

U.S. Department of Justice
 Office of the Inspector General

REPORT OF INVESTIGATION

SUBJECT Gwynn X. Kinsey [REDACTED] et al. Principal Deputy Chief Capital Case Section Washington, D.C.	CASE NUMBER 2017-008997
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OFFICE CONDUCTING INVESTIGATION Washington Field Office	DOJ COMPONENT Criminal Division
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DISTRIBUTION	<input checked="" type="checkbox"/> Field Office WFO	STATUS	
	<input checked="" type="checkbox"/> AIGINV	<input type="checkbox"/> OPEN	<input type="checkbox"/> OPEN PENDING PROSECUTION
<input checked="" type="checkbox"/> Component CRM	PREVIOUS REPORT SUBMITTED:		<input checked="" type="checkbox"/> CLOSED
<input type="checkbox"/> USA	Date of Previous Report:		<input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/> Other			

SYNOPSIS

The Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from an employee of the U.S. Department of Justice Criminal Division (CRM) Capital Case Section (CCS) alleging that on May 24, 2017, in Washington, D.C., CCS Principal Deputy Chief Gwynn "Charlie" Kinsey sexually harassed a then-subordinate CCS employee, [REDACTED], during a happy hour organized by CCS management and attended by CCS staff and later that night during an Uber ride and inside Kinsey's room at a Washington D.C. hotel. Specifically, the complainant, based on conversations with [REDACTED] and another witness, alleged that:

- Kinsey was "extremely" intoxicated during the happy hour, stared at [REDACTED] breasts, and made inappropriate physical contact with her by attempting to grab her and rubbing her leg under the table;
- Kinsey made rebuffed sexual advances towards [REDACTED] while the two rode in an Uber and while they were at a hotel that night, [REDACTED] and [REDACTED];
- Kinsey continued to sexually harass [REDACTED] in the following days by making telephone calls to her and sending her text messages and e-mails in which he made unwanted invitations and advances.

Additionally, the complainant alleged that [REDACTED], who also attended the happy hour, became highly intoxicated in the presence of his subordinates, [REDACTED].

DATE June 5, 2018	SIGNATURE [REDACTED]	
PREPARED BY SENIOR SPECIAL AGENT [REDACTED]		
DATE June 5, 2018	SIGNATURE [REDACTED]	
APPROVED BY SPECIAL AGENT IN CHARGE	Michael P. Tompkins	Digitally signed by MICHAEL TOMPKINS Date: 2018.06.05

[REDACTED]

[REDACTED]

The OIG substantiated the allegation that Kinsey sexually harassed [REDACTED] during the happy hour, during the Uber ride, and inside a hotel on May 24, 2017. [REDACTED]

[REDACTED]

The OIG substantiated that Kinsey continued to harass [REDACTED] in the days following the happy hour, in the form of telephone calls, e-mails, and text messages in which he made unwanted invitations and advances, and by giving her a \$200 Nordstrom gift card. The OIG concluded that Kinsey's actions had the effect of creating an intimidating, hostile, and offensive working environment for [REDACTED] and potentially other CCS employees, [REDACTED]

Additionally, as a supervisor, Kinsey bore the responsibility to avoid any conduct involving a subordinate that violates Department standards of conduct, in fact or appearance. Kinsey was [REDACTED] second line supervisor, and he was therefore obligated, in advance of pursuing a relationship with her, even if she welcomed such a relationship, to notify his supervisor or recuse himself as her supervisor, to ensure that such conduct was not perceived by [REDACTED], explicitly or implicitly, as a term or condition of her employment, or that her response to Kinsey's overtures would not be used as the basis for employment decisions affecting her.

For all of these reasons, the OIG determined that Kinsey harassed [REDACTED] in violation of the Executive branch-wide standards of conduct as outlined in 5 CFR § 735.203, Federal regulations relating to sexual harassment, 29 CFR § 1604.11, and the Attorney General's Policy Memorandum #2015-04 regarding Prevention of Harassment in the Workplace, which articulates a zero tolerance policy towards sexual harassment.

The OIG also found that, as a supervisor, Kinsey exhibited extremely poor judgment by becoming intoxicated at the CCS happy hour in the presence of subordinates [REDACTED]

[REDACTED]

The OIG found that, before leaving the happy hour bar, [REDACTED] gave a non-specific instruction to [REDACTED] not to discuss the evening's events. [REDACTED] reasonably understood [REDACTED] instruction as meaning that [REDACTED] might not have wanted other CCS staff – or [REDACTED] supervisors – to learn about [REDACTED] intoxication, or that [REDACTED] instructions were related to Kinsey's inappropriate interactions with [REDACTED] during the happy hour. In either event, such an instruction was inconsistent with Department regulations, which require DOJ employees to report misconduct that they witness by a fellow Department employee, and [REDACTED] instruction to [REDACTED] constituted misconduct. [REDACTED]

