student who allegedly had information about Philbert.

On October 4, 2005, Walesby met with Warner, Frumkin, and Sharphorn to summarize the work he had completed.²⁹ Frumkin took handwritten notes.³⁰ According to the SPH Professor and her contemporaneous Notes, Walesby told her afterward that Warner was taking the matter seriously and wanted to do something about it.

Walesby also asked the SPH Professor for her assistance in getting E-1 to speak with him. E-1 told us she recalled a later meeting with Walesby and the SPH Professor, but neither Walesby nor the SPH Professor recalled such a meeting, and the SPH Professor’s Notes contain

²⁶ No witnesses identified this person, but the content of her statement and the context suggests that she was likely GS-1, the graduate student discussed earlier who spoke to the SPH Professor.

²⁷ The Notes refer to this faculty member as having intervened between Philbert and Jane Doe. The Notes also state that Jane Doe had “trouble” with Philbert that was similar to that reported by Mary Roe.

²⁸ *See Supra* Section III(A).

²⁹ No one at the meeting recalled the particulars of what was discussed.

³⁰ Frumkin’s notes describe the allegations in a manner that is consistent with Walesby’s emails, which are summarized above.

no reference to it.³¹ According to E-1, Walesby asked her for specific dates and details about Philbert’s conduct at the meeting, but she did not provide that information because it would have identified her and she feared retaliation by Philbert.

5. *“It was determined that OIE would not conduct an investigation”*

Warner recalled meeting with Walesby and other University officials about the matter at some point after Walesby tried to interview the women who reported to the SPH Professor. Warner told us that he learned from Walesby that the women who made the allegations did not wish to pursue their claims, and as a result, OIE could not conduct an investigation. He remembered Walesby being “very disappointed when the student wasn’t willing to pursue this. He felt it was an important case that deserved to be pursued.” He recalled Walesby saying, or perhaps expressing the feeling, that there was nothing more he could do and that he had no choice but to drop the matter.

Walesby told us—after reviewing the emails he wrote at the time—that the University had only second-hand reports and, when the first-hand witnesses refused to talk to him, there was nothing on which to build an investigation. His 2010 email summary (which was written using the notes on the 2005 incidents) concludes, “it was determined that OIE would not conduct an investigation.” Walesby told us that this was a “collective decision” by him, Frumkin, and OGC. Warner told us that he did not participate in that decision but instead was informed about what he referred to as the “University decision.”

Walesby acknowledged in our interview that OIE can interview other witnesses if the first-hand witnesses refuse to provide information. He said that step, however, would also have been a “collective decision” by all of the officials involved and “required a level of seriousness” to the allegation. He also said that in this case, he had contacted several people and it was not clear to him that there were more investigative steps to take.

6. *Warner Meets with Philbert and “Reads Him the Riot Act”*

Warner told us that Walesby found the allegations involving E-1 and Mary Roe credible and that, because two women were making similar allegations based on separate interactions with Philbert, Warner also believed that the allegations were “sufficiently credible” and assumed the conduct happened. Warner recalled being “horrified” by Philbert’s alleged behavior and feeling compelled to take steps to put him on the “correct” path. Therefore, Warner decided that he would speak to Philbert.³²

³¹ The Notes describe the SPH Professor talking with E-1 on November 30, 2005, and then meeting with Hage on December 8, 2005. According to the Notes, the SPH Professor attended the meeting at E-1’s request, but E-1 did not ultimately show up for the meeting.

³² Frumkin told us that the University was “highly decentralized” in 2005, and that deans were expected to handle issues in their schools. He had some memory of that being a consideration in how the University ultimately responded to the allegations against Philbert.

Warner told us that he “read [Philbert] the riot act” and explained to him that such behavior was completely inappropriate and that Philbert was jeopardizing his career. Philbert initially acted “bewildered” and said that he did not know what the Dean was talking about. Warner told him the allegations were deemed credible and had been raised “at the University level.” At some point in the conversation, Philbert stopped denying the allegations. While Philbert never admitted anything, Warner thought Philbert appeared to accept what he was saying, and Warner shifted into the mode of “counseling” Philbert.

Warner believed that Philbert listened and took the advice very seriously. He told us that he suspected the incidents had happened as alleged, but “I thought he heard [me] loud and clear. I put the fear of God in him.” Thereafter, Warner neither witnessed nor heard about any similar conduct by Philbert.

According to E-1, around 2006, Philbert asked her if she would sleep with him.³³ She told him no. E-1 said Philbert continued to press the question, and she continued to decline. E-1 told us that, in January 2007, she quit her job after feeling that Philbert was retaliating against her.

7. *Dean’s Office Staff Receives Information about Sexual Comments by Philbert*

During Philbert’s time as an Associate Dean, he was known throughout the Dean’s office as a gregarious and affable presence. He greeted people in the hallway and was known for hugging employees. One staff member who had become friends with Philbert described one occasion when Philbert hugged her and commented that her breasts felt good against his chest. In another conversation with the same employee, Philbert insinuated that he hoped to have an orgasm. The employee told us Philbert made both comments in or around 2010 or 2011.

The employee told us she thought Philbert’s comments “crossed the line,” and she informed her supervisor about them. But she asked the supervisor not to file an official report because she and Philbert were friends and because reporting would be “way too risky” for her career. The supervisor told us that the employee told her about the conduct and that she made a written record of the conversation, which she stored in the personnel files in her office (which we were unable to find in that office, or elsewhere). The supervisor’s regular practice would have been to inform her own supervisor—another SPH Associate Dean—but she could not recall specifically doing so. The Associate Dean had no memory of having been told about the incidents, and we were not able to locate any written report to her.

In the fall of 2010, an employee in the Dean’s office traveled with Philbert and others on University business. On the trip, Philbert said to her, “You have great lips. I would love to kiss you.” She flatly said no. She did not recall any other incidents with Philbert.³⁴

³³ We do not know the exact timing of this comment vis-à-vis Warner’s conversation with Philbert.

³⁴ We also heard second-hand reports about two other women, one graduate student and one SPH employee, experiencing similar conduct around this time. Neither woman responded to our request for an interview. A University contractor who worked with the SPH Dean’s office between 2005 and 2010 also described comments and conduct by Philbert that made her uncomfortable.

C. 2010: Selection as Dean of the School of Public Health

For much of 2010, Philbert was a candidate to succeed Ken Warner as Dean of SPH. On November 29, 2010, the University announced Philbert's appointment, effective January 1, 2011. While Philbert was under consideration, University personnel received information about his conduct toward women.

1. Overview of Dean's Search Process

In late January 2010, then-Provost Teresa Sullivan began soliciting input for individuals to serve on the Dean's Search Advisory Committee ("Search Committee"). That same month Sullivan was selected as the next President of the University of Virginia, and the University of Michigan named Philip Hanlon, who had been the Vice Provost for Academic and Budgetary Affairs, as its next Provost. Hanlon assumed the office in late June 2010.

The Search Committee had 14 members, including SPH faculty, faculty from related schools (such as the Medical School), community stakeholders, and two SPH students. An SPH faculty member, Paula Lantz, chaired the Search Committee. Neither Sullivan nor Hanlon was a member of the Search Committee, and neither participated in Committee deliberations. Two staff members from the Office of the Provost—one of whom was a search specialist—helped manage the search process. The search specialist attended the Search Committee meetings but did not actively participate in them.

In the first phase of the search process, which occurred in the spring of 2010, the Search Committee sought out candidates, reviewed applications, and selected individuals to participate in interviews. An outside search firm, Spencer Stuart, managed the recruitment, application, and screening processes, and provided the Search Committee with a list of 38 initial candidates. From those candidates, the Search Committee selected ten for interviews.

In the second phase, in mid-July 2010, the Search Committee conducted interviews at the Detroit airport. Following those interviews, the Committee selected candidates to participate in on-campus visits. Four candidates, including Philbert, made visits, during which each made a presentation and met with SPH faculty, students, and organizations. After the candidates' visits, members of the SPH community were given the opportunity to offer feedback on the candidates, including via a confidential survey.

In the third phase, in October 2010, the Search Committee considered the feedback from the campus visits and presented the Provost with a slate of three candidates. As was typical for search processes, the Committee did not make a recommendation from among the three candidates, but discussed the relative merits of each candidate during a meeting with Hanlon.

After presenting the slate of candidates to the Provost, the Search Committee had no further official role. The finalists were narrowed to two candidates, including Philbert, and interviewed again. Hanlon, then-President Mary Sue Coleman, and other University leaders conducted the interviews. Hanlon ultimately recommended Philbert as the next Dean, and the Board of Regents approved the appointment.

2. *Dean's Search Committee Receives Information Regarding Philbert's Classroom Conduct*

During one or more of the Search Committee meetings in the spring of 2010, a student representative on the Committee described Philbert's classroom conduct from several years earlier.³⁵ The student representative was enrolled in an SPH class with Philbert during the fall of 2006 or spring of 2007. She had heard rumors when she started the class that Philbert made women feel uncomfortable with inappropriate comments and jokes, and she described to the Search Committee her sense of Philbert from her classroom experience with him. She also told the Search Committee about a remark Philbert had made during a lecture—that women have high rates of urinary tract infections because “the playground and the trash heap are too close together.” Some Committee members recalled the student representative describing Philbert's comment in similar terms;³⁶ it was clear to them that she had concerns about Philbert.

The same Committee members recalled that the Committee generally did not consider Philbert's comment disqualifying or especially significant. The student representative was dismayed by the Committee's reaction and that it continued to view Philbert as a viable candidate, but she told us that she did not see value in pushing the matter further given the Committee's reaction.

The search specialist from the Provost's office recalled the comment, and that it was reported to another member of the Provost's staff in the course of the Committee's work. She also remembered that staff member taking steps to follow up about the comment.³⁷

3. *Provost Hanlon Receives Information about Philbert's “inappropriate joking comments to women”*

The work of the Search Committee was an agenda item at a meeting between Hanlon and a member of his staff on June 30. The agenda showed that candidate interviews were scheduled for the following month. As to internal candidates, it stated:

Martin Philbert – inappropriate joking comments to women. No more.
Ask Phil about past investigation.

Neither Hanlon nor the staff member recalled the meeting or could explain the references to Philbert on the agenda.

³⁵ The student representative first met with Lantz to share her concerns. Lantz suggested that she share them with the full Committee, which she did.

³⁶ Other Committee members did not recall the graduate student sharing the comments or raising concerns.

³⁷ The other staff member had no memory of the comment or of making any inquiry about it.

4. *The Search Committee Receives an Anonymous Report Alleging Misconduct by Philbert*

Philbert was interviewed by the Search Committee on July 17, 2010. The Search Committee later selected Philbert for an on-campus visit. Philbert was the only internal candidate to make it to this stage. His on-campus visit took place on October 7-8, 2010.

Each candidate made a presentation and met with SPH faculty, students, and organizations during the campus visit. The SPH community was then invited to comment via a confidential survey, and a few individuals were invited to email their feedback to Lantz, the Search Committee Chair. The first several pages of the confidential survey compiled basic statistics from the scored feedback. Philbert's survey results were generally positive, with 65% of the survey participants rating him a highly desirable candidate; only eight percent said Philbert was not an acceptable candidate.

Section 5 of the survey called for a narrative description of the "main perceived weaknesses of the candidate." Philbert elicited 59 separate comments covering four pages. The second page contained the following comment:

I have had countless interactions with this candidate—when he was a professor in class, in his role as associate dean, and as a colleague. My major concern is that in all of those roles, I have witnessed firsthand his inappropriate comments and behaviors with respect to female students, staff, and faculty. He made inappropriate comments and jokes about female genitalia in class. I witnessed his inappropriate sexual banter with colleagues. As a junior faculty member, I was subject to inappropriate and unwanted sexual comments and suggestions. I felt threatened—not physically but in terms of my job security given his senior status and as my associate dean for academics and research. I would not be comfortable with this man as dean of our school.

The Search Committee met on October 14 to discuss the online surveys and other issues, including, according to the written agenda, "[c]andidates' strengths and weaknesses." Of all the members of the Search Committee we interviewed, only Lantz recalled the Committee reviewing the above comment. One of Lantz's contemporaneous emails, as detailed below, shows that she had read the written comment; she wrote of Philbert, "But I think the general issue of gender and behavior, demeanor and baggage from prior interactions does need to be addressed; and it does come up in the feedback comments."³⁸

At the end of the October 14 meeting, according to a contemporaneous email from Lantz, the Committee voted "in regard to whether or not each candidate should be on the slate" of finalists to present to Hanlon. Philbert received 12 yes votes and 0 no votes, "although it was clear [the graduate student representative] did not want to vote yes but did anyway." The other

³⁸ During her interview, Lantz recalled the comment prompting one of the Committee's graduate student representatives to disclose Philbert's comment about women having high rates of urinary tract infections. But the graduate student representative—and multiple other Committee members—said that the graduate student had reported Philbert's comment to the Committee several months earlier.

two candidates received more no votes than yes votes. The next day Lantz spoke with Hanlon. Lantz wrote in an email to the Committee that Hanlon told her that he wanted the Committee to bring all three candidates forward and not to “make any recommendation that would further narrow the pool.”

5. *Search Committee Member, Search Committee Chair, and Provost Hanlon Receive Information about Allegations of Misconduct by Philbert in 2005*

During the same week that the Search Committee met to discuss the feedback from candidates’ campus visits and to vote on the slate of finalists, information about the 2005 allegations reached the Lantz and the Provost’s office.³⁹

In early October, a member of the Search Committee learned about the 2005 allegations involving Philbert.⁴⁰ The Search Committee member conveyed the information to Lantz.

Lantz told us she met in person with outgoing SPH Dean Warner, who was not on the Search Committee, to discuss the information. According to Lantz, Warner told her that there had been an “investigation” in 2005 and that it had not substantiated any wrongdoing, that the details of the matter were not Lantz’s business or the business of the Search Committee, and that Philbert had been counseled at the time. Warner told us he did not recall speaking with the Lantz at that time, nor did he recall anyone asking him about the 2005 allegations as part of the 2010 Dean’s search process. He did, however, tell us that he was surprised when Philbert became Dean “given the seriousness of the allegations.”

Contemporaneous emails show that Lantz also reported the information to the Provost’s office on or before October 11.⁴¹ Pierce remembered Lantz raising an issue that prompted her to ask for more information. Emails from the time show that Pierce asked Walesby for a summary of the 2005 allegations; the emails stated that the summary was intended to help Pierce prepare for a meeting with Hanlon. Walesby sent the summary that follows on October 11:

Okay – I found the file from August 2005 and have attached the emails I have associated with this matter. Here’s what happened:

- August 8, 2005: I met with [the SPH Professor]. She said that in March 2005 a Graduate Student⁴² and UM staff member⁴³ expressed concern to

³⁹ See *supra* Section III(C)(5).

⁴⁰ See *supra* Section III(C)(5). The information likely originated with the SPH Professor, who passed it to another SPH faculty member, who then provided it to a Committee member. But the SPH Professor could not confirm any of those inferences.

⁴¹ Lantz had no memory of making that report when we interviewed her.

⁴² Based on the evidence in our investigation, this likely refers to Mary Roe.

⁴³ Based on the evidence in our investigation, this likely refers to E-1.

her about Professor Martin Philbert. The Graduate Student alleged that Professor Philbert was a “bad man” who did “bad stuff.” In specific, the student told [the SPH Professor] on May 23, 2005, that Professor Philbert would hug her and kiss her on the neck when they were alone. It was alleged that another female student had similar interactions with Professor Philbert and [a different SPH faculty member] had to intervene to help in 2002 or 2003.

- A staff member⁴⁴ alleged to [the SPH Professor] that on June 30, 2005, Professor Philbert asked her to marry him, mentioned something about “chocolate syrup sex” and hugged and kissed her as well.
- [The SPH Professor] reported that Professor Philbert “leers” at students in her lab. In response to the information, we reached out to several people who reportedly knew about this matter:
- On August 23, 2005, I sent an email to the Graduate Student⁴⁵ identified by [the SPH Professor]. She said that she did not have any inappropriate personal experiences with Professor Philbert. However, she said he does have a bad reputation among the female students. She stated that another student told her that Professor Philbert had hugged her twice. My notes also say “sleep w/him if not married,” but I don’t recall if that is what the student alleged that Professor Philbert said to her or exactly what the context was. This student said she was not comfortable sharing “second hand” information.
- I spoke to another Graduate Student⁴⁶ on August 24th. I explained why I was calling and the no-retaliation clause in University policy. The student refused to provide any information. I advised her to call me if she changed her mind—I never heard back from her.
- On September 6th I spoke to [the SPH faculty member who allegedly intervened on behalf of Jane Doe]. He said he did not recall any specific discussion involving female students and Professor Philbert. He said he has heard rumors about Professor Philbert and “women’s issues,” but he tries to avoid Professor Philbert’s personal life. [The SPH Professor] did not provide any further details.
- I also reached out to the female staff member⁴⁷ identified by [the SPH Professor]. It looks like I tried to reach her several times and was able to speak to her briefly on August 26th, but never again. If my notes are correct, it appears this staff member was terminated from her position on

⁴⁴ Based on the evidence in our investigation, this likely refers to E-1.

⁴⁵ Based on the evidence in our investigation, this likely refers to GS-1, who spoke to E-1 after Philbert kissed E-1’s neck. *See supra* Section III(B)(1).

⁴⁶ Based on the evidence in our investigation, this likely refers to Mary Roe.

⁴⁷ Based on the evidence in our investigation, this likely refers to E-1.

July 1, 2005. I believe she is a Research Associate II. From my notes, it appears that I tried to reach her on the following occasions:

1. August 23 : 2 times
2. August 24: 2 times
3. August 25: 2 times
4. August 26: 1 time
5. August 26 – spoke to staff member. She said will call me on Monday – Aug. 29th
6. No word from staff member on Aug. 29th
7. September 2 : 1 time
8. September 6: 1 time

That’s all I have in my file. I know that we all met with the Dean and discussed this matter, but I don’t have a record of that meeting in my file. Based on the information, I remember that it was determined that OIE would not conduct an investigation and that Dean Warner would speak to Professor Philbert about this matter.

I hope this is helpful.

Hanlon’s calendar shows a meeting with Pierce on October 13. According to an email she wrote at the time, Pierce “let [Hanlon] know about the concerns that had been raised by Paula Lantz.” She had planned to review with Hanlon the summary written by Walesby, “but [Hanlon] said he was already aware of what had transpired.”⁴⁸ Pierce told us that Hanlon was also in touch with Lantz, but Pierce did not know what they discussed. We were not able to ascertain from witness accounts or contemporaneous emails whether Lantz discussed the 2005 allegations with Hanlon. Hanlon himself could not recall who first reported the allegations to him.

That same day, October 13, Lantz emailed the Committee member who first received the report about the 2005 allegations:

I have investigated the issue you brought to my attention last week. Here is what I learned: A former chair of the dept in question actually did ask for an investigation of this person because of a concern that inappropriate behavior had taken place—basically unwanted advances. The staff member did not want to pursue it, but an investigation was conducted anyway. No wrongdoing was revealed after what was described to me as an “intense investigation.” As such, there is no record of inappropriate behavior and no formal grievance was ever filed. However, it is also the case that no one really knows for sure if something happened. Could be a case of flirtation that was misinterpreted; or could be a case of something much worse.

⁴⁸ Neither Hanlon nor Pierce recalled the meeting or what was discussed when we interviewed them.

I do not want to bring this up with the search committee as a specific instance because the investigation revealed no wrongdoing. But I think the general issue of gender and behavior, demeanor and baggage from prior interactions does need to be addressed; and it does come up in the feedback comments. You, of course, are free to bring it up if you don't agree with my perspective.

The Committee member responded that she agreed but would “want to keep this as information that is available to the Committee or Provost if further diligence is recommended/needed.” None of the Committee members we interviewed recalled learning about the 2005 allegations, but an email sent one week later by Hanlon (further described below) states that the Committee was aware of the allegations.

6. *Provost Hanlon Receives Information about the Komorowski Litigation and the 2005 Allegations, and Meets with the Search Committee*

On Monday, October 18, the day before the final Search Committee meeting, Hanlon's calendar showed that he had a meeting with Warner “re SPH search.” Neither Hanlon nor the Dean recalled the meeting.

