

U.S. Department of Justice

Office of the Inspector General

REPORT OF INVESTIGATION

Digitally signed by

Date: 2018.06.05

15:55:32 -04'00"

MICHAEL TOMPKINS

Michael 7. Topts

- 20 - 10 - 10 - 10 - 10 - 10 - 10 - 10		and the second				<i></i>	- Tran		
SUBJECT					CASE NUMBER				
Gwynn X. Kinsey et al.						2017-	008997		
	al Deputy Chief								
	Case Section								
Washin	gton, D.C.								
OFFICE	CONDUCTINGINVESTIG	ATION		DOJ COMP	ONENT	- and			
Washington Field Office				Criminal Division					
,, aprilli	Ston I lola Office			St mining	Division				
DISTRIB	UTION	STAT	US						The Alter
8	Field Office WFO		OPEN	D OPE	N PENDING	PROSEC	UTION		CLOSED
	AIGINV	PREV	IOUS REPORT	SUBMITTEL	H.		YES		NO
8	Component CRM			Date of Previ	ous Report:				
	USA								
	Other								
fror (CC "Ch nigh com	 Office of the Inspect n an employee of the CS) alleging that on Marlie" Kinsey sexual difference of the construction of the plainant, based on construction of the uplainant, based on construction o	U.S. Departr fay 24, 2017, ly harassed a by hour organ e and inside k onversations emely" intox ate physical co uffed sexual a tt a hotel that to sexually h her text messa	nent of Justi in Washing then-subord ized by CCS (insey's roo with icated during ontact with h advances tow night, narass ages and e-m	ice Crimina ton, D.C., inate CCS S managem m at a Was and and and and g the happy her by atten wards in the hails in whi	al Division CCS Princ employee, ent and at shington D other witne y hour, star pting to g whil following ch he mad	i (CRM cipal De tended).C. hot ess, alle red at grab he the two days b le unwa	I) Capita eputy Cl by CCS el. Spec ged that r and ru vo rode y makin inted inv	al Cas nief G staff cifical t: bbing in an ng tele vitatio	e Section wynn and later that ly, the easts, and her leg under Uber and model and phone calls to
DATE	June 5, 2018	SIGNATURE							
PREPARE	D BY SENIOR SPECIAL /	AGENT							
DATE	June 5, 2018	SIGNATURE						l' Diate	ally signed by

APPROVED BY SPECIAL AGENT IN CHARGE

OIG Form 111-210/1 (Superseding OIG Form 111-207/4) (04/23/2007) Portions of the Report of Investigation may not be exempt under the Freedom of Information Act (5 USC 552) and the Privacy Act (5 USC 552a)

Michael P. Tompkins



The OIG substantiated the allegation that Kinsey sexually harassed the Uber ride, and inside a hotel on May 24, 2017.

during the happy hour, during

The OIG substantiated that Kinsey continued to harass **because** 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 **because** and potentially other CCS employees,

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 **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 **second**, 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 **Sector** 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

The OIG found that, before leave	ving the happy hour bar,	gave a non-s	pecific instruction to	
not to dis	scuss the evening's events.	reasona	bly understood	
instruction as meaning that	might not have wanted	other CCS staff -	or supervis	sors –
to learn about intoxic	ation, or that inst	ructions were relat	ted to Kinsey's	
inappropriate interactions with	during the happy	hour. In either ev	ent, such an instruction	on was
inconsistent with Department re	gulations, which require D	OJ employees to re	eport misconduct that	they
witness by a fellow Department	employee, and in	nstruction to	constituted	
misconduct.				

Additionally, the OIG found that 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 by denying any knowledge of Kinsey's actions that evening.