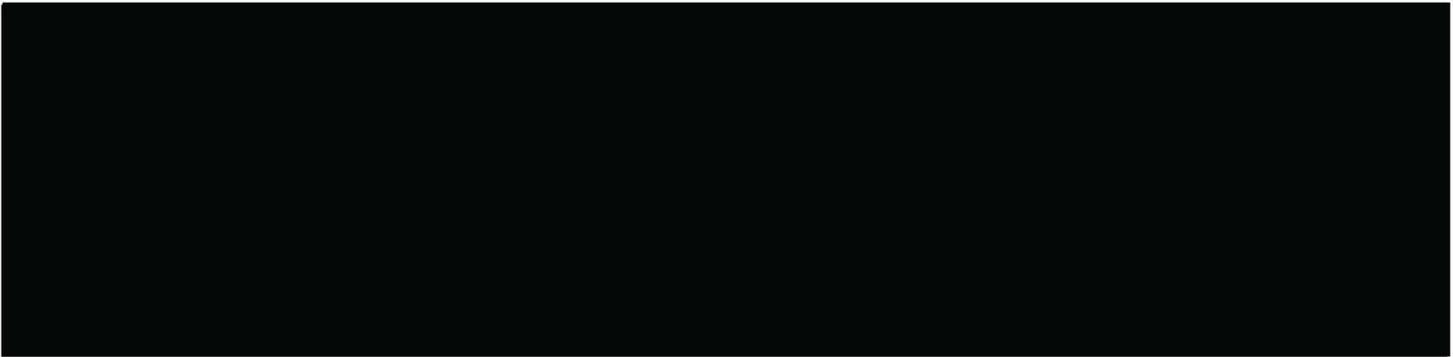
[REDACTED]

Additionally, the OIG found that [REDACTED] lacked candor during his OIG interview when he attempted to

minimize his level of intoxication during the happy hour, and to diminish his responsibility for Kinsey's sexual harassment of [REDACTED] by denying any knowledge of Kinsey's actions that evening.

The OIG further found that [REDACTED] exhibited extremely poor supervisory judgment when he became intoxicated at the CCS happy hour in the presence of his CCS subordinates, which could have contributed to his failure to recognize and intervene to prevent or mitigate Kinsey's harassing behavior towards [REDACTED]

The OIG previously provided to CRM all of the evidence it had gathered in the course of its investigation relating to Kinsey to accommodate CRM's request so that it could determine whether it should take disciplinary action against Kinsey before completion of the OIG's report.



The OIG is providing this report to CRM and to the Department of Justice Office of Professional Responsibility for appropriate action.

ADDITIONAL SUBJECT



DETAILS OF INVESTIGATION

Predication

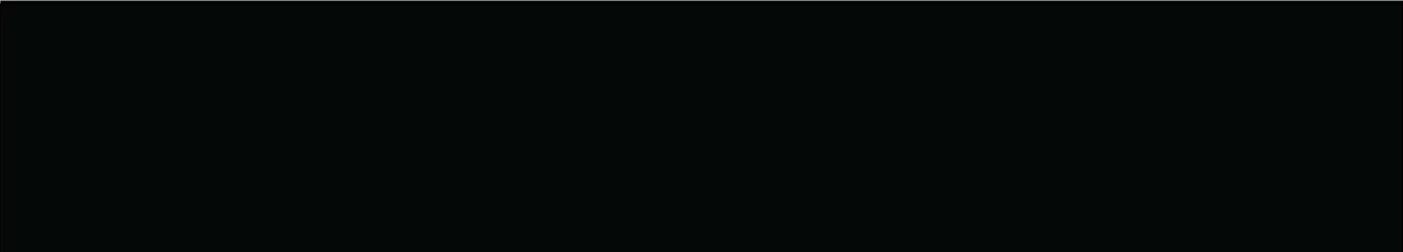
The Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from an employee of the U.S. Department of Justice Criminal Division (CRM) Capital Case Section (CCS) alleging that on May 24, 2017, in Washington, D.C., CCS Principal Deputy Chief Gwynn “Charlie” Kinsey sexually harassed a then-subordinate CCS employee, [REDACTED] during a happy hour organized and attended by CCS staff and later that night during an Uber ride and inside Kinsey’s room at a Washington D.C. hotel. Specifically, the complainant, based on conversations with [REDACTED] and another witness, alleged that:

- Kinsey was “extremely” intoxicated during the happy hour, stared at [REDACTED] breasts, and made inappropriate physical contact with her by attempting to grab her and rubbing her leg under the table;
- Kinsey made rebuffed sexual advances towards [REDACTED] while the two rode in an Uber and while they were at a hotel that night, [REDACTED] and [REDACTED];
- Kinsey continued to sexually harass [REDACTED] in the following days by making telephone calls to her and sending her text messages and e-mails in which he made unwanted invitations and advances.

Additionally, the complainant alleged that [REDACTED], who also attended the happy hour, became highly intoxicated in the presence of his subordinates, [REDACTED]

BACKGROUND

Kinsey began his employment with DOJ in September of 1998, when he was hired as one of the original Trial Attorneys in CCS. Kinsey became the GS-15 Deputy Chief of CCS in 2000. Kinsey stated that he has attended “a lot” of training on “various aspects of hiring, supervision, rating, miscellaneous personnel issues, a fair amount of training.”