That evening, a member of Hanlon's staff forwarded him the October 11 summary of the 2005 allegations. The staff member had received the summary earlier that day after speaking to Frumkin about Hanlon's “desire for information on [Philbert].” The staff member's email also asked Hanlon if he wanted additional information from an attorney in OGC, Dave Masson, who could describe the Komorowski litigation.⁴⁹ Hanlon responded to the email within minutes, stating, “I need to find out a lot more. Please set up a time for me to talk with Dave Masson and with Anthony [Walesby].”

The following day, October 19, Hanlon met with the Search Committee. The search specialist from the Provost's office believes she gave Hanlon packets of materials on each of the three finalists in connection with the meeting (potentially after the meeting). She could not recall the contents of the packets, and Hanlon had no specific memory of the materials when we interviewed him. The search specialist told us that, among other materials, the materials she gave Hanlon could have included Philbert's campus survey results—which, according to the search specialist, would have been accessible to Hanlon in electronic form—and the Committee's “Confidential Summary of Feedback.” Lantz and another Committee member recalled the Committee collaborating on the “Confidential Summary of Feedback” and using it as a guide for discussing the candidates with Hanlon. The summary of feedback included one page on Philbert's background, his strengths and “concerns.” The final paragraph on Philbert stated:

He has some baggage in terms of interpersonal relationships and perceived inappropriate behavior, especially with females. He has been accused of making inappropriate, gendered comments in class. He also has been overly flirtatious

⁴⁹ See *supra* Section III(A)(2). The same email described the Provost's office staff member talking to Masson about the Komorowski lawsuit “a couple of months ago.” Neither the staff member nor Hanlon could explain why she made that inquiry at that time.

with many female staff and colleagues, which has made some recipients uncomfortable. Martin received pointed feedback/warnings regarding this behavior when he became a senior associate dean 5 years ago. All of the examples and reports of inappropriate behavior appear to be at least 5 years old. Thus, there is no evidence that this is an ongoing or current problem. However, rumors and negative feelings among some members of the SPH community linger.

During the meeting, Hanlon made opening remarks and Lantz summarized the feedback on each candidate. Committee members told us that Hanlon asked each Committee member whether the candidates were acceptable. The student representative who had described classroom comments by Philbert recalled that she was the only person who did not say that Philbert was acceptable. No Committee member specifically recalled discussing Philbert's conduct toward women in the meeting with Hanlon, but notes from the meeting taken by the search specialist in the Provost's office refer to "Concern about issues that have come up."

Later that day, Hanlon met with Masson about the Komorowski lawsuit. He met separately with Walesby about the 2005 allegations.⁵⁰ Walesby did not recall the meeting; Masson remembered discussing the lawsuit but could not recall any details. Hanlon did not recall either meeting, but he told us that he trusted Walesby and found him to be thorough, professional, and a person of high integrity, and that he would have relied on Masson's assessment of the Komorowski lawsuit.

The same day, the search specialist in the Provost's office sent an email to the Academic Records office requesting information about four students. The students included Jane Doe, Mary Roe, and two SPH graduate students (one of whom had spoken to the SPH Professor about Philbert's conduct), each of whom had witnessed or been subjected to Philbert's alleged misconduct in 2005.⁵¹ None of the individuals is named in Walesby's summary of the 2005 allegations that was provided to Hanlon the day before, but three of them are described in it.⁵²

Neither the search specialist nor the other staff member who was copied on the request to Academic Records could explain how they came to ask for information about the four students. The staff member told us that any fact finding at that stage in a Dean's search would have been the Provost doing "due diligence."

Hanlon told us he had no specific recollection of the contents or purpose of the email requesting information about the four students. However, in response to a written question on the same topic, he said "we identified a number of prior students who had worked in Professor

⁵⁰ Hanlon's calendar does not show either meeting, but, as described below, in a later email to then-President Coleman, Hanlon indicated that he had met with both Walesby and Masson.

⁵¹ E-1, who was a University employee in 2005, is not on this list. Everyone on the list was a student in 2005.

⁵² Walesby's meeting with Hanlon on October 19 makes him the most likely source of the actual names, but we were unable to confirm that.

Philbert's lab for outreach to ask their opinion on whether he was a supportive mentor, to ask them to characterize the climate in the lab, and to ask whether they had seen any evidence that might support the allegations made 5 years earlier by [the SPH Professor]."⁵³ Hanlon could not recall the specific feedback, but he said that the general response was highly positive and no information was received that supported the 2005 allegations. Pierce also described efforts to reach students, as set forth below.⁵⁴ Only one of the four students identified in the email agreed to meet with us.⁵⁵ She said no one from the Provost's office (or any other University office) contacted her about Philbert's conduct during the 2010 Dean's search.

7. *President Coleman Receives a Summary of Allegations about Philbert*

The following day, October 20, Hanlon sent an email about Philbert to then-President Coleman, stating:

As I understand it, we're going to try to touch base by phone later today. But I wanted to give you a quick heads up about the topic.

Yesterday, the SPH search committee reported out and presented a slate of three candidates. However one of them, UM's own Martin Philbert, was the top choice of all but one committee member and also heavily favored in feedback from the SPH faculty, students, staff and other deans who interacted with the candidates. So, Martin has emerged strongly as the top candidate in the search.

But there's a possible complicated [sic] that I want to discuss with you. About five years ago, there was a series of allegations that Martin made inappropriate advances and/or had inappropriate relationship[s] with female staff and graduate students working in his lab. The most serious of the allegations came in a report from a faculty member who said that she had heard that Martin hugged and kissed and suggested sex with three female graduate students in his lab. Anthony Walesby investigated and the result was:

- the first student said that no, she was not directly involved. But had heard the same things involving students she chose not to name.
- the second student refused to discuss the topic with Anthony.
- the third student would not respond to multiple efforts by Anthony to contact her.

In the end, Anthony had no evidence apart from rumor and the matter was resolved with the Dean having a frank discussion with Martin. A second issue

⁵³ Hanlon's response came after we reminded him that there had been outreach to students during the Dean's search.

⁵⁴ *See infra* Section III(C)(8).

⁵⁵ This is GS-1 who met E-1 in the hallway after Philbert kissed E-1's neck, *see supra* Section III(B)(1), and who is described in the summary prepared by Walesby of the 2005 allegations.

involved litigation with a male staff member who had been let go due to loss of funding in Martin's lab. This male staff member alleged that Martin and the female staff member were having an affair. Again, no evidence of an affair apart [sic] or conflict of interest apart from speculation. The matter was settled out of court. Both the lawsuit and Anthony's investigation date back to the 2005 timeframe. The search committee was aware of these allegations and the investigation but felt that was in the past and that Martin had learned his lesson.

I met with Anthony Walesby and Dave Masson yesterday to get the full report in person. I wanted you to be aware of this and to discuss how to proceed. Talk to you later today, or if we don't connect, then when you're back next week.

Coleman told us she did not remember receiving this email, nor did she recall learning about any allegations about Philbert as part of the Dean's search (or at any other time). Coleman thought that Walesby was a thorough investigator, and she explained that she would have relied on the judgment of Walesby and Hanlon, both of whom she trusted. She also acknowledged that she—and perhaps others who may have received this information regarding Philbert—likely would not have given it the same weight in 2010 as she would today.

Hanlon did not remember the specific email he sent to Coleman. However, he provided written answers to two questions about pieces of it. We asked how to reconcile his statement to the President that Walesby had investigated the allegations with Walesby's summary of the same events from nine days earlier: "It was determined that OIE would not conduct an investigation and that Dean Warner would speak to Professor Philbert about this matter." We also asked Hanlon for the basis of his statement that "[Walesby] had no evidence apart from rumor[.]" Hanlon explained that at the time of the alleged events—2004 to 2005—he was in a different role at the University and was not part of the University's response to the allegations. And he wrote that it was apparent from the documents we had shown him (which are summarized above)⁵⁶ that the allegations "were taken seriously . . . There was an independent investigation by Walesby . . . [who] concluded that no further investigation by OIE was necessary and that Dean Warner would speak to Professor Philbert as follow up."⁵⁷

Hanlon's calendar showed that he spoke with Coleman by phone on October 21, but neither remembers the phone call. When we asked about the purpose of contacting the President, Hanlon wrote that with any decanal appointment, the Provost makes recommendations to the Board of Regents. And the Provost would do so only with the support of the President.

⁵⁶ See *supra* Section III(C)(5).

⁵⁷ Hanlon also gave his synopsis of the documents. Because the central documents are reprinted here in full, we do not recite Hanlon's summary.

8. *Provost Hanlon and Pierce Collect Additional Information about Philbert's Conduct*

By late October, Hanlon had narrowed the finalists to Philbert and one other candidate. Philbert's final interviews were held on October 29 and November 1. He met with Coleman, Hanlon, Pierce, and other University leaders.

Both before and after Philbert's final interviews, the Provost's office collected additional information about his conduct. A few days in advance of Philbert's interviews, Hanlon made reference calls to at least six SPH faculty and administrators. One call was with an SPH faculty member who had been on the Search Committee; she told us she had no memory of Hanlon asking about Philbert's conduct toward women. Another call was with Dean Smith, an Associate Dean in SPH who had not been on the Search Committee; he recalled Hanlon asking if he was aware of any misconduct by Philbert. Smith recalled saying that he was aware of an allegation several years earlier and that he was not aware of any subsequent allegations or issues.⁵⁸

Around the same time, Hanlon also requested that Pierce gather more information regarding Philbert. According to Pierce, Hanlon asked her to talk to female graduate students and faculty in SPH. She understood that the purpose of her inquiry was to assess whether SPH students or faculty had concerns about Philbert. Hanlon told us these were "reference calls, not investigations." Pierce remembered speaking to several people and thought she likely would have kept notes (though she was unable to find any such notes at the time of our interview).

The SPH Professor was among the women contacted by Pierce. Pierce sent her an email on October 24 to arrange the meeting. The email said she was conducting a "routine reference check . . . to hear your thoughts regarding your interactions with Professor Philbert and what you see are his strengths and weaknesses." According to the SPH Professor's Notes, Walesby told her that "several" anonymous comments about Philbert raised concerns about his interactions with women, and Pierce wanted to discuss that with her.

Pierce met with the SPH Professor on November 8, 2010.⁵⁹ According to the SPH Professor's Notes,⁶⁰ Pierce focused on whether the SPH Professor had personal, first-hand knowledge of misconduct by Philbert. The SPH Professor said that she did not (she had reported

⁵⁸ Smith recalled learning of an allegation involving Philbert from someone in Student Services. He could not recall the details of the allegation or when he had learned about the issue. He separately learned from Warner about the 2005 allegations. In his conversation with Hanlon, Smith had assumed that the two issues were the same. In our conversation, he acknowledged that they may have been two separate issues but that he could not be sure.

⁵⁹ That same day, November 8, Spencer Stuart received the results of its review of Philbert and sent them to the Provost's office. The review identified the Komorowski litigation but did not discuss the case in any detail. There was no mention in the review of any allegations regarding Philbert's conduct toward women.

⁶⁰ In this instance, the Notes are dated December 2, 2010. The Notes refer to the meeting three weeks earlier, on November 8, 2010.

the accounts of two other women in 2005). The SPH Professor remembered—and her Notes also reflect—Pierce saying that it “was highly unusual” that nothing had come of Walesby’s inquiries into the SPH Professor’s report in 2005. The SPH Professor said she was unsettled by the meeting.

Pierce told us she did not recall details of the meeting with the SPH Professor. But Pierce remembered concluding that she had found nothing negative, and that the SPH Professor’s account of Philbert’s conduct in 2005 was “strikingly different” from what she was told by everyone else with whom she spoke. Pierce reported back to Hanlon accordingly.

Another staff member in the Provost’s office recalled the office “investigat[ing]” an anonymous report about Philbert that Lantz brought forward,⁶¹ by contacting people in SPH. She did not know the issue under investigation, or who handled the investigation. She did recall its outcome: The investigation went nowhere. The staff member recalled Hanlon saying after the investigation that he would not act on an anonymous complaint.

9. *Provost Hanlon Recommends Philbert as SPH Dean*

Pierce did not know how the concerns about Philbert’s conduct were resolved. She remembered Hanlon “laboring over” it—Philbert was a strong candidate, and, as she remembered it, there was no conclusive evidence that he had engaged in misconduct, but the issue created a “shroud of uncertainty.” Pierce remembered Hanlon saying that he planned to have a “very clear discussion” with Philbert about the allegations that had surfaced in the search process. She does not know if that ever took place, but she remarked that Hanlon was not someone to say he would do something and then not do it.

Hanlon’s calendar shows him meeting with Philbert on November 19. Hanlon told us he does not recall meeting with Philbert on that day or at any point around this time, and he does not recall any conversation with Philbert about his conduct.

Hanlon recommended Philbert to become Dean of SPH. The appointment was announced on November 29, 2010, and Philbert became SPH Dean on January 1, 2011.

D. 2011 to 2017: Dean of the School of Public Health

We interviewed more than 15 staff members who worked in the Dean’s office while Philbert was Dean. The picture that emerges is of a leader with an informal, charismatic manner who was known for his use of sexual innuendo. He made sexualized comments to and around a number of SPH staff members—both men and women—and often insisted that female employees give him hugs. Some staff members said his conduct made them so uncomfortable that they modified their work routines, as described below. Other staff members described Philbert as a supportive mentor.

⁶¹ We do not know whether this relates to the 2005 allegations, the survey comment, or something else.

Philbert also entered into sexual relationships with at least three SPH employees while serving as Dean.⁶² Two of the relationships continued after he became Provost.

1. *Philbert Begins Pursuing Relationships with Female Staff in the SPH Dean's Office*

In early 2012, Philbert met alone with a new staff member as part of an introduction to the office. Philbert asked if the new staff member was married. She replied that she was not and tried to re-direct the conversation, but Philbert returned to the topic of marriage. Ultimately, he said, "I could hook you up but it would end badly," which made the staff member uncomfortable.

Later that semester, Philbert visited the staff member's office suite and told everyone present that he was "coming to get hugs." When Philbert reached the staff member's office, which was not visible to the rest of the staff in the suite, he gave her a hug, slid his hands down her back, and touched her buttocks (over her clothing). She described the incident as "very unsettling and uncomfortable."

During that same semester, Philbert also began to direct attention toward another staff member (hereinafter "E-2"). E-2 stated that Philbert had previously focused on another woman in the office. E-2 said this was Philbert's approach: to focus special attention on a woman in the office, and then to move on to another.

E-2 described a "gradual" build up in Philbert's attention. It began with him spending time in her office to talk and eventually moved to him making comments about her appearance, looking her "up and down" in a way that made her uncomfortable, and giving her frequent hugs.⁶³ Philbert occasionally invited E-2 to lunch, and, when he did so, E-2 asked another staff member (hereinafter "E-3") to join them because she did not want to be alone with Philbert.

In early 2013, Philbert sent E-2 a social media message stating that she was "stunning." E-2 told us that, around the same time, Philbert gave her a full body hug, "chest to chest," that lasted 30 to 45 seconds. She moved to pull back, but he kept her in his embrace. E-2 told us she kept her hands at her sides and looked out her office door, waiting for Philbert to stop.

E-2 began making efforts to avoid being alone with Philbert. She told us she took "evasive measures" when Philbert was around—going to a colleague's office and talking about work, pretending she was on the phone, and the like. She never told him to stop his behavior, but he eventually stopped trying to interact with her in this way and turned his attention to E-3.

⁶² Philbert's University-owned devices contained evidence indicating that he engaged in sexual relationships with additional women during his time as SPH Dean. We investigated whether the women were University students or employees. Because they appear not to be, they were outside the scope of our investigation.

⁶³ Later in 2012, E-2 was promoted within the Dean's office.

2. *Philbert Initiates a Sexual Relationship with E-3*

Philbert began taking an interest in another staff member in the Dean's office, E-3, in the fall of 2012, when he learned that she was going through a difficult personal situation. Philbert gave E-3 his cell phone number and, throughout the fall and winter, he sent her text messages. The relationship and texts grew increasingly personal over time. Philbert began making comments about E-3's physical appearance and, by E-3's account, he "blur[red]" the lines between professional and personal. Philbert told her, "you're beautiful," "I would treat you like a queen," and "if I was with you, I would never let you go."⁶⁴ E-3 described feeling ambivalent about the relationship, both comforted by it and concerned about the appropriateness of her interactions with Philbert.

In the spring of 2013, Philbert and E-3 met in Philbert's office in connection with a University activity and they kissed for the first time. They both expressed feelings for each other when this happened. After that first encounter, they began texting more frequently. The texts included descriptions of sexual acts. Within a month, they began a sexual relationship. During the ensuing relationship, Philbert and E-3 had sexual contact in University offices on numerous occasions and on University business trips. Philbert also saved intimate photographs of E-3 on his University-owned devices.⁶⁵

In the summer of 2013, Philbert emailed E-3 that he was concerned his wife was growing suspicious of his texting. The next month, he and E-3 began communicating on the encrypted message application WhatsApp.

E-3 said her relationship with Philbert was most active and intense in the summer of 2013. That same summer and fall, E-3 applied and was selected for a more senior position in the Dean's office. University officials involved in the application and hiring process remembered Philbert advocating for E-3 generally and supporting her in the selection process that resulted in her promotion but not directly instructing that she be hired.⁶⁶ E-3's supervisor, an associate dean who was the ultimate decision-maker on her promotion, reported directly to Philbert.

Philbert's relationship with E-3 continued off and on through most of 2014. In November 2014 Philbert told E-3 he wanted to end the relationship and for them to remain friends; E-3 agreed.

E-3 found her work environment more "difficult" after her relationship with Philbert ended. Seeing Philbert at work made her anxious, and she felt that Philbert treated her more

⁶⁴ During the same period (late 2012) Philbert was sending sexually explicit texts to a former SPH student who graduated from SPH a few years earlier. The former student declined our request to meet. The texts and emails suggest they may have been in a sexual relationship.

⁶⁵ In 2014, Philbert received a sexually suggestive photograph from a former SPH student who graduated in 2009. Texts between Philbert and this former student suggest that they may have had a sexual relationship.

⁶⁶ E-3's supervisor believed that E-3 was the strongest candidate for the position.

coldly and was more inclined to question her professional decisions. E-3 said Philbert never explicitly connected the state of their relationship and his actions at work, but she nevertheless felt as though she was being professionally “punished” by him.

In 2015, Philbert attempted to initiate sexual contact with E-3 in University offices on three or four separate occasions. E-3 rebuffed him. She told us that Philbert gave her hugs and then put his hands on her buttocks, up her shirt, or down her pants. The contact, which she regarded as non-consensual, would stop when she said no. In November, E-3 decided she would leave the University and, at that point, became more comfortable resisting Philbert’s advances. She did not allow him to get physically close to her; “no” became “hell no,” and Philbert’s hands never went underneath her clothes.

E-3 did not report Philbert’s conduct to the University when it was happening. She told us she believed that, if she did so, Philbert would “throw [her] under the bus and [she] would suffer more consequences.” E-3 described it as a different time—calling it “pre-Me too”—and she thought reporting Philbert would not work out in her favor. Years later, in the spring of 2018, Philbert texted E-3 to say that she was on his mind. In the text conversation that followed, she asked, “Were you ever worried during all the me too news that I would publicly talk about our relationship?” Philbert responded, “Never. I trusted you implicitly.” E-3 asked him to meet her for lunch that spring, and during that lunch she told Philbert that he had used his position of power inappropriately in their relationship. She said Philbert disagreed, telling her that it had been true love.

3. *The Provost’s Office, OIE, OGC, and the Registrar Receive Information about Allegations of Misconduct by Philbert from 2005*

Meanwhile, in the fall of 2012, E-1, who had told the SPH Professor about misconduct by Philbert in 2005, re-enrolled in SPH.⁶⁷ E-1 described feeling “constantly paranoid” that she would run into Philbert at SPH that fall.

