

HUESTON HENNIGAN LLP

**Independent Fact-Finding Review for the Board of Regents
of the University of California:
Summary of Findings**

Brian Hennigan
Michael Behrens
Kasey Mitchell
HUESTON HENNIGAN LLP
523 W. Sixth Street Suite 400
Los Angeles, CA 90014

Hon. Carlos R. Moreno (Ret.)
JAMS
555 W. Fifth St., 32nd Floor
Los Angeles, CA 90013

TABLE OF CONTENTS

| | | |
|------|--|----|
| I. | SCOPE AND METHODOLOGY OF FACT-FINDING REVIEW..... | 1 |
| II. | EXECUTIVE SUMMARY..... | 2 |
| III. | FINDINGS | 5 |
| A. | Summary of Facts Relevant to Context. | 5 |
| 1. | The Existing Tense Relationship Between UCOP and the State Auditor..... | 5 |
| 2. | This Relationship Was Further Strained By the Alleged Behavior of State Auditors During the UCOP Audit..... | 6 |
| B. | Summary of Facts Regarding Interference..... | 6 |
| 1. | The COS and DCOS Directed Campuses to Have Chancellors Review the Campuses' Responses. | 7 |
| 2. | The November 10 Meeting..... | 9 |
| 3. | The COS and DCOS Instructed Campuses to Send Their Survey Responses to UCOP for Review | 9 |
| 4. | The COS and DCOS Instructed Campuses That the Surveys Were Not the Time or Place to "Air Dirty Laundry." | 9 |
| 5. | UCOP Obtained Legal Advice From the Office of General Counsel..... | 10 |
| 6. | President Napolitano Made Statements to Chancellors at Pre-Regents' Meeting Dinner. | 11 |
| 7. | Three Campuses Changed Survey Responses Proactively..... | 12 |
| 8. | Campuses Submitted Survey Responses to UCOP, the COS and DCOS Reviewed, and the DCOS Suggested Edits and/or Revisions..... | 12 |
| 9. | UC Santa Cruz Incident. | 13 |
| C. | Overview of Laws and Standards Governing State Audits. | 14 |
| 1. | California Law..... | 15 |
| 2. | Relevant Auditing Standards..... | 15 |
| D. | The President's Executive Office Interfered With the Surveys..... | 17 |
| E. | The COS and DCOS Intended to Prevent the State Auditor from Obtaining Unfavorable Comments About UCOP from the Campuses..... | 19 |
| F. | The Role of the UC Office of General Counsel..... | 21 |
| G. | The Roles of UCOP Senior Leaders In Directing the Interference..... | 22 |
| 1. | The DCOS..... | 22 |
| 2. | The COS | 23 |
| 3. | President Napolitano. | 24 |

I. SCOPE AND METHODOLOGY OF FACT-FINDING REVIEW

This report summarizes the major findings of an independent fact-finding review undertaken by the Hon. Carlos R. Moreno (Ret.) and the law firm of Hueston Hennigan LLP (“Hueston Hennigan”) for the Board of Regents of the University of California. On June 1, 2017, Hueston Hennigan and Justice Moreno (collectively, “we”) were retained by the Regents to conduct an independent fact-finding review regarding allegations that the University of California Office of the President (“UCOP”) had interfered with campus responses to surveys distributed by the State Auditor in connection with Audit 2016-130 (the “UCOP Audit”). We were asked to report the findings to the Regents working group chaired by Regent Monica Lozano and to the Regents.

Specifically, as stated in our Scope of Work, we were to examine and report:

- Whether any interference by UCOP¹ in the preparation of the campus responses to the surveys took place;
- If there was interference, the reason for such interference;
- At whose direction the interference took place;
- All relevant facts associated with any such direction and/or interference; and
- Any facts relevant to the context for any such purported involvement, including but not limited to directions provided to the recipients of the surveys by the State Auditor, the applicability of such direction--and of Government Code Section 8545(b) and any other standards cited by the State Auditor--to those recipients, and the advice provided by the University of California’s General Counsel to UCOP on this applicability of Government Code section 8545(b). Included in this evaluation will be a thorough assessment of the surveys themselves, including but not limited to (a) the number of surveys in which responses were purportedly changed, (b) the extent and nature of any such changes.

To achieve these objectives, we developed and implemented a fact-finding plan to take place in three stages. In the first stage, we collected, reviewed, and analyzed documents from both UCOP and the UC campuses. In the second stage, we conducted interviews with individuals at the ten UC campuses and at UCOP. In the third stage, we

¹ The divisions and departments housed at the university system’s Oakland headquarters along with the President’s Executive Office are often referred to collectively as the University of California Office of the President (“UCOP”). For the sake of simplicity, we will use the term “UCOP” here interchangeably with the President’s Executive Office--that is, the President, her Chief of Staff, Deputy Chief of Staff and supporting staff.

prepared a summary of our findings of fact based on the evidence gathered in the first two stages for presentation to the working group and/or full Board of Regents.

We implemented this fact-finding plan by:

- Interviewing, telephonically and in person, 38 percipient witnesses at the ten UC campuses and at UCOP;
- Reviewing approximately 427,000 pertinent pieces of electronic data and documents;
- Reviewing applicable governance structures within the University of California;
- Reviewing applicable generally accepted governmental audit standards, including those cited by the State Auditor in her audit report;
- Analyzing applicable California statutes and other authority, including those cited by the State Auditor in her audit report.

Most UC employees were open to sharing their recollections and impressions with the review team. While we cannot rule out that these witnesses circumscribed their remarks to some degree due to perceived retaliation concerns, we are confident that the findings in this report contain a comprehensive, fair and objective analysis of facts. Moreover, we interviewed numerous witnesses, and obtained and reviewed extensive documentation regarding the events at issue, providing multiple perspectives into the events described herein.

At the direction of Board Chair George Kieffer and Regent Monica Lozano, the review team allowed President Napolitano and her counsel, her Chief of Staff and his counsel, and her Deputy Chief of Staff and his counsel, to review a preliminary draft of this Report and discuss it with members of the review team. Any revisions to the report made as a result of those discussions worked to further explicate, not obscure, facts within the report.

II. EXECUTIVE SUMMARY

The first question posed by the Board of Regents was whether UCOP “interfered” with the preparation and submission of survey responses to the State Auditor from the individual UC campuses. On October 20, 2016, the State Auditor sent two sets of survey questionnaires to each of the ten UC campuses for the purpose of obtaining feedback from those campuses with regard to specific aspects of the UCOP administration. Each of those surveys contained the direction that the surveys were to be filled out by the individual campuses and returned to the State Auditor. Finally, each survey contained the request addressed to each campus not to share the survey with “others outside your campus.” For the purpose of this Fact Finding review, we have defined “interference” as any action by

UCOP that had the effect of hindering or impeding the survey responses from the campuses to the State Auditor, regardless of whether that was the intended effect.²

Using the above definition of “interfere,” we find that members of the President’s Executive Office engaged in actions that interfered with the preparation and submission of survey responses from the ten individual campuses to the State Auditor. Specifically, we find that UCOP engaged in four acts in connection with the survey responses that, either separately or in combination with each other, constituted interference: (1) directing the campuses to have the survey responses reviewed and approved by that campus’ Chancellor; (2) instructing the campuses that the survey responses should be submitted to UCOP for review before submission to the State Auditor; (3) informing the campuses that the survey responses were not the time to “air dirty laundry” or otherwise provide negative information; and (4) reviewing the responses submitted by the campuses and suggesting revisions and/or changes to responses that reflected poorly on UCOP – including requesting that some campuses reconsider “Poor” or “Fair” ratings.

President Napolitano has forthrightly acknowledged her role in approving a plan that contained the first two acts identified above: (1) directing the campuses to have the survey responses reviewed and approved by the campus’ Chancellors, and (2) instructing the campuses that the survey responses be submitted to UCOP for review before submission to the State Auditor. Her Chief of Staff Seth Grossman (“COS”) and Deputy Chief of Staff Bernie Jones (“DCOS”) also admitted that they instructed the campuses to submit draft survey responses to their office, reviewed those responses, and provided both written and oral comments back to the campuses via the DCOS. Napolitano, her COS, and her DCOS gave the following explanation for these actions:

(a) They intended their review only to flag whether the responses (i) were within the scope of the audit; (ii) were factually accurate, and (iii) reflected the views of the campus’ Chancellor.

(b) The campuses evidenced confusion regarding the surveys, necessitating UCOP involvement and communication with the campuses to coordinate the responses.

(c) The University’s Office of the General Counsel assured UCOP that it was lawful for the campuses to share survey responses with the President’s Executive Office.

On its face, even this two-part plan constituted interference in the submission of survey responses from the campuses to the State Auditor. In adopting such a plan, UCOP was affirmatively notifying each campus Chancellor that he or she would be seen as the responsible party for any statement critical of UCOP in the survey responses. Further, in

²As discussed in our Findings, we use the term “interfere” according to its literal meaning, which does not include a specific intent to hinder or impede. In other words, we are not using the word “interfere” synonymously with “obstruct.” Where appropriate we will specify where the evidence tends to show that certain actions were taken with the purpose of hindering or impeding responses.

adopting the two-part plan, UCOP told each Chancellor's Office that the campus should submit the campus responses to UCOP for review before submission to the State Auditor, meaning that any criticism from the campuses would become known to UCOP. In short, the review plan was likely to, and in at least one case did, chill campuses' responses to the State Auditor.

Although it had the effect of interfering with the campus responses, the plan that President Napolitano acknowledges adopting did not, on its face, attempt to alter or influence the substantive survey answers prepared and submitted by the individual campuses. However, her COS and DCOS took additional actions designed to do just that, and which in many cases succeeded in doing so. They advised campuses to refrain from including negative information about UCOP and its programs and services. They also provided detailed comments and suggestions regarding the campuses' survey responses that caused some campuses to revise their responses to reflect more favorably upon UCOP.

President Napolitano has represented that she did not approve, and would not have approved, of the execution of any plan that included these latter two actions. Further, she has stated that she had no knowledge that her COS or DCOS engaged in these actions. As will be discussed in our Findings, the evidence is insufficient to conclude that President Napolitano approved or had knowledge of these additional actions.