The OIG further found that **sectors** 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

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,

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 the second and another witness, alleged that:

- Kinsey was "extremely" intoxicated during the happy hour, stared at **sector and** 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 while the two rode in an Uber and while they were at a hotel that night,
- Kinsey continued to sexually harass 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 became highly intoxicated in the presence of his subordinates,

, who also attended the happy hour,

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:



Interview of:

•

Reviews of:

- Marriott Metro Center surveillance video and guest records for Kinsey
- 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 **and the supervisor**. Accordingly, regardless of Kinsey's perception as to whether the was receptive to Kinsey's advances, their respective professional positions required that Kinsey take appropriate steps before pursuing a relationship with 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. 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. said that after some back and forth with CCS employees about dates for the happy hour, Kinsey asked said that the event was eventually scheduled to occur to take over planning the event. 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. Kinsey, and described the happy hour as starting between 5 p.m. and 5:30 p.m. The happy hour ended immediately left in an Uber, which, according to Uber records, was at 10:38 p.m. before Kinsey and recalled that the happy hour started between 4:00 p.m. and 4:30 p.m., and that CCS employees were also at the happy hour when it began, but those employees left earlier in the evening. Kinsey. , and Ł. | 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.

...



When interviewed separately by the OIG, these five CCS employees described varied levels of intoxication amongst themselves during their time at the bar. told the OIG that she drank and Kinsey drank beer, and drank "Jack and Coke" (a mixed bourbon drink). wine. stated that , and left the happy hour first and that left described the last five employees' drinking as "abnormally separately at about the same time. high" alcohol consumption and described herself as "pretty inebriated." She recalled attendees collectively purchasing approximately six rounds of drinks throughout the evening, although she did not pay for her own drinks.

who the OIG believed to be the least intoxicated based on witness testimony, described "Charlie" (Kinsey) as "pretty intoxicated," but "less drunk than was." as "not really that drunk at all" as she left with further stated that he perceived Kinsey.

told the OIG that she perceived as "definitely buzzed, probably passed buzzed," but generally in control and aware of her surroundings. told the OIG that Kinsey did not seem overly intoxicated to her, though she had observed him drinking steadily all night. said that she as being the most intoxicated of the group, and specified that was intoxicated perceived enough by the end of the night that she and walked him to a Metro station and she actively tried to keep him from driving his car home, at times having to debate with him about the issue of whether he was capable of driving. said that had trouble calculating a gratuity for the bill, and that she offered him assistance, which she said witnessed.

Kinsey characterized himself as "not sober" at the end of the happy hour, and described as "lucid" that evening.

denied being "overly" intoxicated by the end of the happy hour and estimated that he drank about five beers. When asked by the OIG if he was intoxicated at all that evening. asked the OIG to define "intoxication" and asserted that he was intoxicated after drinking one beer.

Kinsey Sexually Harassed

The complainant alleged that Kinsey sexually harassed a then-subordinate CCS employee,

, during and after the happy hour on May 24, 2017. According to the complaint, Kinsey engaged in inappropriate touching of at the happy hour and engaged in other conduct that constituted sexual advances toward her. The complaint alleged further that at the conclusion of the happy hour, Kinsey departed with in an Uber, where he allegedly initiated a series of sexually harassing behaviors that allegedly continued went to a hotel room in Washington, D.C. After the encounter on May 24, Kinsey after he and allegedly continued his sexual harassment of by making telephone calls to her, as well as sending text messages and e-mails to her in which he expressed his personal feelings for her.

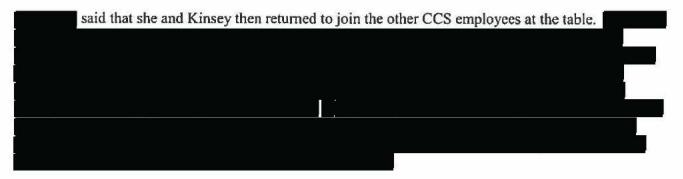
Kinsey's Harassment of at Proper 21



told the OIG that

approached her at the bar that evening

She also said Kinsey may have touched her upper arm as a consoling gesture during this time. She also said at one point she and Kinsey both left the table to use the restroom, which was located in the rear of the bar. Said that, as they were passing through the bar, Kinsey approached her from behind, put his left arm around her left waist area, and then proceeded to tell her he would help pay her bills if she needed financial assistance said that she declined Kinsey's offer, telling Kinsey it was unethical and probably illegal. Said that she declined Kinsey's offer, telling Kinsey it was unethical and probably illegal. Said that she declined that Kinsey's uncharacteristic actions at that time were unexpected, made her uncomfortable, and gave her the impression that he had a "crush" on her. However, Said did not expect Kinsey's conduct to go any further at that time, nor did she recall any additional statements or actions by Kinsey at the bar that made her uncomfortable or that seemed inappropriate.