In the spring of 2013, E-1 felt overcome by anxiety and decided to withdraw from her classes. She never saw Philbert, but she said the possibility that she would was a constant concern. E-1 met with representatives from the University’s Sexual Assault Prevention and Awareness Center (“SAPAC”), one of whom helped her prepare petitions requesting a tuition refund and removal of a “withdrawal” notation from her transcript.

On March 13, 2013, a Program Manager for SAPAC emailed an OIE investigator to explain that “[E-1] has been facing anxiety, fear, and panic attacks when she is back in the building—in fear that she will run into [Philbert].” The OIE Investigator forwarded this email to Walesby, and explained that E-1 was asking to withdraw from classes because she was “sexually harassed (culminating in a kiss on the neck) by a faculty member a few years ago.” Walesby had received the SPH Professor’s report about Philbert and E-1 in 2005. *See supra* Section III(B)(3).

⁶⁷ As discussed above, E-1 left the University in 2007. Her allegations from 2005 were considered in connection with Philbert’s candidacy for the SPH deanship in 2010. *See supra* Sections III(B)(1); III(C)(5).

On March 15, 2013, E-1 met with Walesby and the Assistant Dean of Students about her tuition refund and transcript change petitions. During the meeting, Walesby asked E-1 for additional details about Philbert's conduct that she did not feel comfortable sharing. Walesby told us he had no memory of the meeting.

After the meeting, Walesby sent the summary of E-1's (and Mary Roe's) 2005 allegations prepared by Walesby in 2010, *see supra* Section _____, to Provost Hanlon, Vice Provost Martha Pollack (who had already been selected to succeed Hanlon as Provost), a senior official from the Provost's office,⁶⁸ Christine Gerdes (an attorney from OGC), and Frumkin (the Academic HR official involved with Komorowski's termination in 2003 and the 2005 allegations). The officials on that email also received the following facts from Walesby:

- Walesby met with E-1 about petitions for tuition reimbursement and the removal of a withdrawal notation from her transcript;
- E-1 based the petitions on health issues she connected to being back in SPH following the alleged sexual harassment by Philbert she experienced in 2005;
- Walesby told E-1 that retaliation is prohibited by University policy and that he would like the opportunity to learn more about E-1's specific concerns;
- E-1 refused to provide specific information about any alleged misconduct by Philbert;
- Walesby talked to Hanlon about the issue after he met with E-1; and
- Walesby said that there were no specific allegations to move forward on.

Pollack, the incoming Provost, responded to Walesby's email, agreeing to speak about the issue by phone.⁶⁹

On March 21, 2013, E-1 emailed Walesby to ask him to submit a statement indicating that she had previously reported Philbert for sexual harassment and that the case was "documented and under investigation." On March 22, Walesby, after conferring with other University officials, responded in part:

I haven't written such a letter in the past and I'm not sure I see my role in this matter at this point. There may be a misunderstanding, and if that's so, I apologize. I understood from our last meeting that you continue to not wish to

⁶⁸ This official was copied by mistake and the email should have copied Pierce who was included on later emails on the same topic.

⁶⁹ Pollack told us she had no memory of that discussion or E-1's allegations. Walesby told us he had no memory of speaking to Pollack, or to Hanlon. Hanlon told us he does not recall the email, the fact or substance of E-1's inquiry or having any role in responding to it. No one else with whom we spoke in OGC or the Provost's office recalled this episode.

share any specific allegations regarding the person you reported having interaction with in 2005. As we discussed, I encouraged you to provide information so that the University can conduct a review and make a determination regarding this matter. . . . You indicated in your email below that an investigation is underway, so I wasn't sure if there's a misunderstanding. At this point, other than efforts we made in 2005, we are unable to move forward with an investigation based on the lack of specific allegations.

E-1 wrote to the SAPAC Program Manager after receiving Walesby's email, expressing her frustration that Walesby had declined her request and that he had asked for additional information about her allegations that she had "made clear [she was] not comfortable sharing." On March 28, 2013, E-1 separately emailed the University's Ombuds office, which she had previously contacted for assistance with her petition, and wrote of her March 15 meeting with Walesby:

At that meeting I told [Walesby] what I had heard from a former Ph.D. student familiar⁷⁰ with this faulty [sic] and his sexual harassing behavior with me and other students. She told me about his sexual harassment behavior towards other students in the past few years (people there after I left). I [sic] [Walesby] this information because he was pressuring me to give him details and I felt like I needed to tell him something. By telling him this information, I felt safe that if he confronted the professor regarding it the professor would not link it back to me. [Walesby] said that what he would do is take that information to the provost that oversees the Deans and they would decide from there how to proceed.

E-1 submitted petitions to the Registrar's office and the Dean of Students' office on March 22, 2013. She included letters of support from SAPAC, her psychologist, and the faculty member who taught the course from which she was withdrawing. On March 27, 2013, the Literature, Science, and the Arts Standards Board granted E-1's petition to expunge the "withdrawal" notation from her transcript.

The Registrar's office initially denied E-1's petition for a tuition refund. E-1 informed the Registrar's office that she intended to submit her petition for reconsideration, copying Walesby, the University's Ombuds office, and the Assistant Dean of Students. Walesby forwarded E-1's email to several University officials and wrote, "Just fyi—this relates to the 2005 matter involving Martin Philbert. I sent an earlier email about this and spoke directly to Phil [Hanlon] and Martha [Pollack] about the matter. The student is focused on a tuition reimbursement for a course taken now."

On April 17, 2013, Walesby sent Pierce an email in which he raised the possibility of informing Philbert of E-1's petitions.⁷¹ Pierce replied by email, indicating that she had spoken with Hanlon earlier that day. "Like me, he was immediately concerned of possible retaliation if

⁷⁰ There is no indication that E-1 shared the name of this student or any details about the student's experience.

⁷¹ Pierce did not recall E-1's 2013 petitions.

the dean knew. In the end, he said he didn't have strong feelings one way or the other since she had not filed a complaint. If she did, then obviously [Philbert] should be informed."

Contemporaneous emails show that Walesby met with Philbert on April 25, 2013 and informed him both about E-1's petitions and the allegations raised in 2005. Walesby did not reveal E-1's identity during this conversation. He informed Philbert that the transcript petition would be addressed by an official other than Philbert.

Philbert acknowledged to Walesby that he talked to Warner about the allegations in 2005. Walesby remembered deciding at the time to take the opportunity to ask Philbert about the allegations. He asked Philbert five questions, including whether Philbert had ever kissed a student or made comments about "chocolate syrup sex." Philbert said he had not.

On April 26, 2013, the Registrar's office granted E-1's petition for a tuition refund. The notification included a statement that the Registrar was "expressing no opinion with respect to the merits of the claims" contained in the petition.

4. *Philbert Enters into Sexual Relationships with Additional SPH Employees*

In 2013, while still in a sexual relationship with E-3, Philbert was also in a sexual relationship with another SPH employee (hereinafter "E-4"). E-4 did not acknowledge the sexual relationship with Philbert during our interview of her. However, Philbert's text messages on University-owned devices contain discussions of their in-person sexual activity, explicit exchanges about sex acts, and intimate photos of her.

Philbert and E-4 were exchanging sexually explicit text messages by October 2013. They also engaged in sexually explicit FaceTime sessions, which Philbert "screen captured" and saved on his University-owned devices. The text messages and FaceTime screen captures show that the relationship ran through at least October 2014, and then again from April 2015 through May 2018. Electronic messages between Philbert and E-4 frequently refer to them engaging in sexual activity in University offices.

While he was in a sexual relationship with E-4, Philbert entered into a sexual relationship with another SPH employee (hereinafter "E-5"). E-5 also did not acknowledge the existence of the relationship to us. However, as with the other relationship, Philbert's University-owned devices contain text messages with discussions of their in-person sexual activity, explicit exchanges about sex acts, and intimate photos of her.

The sexually explicit text exchanges with E-5 began in 2017. At some point in 2016, Philbert played an active role in creating a position for the employee when her prior job was not working out. The text messages show the relationship was on and off through at least 2018.

5. *Philbert Initiates Sexualized Communications with E-6*

Philbert's relationship with another SPH employee (hereinafter "E-6") changed in 2016. The two became friends in the course of working together. E-6 said that in or around 2016 Philbert became "flirtatious" in ways that "did not seem normal for a boss." He began to text E-6 frequently and make more sexually suggestive comments, including about E-6's physical

appearance and a hypothetical sexual relationship. E-6 redirected such conversations with Philbert without explicitly asking him to stop.

A dispute between Philbert and E-6 at work further changed their relationship. E-6 described leaving the office one day as a result of the dispute, unsure of whether she wanted to continue working at SPH. E-6 told us that Philbert called her and sent her texts incessantly that afternoon. When they spoke by phone that evening, E-6 wondered aloud whether she could continue working at SPH. E-6 said Philbert responded with words to the effect of, “The problem with you is that I have to try so hard not to like you so much.” E-6 said the comment marked a turning point in their relationship—things changed and Philbert became increasingly friendly. As described below, *infra* Section III(F)(3), Philbert and E-6 entered into a relationship in 2017 after Philbert was selected Provost; it became a sexual relationship in 2018.

The change in Philbert’s relationship with E-6 coincided with changes in his relationship with another SPH employee (hereinafter “E-7”). E-7 told us that Philbert “very quickly” noticed when she stopped wearing her wedding ring in 2016. He began visiting her office, closing the door, and asking whether she was okay. E-7 told us there was an undercurrent to Philbert’s comments and questions that suggested sexual interest. Philbert made comments to her such as “If I wasn’t married, I would really go after you”; “In a different situation, I would want to go out with you”; and “I want to take you wherever I go.”⁷² As described below, *infra* Section III(F)(1), these interactions continued after Philbert became Provost.

E. 2017: Selection as Provost and Executive Vice President for Academic Affairs

In November 2016, then-Provost Martha Pollack was named President of Cornell University. She stepped down as University of Michigan Provost at the end of January 2017, and Paul Courant began serving as the interim Provost. From January to June 2017, the University ran a search process for a new Provost. On June 15, 2017, the University announced Philbert’s selection, effective September 1, 2017.

1. President Schlissel Establishes and Chairs the Provost Search Advisory Committee

President Mark Schlissel chaired the 2017 Provost’s Search Advisory Committee (“Provost Search Committee”) and attended each of the Committee’s meetings. President Schlissel did not routinely participate to this extent in University selection processes, but he wanted to signal how seriously he took the selection of the next Provost. The President’s Special Counsel, Liz Barry, served as staff to the Provost Search Committee.

The Provost Search Committee had eleven members, including President Schlissel. Vice Provost Pierce was a member of the committee, along with officials from schools across the

⁷² Another SPH employee also experienced suggestive comments from Philbert during this same period. Philbert commented about her physical appearance and said that he wanted to bring her with him to his future jobs. The employee told us the comments were “weird and off-putting.”

University and one student representative. The student representative was a Master's student at SPH; he was the only Committee member affiliated with SPH.

An external search firm, Korn Ferry, assisted the Provost Search Committee by contacting potential candidates, reviewing application materials, and performing reference checks.

2. *President Schlissel Solicits and Receives Input from Former-Provost Hanlon*

The first meeting of the Provost Search Committee was on January 26, 2017.

On February 21, 2017, President Schlissel emailed former Provost Hanlon to ask for his help in identifying candidates. Hanlon replied, “[T]wo people come to mind right away. One is Martin Philbert. Admittedly I am at a distance from UM these days, but I still hear great things about Martin’s leadership of Public Health.” Hanlon told us he had heard about the success of SPH under Philbert’s leadership from former-Provost Pollack and indirectly through SPH faculty. Hanlon thereby explained the basis for his recommendation, but did not respond to our specific question about whether he considered “referring to information about Dr. Philbert learned in 2010 or 2013.”⁷³ President Schlissel replied to Hanlon’s email saying, “Martin P is top of list of the internal candidates. I share your high opinion of him.” Later that same day, Philbert sent Korn Ferry his official letter of interest in the Provost position.

President Schlissel did not know Philbert before coming to the University in 2014. In late 2014, then-Provost Pollack reviewed Philbert’s work performance and renewed his deanship. President Schlissel read a summary of the review at the time; it contained no information about Philbert’s conduct towards female staff members or students.⁷⁴ Between then and Philbert’s expression of interest in the Provost position in 2017, President Schlissel’s contacts with Philbert were limited to occasional University-related interactions. They were not personal friends.

3. *Philbert is Selected to Participate in Interviews*

In early March, the Provost Search Committee reviewed applications from 41 candidates. The Provost Search Committee discussed Philbert’s candidacy at this stage, but the conversation was not in-depth; it was assumed that Philbert would advance to the interview stage. Committee members regarded Philbert as a strong candidate, and he was seen as the internal candidate who had the most support from other University deans.

⁷³ See *supra* Sections III(C)(5); III(D)(3).

⁷⁴ We also reviewed the confidential feedback on Philbert that was collected and considered at this stage; it does not include any information about Philbert’s conduct towards women.

The Provost Search Committee ultimately selected Philbert and nine other candidates to participate in first-round interviews. After the first round of interviews, the Committee invited a smaller pool of candidates, including Philbert, to participate in a second round.

The Committee considered the candidates' academic and executive experience, their interviews, and Korn Ferry's background research on their academic credentials. The process did not include requests for reports or allegations of prior misconduct. It also did not include a public campus visit or anonymous campus survey feedback, such as that collected in the 2010 Dean's search.⁷⁵ None of the Committee members recalled receiving any information (written or oral) about Philbert's past conduct toward women during the search process. We looked for such information in every Committee member's email and in the materials assembled by the Committee about Philbert's candidacy. We found none.

Pierce had been aware of allegations of misconduct by Philbert dating back to 2005, including when the allegations came to light again in 2010 and 2013. We asked Pierce whether she considered raising with the Committee information about such allegations.⁷⁶ She did not recall any request for or inquiry into allegations of Philbert's prior misconduct in the course of the Committee's work, and she said she "did not think about it." She stressed that no allegations had been corroborated in those prior inquiries. By her memory, "there had been no evidence to support" the allegations and it was not an established data point, "so it was just gone from [her] mind."⁷⁷

4. *Philbert is Selected as a Finalist and Later, as Provost*

In mid-April, the Provost Search Committee selected three finalists—two outside candidates and Philbert. The selection of finalists completed the Provost Search Committee's work. It was up to President Schlissel to decide which finalist to recommend to the Regents.

Each of the three finalists was interviewed over the course of two days by President Schlissel and a group of Regents, Executive Officers, Deans, and other University officials. Philbert met with the President and other University leaders at the President's residence on May 8 and 9.

In addition to soliciting input from those who interviewed the finalists, President Schlissel also called references—both those provided by the candidates and others President Schlissel believed might have a valuable perspective.

Philbert submitted as references three former University officials—former President Mary Sue Coleman, former Provost Philip Hanlon, and former Provost Martha Pollack—and two external references. Korn Ferry contacted candidates' references and compiled the feedback for

⁷⁵ See *supra* Section III(C)(4).

⁷⁶ See *supra* Sections III(B)(4); III(C)(8); III(D)(3).

⁷⁷ We reviewed the entirety of Pierce's available email for references to Philbert and potential misconduct; we found no references after 2013.

the President. Both former-Provost Hanlon and former-Provost Pollack provided positive feedback on Philbert. The written summary of that feedback prepared by Korn Ferry makes no reference to Philbert's conduct toward women.⁷⁸ Hanlon could not recall his conversation with Korn Ferry, but he told us he answered all questions he was asked truthfully and completely.

President Schlissel did not recall whom he called about Philbert, but he thinks he spoke to former-Provost Pollack, former-President Coleman, former-Provost Hanlon, an Associate Dean in SPH, and one or two sitting deans. All of the feedback President Schlissel received about Philbert was strong and positive; President Schlissel does not recall hearing anything about Philbert's conduct toward women.

On June 7, 2017, President Schlissel recommend Philbert for the position of Provost to the Board of Regents. On June 15, the Board of Regents approved the recommendation, and Philbert's selection was announced later that day, effective September 1, 2017.

5. *President Schlissel Learns of the Komorowski Litigation*

Sometime after the June 15 announcement, President Schlissel learned of the 2003 litigation brought by the former lab worker, Tom Komorowski.⁷⁹ As discussed in Section III(A)(2), *supra*, Komorowski alleged that he was wrongfully terminated based on his age and sex. He also claimed that Philbert terminated him so that he could retain a female lab employee with whom Komorowski alleged Philbert had a close personal relationship. The complaint did not make any allegations regarding Philbert's relationship with the female lab employee, deposition testimony did not establish that there had been an intimate or sexual relationship between them, and the case was settled in November 2005.

President Schlissel recalled learning about the case over lunch with someone who was then a member of the Board of Regents in the summer of 2017. The Regent told the President he learned Philbert had been involved in some kind of sexual misconduct lawsuit, but he did not know any details (including the plaintiff's name). The Regent learned the information from a colleague who had apparently seen news of Philbert's appointment as Provost. President Schlissel could not recall the date of the lunch with the Regent, and we were unable to determine the date from available calendar and email records.⁸⁰ President Schlissel told us that, until then,

⁷⁸ We found no evidence that the third internal reference from the University, former President Mary Sue Coleman, provided any feedback to Korn Ferry. Philbert's references who were not affiliated with the University submitted positive recommendations; neither referred to any alleged misconduct.

⁷⁹ See *supra* Section III(E)(5).

⁸⁰ We reviewed President Schlissel's calendar and found only two entries for that Regent: a lunch on June 7, 2017, a week before the public announcement; and a breakfast in October 2017, more than a month after Philbert started working as Provost. We also reviewed every email between the President, the Regent, and the General Counsel for the period June 1 to September 5. None contained the date when President Schlissel first learned the information from the Regent.

he had never heard of any such lawsuit. (The first references to Tom Komorowski in the President's email appear on September 5, 2017.)

President Schlissel asked Timothy Lynch, the University's General Counsel, to gather more information about the lawsuit right after his lunch with the Regent. On August 29, 2017, OGC requested from the University's Bentley Library⁸¹ the full file associated with the Komorowski litigation. Lynch also received materials from Masson, the OGC attorney who was familiar with the litigation. The next day, August 30, Masson asked an attorney in the law firm that had represented to University in the litigation to review the firm's file. Lynch and the outside lawyer spoke the following day.

President Schlissel told us that he learned the following facts about the litigation at the time:

- In his deposition, Komorowski was unable to provide any evidence confirming the existence of an intimate relationship between Philbert and the female lab employee;
- Komorowski testified that he never saw Philbert and the female employee together outside the University and never personally observed any behavior between them that he considered inappropriate;
- Komorowski had alleged that a coworker would support his claim that Philbert and the female employee had been in an intimate relationship. But the coworker testified that he did not believe the female employee and Philbert had had an intimate relationship.
- Then-Provost Hanlon was aware of the matter before selecting Philbert as SPH Dean.

President Schlissel did not recall if he learned other facts, but he believes he may have seen deposition transcripts which he concluded did not corroborate Komorowski's allegation that Philbert had a relationship with the lab employee. Based on the information provided to him, President Schlissel did not believe there was a reason to reverse the decision to appoint Philbert as Provost.

F. September 2017 to March 2020: Provost and Executive Vice President for Academic Affairs

On September 1, 2017, Philbert moved out of the SPH Dean's office and began working as Provost. As was typical for senior University officials after such a promotion, he retained an office in his former school (in Philbert's case, in SPH).

Philbert's sexual relationships with two SPH employees, E-4 and E-5, continued after he became Provost. Because Philbert encrypted his WhatsApp communications with both women

⁸¹ Bentley Library houses historical records for the University.

at various points in their relationships, we do not know how long either relationship lasted. Based on the record available to us, the relationships continued through at least 2018.

Philbert entered into sexual relationships with at least three additional University employees after he became Provost. For most of his time as Provost, Philbert was in simultaneous sexual relationships with two or three University employees.⁸²

1. E-7 Discusses Philbert with President's Office

Philbert encouraged several female staff members from the SPH Dean's office to consider moving with him to the Provost's office.