The COS and DCOS deny that they executed the review plan with any intent beyond ensuring that responses were factually accurate, within the scope of the audit, and that they reflected the Chancellor's perspective. Based on available witness statements and the weight of the evidence described further herein, it is more likely that they instructed that the campuses provide the responses to the DCOS before submission to the State Auditor so that they could review those responses and, if needed, suggest changes to make them less critical of UCOP.

Legal advice provided by the UC Office of General Counsel to UCOP played a significant and mitigating role in these events. Before UCOP began to review the campuses' responses, the DCOS requested that UC's General Counsel advise him as to whether a California Government Code provision cited by the State Auditor in the survey's instructions prohibited the campuses from sharing their draft responses to the survey with UCOP. The Office of General Counsel advised--correctly--that it did not. The COS and DCOS therefore proceeded with their plan to collect and review the campuses' responses.

Critically, missing from the communications from UCOP to the Office of the General Counsel was disclosure of any plan to sanitize campus survey responses before they reach the State Auditor, or any acknowledgement from the Office of the General that it understood that any such plan existed. Nor did the General Counsel provide legal advice to the effect that it was permissible to take steps to filter out negative comments from the campuses to the State Auditor in the survey responses. Rather, the Office of General Counsel provided advice only on the aspects of the plan that had been described to it. Even then, the General Counsel, who said he felt the plan was a "bad idea," warned the DCOS about the "political" risk it posed.

Days after the legal advice was given, a university Deputy General Counsel participated in providing comments to one of the campuses' survey responses by suggesting revisions to some of the DCOS's comments. This took place late in the review process, after the decision had already been made to embark on the plan, and indeed after feedback had been provided to all but one campus. In her interview, the Deputy General Counsel stated that the DCOS had forwarded his proposed changes to the survey responses to her with little if any explanation, and that she made revisions to his comments for the purposes of dialing back the proposed changes and making them less prescriptive.

The President, the COS and the DCOS have pointed to this activity by the Deputy General Counsel as support for the argument that not just the review but the revision process had been approved by the Office of General Counsel. Given that the General Counsel had also advised the DCOS that the overall legal risk from the plan was "low, *but not zero*" and that it posed "political" risks, and that the Deputy General Counsel had advised the DCOS that he should alert the State Auditor of the activity (which was not done), there is little support for an argument that the Office of General Counsel blessed the activity. Further, as noted above, UCOP did not involve that Deputy General Counsel until late in the process, after most campuses had received feedback from the DCOS.

The DCOS and COS stated that in retrospect, the plan to review the responses was a bad decision and an error in judgment. President Napolitano expressed regret over the way the "process" had taken place and stated that the President's Executive Office would now do things differently. All three individuals stated that they did not intend to interfere with the surveys.

III. FINDINGS

A. Summary of Facts Relevant to Context.

Our Scope of Work included the directive to determine and report "[a]ny facts relevant to the context" for any purported interference by UCOP in the campuses' responses to the State Auditor's surveys.³ Below, we discuss two findings that, while not necessary to support our conclusion that members of the President's Executive Office interfered with the survey responses, provide such context.

1. *The Existing Tense Relationship Between UCOP and the State Auditor.*

At the time that the UCOP Audit was taking place in the fall of 2016, the relationship between the California State Auditor's office and UCOP was tense. Indeed, in the view of Janet Napolitano, President of the University of California, it was "toxic." Several witnesses blamed the strained relationship between UCOP and the State Auditor on the previous, "disastrous" state audit concerning, among other things, non-resident admissions at UC. Witnesses at all levels of the university reported that, at this point, the

³ For purposes of this Report, we have condensed and summarized certain facts where appropriate. A fuller, and chronological, factual summary is contained in Appendix A.

State Auditor was known to overlook facts and paint certain facts in a misleading light. UCOP felt that the non-resident admissions audit had been rife with “factual and other inaccuracies,” and that the State Auditor or her staff had been unwilling to address those mistakes and factual errors even after UCOP had pointed them out.

After UCOP’s response to the prior audit, which some University officials said they felt was “combative” and “tone-deaf,” relations between the State Auditor and UCOP had worsened palpably. It was following that interaction that the Legislature then ordered the audit of UCOP itself. The overarching feeling within the University was that the UCOP Audit was political in nature.

2. *This Relationship Was Further Strained By the Alleged Behavior of State Auditors During the UCOP Audit.*

By the time the surveys arrived on the campuses on October 20, 2016, this tension had been further exacerbated by what UCOP witnesses perceived to be aggressive and unprofessional conduct by state audit staff as they conducted fieldwork at the University’s systemwide headquarters in Oakland. Witnesses described strong negative feelings at UCOP about the conduct of the auditors in September, October, and November of 2016. UCOP had noted reports of audit staff making workers at the Oakland headquarters “uncomfortable,” even “cornered and threatened,” and of “audit staff roaming the halls” and “cornering people with flash drives and asking them to download their hard drive.” One witness described President Napolitano as “displeased” and “frustrated” by these reports. Another witness described President Napolitano as “very upset” by the purported behavior of state audit staff.

The State Auditor’s office did not inform anybody at UCOP that it planned to send surveys directly to the campuses before it did so. Only after the surveys had been sent did the State Auditor’s office call Matt Hicks, UC’s Systemwide Deputy Audit Officer, whose job responsibility typically included coordination of systemwide external audits (including past audits by the State Auditor). One UCOP official saw a message, or even a provocation, in the State Auditor’s office’s decision to bypass UCOP leadership.

Sheryl Vacca, then Senior Vice President and Chief Compliance and Audit Officer of the University of California, expressed her strong belief that the State Auditor had acted unprofessionally and in breach of prior dealings, to send the survey to the campuses directly, without notification to her office. Vacca, who left the university system soon afterwards, later signed her name to a memo to President Napolitano detailing, among other things, her concerns with the actions of the State Auditor’s office throughout the audit.

B. Summary of Facts Regarding Interference

On October 20, 2016, as part of Audit 2016-130 (UCOP Administrative Expenditures), the California State Auditor’s office emailed a survey to UC officials at the ten University of California campuses. One survey was titled “UCOP Services Survey” (henceforth, “Services Survey”); its cover email explained that the State Auditor was “conducting a survey of all campuses regarding the services and programs provided by

the Office of the President.” The other survey was titled “UCOP Campus Assessment Survey” (henceforth, “Assessment Survey”) and explained in its Introduction that the State Auditor was conducting “a survey of all campuses regarding the reasonableness of the Office of the President’s annual campus assessment.”⁴

The cover emails to the surveys instructed that the surveys should be completed and submitted by November 18, 2016. Further, the emails noted:

“Please also note that California Government Code section 8545 (b) requires the State Auditor to keep confidential any information pertaining to any audit not yet completed. We appreciate your assistance in keeping the survey confidential until the audit report is made public by not sharing it with others outside of your campus.”

1. *The COS and DCOS Directed Campuses to Have Chancellors Review the Campuses’ Responses.*

Members of the President’s Executive Office learned of the surveys on October 20, 2016, the day the surveys arrived on campuses. Between October 20 and October 25, the DCOS and COS, and other senior officials at the university’s Oakland headquarters, including in one instance President Napolitano, exchanged texts, emails, and phone calls regarding how to respond to the surveys. The common theme among these communications was the need to contact senior campus officials regarding the responses to the surveys, namely campus Vice Chancellors of Planning and Budget or campus Chief Financial Officers (collectively, “VCPBs”), who had received the “Assessment Survey” and whom the State Auditor had asked to complete that survey, and each campus’ Chancellor and/or that Chancellor’s Chief of Staff.

The DCOS and another senior official contacted the campus VCPBs by phone, or in at least one case, met with them personally. The DCOS stated that the message that he imparted to the VCPBs may have been to “run the responses past the Chancellor” of the campus before sending it to the State Auditor’s office. The other official does not recall providing this message. On October 24th and October 25th, the COS and the same senior UC official made calls to a number of campus Chancellors regarding the surveys. The COS said these calls were meant to impart to the Chancellors that the Chancellor should vet the campuses’ survey responses before they went to the State Auditor’s office. He also intended to recommend to the Chancellors that they confirm they were comfortable with whom was responding to the survey questions. Senior campus officials, including Chancellors, who remembered such a call taking place recalled being told that (1) there needed to be a senior campus leader responsible for collecting the survey responses, and (2) that the Chancellor, being the CEO of the campus, should make sure the responses

⁴ The campus assessment is an amount that the Office of the President requires campuses to pay annually to fund UCOP’s operations. See *Systemwide Budget Manual*, Office of the President, University of California (rev. Jan. 22, 2016), http://www.ucop.edu/operating-budget/_files/bap/systemwide_budget_manual_07312015.pdf. The amount paid by each campus is determined by taking into consideration both the financial resources at the campus and the “types and level of services” provided to the campus by UCOP. *Id.*

reflected his or her views. Some officials with indirect knowledge of the calls stated they were told that UCOP expressed concern on the calls about the audit's political nature and relayed a message that the campus should provide its view and cooperate but that this was not the time or place to air out grievances.

During this period, the COS and DCOS exchanged several texts regarding the need for secrecy with respect to any communications with VCPBs or Chancellors. In one text, the COS warned the DCOS to keep such communications "off of email." He later texted the DCOS, "*Don't want anything in email that could be problematic if made it [sic] way back to the auditor.*" (emphasis added.) A senior official in the university's Ethics, Compliance and Audit Services office, typically tasked with coordinating outside audits of UC, was aware that the DCOS and COS were planning to contact the VCPBs. This official thought that what UCOP was doing could be construed by the State Auditor as "attempting to control how [the campuses] respond to the surveys," and was concerned enough to contact his direct superior. The superior encouraged him to push back against UCOP. She was concerned that UCOP's conduct could threaten her office's relationship with the State Auditor, its independence, and the professional reputations of its staff.