Investigative Process

The OIG's investigative efforts consisted of the following:

Interviews of the following CCS personnel:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Gwynn "Charlie" Kinsey, Principal Deputy Chief

Interview of:

- [REDACTED]

Reviews of:

- Marriott Metro Center surveillance video and guest records for Kinsey
- [REDACTED] Uber records for May 24th and 25th, 2017
- Kinsey's DOJ training records, including Sexual Harassment
- Exhibits submitted by CCS employees pursuant to CRM's management inquiry

Relevant Authority

As the Principal Deputy Chief of CCS, Kinsey was [REDACTED] supervisor. Accordingly, regardless of Kinsey's perception as to whether [REDACTED] was receptive to Kinsey's advances, their respective professional positions required that Kinsey take appropriate steps before pursuing a relationship with [REDACTED] to ensure that his actions did not violate federal regulations and DOJ policies regarding sexual harassment.

Federal regulations relating to employee responsibilities and conduct, 5 CFR § 735.203, require that "an employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government."

Federal regulations relating to sexual harassment, 29 CFR § 1604.11, state in pertinent part the following:

- (a) Harassment on the basis of sex is a violation of section 703 of title VII. 1 Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such

conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

...

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

...

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

The Attorney General's Policy Memorandum #2015-04 (AG Memo) regarding Prevention of Harassment in the Workplace states that "the Department will maintain a zero tolerance work environment that is free from harassment (including sexual harassment). . . . To enforce this zero tolerance policy, the Department will treat harassing conduct as misconduct . . ." The AG Memo defines harassing conduct as any unwelcome verbal or physical conduct that is based on, among other characteristics, sex, when the conduct creates an intimidating, hostile, or offensive work environment.

The District of Columbia Criminal Code 22-3005 defines Fourth Degree Sexual Assault as engaging in or causing sexual contact with or by another person in the following manner:

- (1) By threatening or placing that other person in reasonable fear (other than by threatening or placing that other person in reasonable fear that any person will be subjected to death, bodily injury, or kidnapping); or
- (2) Where the person knows or has reason to know that the other person is:
 - (A) Incapable of appraising the nature of the conduct;
 - (B) Incapable of declining participation in that sexual contact; or
 - (C) Incapable of communicating unwillingness to engage in that sexual contact.

CCS Management Initiated Happy Hour at Proper 21

Witnesses told the OIG that Kinsey suggested organizing a happy hour on behalf of CCS management. [REDACTED] and Kinsey told the OIG that Kinsey suggested an office happy hour during which he would buy a beer for any CCS employee whose data entry was up to date. [REDACTED] said that after some back and forth with CCS employees about dates for the happy hour, Kinsey asked [REDACTED] to take over planning the event. [REDACTED] said that the event was eventually scheduled to occur on May 24, 2017, at the Proper 21 bar, which was located at 13th and F Street, NW, Washington, D.C., near the CCS offices. [REDACTED] Kinsey, [REDACTED] and [REDACTED] described the happy hour as starting between 5 p.m. and 5:30 p.m. The happy hour ended immediately before Kinsey and [REDACTED] left in an Uber, which, according to Uber records, was at 10:38 p.m. [REDACTED] recalled that the happy hour started between 4:00 p.m. and 4:30 p.m., and that CCS employees [REDACTED] were also at the happy hour when it began, but those employees left earlier in the evening. [REDACTED] Kinsey, [REDACTED], [REDACTED], and [REDACTED] all told the OIG that at some point around 6:00 - 6:30 p.m., only they remained and drank together at a table for the remainder of the evening.

from the situation, which [REDACTED] found surprising. [REDACTED] described feeling uncomfortable about the situation because the touching appeared intimate and Kinsey was [REDACTED] superior. [REDACTED] and [REDACTED] did not report seeing any touching between Kinsey and [REDACTED] that night.

According to the witnesses' accounts and [REDACTED] Uber records, at approximately 10:30 p.m., the group departed the bar. [REDACTED] recalled that the group probably left at that time "because we were all drunk" and had to work the next day. [REDACTED] and [REDACTED] described leaving with [REDACTED] and walking towards the Metro with him because they did not want him to drive his car after drinking. At approximately the same time, [REDACTED] and Kinsey got in an Uber that [REDACTED] had summoned. [REDACTED] recalled telling Kinsey more forcefully to go get a hotel room as Kinsey was walking out with [REDACTED] and that Kinsey did not respond to her. [REDACTED] [REDACTED] said that she opted to focus on assisting [REDACTED] to prevent him from driving home. [REDACTED] said that she sensed [REDACTED] was uncomfortable with Kinsey's actions, so she texted [REDACTED] and Kinsey, and possibly called Kinsey, as she walked to the Metro station with [REDACTED] and [REDACTED]. [REDACTED] said that she waited at the Metro station for a reply message, and received a reply from [REDACTED] that Kinsey was going to a hotel. [REDACTED] told the OIG that she suggested in her text messages to [REDACTED] that she take the Metro to her residence [REDACTED] and then get a separate Uber home.