from behind, put his arm around the second waist, and made unspecified comments to her about helping pay her bills and that she found Kinsey's comments to **be** troubling, and that Kinsey had also placed his arm around **better waist** that evening while they were standing at the table with the group. **Better waist** said that she attributed Kinsey's contact with her to people becoming more "touchy-feely" when they drink.

told the OIG that, later in the evening, he observed Kinsey rubbing arm above the table and her thigh and leg below the table as Kinsey leaned in close to her to talk. Said had no noticeable aversion to being touched by Kinsey or made any effort to remove herself



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

	nd Control of Uber records, at approximately 10:30 p.m., the illed that the group probably left at that time "because we were all
	and described leaving with and
	ecause they did not want him to drive his car after drinking. At
	and Kinsey got in an Uber that had summoned.
recalled telling Kinsey more for and that Kinsey did not resp	orcefully to go get a hotel room as Kinsey was walking out with ond to her.
	said that she opted to focus on assisting to
prevent him from driving home.	said that she sensed was uncomfortable with
Kinsey's actions, so she texted	and Kinsey, and possibly called Kinsey, as she walked to the
Metro station with and	
	hat she waited at the Metro station for a reply message, and
	insey was going to a hotel. told the OIG that she
suggested in her text messages to get a separate Uber home.	that she take the Metro to her residence and then

Kinsey's Actions During the Uber Ride

recalled that she was wearing shorts during that evening. stated that, during the Uber ride, Kinsey told her that he had missed his train on purpose. 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. 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. 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 stated that at that point, she said something like, "this is not happening" and ordered the shirt. Uber driver to return to where he had picked them up. said she was concerned that Kinsey may attempt to have sex with her,

Uber records reviewed by the OIG indicated that the Uber picked up **Sector** 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 **Sector** trip at 1298 F Street, N.W. Washington, D.C., in nearly the same point it had originated, in the vicinity of Proper 21.

the Uber driver, told the OIG that he thought and Kinsey may have been a couple, and believed they were kissing in the backseat. The recalled asking to be returned to their pick up location, but did not recall why. The did not hear the set of 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. The said the set of and Kinsey departed his car without incident, and the set of th

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

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



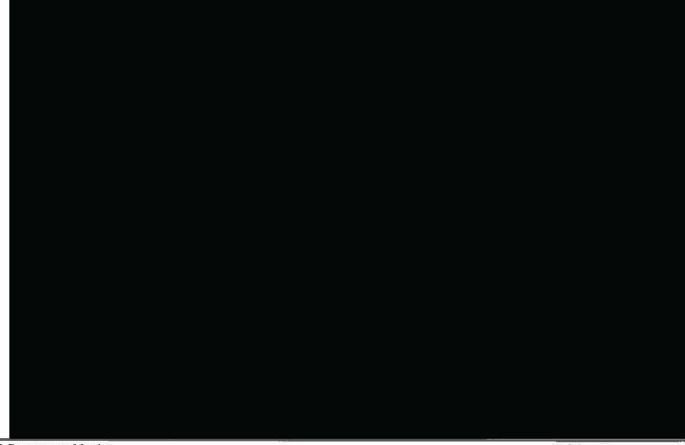
to in a text message stating that she was "Getting him to a hotel."

Kinsey and Interactions at the Hotel

During her OIG interview, **Sector and** 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. **Sector** 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. **Sector** 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.

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 the metrieved and replaced an individual credit card from his wallet.