In statements to the review team and to the State Auditor, UCOP senior leaders cited campus confusion and questions to "UCOP" regarding the surveys as the reason that UCOP felt justified in communicating with campus officials regarding the surveys. These appear to be references to an October 20 email from one campus Internal Audit Director (IAD) to Matt Hicks of the Ethics, Compliance, and Audit Services office suggesting a group call among IADs to discuss matters of logistics and procedure with respect to the surveys.⁵ The Ethics, Compliance, and Audit Services office, while housed at UCOP's Oakland headquarters, is not part of the President's Executive Office. Further, while some VCPBs contacted UC officials in Oakland to inform them that they had received the surveys, there is no evidence that any VCPBs expressed "confusion" to UCOP senior leaders before UCOP began planning calls to them and Chancellors on October 20th and 21st.

Napolitano and the COS further stated that the plan to review the campus responses resulted from a Council of Chancellors' meeting on November 2, in which several Chancellors expressed concern about the surveys. When asked if campuses raised "questions" regarding the surveys, Napolitano stated that she recalled the Chancellors raising the issue of the surveys at the COC meeting. Contemporaneous notes of the meeting reflect that Napolitano raised the issue of the audit, and that two Chancellors made comments, respectively, that it was "difficult" to respond to the surveys and that there was concern that the IADs did not have "full information." A UCOP official present at the meeting stated that the Chancellors discussed the disparity between the views of lower-level campus officials regarding UCOP and the views of senior campus leadership.

⁵ Campus IADs had received the longer, more complex Services Survey and had been tasked by the survey's instructions to coordinate distributing the survey to various "subject matter experts" on campuses. Hicks convened a call on October 25 among the IADs to discuss matters of logistics and procedure regarding the surveys. Hicks further informed state audit staff by email on October 21 that he was forwarding questions posed to him by IADs. In her responsive email, the state audit staffer did not comment on the fact that Hicks had been communicating with campus IADs.

However, there is no evidence that any Chancellors expressed a desire at the meeting that UCOP should review the campus responses.

2. *The November 10 Meeting*

On November 10, President Napolitano hosted an internal UCOP meeting to discuss the audit. Among those present were the COS, the DCOS, the Chief Compliance and Audit Officer, and the Systemwide Deputy Audit Officer. Witnesses agreed that the purpose of the meeting was to address the behavior of the state audit staff. According to one witness, President Napolitano was "very upset" regarding the conduct of the state auditors. This witness then recalls the subject of the meeting turning to the surveys. This witness recalls the President asking how UCOP could get more "control" over the surveys. According to this witness, the Chief Compliance and Audit Officer then suggested that UCOP could collect and review the surveys before they were submitted to the State Auditor. The witness stated that he believes that the Chief Compliance and Audit Officer was not so much making a recommendation as suggesting one thing UCOP could do.

When interviewed, President Napolitano, the COS, and the DCOS did not recall the Chief Compliance and Audit Officer suggesting that UCOP could review the responses at the November 10 meeting as a means of gaining more "control" over the surveys. Nor did the President, the COS, or the DCOS make any claim that they relied upon a suggestion by the Chief Compliance and Audit Officer in reaching their decision to implement the review plan.

3. *The COS and DCOS Instructed Campuses to Send Their Survey Responses to UCOP for Review*

On Monday, November 14, at 10:00 a.m. and 2:00 p.m., the COS and DCOS held two conference calls with campus Associate Chancellors. These Associate Chancellors served as Chiefs of Staff or the equivalent to the campus Chancellors. Participants in the calls recalled that both the COS and DCOS spoke, but some witnesses were not always sure whether it was the COS or DCOS speaking. The DCOS recalls that the COS "kicked [the calls] off," then handed it over to him.

On the call, the COS and DCOS instructed the Associate Chancellors to submit the campuses' completed survey responses to UCOP, through the DCOS, before submitting them to the State Auditor's office. The Associate Chancellors recalled being informed that UCOP wished to review each campus' survey responses before they were sent to the State Auditor. Several participants described an implicit message conveyed on the calls: that campuses would be accountable for any survey responses critical of UCOP. To one witness, it was clear that UCOP wanted to make sure the survey responses would reflect well on President Napolitano. This witness stated that the DCOS, whom she recalled speaking, did not come out and say that UCOP might request changes to responses, but the implication was clear: if you provide a negative answer about UCOP, UCOP is going to know. According to this witness, "The pressure couldn't be any more obvious."

4. *The COS and DCOS Instructed Campuses That the Surveys Were Not the Time or Place to "Air Dirty Laundry."*

Three Associate Chancellors also reported that on the November 14 calls, the COS or DCOS cautioned the participants that the surveys were not the place or forum in which to air “dirty laundry.” These witnesses specifically recall this particular term (“dirty laundry”). One witness recalls the COS using the term, another recalled the DCOS using it. The third was not sure whether it was the COS or DCOS who had used the term. Other Associate Chancellors did not report a recollection of that phrase being used on the call.

The DCOS stated that he did not recall making any comments about airing “dirty laundry” and did not recall the COS making any. Instead, he recalled that Associate Chancellors were told that he and the COS would review for scope, factual accuracy, and Chancellor perspective, “flag things that we felt weren’t within parameters,” then return the surveys to the campuses. The COS denied making such a comment himself and did not remember the DCOS doing so, but stated that the latter was leading the calls while he, the COS, was multitasking and not paying the closest attention. The COS stated that if the DCOS made such a comment, it would not have been appropriate. President Napolitano also stated that such a comment would have been inappropriate, and said if she had known about it she “would have stopped it.”

5. *UCOP Obtained Legal Advice From the Office of General Counsel.*

The review plan as articulated by UCOP caused concern at some campuses about the plan’s wisdom and legality. Officials from at least two campuses contacted the DCOS or other UC officials to voice their concerns. On November 15, the DCOS texted the COS regarding these communications, adding, “I’ve asked Karen [Petrolakis, UC Deputy General Counsel] for her perspective, but I do think this is our most vulnerable area and it wouldn’t surprise me if one or more IADs snitched us to the CSA.”

That morning, the DCOS emailed UC Deputy General Counsel Petrolakis, “I got a call of concern from a campus contact about our plan to review responses to the audit survey. Can you provide me some guidance on this?” He then relayed the State Auditor’s language:

“Please also note that the California Government Code, Section 8545(b) requires the state auditor to keep confidential any information pertaining to any audit not yet completed. We appreciate your assistance in keeping the survey confidential until the audit report is made public by not sharing it with others outside of your campus.”

In a separate email, the DCOS described to Petrolakis what campuses had been instructed to do, including “a process of review that almost universally concluded with the Chancellor reviewing all of the results,” and “that each campus will send [the COS] and [the DCOS] ‘final’ versions of the survey responses for review, and where appropriate, comment (we won’t be doing any direct editing and focus will be on issues of scope).”

Petrolakis was traveling, and later that day UC General Counsel Charles Robinson emailed the DCOS back:

"[I]n response to your question, the statute cited in the CSA's request to the campuses, Gov Code 8545 (b), applies only to a release by the CSA, and only to a public release. Accordingly, it does not preclude the campuses from sharing their survey response with OP. Further, while we are aware of a statute that arguably forbids release of audit-related information by the target of an audit before publication of the final audit report, we know of no statute, and none has been cited to us, that forbids internal intra-agency communication, especially when one part of the agency has oversight responsibilities over the other. The CSA may argue that the surveys are a means of it gathering witness testimony, and that any effort by OP to influence the responses amounts to witness tampering. In my view, such an argument is a stretch, especially given that there are no outstanding subpoenas or court processes pending, and therefore the risk presented by such an argument is low, but not zero. In my view, the greater risk is political, not legal. OP should think carefully about creating an appearance that OP is biasing the results of the survey, which likely would be a subject of criticism in the final audit report. Let us know if you have any other questions."

The DCOS then emailed the COS asking if the latter was "OK" with informing campuses that the review plan was continuing, and the COS replied in the affirmative.

Later that day, Petrulakis emailed the DCOS and COS, recommending that UCOP let the State Auditor know about the plan:

"[T]he campuses would feel more comfortable not complying with the auditor's request not to share the survey outside their campus if UCOP informed the auditors that it is reviewing the surveys. I know you'd prefer not to do that, though it seems likely that the auditors will find out one way or another, such that it might be better to be up front about it."

The next morning, the DCOS texted the COS:

"I assume we aren't alerting the auditors that we are reviewing survey responses and our ongoing expectation is that campuses provide us those responses for review. Just wanted to be sure following Karen's note from last night."

Less than one minute later, the COS replied, "Yep."

6. *President Napolitano Made Statements to Chancellors at Pre-Regents' Meeting Dinner.*

The evening of November 15, President Napolitano hosted a dinner at her residence for the campus Chancellors. Two Chancellor attendees reported that at this dinner, President Napolitano made references to UCOP's plan to review the survey responses before they were submitted to the State Auditor's office. One Chancellor recalled that President Napolitano advised the campus Chancellors that the survey

responses should not be overly negative. President Napolitano also made clear that the Chancellors were expected to review the survey responses before they were sent to UCOP.

Napolitano states that if she made any comment about the surveys, it was to suggest that the campuses send the surveys to UCOP to allow UCOP to review for scope, accuracy, and Chancellor perspective. She denies making any statement regarding negative survey responses.

7. *Three Campuses Changed Survey Responses Proactively.*

Between November 14 and November 16 (after the UCOP calls), at least three campuses modified survey responses *before* the drafts were sent to UCOP for review. One campus flagged a response during an internal review, commenting that the respondent “didn’t get the message . . . that this is NOT the vehicle to critique UCOP.” Another campus Chancellor made changes to his campus’ responses on the basis of President Napolitano’s statements at the dinner that Chancellors should take full responsibility for the survey responses. This Chancellor felt that too many negative responses would not be welcome and eliminated certain critical responses as a result. A third campus struggled with how to handle a critical comment and considered adding a disclaimer to the response. A campus official emailed colleagues that the revisions were allowable because UCOP had “made clear that Chancellor’s [sic] had more latitude than we initially thought.” The Chancellor rewrote the response, which ended up much shorter and expressing a more positive view of UCOP.