One of the SPH staff members, E-7⁸³, told us about her conversations with Philbert during his recruitment efforts in the fall of 2017. E-7 said Philbert continued to make sexually suggestive comments to her (*e.g.*, "If you weren't married...") that made her uncomfortable. He also periodically sent her text messages saying that he was thinking about her.

E-7 applied for the job in the Provost's office for which Philbert had encouraged her to apply. At some point in the process, she met for coffee with Liz Barry, the Special Counsel to the University President, for advice about the position she was pursuing. She had known Barry for some years. During their meeting, E-7 expressed some hesitation about working for Philbert but did not provide much detail. E-7 told us that she "insinuated something around Me Too" and may have added, "he needs to be careful that people do not perceive what he says as inappropriate."

Barry also described the conversation to us. According to her, E-7 said that Philbert had "issues with women," that part of her job would be to "coach" him on his interactions with women, and that a current SPH employee may have been working with him on these issues already. Barry told us that she understood the comments to refer to Philbert's management style, particularly in view of the reference to "coaching," which was not a term Barry associated with addressing sexual misconduct. Barry found nothing concerning about the conversation; rather, E-7 appeared enthusiastic about the prospect of working with Philbert.⁸⁴

⁸² Philbert's University-owned devices contained evidence indicating that he engaged in sexual relationships with additional women during his transition to or time as Provost. We investigated whether the women were University students or employees. Because they appear not to be, they were outside the scope of our investigation.

⁸³ *See supra* Section III(F)(1).

⁸⁴ E-7 later spoke to other witnesses about her interactions with Philbert and her meeting with Barry. Based on other witnesses, we concluded that a sentence from the anonymous letter to President Schlissel in January 2020, *see infra* Section III(F)(8), likely referred to this meeting: "It is our understanding the president's office was previously warned about this predator and did nothing to investigate or stop him."

Barry did not make any record of the conversation with E-7, nor did she share the information with anyone else.⁸⁵ Philbert ultimately selected someone else for the position in the Provost's office.⁸⁶

2. *An SPH Faculty Member Receives Information about Philbert's Statements*

In a casual conversation in January 2018, E-7 mentioned her vacation tan to Philbert. E-7 recalled Philbert saying, "I'm not interested in where you're tan. I'm interested in where you're not tanned." (As discussed below, another female Provost office employee told us Philbert said something similar to her.)

Months later, E-7 told an SPH faculty member about Philbert's behavior. E-7 told us she recalled describing a general feeling of sexual harassment without providing any details, saying things such as, "there is stuff happening that I really need to tell you about." She recalled being in tears when she told the faculty member, "I can't tell you [Philbert's] exact comments because of your role." Based on the faculty member's former leadership role, E-7 assumed the faculty member would have to report Philbert's behavior if she provided specifics, and she did not want to put her in that position. Without providing names, she also told the faculty member that other women had experienced similar conduct.

The SPH faculty member told us that E-7 was "very, very upset" after having a "particularly yucky" interaction with Philbert that included him saying something about wanting to see where she was not tan. The faculty member had worked with Philbert for years and knew him to use sexual innuendo and to be "always a bit inappropriate." The faculty member said the conduct that E-7 described was "within the range of Philbert's interactions," but that something in the nature of the comments was clearly upsetting to E-7 and different from Philbert's typical comments. The faculty member, likely based on her former leadership role, believed that she was required to report suspected harassment. She recalled telling E-7 that if E-7 provided more information, she might be required to report the information, and then describing the University's reporting channels for sexual harassment. The faculty member remembered E-7 saying she could not report to OIE because Philbert was the Provost and she could not afford to lose her job.

The faculty member told us that the conduct E-7 described was in a "gray area" and not far enough "over the line"—it was not a relationship, it was not sex, and there was no physical contact. Instead, she considered it "a bad phrase used in a vulnerable situation."

⁸⁵ In addition to interviewing both E-7 and Barry, we reviewed all email correspondence between them for the period from September 1, 2017 to March 31, 2018. We found no references to any sexual misconduct or other improper behavior by Philbert.

⁸⁶ After Philbert left SPH, E-7's SPH program was cut, and she later left SPH unhappily. She told us she felt that Philbert had harmed her professionally. According to another SPH faculty member, in early 2019, E-7 said that she was angry at Philbert in connection with a professional disagreement and had a plan to "take [him] down."

3. *Philbert Initiates a Sexual Relationship with E-6*

Philbert's promotion to Provost affected his relationship with E-6.⁸⁷ E-6 had had a working relationship with Philbert in SPH in which Philbert became "flirtatious." She said the flirtation increased over time, particularly while Philbert was applying for the Provost position in 2017.

After Philbert was announced as the next Provost in June 2017, E-6 told us that he shifted to a "full court press" with comments such as that he and E-6 could have "beautiful coffee-colored babies" together; that he wanted to see her tan lines; that he was "aching" for [her]; and others. E-6 began to respond in kind to Philbert's flirtations, and she and Philbert discussed the possibility of a relationship.

One evening in late November 2017, Philbert asked E-6 to meet him in his SPH office, explaining that he had something for her. When she arrived, Philbert closed the door and tried to turn the lights off. E-6 insisted the lights remain on. Philbert then approached E-6 forcefully, kissed her, and pressed his body against hers. He tried to remove her shirt, which she stopped, and they continued to kiss. E-6 was attracted to Philbert but was "shocked" by the interaction—she had not expected a physical encounter and told us that it felt "aggressive." When she left Philbert's office, E-6 worried that passers-by could have seen them through the second-floor office's large windows.

The next month, Philbert asked that his SPH office be moved from the second to the sixth floor. The SPH Facilities Director confirmed the request by text to Philbert, and Philbert responded, "So I can sneak in and out / It'd be helpful. But a quiet one." The move was completed within a week and the lock was rekeyed. The work order indicated that the new key would be one "that not only the region does not have, but after-hours maintenance personnel would not have either." This had the effect of taking the office off the submaster key that senior SPH personnel used to access spaces in the building.⁸⁸

After their first physical encounter, E-6 told Philbert that they needed to stop because they were endangering their careers. Philbert insisted that it was true love. The relationship continued. By January 2018, they were exchanging sexually explicit text communications almost daily; shortly thereafter, they began a sexual relationship. Their sexual relationship continued through September 2019, during which time they had sexual relations in University offices, in Philbert's house, and at nearby hotels.

Once they began a sexual relationship, Philbert asked E-6 to move their communications to Signal, an encrypted text application with an auto-delete function. E-6 described using Signal to exchange sexually explicit messages and images, which Philbert initially pressed her to provide. The two also exchanged similar material by regular SMS text, which we recovered from University-owned devices used by Philbert. Evidence we analyzed shows that some

⁸⁷ See *supra* Section III(F)(5).

⁸⁸ The Facilities Director told us that Philbert did not request the key change; rather, he said he made the change himself after discovering a custodian sleeping in the office before Philbert took it over.

sexually explicit images were taken in the Fleming Building, which is the location of the Provost's office.

Not long after Philbert's sexual relationship with E-6 began, in mid-2018, E-7 asked E-6 if Philbert had ever "crossed the line" with E-6. E-7 was not aware that E-6 was in a relationship with Philbert at that time, and E-6 did not disclose it to her. E-6 remembers that E-7 recounted that Philbert told her he wanted to see "the bits below her tan lines."

E-6 asked E-7 whether Philbert had engaged in any other conduct and whether she felt professionally disadvantaged by Philbert's conduct. In the course of their conversation, E-7 mentioned that she had met with Barry, the President's Special Counsel, *see supra* Section III(F)(1). E-6 concluded that she need not report the information to OIE or take further steps because E-7 did not feel professionally disadvantaged by Philbert's comments, and because E-6 assumed that the President's office was aware of the comments.⁸⁹

4. *Philbert Tries to Initiate a Relationship with E-8*

As Philbert and E-6 were entering into a sexual relationship in the spring of 2018, Philbert was also pursuing relationships with personnel in the Provost's office.

Philbert and a staff member in the Provost's office (hereinafter "E-8") were friends early in his time as Provost. Over time, however, E-8 felt that Philbert's behavior became increasingly "odd." She noted that he adjusted his morning schedule so that he arrived earlier, in time to meet E-8 for coffee, and that he hugged her more frequently. Other staff told us they took notice of this behavior. Philbert then began commenting on E-8's physical appearance. Philbert also began sending frequent and informal text messages and photos of himself to E-8, including after business hours.

E-8 grew concerned that personnel in the Provost's office thought she was going around them to interact with Philbert. Around May or June 2018, she asked Philbert to stop giving her as much attention because it was damaging her professional reputation. Philbert reassured her that he would protect her professionally, but he did not change his behavior. E-8 told us that she began avoiding Philbert, including by eating lunch early, closing her office door when she heard his voice, and ignoring his text and chat messages.

In August or September 2018, Philbert announced to E-8 that he was traveling to Los Angeles on University business and asked her to join him. She declined. Several weeks later, Philbert told E-8 that people in the office thought she was his girlfriend. The comment made E-8 uncomfortable, and she asked Philbert to make sure there was no uncertainty on that topic in the office—that she was not his girlfriend. E-8 described the comment to E-6, whom she considered her friend; but E-8 did not know, and E-6 did not disclose to her, that she was in a sexual relationship with Philbert at the time. E-6 began avoiding discussions about Philbert with E-8 so as not to reveal their relationship.

⁸⁹ As noted above, the conversation between E-7 and Barry may be referenced in the anonymous letter sent to the President in January 2020. *See infra* Section III(F)(8).

The following spring, in April 2019, E-8 went on vacation with her family and sent a photo (that she was not in) to Philbert. He responded by text, as follows: “I DO note – not a photo of you!!!” He later said to her in person, “I wanted to see your tan lines.” E-8 had previously heard from E-6 that Philbert had made this request of E-7, as described above.

In July 2019, Philbert exchanged text messages about E-8 and other female Provost’s office staff with a staff member in the office.⁹⁰ The text messages repeatedly refer to the physical appearance of female staff members. Among other things, Philbert asked the staff member to take and send photos of E-8 so that Philbert could look at them while he was out of the office. The staff member took at least two such photos and sent them to Philbert.

Later that summer, E-8 received a text from Philbert reading, “You’re on my mind.” She confided in E-6 again about Philbert’s conduct. E-6 remembered reading the message and realizing that Philbert had sent her an identical one—“you’re on my mind”—at the same time. Soon thereafter, by September 2019, E-6’s sexual relationship with Philbert ended.

5. *Philbert Initiates a Sexual Relationship with E-9*

Philbert also developed a friendship with another staff member in the Provost’s office (hereinafter “E-9”) soon after becoming Provost.

In the spring of 2018, Philbert began interacting more with E-9 and asking her about personal topics. She believed this was an effort to make her see him as a friend rather than as a boss. They began exchanging jokes and photos over text and eventually progressed to more personal messages. In July 2018, while Philbert was away on vacation, he texted E-9 that he missed her. The following month, while E-9 was away on vacation, Philbert again texted that he missed her. Later that summer, when they were both back in the office, Philbert began making sexually suggestive comments to E-9, including about her appearance. E-9 told us Philbert’s hugs became more “intense.” She told us that, in September, he texted her, “I’m in this boring meeting and something is jiggling in my pants for you and it’s not sand.”

In October 2018, E-9 and Philbert kissed for the first time, in the Provost’s office. They met almost every morning after that—throughout October and November—to kiss. In late December, they had sex for the first time, in Philbert’s SPH office. Their sexual relationship continued through the spring of 2019 and included sexual relations almost every day in Philbert’s Provost’s office and once at Philbert’s house.

E-9 told us that Philbert asked her to perform sexual acts in the office during the workday and also asked to take intimate photos of her at work. In the spring of 2019, as she became increasingly uncomfortable with these interactions, E-9 started dressing in ways that made sexual relations less feasible (*e.g.*, wearing tights under her clothing). E-9 said she also began asking

⁹⁰ The staff member was surprised by Philbert’s informal tone, his use of sexual innuendo, and his comments about women in the Provost’s office. The staff member described being apprehensive about Philbert’s behavior but eventually following Philbert’s lead.

that Philbert commit more to their relationship, which she told us made Philbert increasingly hostile toward her.

E-9 told us that April 2019 marked a change in her relationship with Philbert, as Philbert started “turning” on her. On one occasion, E-9 raised a work-related issue with Philbert while he was meeting with another Provost’s office employee. E-9 told us that later that day Philbert said to her privately, “You will never disrespect me again. Are you done with me? Done with your job? Because I can make both happen. I can make you disappear from both . . . I know we’re in a relationship, but I am your boss. You may never speak to me like that again.” Philbert and E-9 nevertheless continued to have sexual relations through at least May 2019, when their relationship ended.

Throughout the summer of 2019, Philbert talked about moving E-9 out of the Provost’s office. E-9 told us about a conversation from June or July 2019 in which she asked him, “What if I just come forward [about the relationship]?” Philbert responded that it would be her word against his, and that he was more powerful. He also told her, “If you ever tell anyone about us, I will make sure you go down. I will destroy your career.”

6. *The President Receives His April 2019 Administration Evaluation Committee (“AEC”) Survey, Which Contains Allegations about Philbert*

The Administration Evaluation Committee is a committee of the University’s Faculty Senate that supports the evaluation of senior administrators by the faculty through the annual administration of a survey. The survey is open to all University faculty and provides an opportunity for anonymous reviews of individual executives. The aggregated statistical results for each official are posted publicly on the AEC website. Anonymous written comments are sent exclusively to each executive reviewed. No record of the written comments is retained by the University. On April 30, 2019, President Schlissel received the results of the AEC for himself.

President Schlissel gave us access to his email for the entirety of his time at the University. We found the 2019 AEC survey in his email. The written comments on the President from the 2019 AEC survey run some 27 pages. We found the following comment on page 15:

Re: your administrative appointments: Martin Philbert was/is a notorious sexual predator, physically cornering and emotionally coercing his female graduate students in his toxicology lab. I am appalled that he has become provost, especially since I heard that he had a harassment case settled during his time here. Settling and NDAs have become a commonplace only recently revealed in their scope for silencing victims and preventing others [sic] victims of assault and harassment from coming forward. If my own case were not beyond the statute of limitations, I would have come forward when he was appointed in 2017. I certainly consulted local discrimination attorneys, Walker and Blanchard. Instead, every time I am asked to fill out his evaluation, I get a little PTSD and I end up writing a note to him and to you. I hope someday his many, many crimes against women will be revealed. Thanks for listening.

President Schlissel told us that he had no recollection of reviewing the written comments, including the comment quoted immediately above. The metadata associated with the email does not indicate whether it was ever reviewed; it does show that the email was never forwarded. We found no reference to the comment in any of the President’s email, and no University official with whom we spoke was aware of it. President Schlissel told us that, had he read the comment, he would have routed it to OIE given its specificity.

Philbert received the results of his 2019 AEC survey that same day, April 30. The confidential narrative included this comment: “I hope someday your crimes against the women who have worked for you are revealed.” Philbert read the comment at the time. He showed it to a few members of his staff—who described him as furious and panicked—and he wanted to know who had submitted it. E-6 recalled Philbert calling her and reading the comment to her; she asked him if he was accusing her of submitting the comment.

Philbert’s 2018 AEC Survey, which he received on April 25, 2018, contained a similar comment: “I have encountered you in the past personally, at which time you sexually harassed me and attempted to sexually assault a colleague. We were under you in the strict university hierarchy and said nothing. In this #metoo moment, I feel particularly angry to see that you've risen so far and continue to treat those below you like objects.”

There is reason to believe that the author also submitted a comment on the President’s 2018 AEC Survey. But email records indicate that the President never received those survey results, and, when he inquired about them a few weeks after they should have been sent to him, the University had already deleted them. The President therefore never received the 2018 comment, and it was no longer available at the time of our investigation.

We identified and met with the person who wrote all of the comments. The author, who had experienced misconduct, told us she submitted the comments to Philbert and the President to voice her anger at Philbert’s promotion to Provost.

7. *Philbert Initiates a Sexual Relationship with E-10*

As Philbert’s sexual relationships with E-9 and E-6 were coming to an end in the spring and summer of 2019, he began interacting more with an SPH employee with whom he had continued to be friendly after he became Provost (hereinafter “E-10”).

Communications between Philbert and E-10 became more personal over the summer of 2019. In the course of their conversations and text messages—which they exchanged on an encrypted version of WhatsApp—Philbert told E-10 that he had feelings for her that went beyond their professional relationship. In late August 2019, Philbert and E-10 kissed for the first time, in the Provost’s office.

Philbert and E-10 saw each other regularly throughout September 2019. E-10 told us that, around the middle of that month, Philbert suggested they move their electronic communications to Signal. In October 2019, they had sexual relations for the first time. During their relationship, they spent time together in hotels and at each other’s houses. Like E-6 and E-9, E-10 told us that Philbert pressed her to send him explicit photos of herself. She eventually did so. E-10 told us that, in early January 2020, shortly before Philbert left on a University trip

to South Africa, Philbert took explicit photos of her without her consent. E-10 asked Philbert to delete the images, but he refused to do so. The relationship ended in January 2020 while Philbert was in South Africa.

8. *The President Receives an Anonymous Letter about Philbert's Conduct*

On the morning of January 16, 2020, while Philbert was in South Africa, he sent text messages to E-6: "I have ruined lives and trust. In every conceivable way." And "I have to work on myself. Understand my crap. And then work the steps with everyone who has supported me. Family, you, the university, people who thought I was something I am not."

Philbert then sent E-10 a text message, in which he told her that E-6 knew about their relationship. He assured E-10 that she was not one of many women in his life. That same morning, Philbert texted E-3 to ask if she was okay and called E-9 to ask if she had told anyone about their relationship.

The next day, on January 17, the President's office received an anonymous letter about Philbert. It begins, in part:

I am writing on behalf of a group of women who have recently connected . . . to corroborate and share our stories of emotional and sexual abuse perpetrated on us within your University by your provost Martin Philbert over the past 20 years. These offenses were made possible through his positions as faculty member, mentor, dean and provost. While each story has some nuance, they all include the same pattern and progression, which begins with persistent and inappropriate sexual comments in the workplace, and for those selected as victims, progresses to a grooming period with nearly identical tactics, songs, phrases, text messages, pictures, etc ... shared with the victims to engender a sense of closeness and trust.

The following day, the University retained us to conduct this investigation.

IV. Analysis

Our task was to investigate (1) Philbert’s conduct and whether such conduct violated University policies in effect at the time of such conduct; and (2) what information the University received regarding Philbert’s conduct during his employment by the University and what action, if any, the University took in response to that information. We take each of these questions in turn.

A. Analysis: *Philbert’s Conduct*

In the course of our investigation, Philbert voluntarily retired from the University, effective June 30, 2020, and relinquished tenure. Although Philbert is no longer subject to discipline or termination by the University, we found significant evidence that Philbert engaged in conduct that violated the University’s Sexual Harassment policy, Standard Practice Guide (“SPG”) 201.89-0, *Sexual Harassment*, which prohibits sexual harassment by employees. At all times during Philbert’s employment, the Sexual Harassment policy prohibited unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, education, living environment, or participation in a University activity;
- submission to or rejection of such conduct by an individual is used as the basis for or a factor in decisions affecting that individual’s employment, education, living environment, or participation in a University activity; or
- such conduct has the purpose or effect of unreasonably interfering with an individual’s employment or educational performance or creating an intimidating, hostile, offensive, or abusive environment for that individual’s employment, education, living environment, or participation in a University activity.⁹¹

The Sexual Harassment policy also makes clear, as it did throughout the course of Philbert’s employment, that the University will take steps to ensure that a person who reports, complains about, or participates in an investigation of a sexual harassment allegation is not subjected to retaliation.

We also found significant evidence that Philbert’s conduct violated other University policies, including:

- SPG 201.23, *Nepotism*, which (1) prohibits, in part, favoritism toward or discrimination against any individual in conditions of employment based upon that individual having a

⁹¹ The policy was revised twice during Philbert’s employment—once in 2009, and once in 2011—but the policy’s underlying prohibitions did not materially change.

close personal relationship with another University employee, and (2) requires that a “management plan” that mitigates conflicts of interest be devised and approved by relevant University officials where an employee is in a close personal relationship with another employee under their supervision or control.