Kinsey's Actions During the Uber Ride

[REDACTED] recalled that she was wearing shorts during that evening. [REDACTED] stated that, during the Uber ride, Kinsey told her that he had missed his train on purpose. [REDACTED] stated that Kinsey was seated beside her in the Uber's back seat and leaned into her. He began to "paw" at her in the car, rubbing on and between her thighs and touching her breast over her shirt. Kinsey did not rub her genital area, but was close. [REDACTED] said she grabbed his wrist, removed his hand and stated "you need to stop" to Kinsey in an effort to get him to stop touching her. [REDACTED] recalled Kinsey saying, "I could lose my job for this. I could lose my security clearance for this," and then touched her breast over her shirt. [REDACTED] stated that at that point, she said something like, "this is not happening" and ordered the Uber driver to return to where he had picked them up. [REDACTED] said she was concerned that Kinsey may attempt to have sex with her, [REDACTED]

Uber records reviewed by the OIG indicated that the Uber picked up [REDACTED] and Kinsey at 1300 F Street, N.W. Washington, D.C. and proceeded northeast until reaching New York Avenue and 6th Street. At that point, the Uber turned south then west, ending [REDACTED] trip at 1298 F Street, N.W. Washington, D.C., in nearly the same point it had originated, in the vicinity of Proper 21.

[REDACTED] the Uber driver, told the OIG that he thought [REDACTED] and Kinsey may have been a couple, and believed they were kissing in the backseat. [REDACTED] recalled [REDACTED] asking to be returned to their pick up location, but did not recall why. [REDACTED] did not hear [REDACTED] ask Kinsey to stop touching her or make any negative statements towards Kinsey prior to dropping them off in the vicinity of 13th and F Streets N.W., Washington, D.C. [REDACTED] said [REDACTED] and Kinsey departed his car without incident, and [REDACTED] did not appear to be in any distress.

The OIG reviewed text messages sent from [REDACTED] to both Kinsey and [REDACTED] during time period of the Uber ride. In one message, [REDACTED] suggested that Kinsey go to a hotel. Kinsey did not respond. [REDACTED] also sent a message to [REDACTED] stating that Kinsey should go to a hotel. [REDACTED] responded

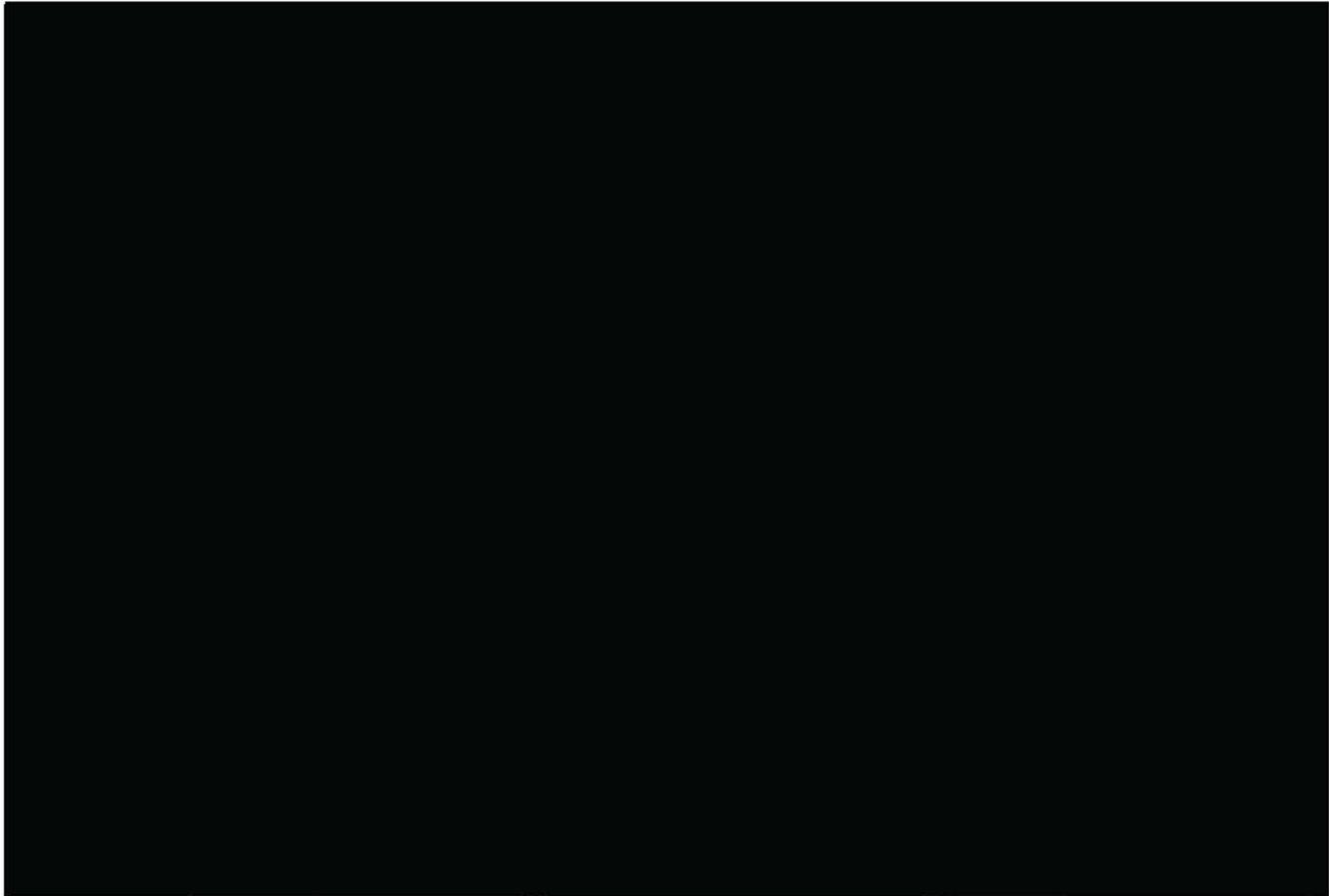
to [REDACTED] in a text message stating that she was “Getting him to a hotel.”