8. *Campuses Submitted Survey Responses to UCOP, the COS and DCOS Reviewed, and the DCOS Suggested Edits and/or Revisions.*

Between Wednesday, November 16 and Wednesday, November 23, eight UC campuses sent one or both sets of survey responses to UCOP by email before submitting them to the State Auditor’s office. Two other campuses submitted responses to the DCOS on Monday, November 21, only after first submitting the responses to the State Auditor’s office.

On November 16, in the late afternoon, the COS and DCOS began their review of the campus survey responses. According to the DCOS, the process eventually became him reviewing each campus’ responses as it arrived, marking with physical flags certain passages, then “walking into” the COS’s office and going through the responses with him. The DCOS stated that this occurred with every survey on which he eventually delivered comments to the campuses. The COS recalled that he and the DCOS split up the responses after the latter received them, and they “both” went through their respective responses. Both the COS and DCOS state that the DCOS then followed up with the campuses based on the results of the review. The COS said that he was not involved after that.

Five campuses reported receiving calls from the DCOS regarding the draft responses.

1. At one campus, the DCOS asked a campus official to reconsider whether a portion of one narrative response was within scope, to consider a modification to another narrative response, and to review all “fair” ratings. The campus made slight changes to the two narrative responses but did not change any “fair” ratings.
2. At another campus, the DCOS asked a campus official to “revisit” one “poor” rating. After consideration, the campus decided not to make the change.
3. At another campus, the DCOS flagged for a campus official a critical comment about UCOP services being redundant and causing delays. The campus ultimately removed the comment from its responses.
4. At another campus, the DCOS provided lengthy feedback, including, as characterized by a campus official, to “stay away from poor ratings” as they could be used against the University, and that “[f]or the narratives, less is more . . .” The DCOS informed the campus, according to this official, that the Chancellor “owns the responses” and “should be responsible for shaping or editing the responses in a manner that considers the impact on the university.” This campus ultimately rewrote many of its survey responses. One senior official emailed his colleagues, “*For the record, we have been instructed by the Office of the President to revise our responses to the survey.*” (emphasis added.)
5. At another campus, the DCOS texted a campus official that the campus’ assessment survey “seems quite inflammatory in its current form,” and sent the official the responses back with passages highlighted. The campus removed the highlighted portions from its responses and one “Dissatisfied” rating was changed to “Satisfied.”

9. *UC Santa Cruz Incident.*

Officials at UC Santa Cruz did not submit their survey responses to UCOP before sending them to the State Auditor’s office via the online portal. On Monday, November 21, 2016, the DCOS emailed the campus’ Associate Chancellor, “checking to see when [they] might expect the documents for [their] review.” The Associate Chancellor informed the DCOS that the campus had submitted the responses on Friday, November 18, 2016, without first sending them to UCOP.

On Tuesday, November 22, 2016, the Chancellor of UC Santa Cruz received a call from President Napolitano about the surveys being submitted. This Chancellor’s and Napolitano’s reported recollections about the call differ significantly. However, both agree that Napolitano requested that the campus recall its survey responses from the state auditor’s office. Later that day, campus officials emailed the auditor’s office and requested to recall and resubmit the surveys because the Chancellor did not have a chance to “fully review” the responses.

The DCOS then emailed comments on the campus' survey responses to the Associate Chancellor. Before he sent the comments to the campus, he sent Karen Petrulakis of the Office of General Counsel his comments attached to a blank email with the subject line "PRIVILEGED/CONFIDENTIAL." Petrulakis suggested some wording changes to the DCOS's comments, generally advising that they be less prescriptive. She also advised the DCOS, "I'm not sure there is any way around the auditor commenting on the changes from the first to second draft and potentially getting a copy of these comments."

In her interview, Petrulakis stated she did not know why the DCOS sent the comments to her, but it may have been because she was advising him not to provide comments at all. She noted that it was fairly common for UCOP personnel to "cc" university counsel on emails or add "privileged/confidential" to an email in an attempt to keep the communication privileged. She recalls, of her involvement in revising the DCOS's comments, that she was attempting to dial back his comments and to ensure that the language was less directive.

After receiving the DCOS's comments, the Chancellor, not wishing his staff to be further involved, personally revised the survey responses, accepting all but one of the changes the DCOS had flagged, and making additional changes to make the responses more favorable to UCOP. As the Chancellor wrote in his cover email to the DCOS, "[a]s you will see, I addressed 98% of your concerns and I made a number of additional changes as well (all in a direction you would not find problematic)."

After the Chancellor returned the surveys, the DCOS texted the Chancellor to point out that one item he had flagged had gone "unaddressed." The DCOS added that while the points made in the item were "well taken," he "would question if the response in scope [sic] for the purposes of the audit and ultimately productive."

Later, the DCOS and the Chancellor had an exchange regarding a critical response in the campus' Assessment Survey. The Chancellor referenced the response in an email, writing, "although I did not write that comment, I fully agree with it." The DCOS texted back:

"I discussed with [the COS]. We appreciate your raising the section on Path and recognize the issues raised. Our strong preference would be that we underscore the broad concern with the Path team directly, rather than through the State Auditors report. As with other issues raised, I don't think it is relevant to the original scope and won't ultimately result in an improved or productive outcome."

The campus revised both responses before resubmitting the surveys to the State Auditor's office.

C. Overview of Laws and Standards Governing State Audits.

We have been asked to determine whether UCOP "interfered" with the State Auditor's surveys to the campuses. Webster-Merriam Dictionary defines "interfere," in

relevant part, as “to interpose in a way that hinders or impedes: come into collision or be in opposition.”⁶ “Interpose,” in turn, is defined as “to place in an intervening position,” or “to put (oneself) between.”⁷ In our view, the definition of “interfere” therefore involves two factors: (1) the existence of a third party that intervenes between two other parties; and (2) that this intervention “hinders or impedes.” Under this definition, “interfere” does not require the specific intent to hinder or impede.

Based on the foregoing review, we conclude that members of the President’s Executive Office did interfere with the surveys. Our conclusion is based on an analysis of the statutory authority of the State Auditor, of the duties and obligations of audited public entities under California law, and of the generally accepted governmental audit standards applied by the State Auditor—standards which UCOP, as the audited entity, knew or should have known would apply. We further conclude that two members of the President’s staff undertook these actions with the specific purpose of shaping the responses to be less critical of UCOP.

1. *California Law*

The California State Auditor’s Office is a creature of statute, and has the duty to perform, among other things, financial and “performance audits” of state entities as required by statute.⁸ Pursuant to California Government Code sections 8546 and 8546.1(c), the State Auditor conducts audits in conformity with the “Government Auditing Standards” published by the United States Comptroller statute, commonly known as the “Yellow Book,” and the standards published by the American Institute of Certified Public Accountants (“AICPA”).⁹

2. *Relevant Auditing Standards*

As noted above, pursuant to the California Government Code, the State Auditor must conduct audits under the “Government Auditing Standards” published by the federal government—also known as the “Yellow Book”— as well as those of AICPA, which are incorporated into the generally accepted government auditing standards.¹⁰ Several of these standards are relevant to our review.

(a) *Scope of the Audit*

Under the standards, each audit is defined by its objectives, which identify the subject matter and “performance aspects” of the audit.¹¹ Objectives are essentially the questions about the government program, activity, entity, or organization that the

⁶ *Interfere*, Webster-Merriam Online Dictionary (2017).

⁷ *Interpose*, Webster-Merriam Online Dictionary (2017).

⁸ Cal. Gov. Code § 8543.1 (2012); Cal. Gov. Code § 8546.1 (2004).

⁹ See *Government Auditing Standards (The Yellow Book)*, U.S. Government Accountability Office, (December 2011), <http://www.gao.gov/yellowbook/overview>. Generally accepted government auditing standards incorporate by reference the AICPA standards. See *id.* at Chapter 4.18.

¹⁰ Cal. Gov. Code § 8546.4(a) (2012).

¹¹ *Government Auditing Standards*, *supra* note 7, at Chapter 6.08.

auditors are seeking to answer based on the evidence obtained. The scope of the audit is “directly tied” to the audit objectives and “defines the subject matter” on which the auditors will examine and report.¹²

(b) Independence of Internal Audit Offices

The standards operate on the assumption that the management of the audited entity is an interested party in the audit.¹³ For example, they distinguish management of the audited entity from other stakeholders of the entity, such as those charged with its governance (e.g., a board) or its employees.¹⁴ An internal audit organization is considered “independent” if, among other criteria, it is accountable to the head of *and* those charged with governance of the audited entity, is located organizationally “outside” the “staff or line-management function of the unit under audit,” has access to those “charged with governance,” and “is sufficiently removed from political pressures to conduct audits and report findings, opinions, and conclusions objectively without fear of reprisal.”¹⁵

(c) Integrity of Audit Evidence

The standards emphasize the importance of maintaining the integrity of audit documentation.¹⁶ Evidence used by the auditor must be “appropriate” to support findings.¹⁷ “Appropriateness is the measure of the quality of evidence that encompasses its relevance, validity, and reliability in providing support for findings and conclusions related to the audit objectives.”¹⁸ “Intentional omissions” or “misleading information” can cause the auditor’s findings to be incomplete or improper.¹⁹ The standards make clear that evidence “obtained under conditions in which persons may speak freely” is more

¹² *Id.* at Chapter 6.08-09.

¹³ *See, e.g., Government Auditing Standards, supra* note 7, at Chapter 6.61 (“Evidence obtained from a knowledgeable, credible, and unbiased third party is generally more reliable than evidence obtained from management of the audited entity or others who have a direct interest in the audited entity.”); 3.14(d). Other authorities on external auditing echo this principle. *See* Brenda Porter et al, *Principles of External Auditing* (Wiley, 2012) (“Management integrity: the likelihood of material error being present in the financial statements is strongly influenced by the integrity of the auditee’s management. This integrity has two aspects: (a) inherent integrity: that is, management’s moral and ethical stance; its ‘natural’ tendency towards being honest or dishonest; and (b) situational integrity: that is, management’s ability to withstand temptation to misrepresent the company’s financial position and/or its profit or loss in situations of pressure....Where a company’s management lacks integrity, the information reported in the (unaudited) financial statements may well be manipulated to the extent necessary to portray the company’s state of affairs and profit or loss as desired by management.”)