- SPG 201.96, *Professional Standards for Faculty*, which was issued in 2013 and prohibits behaviors that have the purpose or effect of (1) unreasonably interfering with an individual’s employment or educational performance, and/or (2) creating an intimidating, hostile, offensive or abusive climate for an individual’s employment, academic pursuits, living environment, or participation in a University activity.

* * *

As discussed in Section III, Philbert engaged in the following conduct toward subordinate employees and student-employees under his supervision at various points: unwanted sexual comments (including sexual jokes and comments about the physical appearance of female staff members, both in person and through electronic means); unwanted personal attention (including through uninvited personal interaction and other communications); and unwanted physical and sexual advances (including touching, hugging, kissing, and other sexual activity). He also pressured at least one subordinate employee to engage in sexual acts in University offices. In addition, a number of the women who experienced such conduct witnessed or became aware of similar conduct that Philbert directed at other women in the office.

Multiple women who were subjected to such conduct told us that they made efforts to avoid Philbert at work. A woman told us that she quit her job at least in part because of Philbert’s conduct. Some of the women with whom Philbert had a sexual relationship told us that he made implicit or explicit threats of retaliation if they told others about the relationship. And several women indicated that they feared adverse professional consequences after their relationship with Philbert ended.

In sum, we found significant evidence that, over the course of more than fifteen years, Philbert engaged in sexually harassing behavior toward numerous University employees and student employees, and that he engaged in multiple sexual relationships with subordinate employees. We found that this conduct, at various points in time, had a significant impact on the employment and/or academic experience of several University employees and students and created an intimidating, hostile, offensive, and abusive environment.

B. Analysis: University's Knowledge and Response

We also investigated what information the University received related to Philbert's conduct and how the University responded to such information. As set forth below, we found that the University received information about Philbert's conduct at various times over the course of more than fifteen years, including during key periods when he was under consideration and later selected for senior positions within the University.

During the entire period that Philbert was a University employee, the University had legal obligations to respond to sexual misconduct complaints against employees, both as an employer and as an institution of higher education that received federal financial assistance. We therefore begin this section with an overview of the legal and policy landscape governing the University's response to sexual misconduct, including a brief summary of how the landscape changed over time.

1. University Obligation to Respond to Sexual Misconduct Complaints

As noted above, the University's Sexual Harassment policy, which was in effect throughout Philbert's employment, prohibits sexual harassment by employees and retaliation against persons who report, complain about, or participate in investigations of sexual harassment. Since 2009, the policy has provided that individuals can file a complaint about an employee's harassing or retaliatory behavior by contacting a University official (such as a supervisor, dean, director or department head), OIE, the appropriate Human Resources office, the Dean of Students (for students), the Dean's Office of the Horace H. Rackham Graduate School (for graduate students), the Center for the Education of Women, or the Department of Public Safety.⁹²

OIE has been responsible for reviewing and investigating complaints against employees under the Sexual Harassment policy since about 2004.⁹³ Since 2009, the Sexual Harassment policy and its accompanying procedures have made clear that OIE "must be advised of all reported incidents of sexual harassment," and that OIE is responsible for "determin[ing] the most effective method of investigating" concerns raised by a complainant.⁹⁴ The policy thus reflects an expectation that officials and offices designated by the University to receive reports of sexual

⁹² Prior to 2009, the policy provided routes for raising "formal charges" of harassment (*i.e.*, through a "dean or director" or a designated University office).

⁹³ Immediately before OIE's creation, Academic HR, which is responsible for faculty human resources issues, investigated sexual harassment complaints against faculty.

⁹⁴ SPG 201.89-0 (2011); SPG 201.89-0 (2009); The University of Michigan Procedural Guidelines for Handling Discrimination and Harassment Complaints, *available at* <https://hr.umich.edu/sites/default/files/sh-procedures-spg20189-0.pdf> (last visited July 31, 2020); The University of Michigan Procedural Guidelines for Handling Discrimination and Harassment Complaints (2009). The previous policy, which was issued in 1993, did not reference OIE (which did not exist in 1993), and thus did not describe OIE's role in investigating complaints under the policy.

harassment against employees will route those reports to OIE, which will then determine how to investigate them.

As noted in the Sexual Harassment policy, sexual harassment by employees is prohibited by Title VII of the 1964 Civil Rights Act, Title IX of the Educational Amendments of 1972, and Michigan's Elliott-Larsen Civil Rights Act.

Title VII. Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin. As relevant here, Title VII prohibits quid pro quo sexual harassment and hostile environment sexual harassment (*i.e.*, conduct that interferes with an employee's work performance and creates an objectively intimidating, hostile, or offensive work environment), as well as retaliation against any employee who opposes a practice made unlawful by Title VII.⁹⁵ These prohibitions were in effect throughout Philbert's employment. Under Title VII, an employer must take reasonable care to prevent and correct sexual harassment, including by ensuring that supervisors and managers understand their responsibilities to address or report complaints of harassment to appropriate officials.⁹⁶ Where an employee asks his or her employer to keep a complaint confidential or take no action, the employer nevertheless must determine whether it has a duty to investigate the conduct in order to "discharge its duty to prevent and correct harassment."⁹⁷

Title IX. Title IX prohibits discrimination on the basis of sex in education programs or activities that receive federal financial assistance. Sexual harassment (either quid pro quo sexual harassment or hostile environment sexual harassment) is a form of sex discrimination prohibited by Title IX. The Department of Education Office for Civil Rights ("OCR") has issued several guidance documents over the last two decades to delineate a school's obligations in this area.⁹⁸

In 1997 and again in 2001, OCR issued guidance discussing a school's obligation under Title IX to take immediate and corrective action when the school has actual or constructive notice that a student has been sexually harassed by an employee, another student, or a third party,

⁹⁵ Title VII, Civil Rights Act of 1964, 42 U.S.C. § 2002e-2; U.S. EQUAL EMP. OPPORTUNITY COMM'N, EEOC-CVG-1999-2, ENFORCEMENT GUIDANCE: VICARIOUS LIABILITY FOR UNLAWFUL HARASSMENT BY SUPERVISORS (1999).

⁹⁶ U.S. EQUAL EMP. OPPORTUNITY COMM'N, EEOC-CVG-1999-2, ENFORCEMENT GUIDANCE: VICARIOUS LIABILITY FOR UNLAWFUL HARASSMENT BY SUPERVISORS (1999).

⁹⁷ *Id.*

⁹⁸ As described in this section, OCR's guidance has changed significantly over the years, and in ways that have sometimes led to confusion among colleges and universities seeking to follow it.

even when a student does not use the school’s existing grievance procedures.⁹⁹ In the guidance, OCR explained that schools have notice of harassment when an “agent or responsible employee” has notice. OCR also provided examples of constructive notice that trigger Title IX obligations—including where “known incidents [of harassment] should have triggered an investigation that would have led to a discovery of the additional incidents.”¹⁰⁰ The guidance defined the term “responsible employee” to include any employee who “has the duty to report to appropriate school officials sexual harassment” or who “a student could reasonably believe” had that responsibility.¹⁰¹ The guidance further provided that schools should take steps to prevent retaliation against individuals who experience harassment and others who report or provide information about harassment.

The guidance also addressed how a school should proceed if a student reporting harassment requested confidentiality or that the school not take action. Specifically, the guidance explained that, in such a case, a school “should take all reasonable steps to investigate and respond to the complaint consistent with the student’s request as long as doing so does not prevent the school from responding effectively to the harassment and preventing harassment of other students.”¹⁰² The guidance noted that, when only one student raised a harassment complaint and asked that his or her name not be revealed, “OCR would not expect disciplinary action against an alleged harasser.”¹⁰³ The guidance further explained, however, that a complainant’s request for confidentiality should be weighed against the school’s obligation to (1) provide a safe and nondiscriminatory environment for its students and (2) fulfill its obligations of fundamental fairness requiring notice of allegations to the respondent.¹⁰⁴ The guidance set forth a number of factors to be considered in making this determination—including, for example, the

⁹⁹ OCR’s 1997 guidance stated that it did not address sexual harassment of employees, even though that conduct may be prohibited by Title IX, and that sexual harassment against employees should be evaluated under case law applicable to sexual harassment claims under Title VII. U.S. DEP’T OF EDUC., OFFICE OF CIVIL RIGHTS, SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES (1997). OCR’s subsequent guidance similarly focused on sexual harassment of students. U.S. DEP’T OF EDUC., OFFICE OF CIVIL RIGHTS, REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES (2001). The new Title IX regulations issued in May 2020, which are effective August 14, 2020, make clear that the Department of Education may enforce Title IX and its requirements with respect to complaints by employees. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 80 Fed. Reg. 30,026 (May 19, 2020) (to be codified at 34 C.F.R. § 106).

¹⁰⁰ U.S. DEP’T OF EDUC., OFFICE OF CIVIL RIGHTS, SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES (1997).

¹⁰¹ U.S. DEP’T OF EDUC., OFFICE OF CIVIL RIGHTS, REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES, 13 (2001).

¹⁰² *Id.* at 17.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

seriousness of the conduct and whether there have been other complaints or reports of harassment against the alleged harasser.¹⁰⁵

A decade later, in 2011, OCR issued a “Dear Colleague Letter,” which supplemented its 1997 and 2001 guidance by providing detailed instructions for investigating and adjudicating sexual harassment complaints.¹⁰⁶ The Dear Colleague Letter focused on sexual harassment by students and referred to OCR’s earlier guidance for information about employee harassment of students. In 2014, OCR issued guidance expanding on the Dear Colleague Letter, which again focused on student-on-student sexual harassment but noted that Title IX prohibits sexual harassment of students by employees.¹⁰⁷ Both the 2011 and 2014 guidance made clear that schools would be held accountable for failures to take immediate and appropriate steps to investigate suspected misconduct. The guidance also reiterated OCR’s earlier guidance, described above, that a school should take a range of factors into account when considering a complainant’s request for confidentiality.¹⁰⁸

In response to the 2011 Dear Colleague Letter, the University of Michigan—along with colleges and universities across the country—significantly revised its policies and procedures addressing sexual misconduct complaints against students, including in 2013 and 2016.¹⁰⁹ And in 2011, the University shifted responsibility for investigating complaints against students to OIE. Until that time, OIE had investigated harassment complaints against employees only. As OIE enhanced its procedures for responding to complaints against students, it imported some of those same enhancements into its procedures for responding to complaints against employees.

State Law. The University has had (and still has) similar obligations under state law. Since 1977, the Elliott-Larsen Civil Rights Act has prohibited discrimination on the basis of sex, including quid pro quo and hostile work environment sexual harassment, by state educational

¹⁰⁵ *Id.* The guidance further noted that, by investigating a complaint to the extent possible, even when the complainant wished to remain anonymous, the school “may learn about or be able to confirm a pattern of harassment based on claims by different students that they were harassed by the same individual,” thus allowing the school to put the alleged harasser on notice without revealing the identity of the original complainant.

¹⁰⁶ U.S. DEP’T OF EDUC., OFFICE OF CIVIL RIGHTS, DEAR COLLEAGUE LETTER FROM ASSISTANT SECRETARY FOR CIVIL RIGHTS RUSSLYNN ALI ON SEXUAL VIOLENCE (2011).

¹⁰⁷ U.S. DEP’T OF EDUC., OFFICE OF CIVIL RIGHTS, QUESTIONS AND ANSWERS ON TITLE IV AND SEXUAL VIOLENCE (2014).

¹⁰⁸ U.S. DEP’T OF EDUC., OFFICE OF CIVIL RIGHTS, QUESTIONS AND ANSWERS ON TITLE IV AND SEXUAL VIOLENCE, 21–22 (2014).

¹⁰⁹ In 2017, OCR withdrew the 2011 and 2014 guidance and issued new interim guidance. As noted above, *supra* n.99, new Title IX regulations were released in May 2020 and are effective August 14, 2020. Although the new regulations include a number of changes to schools’ obligations under Title IX, they do not change the guiding principle that schools will be held accountable for failing to adequately respond to sexual misconduct.

institutions.¹¹⁰ Much like Title VII and Title IX, the Elliott-Larsen Civil Rights Act requires an employer to investigate and take prompt and appropriate remedial action when it has notice of alleged sexual harassment.¹¹¹

* * *

In late 2017, the #MeToo movement garnered significant public attention and gained momentum on college and university campuses across the country. Building on advocacy catalyzed by OCR's 2011 Dear Colleague Letter and 2014 guidance, many students and student organizations called for greater accountability in schools' approaches to sexual misconduct. The movement has increased awareness of sexual misconduct—and in turn has spurred an increase in sexual misconduct reporting¹¹²—across many sectors, including in academia.

In the sciences, in particular, there has been significant attention to the prevalence of sexual harassment in college and university settings. In 2018, a report by the National Academies of Sciences, Engineering, and Medicine documented pervasive sexual harassment of women in higher education—particularly in STEM fields—and called on schools to take steps beyond compliance with Title VII and Title IX to prevent sexual harassment.¹¹³ Also since 2018, both the National Science Foundation and National Institutes of Health have taken measures intended to protect members of the research community from harassment, including by

¹¹⁰ Elliott-Larsen Civil Rights Act, MICH. COMP. LAWS §§ 37.2101–37.2804. Similarly, since November 2006, an amendment to the Michigan Constitution has prohibited discrimination on the basis of sex by public colleges and universities in the context of public education and public employment. MICH. CONST. Art. 1 § 26.

¹¹¹ See, e.g., *Radtke v. Everett*, 501 N.W.2d 155, 168 (Mich. 1993).

¹¹² See, e.g., Roe Levy, Martin Mattsson, Working Paper, *The Effects of Social Movements: Evidence from #MeToo* (Mar. 30, 2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3496903 (analyzing effects of the #MeToo movement on reporting sexual crimes to law enforcement and concluding that, because increased reporting took place before any major changes to laws or policy, reporting increase can be attributed to changing social norms"); Jamillah Bowman Williams, Lisa Singh, Naomi Mezey, *#MeToo As Catalyst: A Glimpse Into 21 Century Activism*, 2019 UCHILF 371, 385 (2019) (noting indications that more individuals are reporting sexual harassment through legal channels since the start of the #MeToo movement); Jamie D. Halper, *In Wake of #MeToo, Harvard Title IX Office Saw 56 Percent Increase in Disclosures in 2018, Per Annual Report*, HARVARD CRIMSON (Dec. 14, 2018), <https://www.thecrimson.com/article/2018/12/14/2018-title-ix-report/>.

¹¹³ See NAT'L ACAD. OF SCI., ENG'G, AND MED., *SEXUAL HARASSMENT OF WOMEN: CLIMATE, CULTURE, AND CONSEQUENCES IN ACADEMIC SCIENCES, ENGINEERING, AND MEDICINE* (2018); see also *Action Collaborative on Preventing Sexual Harassment in Higher Education*, NAT'L ACAD. OF SCI., ENG'G, AND MED., <https://www.nationalacademies.org/our-work/action-collaborative-on-preventing-sexual-harassment-in-higher-education> (last visited Jul. 17, 2020).

requiring grantees to notify them if a principal investigator is removed for engaging in sexual harassment or other inappropriate conduct.¹¹⁴

This heightened awareness around sexual misconduct in higher education has led to an increased focus by many colleges and universities on efforts to promote a culture that does not tolerate sexual misconduct. Although schools' underlying legal obligations to respond to sexual harassment, including under Title VII and Title IX, have not changed, the #MeToo movement has profoundly increased interest in whether and how those obligations are being fulfilled.¹¹⁵

2. *What the University Knew About Philbert*

We now analyze the various points in time at which the University received information related to Philbert's conduct toward women, and how the University responded to that information.

a) 2003: Allegations Raised By Tom Komorowski¹¹⁶

In September 2003, Tom Komorowski, an employee in Philbert's lab, alleged that Philbert was in a close personal relationship with a female lab employee. He made the allegation in connection with a complaint that Philbert had terminated him because of his age. In the course of discussing his complaint with Jeff Frumkin, the Director of Academic HR, Komorowski also mentioned Philbert's conduct toward other lab employees. Specifically, notes from a subsequent meeting among Frumkin, an SPH administrator, and two SPH faculty members mention Philbert's "boundary issues" and refer to a female graduate student—Jane Doe—with the statement "Martin showed up uninvited at home." The SPH faculty member who later interviewed Philbert about his alleged relationship with the lab employee reported back to Frumkin that he "did not learn anything that would confirm the charges about a personal relationship with [the female lab employee]." There is no evidence the University investigated Philbert's conduct toward any other woman in the lab or undertook to investigate whether or why he went to Jane Doe's home.

Komorowski later sued the University over his termination. The complaint did not allege any relationship between Philbert and the female lab employee. Both Philbert and the lab employee were deposed, both denied any improper relationship, and no evidence of a relationship materialized. The litigation was settled about a year and a half after the complaint was filed, and Komorowski received a cash payment. Considering all the actions taken by the University during the initial investigation and the later litigation, we did not identify additional

¹¹⁴ Press Release, Nat'l Sci. Found., NSF announces new measures to protect research community from harassment (Sept. 19, 2018), https://www.nsf.gov/news/news_summ.jsp?cntn_id=296610; Press Release, Nat'l Inst. of Health., Changing the culture of science to end sexual harassment (Sept. 17, 2018), <https://www.nih.gov/about-nih/who-we-are/nih-director/statements/changing-culture-science-end-sexual-harassment> (last visited July 30, 2020).

¹¹⁵ See, e.g., Emma Pettit, *The Next Wave of #MeToo*, CHRON. OF HIGHER EDUC. (Feb. 16, 2020), <https://www.chronicle.com/article/The-Next-Wave-of-MeToo/248033> (last visited July 30, 2020).

¹¹⁶ For a full discussion of the facts, see *supra* Section III(A)(2).

steps that the University should have taken to investigate the relationship alleged by Komorowski.

We learned in the course of our investigation that Jane Doe was one of several students who may have experienced sexual misconduct by Philbert while she worked in his lab. However, we did not find evidence that Komorowski reported any sexual misconduct by Philbert involving Jane Doe (or anyone else), or that the University developed evidence of such conduct in connection with the Komorowski matter. Indeed, the only information we identified on this point consists of the notes from the meeting among Frumkin, an SPH administrator, and SPH faculty members referring to Philbert “show[ing] up uninvited” at Jane Doe’s home; they do not state or imply that Philbert sexually harassed her. We therefore conclude that it was reasonable for the University not to initiate an investigation based on the limited information it had about Philbert and Jane Doe.

b) 2005 Allegations¹¹⁷

In 2005, a graduate student and a research assistant, both of whom worked in Philbert’s lab, separately told an SPH professor (hereinafter “the SPH Professor”) that Philbert had kissed them; one of the women also said Philbert had made comments about having “caramel colored babies” and “something about chocolate syrup sex.” The SPH Professor conveyed the information to Anthony Walesby, the OIE Director, and several senior University officials, including Vice Provost Lori Pierce and SPH Dean Ken Warner.

Walesby contacted the two women; one cried and declined to provide further information; the other indicated a potential willingness to speak with Walesby but ultimately did not respond to his outreach.¹¹⁸ Walesby also contacted another graduate student, who had no first-hand experience of misconduct by Philbert but told Walesby that Philbert had a “bad reputation” among female students. This graduate student also reported that a fellow student had told her that Philbert had hugged her twice and said something to her about “sleep[ing] w/him if not married.” Finally, Walesby contacted a male SPH faculty member, who told him that there were rumors about Philbert’s “women’s issues,” but that he (the faculty member) did not know any details.

¹¹⁷ For a full factual discussion, *see supra* Section III(B)(1)-(6).

¹¹⁸ The second of these two women recalls meeting with OIE and providing additional information. We were unable to find a record of that such a meeting.