Kinsey and [REDACTED] Interactions at the Hotel

During her OIG interview, [REDACTED] described walking to a hotel with Kinsey after the Uber ride had returned them to the vicinity of Proper 21 to make sure he got there safely. [REDACTED] stated that, at that point, she thought Kinsey was just being “stupid” in his advances towards her, and that she escorted Kinsey to the hotel in order to assist him. [REDACTED] said she was unable to recall the specific hotel they walked to due to her state of intoxication at the time, but recalled that it had a red awning.

[REDACTED] stated that Kinsey was “fumbling around for a credit card” and “falling over” at the hotel check-in desk due to his own intoxication. However, a subsequent review of the hotel surveillance video by the OIG showed that Kinsey appeared lucid, upright, and using good dexterity as he walked into the hotel lobby with [REDACTED] and that he retrieved and replaced an individual credit card from his wallet. [REDACTED] also appeared lucid, upright, and conversant with Kinsey as she stood by his side at the check-in desk while Kinsey registered for a room.

[REDACTED] told the OIG that Kinsey asked her to help him find his room after checking in at the hotel’s front desk, which hotel surveillance video showed at 11:00 p.m. on May 24, 2017, reiterating that Kinsey was “falling over” at the check-in desk, so she agreed to help him to his room. [REDACTED] did not recall any conversation with Kinsey en route to the elevator or report any contact he had with her during that time. However, the hotel’s surveillance video showed Kinsey and [REDACTED] walking towards the elevator bank together and mutually kissing each other before entering an elevator together.



[REDACTED]

[REDACTED] stated that after she left the hotel, which hotel surveillance video showed at 12:48 a.m. on May 25, 2017, [REDACTED]

[REDACTED] stated that she called an Uber and went directly home for the rest of the night, arriving around 2:00 a.m. The OIG's review of Uber records confirmed [REDACTED] at 1:46 a.m. on May 25, 2017. [REDACTED] recalled that she sent an email to Kinsey [REDACTED], and "[REDACTED] (direct supervisor) around 4:00 - 4:30 a.m. requesting sick leave on May 25, 2017. The OIG's review of [REDACTED] e-mail confirmed she sent the e-mail at 4:43 a.m. on May 25, 2017.

Kinsey's Continued Harassment [REDACTED]

[REDACTED] stated that Kinsey called her around 6:30 a.m. on the morning after the happy hour (May 25, 2017) and suggested that he come to Washington D.C. to meet her for dinner. [REDACTED] deflected Kinsey's offer by saying she would let him know, claiming she did not want to "piss him off" by "blowing him off." [REDACTED] stated that, at the end of the call, Kinsey told her that he loved her, and acknowledged that he had deliberately missed his train the night before.

An OIG review of Kinsey's DOJ e-mail account revealed a May 25, 2017, e-mail exchange wherein Kinsey asked [REDACTED] if he could call her at 6:15 a.m., and asked for her telephone number at 6:27 a.m.. [REDACTED] replied at 6:27 a.m. and provided Kinsey with her telephone number. One of the e-mails from Kinsey to [REDACTED] on June 8, 2017 at 9:02 p.m., ended with "XXOO."

[REDACTED] told the OIG that Kinsey sent her a series of text messages in which he continued to ask to meet her for dinner, invited her on a personal all-expenses paid trip to Italy with him, and stated that several of his messages were being sent while he was "drunk." [REDACTED] also provided the OIG with a \$200 Nordstrom gift card she said she received as a gift from Kinsey [REDACTED], [REDACTED]. [REDACTED] stated that Kinsey left the gift card at her desk in the office [REDACTED]. [REDACTED] stated that Kinsey began coming by her office more regularly and asking about her weekends, which she characterized as a behavioral change that other CCS attorneys began to notice. She said that Kinsey later apologized to her in the office for sending her text messages.

An OIG consensual review of [REDACTED] personal cellular telephone revealed a series of text messages received from Kinsey, including:

- A message on May 26, 2017 asking her to join him in the city (Washington, DC) the following day.
- A June 2, 2017 message asking her to travel to Italy with him.
- A June 14, 2017 message containing a photograph of [REDACTED] from her Facebook page. [Kinsey confirmed to the OIG that Facebook as the source of this photograph.]
- A June 14, 2017 message saying he was in New Jersey and wished she were there, later saying he missed her. The message ended with "xoxo" twice.