¹⁴ *See Government Auditing Standards, supra* note 7, at Chapter 3.14(d) (discussing relationships with “management” or “personnel” of an audited organization.)

¹⁵ *Government Auditing Standards, supra* note 7, at Chapter 3.31(a)-(e).

¹⁶ *See, e.g., Government Auditing Standards, supra* note 7, at Chapter 3.92; *AICPA Professional Standards*, at AU Section 339.34 (SAS No. 103), American Institute of Certified Public Accountants (Feb. 2014).

¹⁷ *Government Auditing Standards, supra* note 7, at Chapter 6.03; 6.56.

¹⁸ *Id.* Chapter 6.57.

¹⁹ *Id.* Chapter 6.05.

reliable than evidence obtained “under circumstances in which the persons may be intimidated.”²⁰

In particular, testimonial evidence obtained from an unbiased, knowledgeable individual is more reliable than that “obtained from an individual who is biased.”²¹ The standards distinguish “evidence,” including “testimonial evidence,” taken from “persons” and “third parties,” from that taken from management. Chapter 6 of the Yellow Book, titled “Field Work Standards for Performance Audits,” notes that such evidence is “generally more reliable than evidence obtained *from management of the audited entity* or others who have a direct interest in the audited entity.”²² The standards also distinguish “management information” from other types of physical, documentary, and testimonial evidence, including “inquiries, interviews, focus groups, public forums, or *questionnaires*.”²³

Surveys are an accepted, albeit specialized and complementary, audit tool. For example, section 3.72(d) of Chapter 3 of the Yellow Book notes that auditors should possess skills “appropriate for the work being performed,” for example, “specialized audit methodologies or analytical techniques, such as the use of complex survey instruments”²⁴ The government standards also provide that “[e]vidence may be obtained by observation, inquiry, or inspection.”²⁵ The AICPA Professional Standards also identify “inquiry,” defined as “seeking information of knowledgeable persons” through, among other things, “formal written inquiries,” as a valid source of audit evidence, although they warn that as a method it should be considered complementary to “audit procedures.”²⁶

D. The President’s Executive Office Interfered With the Surveys.

The standards cited above compel the conclusion that members of the President’s Executive Office interfered with the surveys. As noted above, for interference to occur, there must be three parties, with one party interposing itself between the other two in a manner that hinders or impedes. Here, generally accepted governmental audit standards distinguish between “management” of the audited entity, those charged with its governance, and “individuals” or third parties who give evidence, including testimonial evidence.

By (1) requesting Chancellor review; along with (2) communicating to Chancellors and their Associate Chancellors/Chiefs of Staff that the COS and DCOS would review the responses, the President’s Executive Office interposed itself between the State Auditor

²⁰ *Id.* Chapter 6.61(d).

²¹ *Id.* Chapter 6.61(e).

²² *Id.* at Chapter 6.61(f) (emphasis added).

²³ *Id.* at Appendix I, A6.04 (emphasis added).

²⁴ *Id.* at Chapter 3.72(d)(4); 6.63 (“Surveys generally provide self-reported information about existing conditions or programs.”).

²⁵ *Id.* at Chapter 6.61; A6.04 (“Testimonial evidence is obtained through inquiries, interviews, focus groups, public forums, or questionnaires.”).

²⁶ *AICPA Professional Standards*, *supra* note 14, at AU Sections 326.05, 326.31, 326.35 (SAS No. 106).

and the individual campus subject matter experts who were being asked to provide testimonial evidence regarding UCOP services to the campuses.

The President and her executive staff have stated that the campus survey responses were vetted for three parameters: whether the response was within the scope of the audit, whether it was factually accurate, and whether it represented the perspective of the Chancellor. Even assuming these were the only standards applied, this still constituted interference. No one disputes that UCOP informed campuses, through the Associate Chancellors, that this type of review would be taking place. Napolitano also made statements regarding the review to Chancellors. Once that happened, regardless of UCOP's intent, a "chilling" effect upon the campus responses was inevitable.

Numerous campus witnesses, including at least one Chancellor, stated that the knowledge that UCOP would be reviewing their responses caused them to respond to the surveys differently than they otherwise would have. This dynamic permeated the entire process beginning at the latest after November 14, when campuses were expressly informed that UCOP would be reviewing campus responses. Most campus witnesses with whom we spoke considered President Napolitano (and by extension, her executive staff) their "boss," and under generally accepted governmental auditing standards, evidence "obtained under conditions in which persons may speak freely" is more reliable than evidence obtained "under circumstances in which the persons may be intimidated." Based on the evidence, we conclude such circumstances were in existence after November 14.

In executing the plan, the COS and DCOS further interfered with the survey responses by (3) suggesting to campuses the content of their initial responses (for example, that they should not air "dirty laundry"); and (4) reviewing and suggesting edits to the campuses' survey responses that caused the campuses to revise those responses to minimize negative information regarding UCOP. The COS and DCOS deny engaging in these actions, which as discussed below we find were undertaken with the purpose of hindering and impeding campus responses. President Napolitano stated that she was not aware that these actions were taken, and further, had she known that they were occurring, she would have put an immediate stop to it.

Under the Yellow Book standards, audit evidence must be "appropriate," meaning reliable. Evidence that contains omissions, or that in some manner reflects the views of those interested in the audit, is inherently unreliable and may not support audit conclusions. Here, as described above, under government audit standards senior management of the audited entity is assumed to be an interested party in the audit, making any evidence reflecting management perspectives less appropriate and therefore less able to support audit conclusions. This is particularly true here, where the audit surveys were specifically about the quality of services provided *by* management. The COS's and DCOS's actions therefore hindered and impeded the State Auditor's ability to obtain audit documentation that she could use to support her audit conclusions.

The stated goals of the UCOP Audit were, among other things, to "[r]eview the reasonableness, in terms of cost and need, of the services that UCOP provides to the campuses," to determine the "number and type of administrative functions [at a selection

of campuses] that are duplicative of UCOP's functions," and to "[r]eview and assess any other issues that are significant to the audit."²⁷ While some witnesses with whom we spoke disputed the usefulness of the surveys to achieving these goals, the audit standards which the State Auditor is statutorily required to utilize make clear that surveys are an accepted form of obtaining audit documentation, albeit a complementary one.

Further, no one disputes that the subject matter of both surveys was relevant to the goals. UCOP's actions in reviewing the surveys and in some cases causing the campuses to edit their responses resulted in reduced reliability of those responses. This reduced reliability of audit documentation in turn hindered and impeded the State Auditor's ability to carry out her stated goals. Thus, we conclude that UCOP's conduct constituted interference.

E. The COS and DCOS Intended to Prevent the State Auditor from Obtaining Unfavorable Comments About UCOP from the Campuses.

Based on our review of the DCOS's comments to the respective campuses, it appears that the feedback provided to the campuses systematically targeted statements and/or ratings that could be interpreted as unfavorable to UCOP and its provision of services. Although the issue of intent is always subject to interpretation, the weight of the evidence suggests that the COS's and DCOS's review of campus survey responses and its comments to those campuses were undertaken for the purpose of minimizing the amount of unfavorable or negative comments about UCOP that would be transmitted to the State Auditor.

During the UCOP review process and subsequently after the Audit Report was released, the President's Executive Office consistently described the feedback provided by UCOP as falling within three possible parameters: "1) whether answers provided in certain sections are within audit scope and/or go beyond the question posed, 2) whether the answers are factually correct, and 3) whether the answers reflect [the Chancellor's] perspective as the head of the campus." In statements to the review team, the COS and DCOS insisted that their review, and comments to the campuses, focused on the three criteria, and otherwise did not address the substance of the draft responses, or whether they were critical of UCOP.

This assertion is not supported by the record. While it is true that the DCOS often (but not always) couched his comments to the campuses to consider, reframe, and/or delete certain statements or ratings in the language of these three criteria, the feedback provided did not always genuinely seem to fit within this framework. This is particularly because many of the comments flagged were in response to a general request for "any specific comments that you would like to share regarding the program administered by the Office of the President's . . . ?"

²⁷ See California State Auditor, *2016-130 Audit Scope and Objectives: University of California Office of the President – Administrative Expenditures* (Aug. 3, 2016), <https://www.auditor.ca.gov/reports/scope/2016-130> (last visited Oct. 27, 2017).

Based on a review of the comments provided, it would appear more likely that certain responses were targeted because they were critical of UCOP's services and could result in a negative audit outcome. This conclusion is further bolstered by the fact that on at least three occasions, witnesses stated that the DCOS asked campuses to review all of their "poor" or "fair" responses. No campus was ever specifically asked to reconsider whether a "Good" or "Excellent" rating was factually accurate or reflected the Chancellor's view, making it seem more plausible that the "poor" ratings were flagged because of their negative nature.

In at least two cases, the DCOS's written comments to campuses do not abide by the three criteria. As noted above, he highlighted passages in one campus' responses as "inflammatory." Whether a survey response is "inflammatory" is not germane as to whether it is factually accurate, within the audit's scope, and reflects Chancellor perspective. At UC Santa Cruz, the Chancellor informed the DCOS that the Chancellor agreed with a particular comment. In response, the DCOS texted that he had discussed with the COS and "[o]ur strong preference would be that we underscore the broad concern with the Path team directly, rather than through the State Auditors report." Whether a concern would be better expressed "directly" to UC personnel than through the audit does not concern scope or factual accuracy. Moreover, the Chancellor had already informed the DCOS that the response reflected his perspective.