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. **Security** 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 **Security** walking towards the elevator bank together and mutually kissing each other before entering an elevator together.



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



	stated that after she left the hotel, which hotel surveillance video showed at 12:48 a.m. on May
25, 20	
	stated that she called an Uber and went directly home for the rest of
the nig	ght, arriving around 2:00 a.m. The OIG's review of Uber records confirmed
	at 1:46 a.m. on May
25, 20	17. recalled that she sent an email to Kinsey, and "
	direct supervisor) around 4:00 - 4:30 a.m. requesting sick leave on May 25,
2017.	The OIG's review of e-mail confirmed she sent the e-mail at 4:43 a.m. on May 25,
2017.	

Kinsey's Continued Harassment

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. **Sector** deflected Kinsey's offer by saying she would let him know, claiming she did not want to "piss him off" by "blowing him off." **Sector** 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 for the could call her at 6:15 a.m., and asked for her telephone number at 6:27 a.m., for the could call her at 6:27 a.m. and provided Kinsey with her telephone number. One of the e-mails from Kinsey to the could call a 9:02 p.m., ended with "XXOO."

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." **Several** also provided the OIG with a \$200 Nordstrom gift card she said she received as a gift from Kinsey

the office **Section** stated that Kinsey left the gift card at her desk in 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 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 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.

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. Solution said that she assumed CCS knew she was looking for another job, and she hoped



to "keep her head down" until finding another job. **Sectors** stated that the only reason "this whole thing got out in the first place" was that **Sectors** made a comment to **Sectors** at the end of the happy hour that had been reported. She added that **Sectors** knew some things about her interactions with Kinsey, but not everything, and that she withheld "the most serious part" (the events at the hotel) from specific CCS colleagues because of personal embarrassment and a desire to avoid "uprooting" Kinsey's and **Sectors** lives or contributing to a "witch-hunt" within CCS that could destroy lives.

told the OIG that, based on her observations at the bar and during subsequent conversations with about this matter, she did not perceive that **about this** was comfortable with Kinsey's actions and comments towards her that night. She also did not think that **about this** was comfortable with Kinsey's continued advances and solicitations after the happy hour evening.

When interviewed by the OIG, **and a** said that **and and a** was **and a** direct supervisor, and Kinsey was her second line supervisor. **Constant** said that he was unsure how much Kinsey and **and a** interacted during the happy hour, and he first noticed them talking together towards the middle or end of the evening across the table from each other. **Constant** stated that he did not see any physical contact between **and Kinsey** and **Kinsey**, nor did he hear anything discussed by Kinsey and **constant** denied seeing anything inappropriate occur between Kinsey and **constant** adding "I would have made note of that in my mind."

Kinsey's Statement Regarding His Interactions with

During his OIG interview under oath, Kinsey acknowledged that, in **Sector B**absence from work, he was the senior official within CCS. He admitted to consuming at least five beers, possibly more, during the evening at the Proper 21 bar with his subordinates, and characterized himself as "not sober" as they left the bar. Kinsey told the OIG that he perceived **Sector B** as being "lucid" that evening. Kinsey believed that **Sector B** as romantically interested in him because she had sat deliberately and unnecessarily pressed against him while seated at a group table at a previous happy hour, and he believed that **Sector B** had deliberately positioned him and **Sector B** beside each other on two occasions that evening. When interviewed by the OIG in follow-up, **Sector B** denied taking any action to position Kinsey and **Sector B** next to each at the happy hour.

Kinsey was uncertain about his response to account of the had missed his train. Kinsey stated that, operating under the assumption that the had missed his train. Kinsey stated that, operating under the assumption that the had missed her in an area of the bar near the restrooms, around the other CCS employees. Kinsey said that, as he was returning from the restroom, he thought that the was waiting for him after having intentionally positioned herself away from the group. He said that the had did not rebuff his kiss and placed her hand on top of his hand that he had



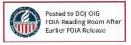
placed on her waist. did not report being kissed by Kinsey at any time during the happy hour.] Kinsey also admitted to offering to pay for the bills and expenses.