[REDACTED] said that Kinsey's continued solicitations and attention after May 24, 2017, made her feel uncomfortable at work, but she had hoped that Kinsey's actions at the hotel were a "one-off" and would not continue. [REDACTED] said that she assumed CCS knew she was looking for another job, and she hoped

placed on her waist. [REDACTED] did not report being kissed by Kinsey at any time during the happy hour.] Kinsey also admitted to offering to pay for [REDACTED] bills and expenses.

After returning to the group's table, Kinsey recalled touching [REDACTED] elbow, but he could not recall if he also touched her leg under the table. Kinsey acknowledged that it was possible that other employees may have seen him kiss [REDACTED] and touch her elbow at the table. Kinsey acknowledged that [REDACTED] told him to go to a hotel room, however, Kinsey could not recall his response to [REDACTED]. Kinsey said that as he was entering the Uber taxi with [REDACTED] he heard [REDACTED] call his name and interpreted the callout to mean that [REDACTED] wanted him (Kinsey) to come with [REDACTED]. Kinsey said that he felt as though he was in competition with [REDACTED] for [REDACTED] affection that evening.

Kinsey told the OIG that he did not know the destination of the Uber he shared with [REDACTED] or why the Uber returned to the vicinity of their pick-up location. Kinsey admitted that, during the ride, he kissed [REDACTED] and touched her left breast and thighs, but he denied that [REDACTED] ever asked him to stop or expressed that his actions were not invited or welcomed. Kinsey stated that, after arriving at the hotel, he invited [REDACTED] up to his hotel room, and she accepted. He recalled they engaged in a mutual kiss at the elevator, and engaged in sexual activity inside the room. [REDACTED]

[REDACTED]

Kinsey admitted to calling [REDACTED] on her personal cellular telephone, which he said that [REDACTED] provided to him when he asked for her number. The following day, he called [REDACTED] to ask her to dinner in Washington, D.C. and they discussed Kinsey's statements and actions from the previous night. Kinsey recalled [REDACTED] stating that his actions "were not unrequited." Kinsey further admitted to sending a series of text messages to [REDACTED] wherein he pursued dinner together in D.C., invited her to Italy, made repeated "XXOO" messages directed towards her, and sent her incoherent messages while he was intoxicated. Kinsey also admitted giving [REDACTED] a \$200 Nordstrom gift card [REDACTED], asserting that he felt "subtle" pressure to get her an expensive gift. Kinsey said he was aware of a general policy about gift-giving, but acknowledged that he did not seek ethics advice about giving [REDACTED] a \$200 gift card. Kinsey recalled that [REDACTED] had previously sought ethics advice, at the suggestion of Kinsey and another attorney, about giving [REDACTED] an \$80 gift card from the office, in lieu of cash.

Kinsey stated that [REDACTED] came into his office [REDACTED] looked over her shoulder to ensure their privacy, and hugged him from behind, which Kinsey interpreted as further affirmation of [REDACTED] romantic interest in him. Kinsey stated that his first awareness that his sexual and romantic advances

towards [REDACTED] were unwanted was when he was contacted via email by DOJ Criminal Division [REDACTED] on or about Monday, June 18, 2017, wherein [REDACTED] advised Kinsey of the sexual harassment allegation against him.

Initially during his OIG interview, Kinsey asserted that [REDACTED] was not within his chain of command. However, when challenged by the OIG, Kinsey conceded that, as the Principal Deputy Chief of CCS, [REDACTED] was subordinate to him. Kinsey asserted that he did not believe [REDACTED] had given him any indication that she was opposed to his actions that evening or afterwards. Regarding whether or not he believed he had violated any DOJ policies regarding his actions with [REDACTED] given their supervisor-subordinate relationship, Kinsey stated: "I'm not aware of any policy that I've violated, a specific policy that I've violated at all." Kinsey emphasized that he perceived [REDACTED] to be mutually attracted to him and did not think his actions were unwanted. However, Kinsey acknowledged his position as a manager and said that he would never "come close" to such a situation in the future, regardless of any "strong" advances towards him by a subordinate.

OIG's Conclusion

The OIG concluded that Kinsey sexually harassed [REDACTED] during and after the happy hour at the Proper 21 bar, in violation of federal regulations regarding employee conduct and sexual harassment and the AG Memo regarding sexual harassment in the workplace. The OIG found that Kinsey's behavior at Proper 21, during the Uber ride, and at the hotel, as well as his continued pursuit of [REDACTED] via telephone calls, texts, e-mail, and a [REDACTED] gift, constituted recurring improper advances that made [REDACTED] uncomfortable, and constituted sexual harassment. The OIG believes that [REDACTED] was understandably hesitant to decline Kinsey's advances during and after the CCS happy hour. By her own account, [REDACTED], as Kinsey's subordinate, did not want to anger Kinsey and attempted to handle his verbal and physical advances with diplomacy. The OIG believes that [REDACTED] was not in a position where she felt she could firmly rebuff Kinsey's continued harassment as he pursued her. Though both Kinsey and [REDACTED] were admittedly intoxicated during and after the happy hour, Kinsey did not attribute his behavior to intoxication, but rather his perception that [REDACTED] was romantically interested in him. Moreover, it was apparent from the video evidence the OIG reviewed from the hotel lobby that Kinsey was not so intoxicated as to be unable to understand exactly what he was doing at that time. The OIG concluded that the evidence did not support Kinsey's claim that he believed [REDACTED] welcomed his advances.