The University did not open an investigation because the two potential complainants declined to file a formal complaint or to otherwise participate in an investigation. Walesby told us that without them, there was nothing on which to build an investigation.¹¹⁹

We conclude that the University should have taken further steps to investigate Philbert in 2005. Victims of sexual harassment are entitled to decide whether they want to participate in an investigation, and a complainant's decision not to provide information may limit the University's ability to investigate the conduct. Nevertheless, schools are obligated to take all reasonable steps to investigate sexual harassment reports, consistent with the victim's wishes not to participate, in order to provide a nondiscriminatory environment for students and employees.¹²⁰

The University failed to take all reasonable steps in this instance. OIE had information from several individuals—students and faculty—about Philbert's conduct, including that he had kissed a graduate student and a research assistant from his lab without their consent. Moreover, the key reports were firsthand (by way of the SPH Professor) and all four reports were consistent with each other. Indeed, Dean Warner told us he found the allegations sufficiently credible that he “read [Philbert] the riot act.” Philbert was a professor and principal investigator in his lab—he was therefore in a position to harass multiple students and employees. This heightened the importance of taking additional investigative steps to ensure that students and employees working with Philbert did so in a safe and nondiscriminatory environment.

OIE had avenues of investigation available to it. To begin with, OIE could have attempted to interview other employees and students in Philbert's lab. There is no way to know whether such interviews would have uncovered other troubling conduct. But it is clear that—in the absence of an OIE investigation—the University did not put itself in a position to know whether Philbert had sexually harassed students or employees. When the same allegations surfaced in 2010 during the SPH Dean's search, University personnel mistakenly relied on the outcome of OIE's work in 2005 as though it had fully investigated the allegations.

c) 2010 Dean's Selection¹²¹

During the 2010 SPH Dean's search and selection process, members of the Dean's Search Advisory Committee, which selected Philbert as a finalist, and Provost Hanlon, who

¹¹⁹ Walesby told us that the decision to not investigate was a collective decision among himself, Frumkin, and OGC. In 2005, OIE was the office responsible for responding to complaints of sexual harassment against employees. The University's Sexual Harassment policy did not reflect that, however; it had not been updated since 1993, and thus did not refer to OIE (which was not created until about 2004). It was not until 2009 that the Sexual Harassment policy and its accompanying procedures were revised to make clear that OIE was responsible for “determin[ing] the most effective method of investigating” complaints under the policy. SPG 201.89-0 (2009); The University of Michigan Procedural Guidelines for Handling Discrimination and Harassment Complaints (2009).

¹²⁰ See, e.g., U.S. DEP'T OF EDUC., OFFICE OF CIVIL RIGHTS, SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES (1997); Title VII, Civil Rights Act of 1964, 42 U.S.C. § 2002e-2.

¹²¹ For a full discussion of the facts, see *supra* Section III(C).

recommended Philbert to be Dean of SPH, received several pieces of information about Philbert’s conduct toward women that raised red flags. The information included the following:

2005 Allegations. Paula Lantz, the Chair of the Search Committee, learned of the 2005 allegations against Philbert from a Committee member who had heard them from an SPH faculty member. Lantz told us that she contacted Dean Warner, and he informed her that an “investigation” in 2005 had not substantiated any wrongdoing. He also told her that he had counseled Philbert. We found no evidence that Lantz received any other information about the 2005 allegations. In an email to the Committee member who had learned of the allegations, Lantz stated: “No wrong-doing was revealed after what was described to me as an ‘intense investigation.’ As such, there is no record of inappropriate behavior and no formal grievance was ever filed.”

In the same email, Lantz stated that she did not want to inform the full Committee about the 2005 allegations “as a specific instance because the investigation revealed no wrongdoing.” Lantz told the Committee member, “You, of course, are free to bring it up if you don’t agree with my perspective.”¹²² It does not appear that the full Committee ever learned of the specific allegations that had been reported to OIE in 2005. However, Lantz did share what she had learned about the 2005 allegations with the Provost’s office.

Hanlon had more information about the 2005 allegations than Lantz. After he learned about the allegations, his calendar shows that he met with Dean Warner “re SPH search.”¹²³ Hanlon later received an email summary prepared by Walesby (who was still Director of OIE) about the allegations. Walesby’s summary stated that two women had reported to an SPH professor that Philbert had kissed them; that one of the women reported that Philbert had made comments to her about having “caramel colored babies” and “something about chocolate syrup sex”; and that the other said “Philbert was a ‘bad man’ who did ‘bad stuff.’”¹²⁴ Hanlon later met with Walesby to discuss the allegations.¹²⁵

Hanlon emailed University President Mary Sue Coleman to inform her about the 2005 allegations.¹²⁶ He described the allegations and stated that OIE “had no evidence apart from rumor and the matter was resolved with the Dean having a frank discussion with Martin.” Hanlon further stated that “[t]he search committee was aware of these allegations and the investigation but felt that was in the past and that Martin had learned his lesson.”

¹²² Lantz noted in the email that “the general issue of gender and behavior, demeanor and baggage from prior interactions does need to be addressed[.]”

¹²³ Neither Hanlon nor Warner recalled this meeting.

¹²⁴ Pierce also received Walesby’s summary of the 2005 allegations. We found no evidence that Lantz received the summary.

¹²⁵ Neither Hanlon nor Walesby recalled this meeting, but email correspondence shows that they met and discussed the allegations.

¹²⁶ Coleman did not recall this email or being aware of any allegations regarding Philbert’s conduct.

Other Conduct. Lantz, members of the Search Committee, and/or Hanlon learned of other allegations and information regarding Philbert’s conduct toward women:

- Hanlon learned about the Komorowski litigation and met with OGC attorney Dave Masson to learn more about the lawsuit. (We found no evidence that Lantz or the Committee knew about the Komorowski lawsuit.)
- One of the Committee’s graduate student representatives raised concerns about a comment Philbert had made to students, and Lantz encouraged her to share her experience with the full Committee. The student representative informed the Committee that, in 2006 or 2007, Philbert had stated in class that women have high rates of urinary tract infections because “the playground and the trash heap are too close together.” (Our investigation did not establish that Hanlon learned about this specific comment.)
- The Committee received the results of a confidential survey regarding Philbert, in which one comment—written by a survey participant who described herself as having interacted with Philbert while he was a “a professor in class, in his role as associate dean, and as a colleague”—referred to Philbert’s “inappropriate comments and behaviors with respect to female students, staff, and faculty.” The participant stated: “I was subject to inappropriate and unwanted sexual comments and suggestions. I felt threatened—not physically but in terms of my job security given his senior status and as my associate dean for academics and research.” No Committee members, other than Lantz, recalled reviewing the comment or discussing it in Committee deliberations (or otherwise).¹²⁷ Hanlon had access to the survey results through an online system but told us he does not recall reviewing the comment, and we could not determine if he did.
- The Committee developed a one-page summary on each of the finalists, including Philbert, and it used those summaries in discussing the candidates with Hanlon. The summary for Philbert referred to “perceived inappropriate behavior, especially with females” and noted that Philbert had “received pointed feedback/warnings regarding this behavior when he became a senior associate dean 5 years ago.” The summary further stated that there was “no evidence that this is an ongoing or current problem [but] rumors and negative feelings among some members of the SPH community linger.” The summary did not specifically reference the 2005 allegations.

We reach the following conclusions regarding the actions of relevant University personnel in response to the information described above:

¹²⁷ There is reason to believe that at least some members of the Committee were aware of the comment. Lantz wrote an email to a Committee member while the Dean’s search was underway; the email described Philbert’s issue with gender and behavior, and also said that “it does come up in the feedback comments.”

Committee Chair. Lantz’s knowledge of the 2005 allegations was limited. She received information from a Committee member about the allegations and then met with Dean Warner. According to Lantz, Warner said the allegations had been investigated and were not substantiated. Lantz did not receive the email summary prepared by Walesby (or any other information) regarding the allegations. Lantz shared what she knew about the 2005 allegations with the Provost’s office. But she did not inform the full Committee about the specific allegations reported to Walesby in 2005 because, as noted above, she understood, albeit incorrectly, that they had been investigated and the investigation had “revealed no wrongdoing.”¹²⁸ Given the information before her, we believe Lantz exercised reasonable judgment in choosing not to raise the 2005 allegations with the full Committee.¹²⁹

We believe that Lantz (or anyone else on the Committee) should have forwarded the confidential survey results received by the Committee—specifically, the comment that Philbert had subjected a survey participant to “inappropriate and unwanted sexual comments and suggestions”—to OIE.¹³⁰ From the vantage point of the Committee, the comment was a specific and previously unreported allegation of misconduct by a faculty member. The University’s Sexual Harassment policy provided, at that time, that OIE “must be advised of all reported incidents of sexual harassment,” and it was OIE’s responsibility to investigate such reports.¹³¹ But OIE could not investigate reports that were not brought to its attention. And in this instance, the faculty member was a candidate for a senior leadership position—making it that much more important for the information to have been reported to OIE.

Provost Hanlon. As described above, Hanlon had more information than the Committee regarding Philbert’s conduct—including about both the Komorowski litigation and the 2005 allegations. And, with the possible exception of Philbert’s alleged classroom comment, Hanlon received or had access to the all of the information collected by the Committee regarding Philbert’s conduct. This included the Committee’s summary noting Philbert’s “perceived inappropriate behavior, especially with females,” and the confidential survey results containing a comment about his “inappropriate comments and behaviors” toward women.

Hanlon has no recollection of having read the survey comment, and we did not find any evidence to suggest that he did. We did find that he had access to the comment. Had Hanlon reviewed the comment, we reach the same conclusion that we reach above with respect to the

¹²⁸ There is evidence, however, that the Committee discussed more general examples of Philbert’s conduct toward women from the same time period, as a one-page summary on Philbert stated, “Martin received pointed feedback/warnings ... 5 years ago. All of the examples and reports of inappropriate behavior appear to be at least 5 years old.”

¹²⁹ Lantz also told the Committee member who was aware of the 2005 allegations that she was “free to bring [the allegations] up” to the full Committee. (Lantz had previously encouraged the Committee’s graduate student representative to share with the full Committee her concerns about Philbert’s comments.)

¹³⁰ Lantz should also have alerted Hanlon to the comment because Hanlon was responsible for deciding who would be the next SPH dean. We could not establish whether Lantz did so.

¹³¹ SPG 201.89-0 (2009).

Committee: Hanlon should have provided the information to OIE for such further action as it considered appropriate.

We asked Hanlon about his consideration of the 2005 allegations during the 2010 Dean’s search. He told us that it was apparent from the documents we showed him¹³² that the allegations “were taken seriously . . . There was an independent investigation by Walesby . . . [who] concluded that no further investigation by OIE was necessary and that Dean Warner would speak to Professor Philbert as follow up.” At the time of the Dean’s search, in Hanlon’s email to Coleman, he wrote that “Anthony Walesby investigated¹³³ . . . [and] [i]n the end, [Walesby] had no evidence apart from rumor and the matter was resolved with the Dean having a frank discussion with [Philbert].”¹³⁴

To be sure, Hanlon did not dismiss the information he received about Philbert’s conduct. He met with Walesby about the 2005 allegations, and he met with OGC about the Komorowski lawsuit. He also asked Vice Provost Lori Pierce to make what he described to us as “reference calls” to women in SPH. Pierce recalled that her task was to contact female graduate students and faculty to learn of any concerns about Philbert. And staff in the Provost’s office obtained contact information for the students who had witnessed or been subjected to Philbert’s alleged misconduct in 2005—fact-gathering that staff told us would have been part of Hanlon’s “due diligence.”¹³⁵ Hanlon himself made reference calls to at least six SPH faculty and administrators.¹³⁶

Hanlon was entitled to rely on the results of OIE’s work. But the record shows that OIE never conducted an investigation of the 2005 allegations. Hanlon’s reliance on OIE was

¹³² In the course of interviewing Hanlon, we showed him emails that he received and sent while the Dean’s search was underway. The emails included the summary of the 2005 allegations prepared by Walesby, which Hanlon received on October 18, 2010.

¹³³ Hanlon told us that he trusted Walesby and found him to be thorough, professional, and a person of high integrity.

¹³⁴ There is tension among (a) Hanlon’s understanding of OIE’s efforts in 2005 (*i.e.*, that there was an “investigation” and that OIE had “no evidence apart from rumor”), (b) the written summary of the 2005 allegations prepared by Walesby in 2010 (*i.e.*, that OIE had determined not to conduct an investigation), and (c) the fact that Dean Warner addressed the 2005 allegations in a frank discussion with Philbert at the time (which Dean Warner did because he found the allegations credible and assumed the conduct happened). However, we do not have a complete record about the information Hanlon received. For instance, Hanlon and Walesby met in person on October 19, prior to Hanlon emailing Coleman, and neither Hanlon nor Walesby recalled that meeting or how Walesby described his efforts to learn more in 2005.

¹³⁵ Only one of the students identified in the staff member’s email agreed to meet with us. She said that no one from the Provost’s office (or any other University office) contacted her about Philbert’s conduct during the 2010 Dean’s search.

¹³⁶ At least one of these individuals recalled telling Hanlon that he had heard rumors of Philbert’s conduct toward women.

therefore either misplaced or based on a misunderstanding of what OIE had done to get to the bottom of the allegations about Philbert that were raised at that time. And even assuming that Hanlon relied on OIE's work to conclude that the 2005 allegations were unsubstantiated, Hanlon had additional information about potential misconduct by Philbert (e.g., the Committee's summary noting Philbert's "perceived inappropriate behavior, especially with females," and the survey comment about Philbert's "inappropriate comments and behaviors" toward women).

Hanlon was also entitled to conduct due diligence about Philbert's conduct, and we find that he did that work carefully. But to the extent Hanlon believed that a closer look at the 2005 allegations was warranted—particularly in order for him to reach a judgment as to whether Philbert was fit to serve as Dean of SPH—he should have turned to trained investigators in OIE, the office responsible for reviewing and investigating sexual harassment allegations, to pursue that inquiry.

President Coleman. Coleman does not recall the email about Philbert's candidacy that she received from Hanlon on October 20, 2010. She also does not recall being aware of any allegations regarding Philbert's conduct toward women. She told us that she would have relied on the judgment of Hanlon and Walesby, both of whose judgment she trusted. She also acknowledged that she—and perhaps others who may have received this information regarding Philbert—likely would not have given it the same weight in 2010 as they would today. We believe Coleman should have asked questions and pressed to gain a full understanding of the allegations about Philbert's conduct. Absent a complete record regarding any conversations between Coleman and Hanlon (or any other Senior Administrator), we are unable to reach any conclusions about whether she failed to do so.

d) 2013 Tuition Reimbursement¹³⁷

In the fall of 2012, E-1—one of the women who had raised allegations of sexual misconduct against Philbert in 2005—re-enrolled in SPH. In the spring of 2013, she filed petitions requesting a tuition refund and transcript amendment based on emotional distress she was experiencing related to Philbert's alleged sexual harassment of her several years earlier. Walesby alerted several University officials, including then-Provost Hanlon, incoming Provost Martha Pollack, Director of Academic HR Jeff Frumkin, and Christine Gerdes, an OGC attorney. He sent the group the same summary of the 2005 allegations that he had prepared in 2010 in connection with the Dean's selection process. Within the following month, the University granted both of E-1's petitions.

While preparing her petitions, E-1 met with Walesby and in the course of the meeting, he attempted to learn more about her allegations. She declined to provide additional information. Walesby concluded that there were no specific allegations to move forward on. Walesby conferred with Vice Provost Pierce about whether he should inform Philbert about E-1's petitions, and discussed concerns about "possible retaliation if [Philbert] knew" about the

¹³⁷ For a full discussion of the facts, *see supra* Section III(D)(3).

petitions. Walesby later met with Philbert and, without sharing E-1's name, alerted him to the petitions.

E-1's petitions were the third time in eight years that the 2005 allegations came to the attention of senior University administrators. Since E-1 provided no new information and the senior administrators who were briefed on the petition thought, albeit mistakenly, that E-1's allegations had been fully investigated by OIE in 2005, it is understandable none of them thought to ask OIE to investigate the allegations in 2013.

e) 2017 Provost Selection¹³⁸

President Schlissel. In 2017, President Schlissel recommended and the Board of Regents approved Philbert as University Provost. We found no evidence that information about Philbert's alleged misconduct reached the President in advance of Philbert's selection.

During the summer of 2017—after Philbert had been selected and announced as Provost, but before he had taken office—President Schlissel learned of the Komorowski litigation. With the assistance of OGC, President Schlissel collected information about the litigation, including about the alleged relationship between Philbert and a female lab employee in 2003. President Schlissel learned that the facts, which came in large part from sworn deposition testimony, had not established the existence of a relationship. President Schlissel thus found no reason to reverse Philbert's appointment.

We reached the same conclusion: The litigation record—including the testimony of multiple witnesses—included no evidence that Philbert had had a relationship with a female lab employee. We did not identify any additional evidence that the President or the University should have considered, or any further steps that should have been taken in response to the information President Schlissel learned.

Provost Search Committee. We similarly found no evidence that information about Philbert's alleged misconduct reached the Provost Search Committee during its deliberations.

Vice Provost Pierce was a member of the Provost Search Committee. Pierce learned of the allegations against Philbert in 2005 when she met with the SPH Professor and directed her to report the information to OIE; she called women in SPH about Philbert's conduct when allegations surfaced during the 2010 Dean's search; and she received information that the allegations were at issue in E-1's request for tuition reimbursement in 2013.

Pierce did not mention the allegations to the Provost Search Committee or the President. She told us that she did not recall being asked, as a member of the Committee, whether she was aware of any allegations of misconduct against Philbert, and she simply "did not think about it."

¹³⁸ For a full discussion of the facts, *see supra* Section III(E).

She explained that, to her recollection, “there had been no evidence to support” the allegations¹³⁹ and it was not an established “data point,” “so it was just gone from [her] mind.”

There is no evidence that information about Philbert’s conduct came to Pierce’s attention after 2013.¹⁴⁰ And we did not find evidence of the Provost Search Committee seeking such information, either in paper form or verbally, from Committee members. Considering the totality of the evidence, we credited Pierce’s statement that she did not think about the 2005 allegations while participating in the Committee’s work.

We recognize that, as a general matter, prior unsubstantiated allegations of misconduct should not be considered in the University’s selection processes and other personnel decisions. And, to be sure, Philbert had never been found to have violated University policy or engaged in other misconduct. However, in light of the nature of the 2005 allegations (*e.g.*, unwanted kissing and a proposition for sex)—which then surfaced again in 2013 when one of the women, E-1, requested a tuition reimbursement (which the University granted)—we believe that had Pierce recalled the allegations, it would have been appropriate for her to raise them with the Committee or with President Schlissel for consideration. This is particularly so in light of the senior leadership position for which Philbert was being considered. If President Schlissel had received that information, he would have been in a position—as Hanlon was in 2010—to conduct additional diligence regarding Philbert’s conduct before making a decision on Philbert’s candidacy for Provost.

f) Other Information Received by the President’s Office

Information Received by the Special Counsel to the President. In the fall of 2017, E-7, an SPH employee, met with Liz Barry, the Special Counsel to the President, to discuss a position E-7 was considering in the Provost’s office. E-7 recalled expressing some hesitation about working for Philbert and “insinuate[ing] something around Me Too.” She also may have said that Philbert “needs to be careful that people do not perceive what he says as inappropriate.”

Barry told us about a conversation in which E-7 referred to Philbert having “issues with women” and stated that part of her job would be to “coach” him on interactions with women. Barry told us that she understood the issue to be Philbert’s management style, in part because she did not associate the term “coaching” with sexual misconduct. We reviewed all emails between Barry and E-7 for a seven-month period after September 1, 2017 (the day Philbert started as Provost) and found no references to sexual misconduct or other improper behavior by Philbert.

We do not find that Barry received a report of sexual misconduct, or that there were any further steps that she could reasonably have been expected to take in response to what E-7 told her.

¹³⁹ As discussed above, based on our analysis of the entire record, we disagree that there was no evidence to support the allegations.

¹⁴⁰ We reviewed the entirety of Pierce’s available email for references to Philbert and potential misconduct; we found none after 2013.