We find other aspects of the UC Santa Cruz incident indicative of the COS's and DCOS's intent. They insisted to the review team that President Napolitano called that campus' Chancellor because the Chancellor had not had a chance to review the survey responses before they went to the State Auditor. Napolitano stated that either the COS or DCOS informed her that the Chancellor had not had the chance to review the responses. However, the Chancellor, or at least his chief of staff, *had* reviewed the survey responses. More importantly, we found no evidence that anyone at UCOP had knowledge one way or the other at the time whether the Chancellor had reviewed the responses. What no one disputes, however, is that at that time the COS and DCOS knew that *they* had not had the chance to review the responses. In light of the evidence described above, it is reasonable to ask whether the reaction to the Santa Cruz situation can be explained solely as a desire to ensure that the campuses' responses were within the scope of the audit and did not contain factual errors.

The DCOS, when we met with him, noted that some survey responses had become more negative after the review. While we did find at least one instance in which a positive comment about UCOP in a draft version was left out of the final response, we are aware of no instance in which UCOP flagged a response for a campus, and the campus then changed that response to be more critical of UCOP. We are not aware of any positive responses being flagged to be reviewed further or changed, nor are we aware of any criticism added to the survey responses as a result of UCOP's feedback. Thus, the weight of the evidence suggests that the COS and DCOS reviewed, and the DCOS commented, on the draft surveys in an attempt to prevent the State Auditor from obtaining some unfavorable statements and ratings about UCOP from the campuses.

F. The Role of the UC Office of General Counsel.

The Office of General Counsel played a significant role in the interference by the President's Executive Office with the campus responses to the State Auditor's surveys. In fact, the President, her COS, and her DCOS, individually and through their counsel, have forcefully argued that they relied on the advice provided by the Office of General Counsel and believed that their activities were greenlit by the Office of General Counsel.

UC's General Counsel Charles Robinson, who wrote the email to the DCOS, stated that he did not believe that the Office of General Counsel had "approved" any plan. In Robinson's view, he provided legal advice regarding a specific statute, Government Code section 8545(b), and further warned the DCOS regarding the "political" consequences of the plan. Robinson explained that he and others in the Office of General Counsel felt the plan was a bad idea, and he said so to the DCOS.

Essential to any argument that the review plan was approved by the Office of General Counsel is the question of what was disclosed to the Office of General Counsel and what advice was provided by the Office of General Counsel as to the legality of the actions taken by UCOP officials.

What is clear at the outset is that no UCOP official disclosed to the Office of General Counsel that UCOP was seeking to sanitize the responses of the campuses to the State Auditor. In fact, both President Napolitano and the COS stated that that was not the goal of UCOP's activity in connection with the surveys. As a result, it would be impossible for any UCOP official to claim that the Office of the General Counsel authorized or encouraged a program designed to prevent the campuses from submitting critical comments to the State Auditor. While it is true that a Deputy General Counsel assisted the DCOS in providing comments to one campus, this event took place late in the review process, after comments had been provided to all but one campus. There is no evidence that, at the time that UCOP sought and received formal advice from the Office of General Counsel, the Office of General Counsel was aware that UCOP would be sanitizing campus survey responses.

Therefore, even assuming that the Office of General Counsel "approved" the plan, what, then, would have the Office of General Counsel thought that it was approving? From the relevant documents and interviews, it appears that UCOP officials explained to the Office of General Counsel that UCOP wanted to implement steps to ensure that the campuses provided accurate, responsive answers and that those answers had been reviewed by the individual Chancellors on each campus. Accordingly, as presented by UCOP officials, the UCOP role was limited to ensuring that the Chancellors on each campus reviewed the survey responses, that the responses reflected that Chancellor's views, that the information conveyed was factually accurate and responsive to the questions posed, and that each individual campus Chancellor was responsible for making the final decision as to what was to be submitted. As discussed in the Summary of Facts, however, this version of events had little connection with what actually took place. As described by UCOP to the Office of General Counsel, UCOP was to be a dispassionate administrator, with the goal of facilitating the communication of accurate information from the campus Chancellors to the State Auditor. In practice, though, UCOP was

anything but dispassionate – it actively conveyed to the campuses that they should not provide negative information and then took the step of suggesting particular edits to answers to make sure that negative information was not conveyed to the State Auditor from the campuses.

Moreover, it is difficult to understand how either UCOP officials or the Office of General Counsel would not have foreseen this problem. The substance of the audit concerned campus feedback as to how well the UCOP was serving the campuses. UCOP was not a “dispassionate administrator” looking to facilitate the communication between the campuses and the State Auditor. UCOP was the subject of the audit and, by definition, would have a strong interest in making sure that the audit responses reflected well on its activity.

During their interviews, both President Napolitano, the COS, and the DCOS acknowledged that, in retrospect, the process adopted by UCOP in connection with this audit was seriously flawed. However, the advice provided by Office of General Counsel is a mitigating factor when evaluating any decision to implement the plan.²⁸

G. The Roles of UCOP Senior Leaders In Directing the Interference.

We find that the interference with the surveys was carried out by the DCOS at the direction of the COS. As noted, while President Napolitano knew and approved of some acts by her COS and DCOS that we have concluded constituted interference, we find insufficient evidence to conclude that she was aware of their conduct in purposefully and systematically targeting unfavorable responses.

1. The DCOS.

The evidence indicates that the DCOS carried out the interference and therefore was also involved in its direction. He admits participating in calls with the VCPBs and believes that he may have instructed them that their Chancellors should review the responses. While the plan to review the campuses’ survey responses did not originate with him, once it was in place the DCOS was the individual who carried out the plan to completion. He sent the invitations for and participated in the November 14 conference calls in which campuses were instructed to have Chancellors review the responses, to send their survey responses to UCOP for review, and on which witnesses recall the statements regarding the surveys not being the time or place to air “dirty laundry” were made. Throughout the ensuing survey review process, the DCOS acted as the main point of contact between the campus Associate Chancellors (and for Santa Cruz, the Chancellor) and UCOP. After receiving the responses, the DCOS, together with the COS, reviewed them. The DCOS then communicated by phone, email, and text with campus officials regarding the survey responses, in some cases requesting to review the campus’ revised

²⁸ Based on the evidence regarding the Chief Compliance and Audit Officer’s comment at the November 10 meeting, it is also plausible to believe that UCOP leaders thought that the university’s internal audit function had blessed the plan as well. However, this belief would be somewhat undercut by the fact that no senior UCOP leader, when interviewed, recalled the Chief Compliance and Audit Officer’s comment.

responses before “signing off” on the “final” version. As detailed above, the evidence shows that his comments largely followed the pattern of targeting draft responses unfavorable to UCOP and requesting, through euphemisms such as “consider” or “revisit,” and references to “scope,” that the campus revise its survey responses.

2. *The COS*

The evidence further indicates that the COS directed the interference, with the assistance of the DCOS as described above. The COS saw the surveys as a major priority; the day after the surveys arrived, he texted the DCOS that the audit was a “top 3 priority” and the surveys were “important.” He ordered the calls with the VCPBs who received the Assessment Survey, and discussed with the DCOS and President Napolitano a plan to schedule calls with the Chancellors of each campus to discuss the surveys. The COS made calls to the Chancellors and stated to the review team that in those calls he recommended to those Chancellors that they should collect and review the responses.

The COS was closely involved in the plan for UCOP to review the survey responses before they were submitted to the State Auditor. The DCOS stated that after the November 10 meeting, he and the COS met to discuss the review plan. The COS directed the November 14 conference calls in which he and the DCOS informed the Associate Chancellors that campuses were to send their responses to UCOP for review and on which some witnesses recall either the DCOS or COS informing the Associate Chancellors that the surveys were not the time or place to “air dirty laundry.” While the COS denies making this statement or hearing the DCOS make any such statement, the totality of the evidence, including his admitted presence on the call, the nature of the comments, and the multiple witnesses that recall those comments being made, including one witness that recalls the COS himself making the comment, suggests otherwise.

The evidence indicates that the COS was aware of, and approved, comments targeted at survey responses unfavorable to UCOP. Both the COS and DCOS agree that they initially split up and each reviewed a set of survey responses. The DCOS also told the review team that the plan then became him walking each set of responses into the COS’s office, where they reviewed them together. The COS stated to the review team that while he reviewed a set of campus responses initially, he left the actual contact with the campuses and any follow-up correspondence to the DCOS. He further stated that it was never his intent to flag negative responses and suggest to campuses that they revise responses unfavorable to UCOP, but instead that his review adhered scrupulously to the three criteria of (1) scope, (2) factual accuracy, and (3) Chancellor perspective.

The weight of the evidence militates for a different conclusion. For example, at least one contemporaneous text by the DCOS confirms the COS’s involvement in such comments: as noted above, the DCOS texted the Chancellor of UC Santa Cruz that he had discussed an unfavorable comment with the COS and that they preferred that the response be removed, for a reason that appeared to have little to do with scope, accuracy, or Chancellor perspective. Indeed, while the DCOS may have handled follow-up with campuses after the initial review, he was texting regularly with the COS throughout this process. For example, on November 29, the DCOS texted the COS that a campus had sent an updated draft of its responses and that he was checking to confirm the “necessary

changes” had been made. The COS did not ask what these changes were, but instead asked whether the campus official responsible for the original response had an “explanation” for it. The DCOS replied, “Some BS . . . He tried to argue that the totality of his response on the assessment survey was positive . . . I doubt he is actually apologetic and knew exactly what he was doing.”

These, and other, exchanges suggest that the COS was aware that negative responses were being targeted. Other evidence indicates this as well. The DCOS stated that he and the COS were in “lockstep” throughout the process; the latter is the former’s direct superior, and the DCOS told the review team that he interacts with the COS thirty to fifty times a day. A senior UCOP official described the COS as “the eyes and ears at the top level on everything,” “authoritarian,” and that “there’s nothing he doesn’t know about.” The record indicates that the campus submission of draft responses, UCOP’s review of those responses, and the delivery of UCOP’s feedback happened in close temporal proximity, usually on the same day. It is unlikely that the DCOS, who comes across as a capable subordinate with good communication skills, would have repeatedly misunderstood and exceeded the COS’s instructions.