While Kinsey and [REDACTED] provided the OIG with very differing accounts of what occurred that night, under either account Kinsey's conduct constituted repeated and serious sexual harassment of [REDACTED]. Kinsey was [REDACTED] supervisor, and therefore his repeated actions that evening and subsequent to that evening, constituted serious misconduct even if, as he claimed, he believed that [REDACTED] never made it clear to him that his advances were unwanted. It was Kinsey's responsibility, before attempting to pursue a relationship with [REDACTED], to notify his supervisor and recuse himself as her supervisor, to ensure that such conduct was not perceived by [REDACTED] explicitly or implicitly as a term or condition of

her employment, and to ensure that her response to Kinsey's overtures would not be used as the basis for employment decisions affecting her. We found that Kinsey did none of that, and that his conduct created an intimidating, hostile, and offensive working environment for [REDACTED] and potentially other CCS employees, [REDACTED].

The OIG also notes that during his OIG interview, Kinsey failed to demonstrate any recognition of or appreciation for the seriousness of his actions as a senior manager. Indeed, Kinsey initially claimed that [REDACTED] was not his subordinate, and only admitted that she was subordinate to him after the OIG challenged his assertion. Even more concerning, in the face of DOJ's zero tolerance sexual harassment policy, was Kinsey's statement that he was "not aware of any policy that I've violated, a specific policy that I've violated at all."

The OIG also concluded that Kinsey exhibited extremely poor judgment by becoming intoxicated at a CCS happy hour, in the presence of subordinates, [REDACTED].

[REDACTED] Conduct at Proper 21

The complainant further alleged that [REDACTED], who also attended the above-referenced office happy hour, became highly intoxicated in the presence of his subordinates, [REDACTED].

[REDACTED], and Kinsey described [REDACTED] as very intoxicated during the latter part of the CCS happy hour at Proper 21 on May 24, 2017. Kinsey recalled [REDACTED] walking [REDACTED] to the Metro station because [REDACTED] had drunk a "fair amount." [REDACTED] and [REDACTED] described escorting [REDACTED] to the Metro after he left the Proper 21 bar because they feared he would drive home and endanger himself or others. [REDACTED] described [REDACTED] as "extremely drunk" when the group departed the bar, and that [REDACTED] was "initially intent" on driving home that night.

[REDACTED] told the OIG, that prior to leaving the bar, [REDACTED] whom he described as "pretty drunk," "extremely drunk," and "very drunk" during the evening, leaned into him while still seated at the table and said not to talk about the night with anyone in the office. [REDACTED] said he laughed, thinking [REDACTED] was joking, at which time [REDACTED] told [REDACTED] that he was "serious," and [REDACTED] took it as an order. [REDACTED] said he was not sure why [REDACTED] asked him not to say anything. [REDACTED] said he took [REDACTED] statement to mean that [REDACTED] could have not wanted him to say anything because he was "pretty drunk at that point," possibly "embarrassed," and did not want it to get back to the CCS office. [REDACTED] also said he thought it was possible that [REDACTED] may have observed Kinsey and [REDACTED] close interaction and physical contact at the end of the table, and was making reference to that as being the conduct that [REDACTED] should not discuss.

██████████ told the OIG that during a subsequent ██████████ meeting with CCS ██████████ he told attendees how ██████████ had made the statement to him. ██████████

██████████ told the OIG he believed ██████████ statement only applied to him.

██████████ told the OIG he was never approached by ██████████ after the happy hour regarding ██████████ directive to not speak about the happy hour. ██████████ said that she recalled ██████████ saying something like, "this never happened," but she felt that ██████████ comment was said jokingly and that she did not feel threatened by it. ██████████ said that she later heard in the office that ██████████ had "threatened" ██████████ not to say anything about what happened at the happy hour.

Kinsey told the OIG that he discussed the happy hour with ██████████ on one occasion. Kinsey said that ██████████ came into his office the next morning and stated, "I'm not going to ask what happened last night" and asked Kinsey where he had spent the night. Kinsey replied, "at the Marriott." Kinsey recalled a subsequent meeting between himself, ██████████ and ██████████ where ██████████ commented on ██████████ not attending the happy hour and then made a joking remark about some people being so concerned about team morale that they are willing to "stay here overnight." Kinsey stated he left the meeting because of the comment. Kinsey denied having any further conversations with ██████████ about the happy hour event, including covering anything up.

During his OIG interview under oath, ██████████ estimated that CCS staff members attend happy hours as a group about once every 3 months and cited an awareness of the happy hour relevant to this investigation, which he said happened about a month prior to his OIG interview. ██████████ repeatedly cited the 4-5 weeks that had transpired since the happy hour as a factor in his inability to remember details. He told the OIG that he could not remember the date of the happy hour and mispronounced the name of the bar where it was held. ██████████ later named the employees who attended the event. ██████████ described the group's table as tall with tall chairs, with some CCS attendees seated and others circulating around the bar. He then named ██████████ and ██████████ specifically as having left the event early in the evening.