After returning to the group's table, Kinsey recalled touching the set of 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 the set of and touch her elbow at the table. Kinsey acknowledged that touch touch her elbow at the table. Kinsey acknowledged that touch touch him to go to a hotel room, however, Kinsey could not recall his response to the set of the set o

Kinsey told the OIG that he did not know the destination of the Uber he shared with the or why the Uber returned to the vicinity of their pick-up location. Kinsey admitted that, during the ride, he kissed and touched her left breast and thighs, but he denied that the 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 to be 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.

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

Kinsey stated that **a state of the second state of the st**



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

Initially during his OIG interview, Kinsey asserted that was not within his chain of command. However, when challenged by the OIG, Kinsey conceded that, as the Principal Deputy Chief of CCS, was subordinate to him. Kinsey asserted that he did not believe what 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 sections given their supervisorsubordinate 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 sections 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 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 via telephone calls, texts, e-mail, and a gift, constituted recurring improper advances that made uncomfortable, and constituted sexual harassment. The OIG believes that was understandably hesitant to decline Kinsey's advances during and after the CCS happy hour. By her own , as Kinsey's subordinate, did not want to anger Kinsey and attempted to handle his account. verbal and physical advances with diplomacy. The OIG believes that was not in a position where she felt she could firmly rebuff Kinsey's continued harassment as he pursued her. Though both were admittedly intoxicated during and after the happy hour, Kinsey did not Kinsey and attribute his behavior to intoxication, but rather his perception that 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 welcomed his advances.

While Kinsey and **sectors** 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 Kinsey was sectors supervisor, and therefore his repeated actions that evening and subsequent to that evening, constituted serious misconduct even if, as he claimed, he believed that the never made it clear to him that his advances were unwanted. It was Kinsey's responsibility, before attempting to pursue a relationship with the sectors, to notify his supervisor and recuse himself as her supervisor, to ensure that such conduct was not perceived by **sectors** 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 the second and potentially other CCS employees,

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 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,

Conduct at Proper 21

The complainant further alleged that the presence of his subordinates, the above-referenced office happy hour, became highly intoxicated in the presence of his subordinates,

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

told the OIG, that prior to leaving the bar, 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. said he laughed, thinking was joking, at which time told that he was "serious," and took it as an order. said he was not sure why asked him not to say anything. said he took statement to mean that 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. also said he thought it was possible that may have observed Kinsey and close interaction and physical contact at the end of the table, and was making reference to that as being the conduct that should not discuss.



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

said that she recalled **a second seco**

Kinsey told the OIG that he discussed the happy hour with the on one occasion. Kinsey said that in the 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, **Sector** and **Sector** where **Sector** commented on **Sector** 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 **Sector** about the happy hour event, including covering anything up.

During his OIG interview under oath, **sector** 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. **Sector** 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. **Sector** later named the employees who attended the event. **Sector** described the group's table as tall with tall chairs, with some CCS attendees seated and others circulating around the bar. He then named **sector** 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, **set of said** that individuals were intoxicated to a "moderate" degree by the time the last five attendees remained. **Set of 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."

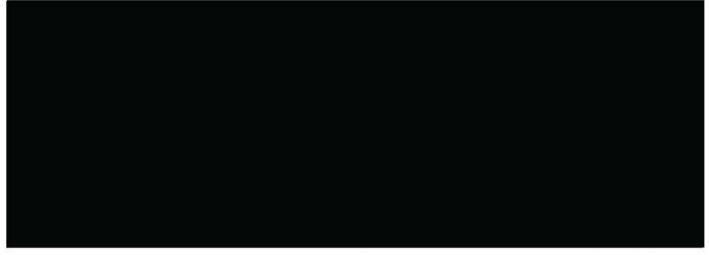
said he asked Kinsey directly if he was going to miss his train because Kinsey usually "gets on the road" because he has a long commute. Kinsey replied to that he would get a hotel and that he had Marriott Points. When asked about the impetus for his concern about Kinsey's commute that evening, the cited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