3. *President Napolitano.*

President Napolitano has acknowledged that she approved a plan (1) to notify each campus Chancellor that she/he was ultimately responsible for the substance of the survey responses and (2) to inform each campus that survey responses should be submitted to UCOP for review before submission to the State Auditor. President Napolitano explained that the UCOP review would be undertaken to ensure that the campus responses were accurate, were within the scope of the Auditor’s jurisdiction, and had been reviewed by the campus Chancellor. And, as previously noted, President Napolitano expressed the belief that Office of General Counsel had opined that the plan that she had approved did not violate the law.

Whether intended or not, the plan as approved by Napolitano interfered with the submission of reliable survey responses from the campuses to the State Auditor. By telling campus Chancellors that they were responsible for the survey answers and then telling the campuses to submit the survey response to UCOP for review, the plan chilled the responses submitted by the individual campuses. Indeed, that was precisely the concern raised by the Office of General Counsel when it was asked to review this approach. Not surprisingly, as described above, a few campuses self-corrected the survey responses, knowing that the responses would be submitted and reviewed by UCOP before submission to the State Auditor.

There is, however, insufficient evidence to conclude that President Napolitano knew and approved her COS’s and DCOS’s actions in (3) instructing campuses that now was not the time to air “dirty laundry” or (4) flagging and sanitizing critical comments in the survey responses. President Napolitano stated that she was unaware of these acts that took place in the execution of the plan and, if she had been aware of those actions, she would have put an end to it.

Of course, President Napolitano's activities in connection with the survey responses from UC Santa Cruz are the strongest evidence on which to conclude that the President understood that members of her staff were systematically highlighting and sanitizing critical comments from the campuses. As described by the Chancellor for that campus, the President telephoned him in his car on the way to work, was "furious" that the campus had submitted the survey responses to the State Auditor before UCOP had reviewed them, stated that she felt she had been clear that UCOP wanted to review the responses first, and proposed that the Chancellor withdraw the responses so that this could occur. The Chancellor did not recall any inquiry as to whether he had personally reviewed the survey responses before submission. Rather, the Chancellor recalled only that the President was very upset that the survey was submitted before it had been reviewed by UCOP.

President Napolitano has characterized the call as her using a measured tone to alert the UC Santa Cruz Chancellor that his campus had submitted the survey responses before he had seen them, to ask him whether he was aware of that fact, and to suggest that perhaps the Chancellor could withdraw the responses to see if he could review them. The President has further explained that the campuses had agreed that the Chancellor would review the survey responses, and she called the Chancellor to find out why that campus had not followed the agreed-upon approach.

It is of course possible that the President was upset by the fact that UC Santa Cruz had submitted survey responses that were not reviewed and addressed by UCOP for the purpose of sanitizing the responses. It is, however, equally plausible that President Napolitano was concerned that she had approved a plan to, among other things, assure accurate responses that reflected the Chancellor's perspective, had described that plan to the Chancellors, and contacted the Chancellor because his campus did not follow the plan. Accordingly, the evidence is ultimately inconclusive as to whether President Napolitano knew of and approved her COS's and DCOS's additional actions with regard to the campus responses submitted to UCOP by UC Santa Cruz or any of the other campuses.

APPENDIX A
TABLE OF CONTENTS

| | | |
|----|---|----|
| A. | October 20, 2016: The UCOP Audit Surveys Arrive..... | 1 |
| 1. | State Auditor’s Office Sends Surveys to Campus Internal Audit Directors and Vice Chancellors of Planning and Budget. | 1 |
| 2. | Relations Between State Auditor and UCOP..... | 1 |
| 3. | Internal Audit Director Forwards Services Survey to Matt Hicks of UC Ethics, Compliance and Audit Services Office. | 2 |
| 4. | Campus Reactions to Surveys..... | 3 |
| B. | October 20-25, 2016: Communications between UCOP, UC Campuses, and State Auditors Regarding the Surveys. | 3 |
| 1. | Hicks Forwards IAD Email to UCOP Leadership. | 3 |
| 2. | Hicks Emails State Audit Staff..... | 4 |
| 3. | Hicks Convenes IAD Call. | 5 |
| 4. | UCOP Communications with Campus Vice Chancellors of Planning and Budget..... | 5 |
| a) | Jones and Grossman Exchange Texts re Calls to VCPBs..... | 5 |
| b) | Jones and Brostrom Place Calls to Vice Chancellors of Planning & Budget re Surveys. | 7 |
| 5. | UCOP Communications with Campus Chancellors. | 7 |
| a) | Grossman Plans Calls to Chancellors. | 7 |
| b) | Grossman and Brostrom Place Calls to Chancellors re Surveys..... | 8 |
| C. | November 2–16, 2016: UCOP Develops and Implements Review Plan..... | 8 |
| 1. | Discussion at November 2 Council of Chancellors Meeting. 8 | |
| 2. | Discussion at November 10 Internal UCOP Meeting..... | 9 |
| a) | Purpose and Tone of Meeting..... | 10 |
| b) | Discussion Regarding Campus Surveys. | 10 |
| 3. | UCOP Moves Forward on Decision to Review the Survey Responses..... | 11 |
| 4. | November 14 Conference Call Between UCOP and Campus Associate Chancellors/Chiefs of Staff..... | 12 |
| 5. | UCOP Requests Legal Opinion on Review. | 13 |
| a) | Campuses Express Concern..... | 13 |

APPENDIX A

| | | |
|-----|---|----|
| b) | OGC Provides Legal Advice. | 14 |
| 6. | November 15 Dinner at Napolitano’s Residence..... | 16 |
| 7. | Changes Made by Senior Campus Leadership to Survey Responses Prior to UCOP Review. | 16 |
| D. | November 15-29, 2016: UCOP Review of Surveys and Communications with Campuses. | 18 |
| 1. | Submission of Drafts to UCOP. | 18 |
| 2. | Eight Campuses’ Surveys Are Reviewed by UCOP Before Submission to the State Auditor’s Office..... | 19 |
| a) | Five Campuses Receive Calls from Jones to Discuss Survey Responses. | 19 |
| (1) | UC Riverside. | 19 |
| (2) | UC Merced. | 19 |
| (3) | UC San Francisco..... | 19 |
| (4) | UCLA..... | 20 |
| (5) | UC San Diego. | 21 |
| b) | Three Campuses Receive No Feedback from Jones..... | 22 |
| 3. | Two Campuses Submit Surveys to State Auditor Without First Sending to Jones. | 23 |
| E. | Post-Submission Recall & Review of University of California, Santa Cruz (UCSC) Surveys. | 23 |
| 1. | UCSC Submits Surveys to State Auditor Without Sending To UCOP..... | 23 |
| 2. | President Napolitano’s Call to Chancellor George Blumenthal..... | 23 |
| a) | Chancellor Blumenthal’s Recollection of the Call. | 24 |
| b) | President Napolitano’s Recollection of the Call. | 24 |
| 3. | UCSC Surveys Recalled from the State Auditor. | 24 |
| 4. | UCOP Review of the Surveys. | 25 |
| 5. | UCSC Revisions to the Surveys..... | 27 |
| a) | UCOP Services Survey. | 27 |
| b) | UCOP Assessment Survey..... | 28 |
| F. | UCOP Reflections Regarding Review of Surveys. | 28 |

APPENDIX A

A. October 20, 2016: The UCOP Audit Surveys Arrive.

1. *State Auditor's Office Sends Surveys to Campus Internal Audit Directors and Vice Chancellors of Planning and Budget.*

On October 20, 2016, as part of Audit 2016-130 (UCOP Administrative Expenditures), the California State Auditor's office emailed a survey to each of the ten Internal Audit Directors ("IAD") at the ten University of California campuses. The survey that went to the IADs was entitled "UCOP Services Survey" (henceforth, "Services Survey") and was fifty-two pages long. The cover email explained that the State Auditor was "conducting a survey of all campuses regarding the services and programs provided by the Office of the President." The survey's instructions explained that the IAD should send the questions for each "service area" to the appropriate "subject matter expert" on the campus, then collect the answers and input the responses into an online portal.

The State Auditor's office also sent another survey the same day to the Vice Chancellors of Planning and Budget ("VCPB") or Chief Financial Officers ("CFO") of each campus (for simplicity, hereinafter referred to as the "VCPB"). This second survey was six pages long, titled, "UCOP Campus Assessment Survey," and explained in its Introduction that the State Auditor was conducting "a survey of all campuses regarding the reasonableness of the Office of the President's annual campus assessment."

The cover emails to the surveys instructed that the surveys should be completed by the November 18, 2016. Further, the emails noted:

"Please also note that California Government Code section 8545 (b) requires the State Auditor to keep confidential any information pertaining to any audit not yet completed. We appreciate your assistance in keeping the survey confidential until the audit report is made public **by not sharing it with others outside of your campus.**" (emphasis added).

2. *Relations Between State Auditor and UCOP.*

At the time the surveys arrived on the campus, the relationship between the State Auditor's office and UCOP was tense. Indeed, in the view of Janet Napolitano, President of the University of California, it was "toxic." Several witnesses blamed the strained relationship between UCOP and the State Auditor on the previous, "disastrous" state audit concerning, among other things, non-resident admissions at UC. Witnesses at all levels of the university consistently reported that, at this point, the State Auditor was known to overlook facts and paint certain facts in a misleading light. After UCOP's response to the prior audit, which some officials said they felt was "combative" and "tone-deaf," relations between the State Auditor and UCOP had worsened palpably. It was following that interaction that the Legislature then ordered the audit of UCOP itself.

The State Auditor's office sent the surveys to the campuses without first informing anybody at UCOP that it was doing so, and without seeking out the involvement of Matt Hicks, UC's Systemwide Deputy Audit Officer, whose job responsibility typically included

APPENDIX A

coordination of systemwide external audits (including past audits by the State Auditor). Only after the surveys had been sent to the campuses did the State Auditor's office call Hicks to inform him that the surveys had gone out. To Hicks, who had coordinated almost a dozen external audits, including state audits, it was unusual that the state audit staff had not given him a heads-up before the surveys went out.