When asked about the group's level of sobriety or intoxication after the initial employees had departed, ██████████ twice answered by characterizing the group's pace of drinking and drink ordering methods, but did not address his perception of the level of intoxication of individuals. After the OIG's third attempt to elicit such information, ██████████ said that individuals were intoxicated to a "moderate" degree by the time the last five attendees remained. ██████████ said that he did not witness anything that indicated that anyone was "highly" intoxicated or doing anything that warranted him to intervene or "cut them off" as the "boss."

██████████ said he asked Kinsey directly if he was going to miss his train because Kinsey usually "gets on the road" because he has a long commute. Kinsey replied to ██████████ that he would get a hotel and that he had Marriott Points. When asked about the impetus for his concern about Kinsey's commute that evening, ██████████ cited the possibility that Kinsey might have lost track of time at the happy hour. ██████████ said that was his only conversation with Kinsey on the matter, ██████████

While challenging the OIG about the definition of “intoxication,” ██████ denied becoming “overly” intoxicated at the happy hour, being intent on driving home, or needing to be convinced by ██████ not to do so. ██████ said he only joked with ██████ that he was “fine” after she stated to him that he should not drive, and said that he had decided early in the evening not to drive home. When asked specifically if he was “intoxicated” at the happy hour and therefore left his car at the office, ██████ debated the definition of “intoxication.” When asked to elaborate, ██████ said that he leaves his car at the office and takes the Metro home approximately once per month, but not only due to drinking. ██████ said he could have driven home after the happy hour, but took the Metro because he did not want to drive after having consumed “a few beers.” ██████ stated, “I’m intoxicated if I have one beer, I’m intoxicated after having three or four beers.”



██████ estimated that he departed the happy hour with ██████ around 9:00 p.m. (the OIG investigation determined that the group actually departed at approximately 10:30 p.m.) and went to their separate trains at the Metro station. He said he did not specifically recall ██████ accompanying him and ██████. ██████ said that he did not notice at the time, or now recall, the circumstances of Kinsey’s and ██████ departure from the bar or where they were going. ██████ then explained that his assumption “would have been” that ██████ was headed home and Kinsey to the train station, or possibly to a hotel.

██████ said that neither Kinsey nor ██████ had reported anything to him about their interactions after departing the bar, and ██████ said he was completely unaware of any specifics of the allegation against Kinsey. ██████ explained that CRM ██████ had informed him that a sexual harassment allegation had been made by ██████ against Kinsey, and prohibited ██████ from discussing the allegation with Kinsey or ██████.

██████ said since learning of the allegation, he had “turned it over in his mind” and was “100%” sure that he had not seen and was not aware of any inappropriate interactions between Kinsey and ██████. In comparison, ██████ said that if he had hypothetically ever witnessed or been told by anyone that Kinsey and ██████ were seated in “a corner booth in the restaurant down the street,” he would have been angry for being placed in a position to “go report something about this” and “figure out what to do about it.” ██████ further explained that because he would have then been made aware of the situation, “I would now have to say something about it” and would not be able to “sweep this under the rug.” He said that nothing occurred at the happy hour that raised those sorts of concerns in his mind.

described [REDACTED] as very intoxicated during the latter part of the happy hour. [REDACTED] and [REDACTED] both told us that they accompanied [REDACTED] to the Metro to make sure that he did not decide to drive home due to his severely intoxicated condition. By contrast, [REDACTED] claimed to the OIG that he was fully capable of driving home that evening, and only decided not to do so because he had had a few beers. We did not find [REDACTED] claims to be credible. When presented with specific questions about his perception of the level of intoxication of attendees at the happy hour, his own level of intoxication, his directive to [REDACTED] the interactions between Kinsey and [REDACTED], and the circumstances of his and the last group of happy hour attendee's departure from the bar, [REDACTED] provided evasive and qualified responses. The OIG found [REDACTED] qualified and hypothetical answers to the OIG's questions to be self-serving in an effort to minimize his responsibilities as [REDACTED] and his accountability for his conduct on the evening of the happy hour. The OIG found [REDACTED] conduct at the happy hour and during his interview to be inconsistent with his position a DOJ senior executive leader.

In sum, the OIG investigation concluded that [REDACTED] engaged in misconduct when he directed [REDACTED] not to discuss the happy hour, which was reasonably interpreted by [REDACTED] as an effort to keep quiet the activities at the happy hour. The OIG also concluded that [REDACTED] lacked candor during his OIG interview, and additionally exercised extremely poor judgment when, as [REDACTED] (1) He became highly intoxicated in the presence of subordinates at the CCS happy hour, such that subordinates considered it necessary to escorted him to the Metro to ensure that he did not drive, and that he got home safely; and (2) His impairment could have contributed to his failure to recognize and intervene to prevent or mitigate Kinsey's inappropriate, harassing behavior towards [REDACTED]

The OIG previously provided to CRM all of the evidence it had gathered in the course of its investigation relating to Kinsey to accommodate CRM's request so that it could determine whether it should take disciplinary action against Kinsey before completion of the OIG's report. The OIG is providing this report to CRM and to the Department of Justice Office of Professional Responsibility for appropriate action.