President Schlissel's 2019 AEC Survey. On April 30, 2019, President Schlissel received his 2019 AEC survey results. The anonymous narrative comments included allegations that Philbert was a “sexual predator.” The University has established channels, including anonymous channels, for reporting sexual misconduct. The AEC survey is not a reporting channel. However, the AEC survey is a way for faculty to make statements to senior officials, and the premise of the upward evaluation process is that the official being reviewed will receive and read those statements.¹⁴¹

President Schlissel has no recollection of having read the comment. We did not find that President Schlissel (or anyone else in the President’s office) had knowledge of the comment in the 2019 AEC survey regarding Philbert. We did find that, as of April 2019, he had access to that comment. Based on the nature of the survey, while the President was not required to read it, we understand he may have been expected to read it. President Schlissel acknowledged that had he reviewed the comment, he would have routed it to OIE. In light of OIE’s responsibility for reviewing and investigating sexual harassment complaints, we believe that would have been the correct course of action.

g) Reports to Other University Employees

The events described above are the most significant instances in which University officials learned of information or allegations regarding Philbert’s conduct toward women. However, we identified other instances where other University personnel received similar information regarding Philbert. In two of these instances, the employees who received the information were in supervisory roles:

- In either 2010 or 2011, a staff member in the SPH Dean’s office told her supervisor that Philbert’s comments had “crossed the line.”¹⁴² The staff member recalled describing Philbert’s comment that her breasts felt good against his chest during a hug. The staff member specifically asked the supervisor not to file an official report. The supervisor told us that she made a written record of the conversation and stored it in the staff member’s personnel file.¹⁴³
- In 2018, an SPH staff member, E-7, discussed Philbert’s conduct with E-6, who held a supervisory role in SPH.¹⁴⁴ Specifically, E-7 described Philbert’s comment that he

¹⁴¹ We found two emails generally related to this issue. First, AEC sends an email to recipients stating, “How you treat the message and its confidential and anonymous content is up to you.” Second, President Schlissel also sent an email on April 1, 2019 stating, “I also want to encourage all administrators being evaluated to take the feedback received from the faculty survey seriously, as it provides an important perspective on the work of the university.”

¹⁴² For a full discussion of the facts, *see supra* Section III(B)(7).

¹⁴³ The supervisor’s practice would have been to inform her own supervisor—an associate dean—but she could not recall specifically whether she had done so, and the associate dean did not recall having been told about the report.

¹⁴⁴ For a full discussion of the facts, *see supra* Section III(F)(3).

wanted to see below E-7's tan lines. E-7 mentioned that she had met with Liz Barry, the Special Counsel to the President. E-6 concluded that she need not report the information to OIE because E-7 did not feel professionally disadvantaged by Philbert's comments, and because E-6 assumed that the President's office was aware of the comments.¹⁴⁵

In both cases, these employees, because of their roles, were designated under the University's Sexual Harassment policy to receive reports about an employee's sexually harassing behavior. At the time of both reports, the policy reflected an expectation that officials designated to receive reports of sexual harassment would route those reports to OIE, which would then "determine the most effective method of investigating" a complaint.¹⁴⁶ The policy applied regardless of whether other designated officials had received the same report. Accordingly, we conclude that in both instances, the reports should have been provided to OIE.¹⁴⁷

We found two additional instances when University personnel received information regarding Philbert's conduct toward women. First, in 2017, E-7 complained about Philbert's comments, without providing detail, to an SPH faculty member who had previously served in a leadership position.¹⁴⁸ The faculty member seemed to believe at the time of this conversation that she was expected to provide reports about sexual harassment to OIE. However, because the faculty member was no longer in a leadership position at the time of her conversation with E-7, and did not otherwise supervise E-7, we conclude that she was not an official designated to receive reports under the Sexual Harassment policy.

In 2018, E-8, a staff member in the Provost's office, told E-6—who, as noted, held a supervisory role in SPH—about her discomfort when Philbert told her that people in the office thought she (E-8) was his girlfriend. Although E-6 held a supervisory role in SPH, that supervision did not extend to E-8, who worked in the Provost's office. The Sexual Harassment policy does not make clear whether employees in supervisory roles are expected to inform OIE

¹⁴⁵ E-6 was in an undisclosed sexual relationship with Philbert at the time of this conversation. We can only speculate as to whether that influenced her thinking about whether to report what E-7 told her. As to E-7's meeting with Barry, as noted above, we concluded that Barry did not receive a report of sexual harassment from E-7.

¹⁴⁶ The University of Michigan Procedural Guidelines for Handling Discrimination and Harassment Complaints (2009). The Sexual Harassment policy did not specifically address whether designated officials must report to OIE when—as was the case in 2010 or 2011—an employee does not want to file a report. We heard from OIE officials, however, that the University expects such reports to be routed to OIE.

¹⁴⁷ We did not, in either case, assess whether the employee who received the report had received adequate training with respect to her responsibility under the Sexual Harassment policy to provide such reports to OIE.

¹⁴⁸ For a full discussion of the facts, *see supra* Section III(F)(2).

of a report by an employee who is not under their supervision. Given this lack of clarity, we cannot conclude that E-6 was expected to provide E-8's report to OIE.

C. Analysis: *Summation*

The preceding analysis addresses Philbert's conduct, what information the University had about it, and what the University did in response to that information. We now address why, in our estimation, only certain information was known (and other information was not known) to senior University administrators as Philbert rose from assistant to full professor and from there to SPH Dean and University Provost.

As an initial matter, we did not find evidence that University personnel intentionally hid allegations about Philbert's misconduct. Rather, the heart of our findings is that the University should have done more to investigate an early, credible allegation that Philbert had engaged in sexual misconduct in 2005. Had OIE conducted a meaningful investigation at that time, it may have identified at least some additional evidence, as we did in our investigation. That evidence in turn could have informed the consideration he received for leadership positions, including in 2010, when Provost Hanlon learned of the 2005 allegations. Hanlon relied on the adequacy of OIE's review in 2005, but OIE had not done the work to know, one way or the other, if Philbert had engaged in the alleged conduct. Moreover, had the 2005 inquiry yielded more evidence, then other information regarding Philbert's conduct that came up in the 2010 Dean's search—such as the anonymous comment from a survey participant that she had received “inappropriate and unwanted sexual comments and suggestions” from Philbert—may have been viewed differently and appropriately referred to OIE.

Missed investigative opportunities aside, there is a separate question as to why, in light of the persistent and widespread nature of Philbert's conduct, University officials did not learn of other instances of Philbert's inappropriate behavior. Information about Philbert's misconduct did not come up during two critical periods—when Philbert was renewed as Dean of SPH in 2015, and when he was selected as Provost in 2017. And prior to 2020, no witnesses from the Dean's office or the Provost's office filed a complaint against Philbert despite many instances of potential misconduct while he served there. Our investigation revealed two key reasons why witnesses may have chosen not to come forward.

First, Philbert normalized his behavior. We heard from several University personnel that Philbert consistently behaved in an informal and flirtatious manner with students and colleagues alike, regularly hugging people and engaging in conversations that included inappropriate, and sometimes sexual, comments. We conclude that at least some of Philbert's colleagues viewed his discomfiting behavior as part and parcel of his usual manner. When a faculty member in SPH was told by one of Philbert's subordinates about a comment by Philbert—that he wanted to see where the subordinate was not tan—the official said the comment was, “within the range of Philbert's interactions.” Thus, it appears that certain instances of Philbert's conduct might have been more readily scrutinized—and reported—had they not been accepted as a component of his personality. As discussed above, the advent of the #MeToo era is changing in profound ways the response to offensive behavior, and may have contributed to the willingness of women to come forward in January 2020.

Second, multiple witnesses—including some who were in a relationship with him—said they were afraid that Philbert would have retaliated against them if they had reported him. This appeared to chill several people from reporting Philbert’s conduct. In 2005, the two women who alleged being kissed by Philbert did not want to report him because they were concerned that he would take action against them or people close to them (despite assurances that the University prohibited retaliation). This was a consistent theme we heard from many women who experienced Philbert’s misconduct at various points in time: They were afraid to report him because he was a powerful, influential figure who could affect their professional (and, in some cases, personal) lives. Philbert had expressly threatened some of them—one witness, who in fact was in a relationship with Philbert, told us that he said: “If you ever tell anyone about us, I will make sure you go down. I will destroy your career.” And at least one of the women who reportedly experienced misconduct nearly two decades ago did not respond to our request for an interview because she remained concerned that doing so would damage her career.

* * *

Two things are clear: First, there is significant evidence that Philbert engaged in a wide range of sexual misconduct, including sexual harassment, for at least fifteen years. Second, neither OIE nor the senior leadership of the University understood the seriousness or the pervasiveness of Philbert’s misconduct. Among our recommendations below, we make suggestions for closing that information gap so that the University is better positioned to identify and respond to sexual misconduct issues moving forward.

V. Recommendations

We developed recommendations based on our key findings and conclusions regarding Philbert’s conduct and the University’s response to allegations about Philbert. We also considered current University policies, procedures, and practices, including those addressing sexual misconduct, and compared those policies, procedures, and practices to those of peer institutions.

Our recommendations fall into three categories. In Part A we recommend actions to ensure that information about sexual misconduct and other inappropriate behavior reaches the appropriate University officials, including OIE, the entity responsible for investigating sexual misconduct complaints. In Part B we recommend actions to ensure that OIE’s findings are informed by thorough investigations. And in Part C we recommend actions to ensure that the University’s hiring decisions are informed by past findings of policy violations, including findings regarding sexual misconduct. In sum, we are recommending actions to ensure that the University has access to information regarding sexual misconduct, and that such information is reliable and systematically considered when important decisions are made. More broadly, our recommendations are intended to enhance the University’s ability to prevent, identify, and respond to complaints of sexual misconduct, including conduct of the kind described in this Report.

We also have general suggestions about how to implement our recommendations; we do not prescribe a course of action. The University is in the best position to determine how best to adapt and implement our recommendations.

A. Ensuring that Information Reaches OIE and Appropriate University Officials

Much of Philbert’s conduct toward women, as well as his sexual relationships with subordinate employees, did not come to the attention of University officials. Our findings demonstrate the importance and challenge of ensuring that information about sexual misconduct and other inappropriate behavior reaches University officials. We make two sets of recommendations in this area.

First, the University’s Nepotism policy prohibits favoritism and discrimination in the context of “close personal relationship[s]” between employees. However, the policy does not provide clear notice regarding the appropriate course of action when two employees enter into a consensual relationship, including the circumstances under which the University must be notified of the relationship. We thus recommend that the University adopt a standalone policy that addresses consensual relationships between employees and makes clear what obligations are triggered by such relationships.

Second, information about sexual misconduct may not always reach OIE, which is responsible for investigating such conduct. Complainants and witnesses may not be inclined to report through established channels (or to report at all) because—as was the case with several of the witnesses with whom we spoke—they have concerns about confidentiality and/or they fear retaliation. Our investigation also revealed that (1) despite the University’s efforts to ensure that available reporting mechanisms are widely understood, confusion remains among some members

of the University community regarding how or where to report; and (2) employees who are obligated to report suspected sexual misconduct may not fully understand the scope of that obligation. We make several recommendations below to address these issues.

We note that in April 2019, following an independent review commissioned by the University, the law firm of Hogan Marren Babbo & Rose, Ltd. issued a report (the “HMBR Report”) containing recommendations for enhancing the University’s reporting mechanisms and written policies and procedures regarding sexual misconduct. Some of our recommendations echo and build on recommendations made in the HMBR Report.¹⁴⁹

1. Establish a Standalone Policy Regarding Consensual Relationships Between Employees

Consensual relationships between University employees ordinarily do not implicate issues of sexual misconduct reporting, and thus are not reviewed by OIE. Under certain circumstances, however, the fact that such a relationship exists is information that should be provided to appropriate University officials. To ensure that employees have notice of their obligations when they enter into a consensual relationship, we recommend that the University establish a standalone policy regarding consensual relationships between employees.

Philbert engaged in multiple sexual relationships with subordinate employees while serving as Dean of SPH and as Provost. Such relationships between employees—though they may be consensual—create the potential for actual and perceived conflicts of interest, exploitation, and favoritism where the employees occupy unequal positions of authority, and may disrupt the workplace environment. Moreover, such relationships can involve issues of sexual harassment and retaliation.

Like many of its peer institutions, the University has policies that address “sexual, romantic, amorous, and/or dating relationships” between faculty and students as well as between staff and students.¹⁵⁰ The University does not, however, have a standalone policy addressing such relationships between employees. Rather, the University addresses issues of favoritism and discrimination arising from employees’ “close personal relationship[s]” in its Nepotism policy, Standard Practice Guide (“SPG”) 201.23. Section 1 of the Nepotism policy prohibits favoritism toward or discrimination against an individual “based upon that individual’s being a relative of

¹⁴⁹ Hogan Marren Babbo & Rose, Ltd., *Report of Review of Sexual Misconduct Policies and Procedures (Focus on Faculty and Staff)*, April 2019.

¹⁵⁰ SPG 601.22 (faculty-student relationship policy); SPG 601.22-1 (employee-student relationship policy).

or having a close personal relationship or external business relationship to another person employed by the University.”¹⁵¹

Section II of the Nepotism policy (“Regulations”) provides that, where an individual is assigned to a position under the supervision or control of a “relative,” a management plan must be devised to “mitigate possible conflicts of interest.”¹⁵² The management plan must be approved by the head of the organizational unit and the unit’s senior human resources officer.¹⁵³

While the University requires a management plan for employees in close personal relationships, the language of the policy and its accompanying procedures do not make that requirement clear in two respects. First, although Section I of the policy states that “relative” includes “close personal relationships,” Section IV (“Definitions”) defines “relative” as a person with a familial or household relationship, and states that this definition is “not to be construed to exclude the possibility of questions of favoritism arising with regard to other relatives, or other close personal or external business relationships.”¹⁵⁴ Second, the policy sets forth one procedure for “relatives” (the development of a management plan), and a second procedure for “[o]ther close personal relationships and external business relationships.” This second procedure does not expressly require the development of a management plan; instead, it requires supervisors to investigate concerns of favoritism arising from such relationships and to consult with the appropriate human resources officer regarding what action should be taken.¹⁵⁵ In short, the Nepotism policy does not state clearly whether employees in a consensual relationship must develop a management plan.

Many institutions of higher education have recently adopted policies addressing consensual relationships between faculty/employees and students. Fewer schools have focused on consensual relationships between employees in positions of unequal authority. Schools that address such relationships tend to do so either in (1) a nepotism policy covering familial/household relationships and (sometimes in a separate section) consensual relationships,

¹⁵¹ SPG 201.23, Section I(B) (emphasis added). The policy makes clear that it does not apply to or supplant situations covered by the University’s Sexual Harassment policy (SPG 201.89-0). The Sexual Harassment policy, in turn, states that the Nepotism policy “precludes individuals from evaluating the work performance of others with whom they have intimate familial or close personal relationships, or from making hiring, salary, or similar financial decisions concerning such persons, without prior written approval.”

¹⁵² *Id.* at SPG 201.23, Section II.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at SPG 201.23, Section IV(A).

¹⁵⁵ See SPG 201.23, *Appointment of Relatives*, the University of Michigan, available at <https://hr.umich.edu/working-u-m/management-administration/uhr-procedures/20123-appointment-relatives> (last visited July 30, 2020).

or (2) a standalone policy for consensual relationships.¹⁵⁶ Regardless of form, such policies typically have two common features. First, notification is required—*i.e.*, the employee in the position of greater authority must notify designated officials about the relationship. Second, recusal and/or mitigation is required—*i.e.*, the employee in the position of greater authority must recuse himself or herself from any role of authority, supervision, or evaluation and/or must agree to a plan for alternate supervisory arrangements.

To be clear, the University’s Nepotism policy prohibits favoritism and discrimination in the context of “close personal relationship[s]” between employees.¹⁵⁷ But the policy does not state a clear course of action when employees in unequal positions of authority enter into a consensual relationship.¹⁵⁸ To ensure that employees have clear notice of the University’s expectations, we recommend the following:

- The University should develop a standalone policy explicitly focused on consensual relationships between employees (faculty and staff) in positions of unequal authority, thus limiting the scope of its Nepotism policy to cover familial and household relationships only.
- The policy should define “covered relationships.” Covered relationships should include relationships between employees in positions of unequal authority where one party has supervisory or evaluative authority over the other. “Supervisory or evaluative authority” should be defined to include, *e.g.*, the power to control or influence another person’s employment, including but not limited to hiring, work conditions, compensation, promotion, discipline, assignments, and recommendations.
- The policy should state what is required of employees in such relationships. Specifically, the policy should set forth a notification and recusal and/or mitigation model for covered relationships, including that:
 - The employee in the position of greater authority must notify designated officials of the relationship; and
 - The employee in the position of greater authority must recuse himself or herself from any role of authority, supervision, or evaluation over the other employee; or
 - The employees must agree to a management plan that is designed to mitigate possible conflicts of interest.

¹⁵⁶ Some schools address consensual relationships in a broader sexual misconduct policy, while noting that such relationships do not constitute prohibited misconduct under the policy.

¹⁵⁷ SPG 201.23, Section I.

¹⁵⁸ *Id.*

- The policy should state that the failure to follow the steps outlined above—including an employee’s failure to notify designated officials of a covered relationship—constitutes a violation of the policy.

Employees in a consensual relationship are more likely to understand their obligations if they are set forth in a standalone policy. Such a policy will also make clear the University’s commitment to identifying and preventing conflicts of interest, favoritism, and discrimination that may arise from employee relationships.

2. *Educate the University Community on Avenues for Reporting Sexual Misconduct*

We recommend that, in addition to efforts made to date, the University further educate students and employees on the avenues for reporting sexual misconduct.

OIE is the exclusive entity responsible for investigating allegations of sexual misconduct against students and employees.¹⁵⁹ Individuals with information regarding suspected prohibited conduct can report to OIE (by phone, by email, through OIE’s website, or in person), or to designated employees who are required to report suspected prohibited conduct to OIE (known as “Responsible Employees,” as defined by current University policy). Individuals can also submit anonymous online reports to OIE. OIE’s website and the University’s dedicated “Sexual Misconduct” website¹⁶⁰ describe these reporting options, as well as information about confidential resources and options for reporting to law enforcement.¹⁶¹

In October 2019, informed by the recommendations in the HMBR Report, the University released a draft umbrella policy for addressing sexual and gender-based misconduct that applies to misconduct by or against students, faculty, staff, and third parties on the Ann Arbor, Dearborn and Flint campuses.¹⁶² The draft umbrella policy sets forth the avenues for reporting sexual misconduct, as well as the available confidential resources on campus.¹⁶³ When the University

¹⁵⁹ Reports of sexual harassment made under the Sexual Harassment policy (SPG 201.89-0), which is applicable to complaints against faculty and staff, are investigated by OIE, or jointly with another office as determined by OIE.

¹⁶⁰ The University launched the Sexual Misconduct website in September 2019 as a one-stop shop for information about reporting sexual misconduct and the University’s processes for responding to such reports.

¹⁶¹ See *Sexual Misconduct Reporting & Resources*, the University of Michigan, available at <https://sexualmisconduct.umich.edu/> (last visited July 27, 2020).

¹⁶² See *Umbrella Policy*, the University of Michigan, available at https://sexualmisconduct.umich.edu/wp-content/uploads/2019/10/Policy_10.3.19_clean.pdf (last visited July 30, 2020).

¹⁶³ Confidential resources are University employees who are prohibited from disclosing confidential information unless (1) given permission by the person who disclosed the information; (2) there is an imminent threat of harm to self or others; (3) the conduct involves suspected abuse of a minor under the age of 18; or (4) as otherwise required or permitted by law or court order.

implements this new policy, we recommend that it take the opportunity to remind students and employees (e.g., through a campus-wide email) about how to report sexual misconduct to OIE, as well as the identity and availability of confidential resources.¹⁶⁴

In addition, we found that allegations of sexual misconduct that are raised or referenced in tools used to provide employee feedback, such as anonymous surveys, may never reach OIE. Those tools are not designated channels for reporting. As described above, *see supra* Section III(F)(6), allegations about Philbert appeared in three AEC surveys, which are anonymous and confidential evaluations by faculty members of a University executives' work performance. The University directs survey responses exclusively to the executive under review and does not retain or review them. Accordingly, we recommend that the University add a notice to anonymous surveys and other methods for providing feedback about faculty and staff to make clear that these tools are not channels for reporting sexual misconduct. The notice should also alert readers to the available options for reporting sexual misconduct allegations to OIE.