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

PAGE: 17 CASE NUMBER: DATE:



While challenging the OIG about the definition of "intoxication," where denied becoming "overly" intoxicated at the happy hour, being intent on driving home, or needing to be convinced by to to do so. Solution 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, the 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.



determined 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 accompanying him accompanying

assumption "would have been" that the time, or now recall, the circumstances of Kinsey's and assumption "would have been" that the work was headed home and Kinsey to the train station, or possibly to a hotel.

said that neither Kinsey nor the second 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. Second explained that CRM had informed him that a sexual harassment allegation had been made by a said against Kinsey, and prohibited from discussing the allegation with Kinsey or the second had informed him that a sexual

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 set 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." If the 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.



However, **best of** stated clearly that the events of the night of the happy hour had been "the source of conversation around here (CCS)." When asked a follow-up question about that statement, **best of** disputed that any such conversations had occurred within CCS or that he had said so during the interview. **Best of** explained that emails had circulated (in lieu of verbal conversation), then changed his statement to say that he meant that matters related to **best of** had been a topic of conversation, not the happy hour's events. When asked about the impact of alcohol on his memory of what happened at the happy hour, **best of** attributed his inability to recall specifics about his alleged verbal directive or other events of the evening to the time lapse of 4-5 weeks between the happy hour and his interview, not his level of intoxication that night.

OIG's Conclusion

The OIG substantiated that verbally directed not to discuss what occurred during the happy hour at Proper 21. The OIG credits vivid recollection of direct statement to him not to discuss the happy hour with anyone, including emphasis that he was "serious" about the matter. This was further corroborated by recollection of hearing a similar comment by . By contrast, denied making such a We found statement to responses to questions about his discussion with to be evasive and disjointed, with efforts by him to clarify and qualify his answers. We were deeply troubled by action, which took as an instruction, given he was and . It was reasonable for to have assumed, as he did, that was embarrassed about going to a happy hour with his subordinates, . and becoming extremely drunk, and that he might not have wanted other CCS staff - or supervisors observed at least some of the inappropriate contact at the happy - to learn about it. Moreover. hour between Kinsey and and he could have reasonably believed that may have also observed Kinsey's actions told the OIG that he did not) and that his instruction to was related to those actions. No DOJ supervisor, let alone a senior DOJ prosecutor, should be instructing a subordinate to not discuss the potentially inappropriate actions of their fellow employees. Indeed, such an instruction is inconsistent with Department regulations, which require DOJ employees to report misconduct that they witness by a fellow Department employee.

The OIG credits consistent witness descriptions of the train as being "highly" intoxicated, or "extremely drunk," at the happy hour. The OIG questions **of the train and or during his efforts to minimize his level** of "intoxication" during the happy hour or his intent to drive home, and to diminish his responsibility by denying any knowledge of Kinsey's actions. Given the group's proximity around the bar table, the OIG was unconvinced by **of the table** assertion that he was completely unaware of Kinsey's physical touching of

The OIG finds it improbable that the group's positioning around the bar table, as drawn by during his interview and described by other witnesses, precluded from hearing such a collective discussion, or to see Kinsey leaning in close to and rubbing her arm above the table.

The OIG further found that was inebriated by the end of the group's gathering at the happy hour at Proper 21, which had last for approximately 5 hours.



described as very intoxicated during the latter part of the happy hour. and both told us that they accompanied to the Metro to make sure that he did not decide to drive home due to his severely intoxicated condition. By contrast, 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 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 the interactions between Kinsey and , and the circumstances of his and the last group of happy hour attendee's departure from the bar. provided evasive and qualified responses. The OIG found qualified and hypothetical answers to the OIG's questions to be self-serving in an effort to minimize his responsibilities as and his accountability for his conduct on the evening of the happy hour. The OIG found 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 **and the engaged** in misconduct when he directed **and the end of the end of**

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.