3. *Enhance Visibility and Training of Mandatory Reporters*

The University's Sexual Harassment policy, which applies to complaints against employees, designates certain University officials to whom complaints under the policy may be made. Similarly, the University's Interim Policy and Procedures on Student Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence identifies "Responsible Employees" who are required to report suspected misconduct to OIE. The University's draft umbrella policy—which, as noted above, is a single policy that applies to misconduct by or against students, faculty, staff, and third parties—also identifies Responsible Employees who are required to report suspected misconduct to OIE.

Employees who are designated to receive complaints of sexual misconduct (referred to here as "mandatory reporters"¹⁶⁵) are a critical link between potential complainants and OIE. To ensure that these employees provide an effective avenue for reporting, it is critical that (1) members of the University community understand which employees are mandatory reporters (as opposed to confidential resources); (2) employees understand whether they are mandatory reporters and the scope of their responsibilities as such; and (3) all employees understand their role in responding to reports of sexual misconduct, whether or not they are a mandatory reporter. We thus recommend that the University enhance the visibility of and training provided to mandatory reporters.

Enhanced Visibility. Although the University has made efforts to indicate in its policies the employees who are designated to receive reports of sexual misconduct, we found that

¹⁶⁴ This reminder would be in addition to the other means through which the University publishes information about sexual misconduct reporting.

¹⁶⁵ The Department of Education's newly-issued Title IX regulations, which are effective August 14, 2020, give institutions wide discretion to designate those employees who are "mandatory reporters" required to report sexual harassment allegations to the Title IX Coordinator. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 80 Fed. Reg. 30,026 (May 19, 2020) (to be codified at 34 C.F.R. § 106).

confusion persists—both with respect to who those employees are and what their reporting responsibilities are.¹⁶⁶

The Sexual Misconduct website and OIE’s website currently provide links to the policies that enumerate the categories of employees who are mandatory reporters. We recommend that, in addition to providing links to the relevant policies, these websites have a dedicated page that separately lists the categories of employees who are mandatory reporters. Additionally, the University, in coordination with OIE, should encourage its units and schools to provide clear information to their students, faculty, and staff regarding the personnel in those units or schools who are mandatory reporters.¹⁶⁷

Enhanced Training. OIE provides in-person training to certain groups of employees (such as Resident Advisors and members of Student Life and Athletics) regarding their reporting obligations. That training has, at various points in time, been mandatory for some groups of employees.¹⁶⁸ OIE also offers online “Responsible Employee” training, which is available on the Education and Training page of its website.¹⁶⁹ This training was distributed to employees when it was rolled out in 2016, and OIE often identifies it as a resource during in-person trainings and/or sends it via email to certain employees. The online training is not mandatory and is not distributed widely on an annual basis. Some employees with whom we spoke did not recall ever having received training from OIE (whether in-person or online) regarding their reporting obligations, and some witnesses expressed confusion about when the obligation to report attaches.¹⁷⁰

The University should require that all University employees receive annual online training regarding (1) the avenues for reporting sexual misconduct, (2) which employees are mandatory reporters, and (3) the reporting obligations of mandatory reporters (*i.e.*, under what circumstances they are required to report and how they are to do so). Requiring that all employees take such training increases the chances that all employees understand whether they are mandatory reporters. Such a requirement also ensures that anyone who has recently become

¹⁶⁶ The April 2019 HMBR Report noted that the term “Responsible Employee” is not consistently defined across the University’s existing policies and it recommended that the University adopt a University-wide definition of “Responsible Employee” in its umbrella policy. The current draft umbrella policy carries out that recommendation.

¹⁶⁷ In any communication or location in which the University provides information about mandatory reporters, information regarding confidential resources should also be provided.

¹⁶⁸ For example, Athletics receives mandatory Responsible Employee training annually.

¹⁶⁹ See *Education and Training Programs*, the University of Michigan, available at <https://oie.umich.edu/education-and-training-programs/> (last visited July 30, 2020).

¹⁷⁰ In 2019, all University employees were required to take an online training regarding sexual and gender-based misconduct and other forms of interpersonal violence. That training, which appears to have been well-received by many groups, did not include guidance as to which employees are responsible employees or responsible employees’ reporting obligations.

a mandatory reporter (e.g., due to a change in position or responsibilities) receives guidance regarding his or her reporting obligations. This approach also ensures that all employees—even those who are not mandatory reporters—understand the alternative means for reporting sexual misconduct.

The University should also ensure that this training identifies the confidential resources available to the University community and includes content on a bystander’s role in recognizing the warning signs of sexual misconduct and intervening when appropriate.

In addition to the annual training requirement, OIE should evaluate whether specific groups of employees and/or mandatory reporters, in addition to those groups that typically receive in-person training, would benefit from additional training. We recommend, for example, that OIE provide targeted training to Human Resources Directors who sit within University units and schools regarding their reporting obligations with respect to suspected sexual misconduct involving employees.

4. *Provide Alternative Oversight of Sexual Misconduct Allegations Involving Members of the Provost’s Office*

OIE currently reports to the Provost. On January 22, 2020, President Schlissel moved OIE’s reporting line for all matters related to this investigation to the Associate Vice President for Human Resources, Richard S. Holcomb. Some witnesses told us that they did not previously report Philbert’s conduct to OIE based on its reporting relationship to him as Provost. For any report made to OIE involving a respondent in the Provost’s office, we recommend that (1) OIE’s reporting line for that matter be moved to another appropriate office or official, and (2) the University publicize that policy to the University community (through, for example, OIE’s website or the Sexual Misconduct website).

5. *Conduct a Climate Survey Regarding Sexual Misconduct for Faculty and Staff*

We recommend that the University conduct a climate survey for all employees that is aimed at providing University officials with critical information about employees’ experience with sexual misconduct on campus.

In the spring of 2019, the University was one of 33 schools to participate in a climate survey of undergraduate and graduate students conducted by the Association of American Universities (“AAU”) regarding sexual misconduct. The University also participated in climate surveys of undergraduate and graduate students in 2015 (one administered by the AAU, and one designed specifically for the University and administered by a local Ann Arbor firm). All of these surveys were administered on the Ann Arbor campus. The University has not participated in similar surveys of its faculty and staff. The April 2019 HMBR Report observed that the University may wish to use climate surveys to “conduct periodic assessments of its employees’ knowledge of and comfort with using the available sexual misconduct policies and procedures.”¹⁷¹

¹⁷¹ Hogan Marren Babbo & Rose, Ltd., *Report of Review of Sexual Misconduct Policies and Procedures (Focus on Faculty and Staff)*, April 2019.

We agree that the University should conduct a climate survey specifically designed for faculty and staff (including student employees) and should share the results of that survey with the University community. The survey should seek information regarding, for example, (1) employees' experience with sexual misconduct on campus; (2) employees' understanding of and satisfaction level with the University's sexual misconduct policies and procedures; and (3) whether employees fear retaliation in connection with reporting sexual misconduct.

B. Ensuring that Findings are Based on Full Investigations

A central issue in this case involves the University's decision not to investigate allegations of sexual harassment after two potential complainants, each of whom had previously described her first-hand experience to a professor, declined to file a complaint or to provide further information to OIE. At that point, OIE's inquiry had not established whether the misconduct had occurred, and OIE closed the matter. Given the nature of the allegations and the evidence available at the time, we conclude that OIE should have taken additional investigative steps. *See supra* Section IV(B)(2)(b).

Five years later, some University officials appeared to have concluded, erroneously, that OIE had completed an investigation of the 2005 allegations and concluded that misconduct had not occurred. University officials are, as a general matter, entitled to rely on the results of completed investigations.¹⁷² But investigative findings are reliable only if informed by an actual investigation.¹⁷³

Investigating sexual misconduct is challenging, especially where potential complainants decline to participate. OIE cannot and should not compel a potential complainant to participate, and where a complainant declines to do so, OIE may not be able to fully investigate and/or meet its evidentiary burden. OIE must also consider a complainant's stated wish to take no action (indeed that may mean some cases do not proceed). But under some circumstances, further investigative steps may be warranted; as noted above, *supra* Section IV(B)(1) a complainant's wishes must be weighed against the school's obligation to provide a safe and nondiscriminatory environment for its students.

The University has greatly enhanced its training of OIE investigators in the fifteen years since its review of the allegations against Philbert in 2005. Newly-hired investigators receive training when they are onboarded; shadow other OIE investigators or associate directors before conducting investigations; and review case files to understand the various procedural issues that may arise in investigations. OIE investigators also receive internal training throughout the year, including through periodic office-wide trainings, and receive materials on topics related to

¹⁷² In addition, subjects of investigation are entitled to repose when an investigation does not substantiate any wrongdoing.

¹⁷³ We are not suggesting that OIE should reopen investigations whenever allegations that have already been thoroughly investigated are re-asserted. But reopening an investigation may be appropriate when, for example, new information comes to light or when the original investigation was ended prematurely or otherwise inadequate.

conducting investigations and making findings.¹⁷⁴ OIE investigators have also received training from an external consultant with significant investigations experience, in addition to participating in other external training opportunities.

We examined a single case in 2005 involving two first-hand complainants who declined to participate where, in our view, options for further investigation existed but were not pursued. We did not review any other OIE investigations, nor did we comprehensively review the content of the training that OIE provides to its investigators. For those reasons, we do not make recommendations regarding the way OIE conducts investigations or the training that it provides to its investigators. However, we recommend the University consider the following:

- Evaluate OIE investigative practices, and consider adopting formal investigative guidelines, to ensure that OIE is identifying and, as appropriate, pursuing additional investigative steps when complainants decline to participate.
- Establish formal file reviews on a routine basis to provide quality assurance and confidence in investigation procedures and outcomes. For example, supervisory investigative personnel could review files with line investigators at defined time intervals, or upon closure of a file. In the first instance, such reviews could be directed at those matters where an investigation has not proceeded due to a complainant's decision not to participate.

C. Ensuring that Hiring Decisions are Informed by Past Findings of Policy Violations

Our investigation revealed opportunities to improve the University's vetting procedures in its significant hiring decisions. With respect to internal candidates, we recommend that the University ensure that substantiated findings of policy violations and other misconduct are available to decisionmakers and systematically considered. Similarly, with respect to external candidates, we recommend that the University consider implementing a pilot program that enhances its ability to identify findings by previous employers of sexual and other misconduct.

Philbert's case did not involve substantiated findings of policy violations or other misconduct. Prior to his appointment SPH Dean in 2010 and University Provost in 2017, there were no substantiated findings that Philbert had violated University policy or otherwise engaged in misconduct (although allegations of sexual misconduct had come to the attention of University officials). Thus, the recommendations below, standing alone, would not have affected those selection processes. We nevertheless believe that these recommendations would improve the quality of the University's vetting procedures and, in turn, enhance the integrity of its personnel decisions.

Vetting of Internal Candidates. OIE maintains information about investigation outcomes, including findings of policy violations and otherwise inappropriate behavior. Academic HR,

¹⁷⁴ We understand that some of these materials will be updated to be consistent with the University's draft umbrella policy, including any changes made to that policy as required by the new Title IX regulations, which go into effect on August 14, 2020.

which oversees human resources issues involving faculty, maintains findings of policy violations (other than violations of the Sexual Harassment policy) and other misconduct by faculty.

In 2019, in an effort to enhance information-sharing in connection with promotion and tenure decisions, the Provost's office instituted a practice whereby OIE and Academic HR review the names of candidates for tenure and promotion and provide information to relevant decisionmakers about investigative outcomes regarding those candidates.¹⁷⁵ This practice is not formally documented in University policy.¹⁷⁶ Separately, with respect to senior-level appointments of internal candidates—which occur on a more one-off basis—the relevant decisionmakers can obtain information from OIE or Academic HR about internal candidates, but there is no formal policy requiring decisionmakers to do so.

While the University has made efforts recently to improve information-sharing in faculty promotion and tenure decisions, we recommend that the University formalize that practice to ensure that it is uniformly applied to all promotion, tenure, appointment, reappointment, and other hiring decisions involving internal candidates. Specifically:

- The University should ensure that findings of policy violations and other misconduct are collected and accessible.¹⁷⁷
- The University should establish a formal written process for obtaining and considering findings of policy violations and other misconduct in promotion, tenure, appointment, reappointment, and other hiring decisions involving internal candidates. Such a process would, for example, require that relevant decisionmakers coordinate with appropriate University offices (*e.g.*, OIE, Academic HR, or other designated office) to identify findings that an internal candidate has violated University policy or engaged in other misconduct.
- The University should instruct decisionmakers that a finding that a candidate has violated University policy or engaged in other misconduct is not an automatic disqualifier for an internal position, but that such information should be weighed on a case-by-case basis in view of the facts and circumstances (such as the length of time that has passed since the incident, the nature of the incident, the severity of the incident, etc.) and in consultation with other University officials as appropriate.

¹⁷⁵ Information regarding a policy violation or other finding of inappropriate behavior or misconduct is not necessarily disqualifying; the decisionmaker has the discretion to decide to what extent information affects the individual's candidacy.

¹⁷⁶ This practice does not include a review of non-faculty employees who are promoted or move to other units or University of Michigan campuses. In such cases, the relevant hiring unit is responsible for conducting a reference check, including a review of information in the employee's unit-level personnel file or the University's central personnel file.

¹⁷⁷ We understand that OIE recently began using a new database with improved search functionality of case files.

Importantly, this is not a recommendation that individuals involved in hiring decisions investigate sexual misconduct. That responsibility remains with OIE.

Decisionmakers and/or search committees may learn of previously unreported allegations of sexual misconduct in the course of their deliberations (as was the case with allegations raised against Philbert in a confidential survey during the 2010 Dean’s search, *see supra* Section III(C)(4)). The University should ensure that individuals involved in promotion, tenure, appointment, and other hiring decisions involving internal candidates—including individuals who serve on search committees—understand that previously unreported allegations of sexual misconduct that arise in the course of their deliberations should be reported to OIE, which is responsible for reviewing and investigating such allegations.

Vetting of External Candidates. Some universities have recently announced pilot programs or adopted policies requiring reference checks for final external candidates for purposes of uncovering violations of institutional policy (including sexual harassment).¹⁷⁸ The programs apply to designated positions (*e.g.*, academic appointments conferring tenure or security of employment) or, more broadly, to all faculty and staff positions. The programs typically require a candidate to consent to a reference check. Once a consent is received, the university contacts current and previous institutions to inquire whether the candidate has violated institutional policy.

In conjunction with its efforts to enhance vetting procedures for internal candidates, the University should review its procedures for vetting external candidates for faculty and staff positions, and consider implementing a pilot program that enhances its ability to identify findings by previous employers of sexual or other misconduct.

¹⁷⁸ These schools generally will not consider candidates who decline to sign a waiver. Schools that conduct such reference checks are also willing to respond to similar requests from external employers regarding current or former employees, provided those current or former employees waive confidentiality.

Appendix 1 – University Announcement¹⁷⁹

From: **President Mark S. Schlissel**

Date: Wed, Jan 22, 2020 at 3:18 PM

Subject: Allegations of sexual misconduct

To All Members of the U-M Ann Arbor Community:

The University of Michigan has received and acted on allegations of sexual misconduct against Martin A. Philbert, provost and executive vice president for academic affairs. With the endorsement and full support of the U-M Board of Regents, I have placed Dr. Philbert on administrative leave, effective Jan. 21, 2020, pending the results of an investigation we began on Friday, Jan. 17.

I will follow up in the coming days regarding the appointment of an acting provost and executive vice president for academic affairs.

We take allegations of sexual misconduct very seriously, and our policy is clear: Sexual misconduct will not be tolerated in the University of Michigan community.

I want to apprise everyone of what has happened over the last few days and the actions we have taken.

- On Thursday and Friday, Jan. 16-17, 2020, the university received several allegations of sexual misconduct by Dr. Philbert.
- We began an internal investigation Friday. Over the next three days, the university retained an outside law firm which immediately launched an investigation of the allegations, our Division of Public Safety and Security was engaged, and Dr. Philbert was directed not to report to work. I placed him on administrative leave Tuesday.
- The Office for Institutional Equity, who would normally handle such investigations, reports to the provost. Today, I have moved OIE's reporting line for all matters related to this investigation to Associate Vice President for Human Resources Richard S. Holcomb.

The U-M Board of Regents and I are committed to a full and thorough investigation, and we will continue to work to ensure the integrity of the process, following the same policy and practices that apply to all employees at U-M. It remains early in the investigation, and no findings or conclusions have been reached.

¹⁷⁹ See *Allegations of sexual misconduct*, the University of Michigan, (Jan. 22, 2020), <https://president.umich.edu/news-communications/statements/allegations-of-sexual-misconduct/> (last visited July 30, 2020).

We thank the individuals who have come forward with these allegations. We know that reporting requires courage. The university has offered support services and will work diligently to assist those who report in every way possible.

We encourage any member of our community who is aware of conduct that may violate U-M's sexual misconduct policy to notify our [Office for Institutional Equity](#). You may also report, seek support or access confidential resources on our [sexual misconduct website](#).

If you have information on this case, you can report in three ways:

- The Office for Institutional Equity (734-763-0235)
- U-M's anonymous compliance hotline (1-866-990-0111) or [via the website](#).
- Division of Public Safety and Security (734-763-1131)

We recognize and thank the many members of our community who have spent considerable time over the last few years helping us with revisions to our sexual misconduct policies, increasing awareness of this problem and helping us become a better university. These efforts – and your many contributions – have been essential and remain so, as we strive to create a safe, respectful and inclusive culture, where everyone has an equal opportunity to thrive and accountability applies to all.

Sincerely,

Mark S. Schlissel
President

Appendix 2 – Witness Glossary

Identifier	Description
The SPH Professor	An SPH Professor who worked in SPH-2 in 2005 and received allegations of misconduct by Philbert from GS-1, E-1, and Mary Roe, and other graduate students. She reported the allegations to the Ken Warner (SPH Dean), Anthony Walesby (OIE), and Lori Pierce (Vice Provost) in 2005, and met with Pierce during the SPH Dean’s search in 2010.
GS-1	An SPH graduate student who learned about E-1’s experience with Philbert and reported it to the SPH Professor. This student also likely spoke with Anthony Walesby (OIE) briefly in 2005.
Jane Doe	A graduate student who worked in Philbert’s lab in the late 1990s and early 2000s. We received several second-hand reports that she experienced inappropriate conduct by Philbert.
Mary Roe	A graduate student who worked in Philbert’s lab in 2005 and who reported to the SPH Professor that Philbert had kissed her neck and said that Philbert was “a bad man” who wanted to talk about “bad stuff.” Anthony Walesby (OIE) reached out to her in 2005, but she did not provide him with details of the alleged incident.
E-1	A research assistant who worked in Philbert’s lab in 2005 and who reported to the SPH Professor that Philbert kissed her neck and said that he wanted to have “caramel colored babies” together and “something about chocolate syrup sex.” Anthony Walesby (OIE) reached out to her in 2005, but she did not provide him with details of the alleged incident. In 2013, E-1 filed a petition for tuition reimbursement and met with Walesby and other University officials.
E-2	A staff member in the SPH Dean’s office who received a full body hug from Philbert around 2012-2013 and later took steps not to be alone with him.
E-3	A staff member in the SPH Dean’s office who was in a sexual relationship with Philbert from 2013-2014 and experienced unwanted conduct by him in 2015.
E-4	An SPH staff member who was in a sexual relationship with Philbert during periods between 2013-2018.
E-5	An SPH staff member who was in a sexual relationship with Philbert from at least 2017-2018.
E-6	A staff member in the SPH Dean’s office who was in a relationship with Philbert from 2017-2019.
E-7	An SPH staff member to whom Philbert made sexualized comments in 2016-2018, including while being recruited to the Provost’s office.
E-8	A Provost’s office staff member to whom Philbert made sexualized comments in 2018-2019.

E-9	A Provost's office staff member who was in a sexual relationship with Philbert in 2019.
E-10	An SPH employee who was in a sexual relationship with Philbert in 2019-2020.