One UCOP official saw a message, or even a provocation, in the State Auditor's office's decision to bypass UCOP leadership. Bernie Jones, Deputy Chief of Staff to President Napolitano, felt it was "purposeful" that the State Auditor chose not to send the surveys to campuses either through the campus Chancellors or through UCOP; to him, it betrayed a lack of "good faith." This opinion was shared by Sheryl Vacca, then Senior Vice President and Chief Compliance and Audit Officer of the University of California. To Vacca, the State Auditor's action in sending the survey directly to the campuses "was unprofessional; there was no reason the State Auditor could not have gone through Matt (Hicks) to give a heads-up and ask for coordination or assistance to make sure it goes to the right people." Vacca felt that the "tensions" created by the State Auditor's actions were "not necessary." Vacca thought that sending the surveys directly to the campus IADs and without warning to UCOP was "the frosting on the cake that made the relationship very antagonistic." Vacca, who left the university system soon afterwards, later signed her name to a memo to President Napolitano detailing, among other things, her concerns with the actions of the State Auditor's office throughout the audit.

The overarching feeling within the University was that the UCOP Audit was political in nature. President Napolitano shared this view. She said, "You'd like to think that an auditor comes in without any preconceived notions in terms of what they were going to find." "I'll confess that on this one I didn't have that confidence. From the outset we knew this was going to be a difficult audit." Another UCOP official explained that the news of the UCOP Audit was greeted at UCOP with "dread."

3. *Internal Audit Director Forwards Services Survey to Matt Hicks of UC Ethics, Compliance and Audit Services Office.*

Upon receiving the Services Survey, UC San Francisco's IAD, Irene McGlynn, wrote an email to Hicks suggesting a conference call involving the IADs on other campuses to coordinate "process, logistics," and the mechanism of responding to the survey. Several witnesses, including McGlynn, reported that it was a typical process for Hicks to schedule a systemwide call in the event of a systemwide audit, particularly an external or state audit.

As the Systemwide Deputy Audit Officer in the Ethics, Compliance and Audit Services department ("ECAS"), Hicks serves two functions: (1) he acts as the Internal Audit Director for the UCOP, conducting annual audit and service projects for the operations at UCOP; and (2) he assists with systemwide audit functions at each of the ten campuses, working with the IADs at each campus and maintaining a systemwide methodology around internal audits. Hicks reports directly to the Senior Vice President, Chief Compliance and Audit Officer, who at that time was Sheryl Vacca. The campus IADs, as well as Hicks, are local officers of a single audit organization at UC with direct reports to the SVP, Chief Compliance and Audit Officer.

APPENDIX A

After receiving McGlynn's email suggesting the conference call, Hicks emailed the other IADs as a group:

"Colleagues:

Some of you may have already received the attached survey from the California State Auditor regarding UCOP services that appears to have gone out to all the campuses and requesting Internal Audit to coordinate the response. We will be setting up a call for us to discuss this survey shortly."

4. *Campus Reactions to Surveys.*

The individuals on the campuses who had received or were otherwise responsible for the surveys reacted primarily to the length and logistical complexity of the UCOP Services Survey. There was generally no expressed concern about the UCOP Assessment Survey, which was significantly shorter and asked questions generally within the knowledge of the VCPB who received the survey. No witnesses reported feeling that the task of completing the surveys was insurmountable without outside assistance, and no one recalled anybody on their campus recommending reaching out to UCOP for assistance.

Although, as described above, one IAD did reach out to Hicks at ECAS to recommend a systemwide IAD call to discuss the logistics of the surveys, coordination of campus IADs with the ECAS office (which was described as an ordinary process) is distinguishable from communications with President Napolitano or other members of the President's Executive Office (e.g., Jones, Grossman). The ECAS office, while housed at UCOP's Oakland headquarters, is not part of the President's Executive Office. Most IADs reported they had not worked with Jones or Grossman on prior audits. No witnesses reported reaching out to Jones or Grossman with "questions" or any request for help with coordinating the responses. Grossman did not recall anybody reaching out to him with questions, nor was he aware of anyone reaching out to Jones or Napolitano with questions. Furthermore, as explained below, the record reflects that Jones, Grossman, and UCOP's Chief Financial Officer, Nathan Brostrom were proactively planning and executing calls to campus VCPBs and Chancellors shortly after the surveys were circulated, unprompted by any questions or requests for assistance.

B. October 20-25, 2016: Communications between UCOP, UC Campuses, and State Auditors Regarding the Surveys.

1. *Hicks Forwards IAD Email to UCOP Leadership.*

Hicks forwarded the IAD's email and the survey to certain UCOP staff whom he had been keeping updated about the UCOP Audit. This group included, among others, Deputy Chief of Staff Bernie Jones. By that point, Hicks knew that Jones had been designated as UCOP's "point person" for the UCOP Audit. According to Seth Grossman, Jones had been given this role by Grossman and President Napolitano at the outset of the UCOP Audit for two reasons. The first was efficiency. The scope of the audit was "really massive"; the State Auditor's office had suggested it was going to take 3,000 to 4,000 hours to perform the audit, and UCOP estimated that every hour spent on the audit by

APPENDIX A

the auditor's staff would require three hours of UCOP time. At the time, UCOP was dealing with several major projects, including a significant increase in admissions, a reform of sexual harassment rules, and two Chancellor searches. Jones' job was to coordinate the document and information requests made by state audit staff in order to minimize the burden on UCOP.

The second reason was to ensure that state audit staff were talking to the right people and getting the right information. Jones said that UCOP had been struck by the state audit office's "very aggressive" approach that did not allow for the correction of factual errors in her audit of the University the previous year. UCOP felt that audit had been rife with "factual and other inaccuracies," and that the State Auditor or her staff had been unwilling to address those mistakes and factual errors even after UCOP had pointed them out. Jones was involved to head off the possibility of factual errors making their way into the audit in the first instance. Napolitano wanted Jones involved because the surveys involved more than audit-type questions; they concerned programs. She said that it made sense to have somebody involved who was not simply on the audit staff and that would be able to reach out to Vice Chancellors and others on campus to make sure the right people on campuses were involved and the auditor was getting the right information.

Jones replied to Hicks' email that he "agree[d] with pulling together a systemwide call among IAD's" and indicated he wanted to join that call. He also told Hicks, "we should think about what, if anything, we might provide them (I'm thinking the summary of OP functions/activities, etc.)." Later, Jones emailed Hicks suggesting that they discuss "strategy" for the IAD call.

Jones then emailed Grossman, his direct superior, with a suggestion:

"I believe I should send [the survey] to all the Division leaders, so that they are aware. Similarly, I see value in sharing this directly with the Chancellors. I concur with UCSF's perspective that we should have a systemwide call ASAP at the level of those who have received the survey, but I wonder if you feel we should have similar communications with others at different levels."

Grossman emailed back: "I think the first step is to have a call with the internal audit directors to get a sense of how they plan to proceed, then go from there."

2. Hicks Emails State Audit Staff.

Hicks continued to communicate with the campus IADs regarding the surveys. On October 20 and October 21, Hicks fielded several queries from an IAD regarding the procedure and logistics for completing the survey. On October 21, Hicks emailed Katie Cardenas, a staffer at the State Auditor's office, noting that he had "received the following questions on the survey from some of our Internal Audit Directors," and listing the questions. This email included questions such as whether the survey needed to be entered into the Survey Monkey portal in one sitting, and what to do if more than one "subject matter expert" was required for one section of the survey. Cardenas responded to the email on October 24, typing her answers directly into Hicks' original email. She did not comment on or otherwise react to Hicks' statement that he had been communicating with

APPENDIX A

the campus IADs regarding the survey. Hicks forwarded Cardenas' responses to the campus IADs.

3. *Hicks Convenes IAD Call.*

At 8:00 a.m. on Tuesday, October 25, Hicks and Vacca hosted a call amongst the IADs to discuss the surveys. On the line were Hicks, Vacca, Peter Cataldo (UCOP's Systemwide Audit Manager), the campus IADs, and Jones. Neither Hicks nor the IADs recalled Jones saying anything on the call; indeed, most of the IADs did not realize that Jones was present.

Most participants remembered the call being short and mainly about process. The discussion mostly revolved around the mechanics of gathering the survey responses from the subject matter experts and the IADs' roles, such as whether they would be considered "attesters" for the information they received. At least one IAD had the impression that Hicks and Vacca were trying to "distance themselves" from the survey and were taking pains to facilitate the call without comment.

Neither Jones nor Hicks recalled whether they discussed "strategy" before the call with the IADs as Jones had suggested. However, one witness recalled that there was a generic discussion on the call that the survey needed to reflect "leadership's answers"—a theme of the "message" that Jones, Brostrom, and Grossman had been imparting in separate calls to campus VCPBs and Chancellors at that time (see below). Furthermore, during the call, Jones texted Grossman:

"On the call with the Internal Audit Directors and have confirmation of a few campus approaches and ultimate reviewing body: UCSF (Hawgood), UCB (Chancellor/Provost Cabinet), LA (EVC/CFO), Riverside (Chancellor/Provost/VCS). Only concern would be if Olsen has an axe to grind. I also know UCM is a Chancellor level review for the surveys. I think emphasizing their review would be a good thing for these various calls and have relayed similarly to Nathan."

Grossman texted back: "Yes, that's what I've told the three [Chancellors] I've spoken to so far, and they've all agreed."

Several IADs recalled that on the call, Hicks offered to pass on to the state audit staff any questions the IADs might have about the surveys, as he had done a few days prior. Through the end of the week, Hicks continued to circulate answers to the IADs' questions. IADs found these answers useful, and none found these emails unusual; it was typical for Hicks to be the point of contact with an external auditor for questions seeking clarification on instructions.

4. *UCOP Communications with Campus Vice Chancellors of Planning and Budget.*

a) Jones and Grossman Exchange Texts re Calls to VCPBs.

Around the same time as the call to the IADs to discuss the UCOP Services Survey was being planned, UCOP staff began discussing the need for a call to the VCPBs, who

APPENDIX A

had received the UCOP Assessment Survey. On the evening of October 20, Grossman texted Jones: "Definitely going to need a call on the CFO [VCPB] survey." Jones replied:

"Already connected with Nathan and Zoanne. Asking Jane to set up a call ASAP. Also asking Matt what we might email ahead of time that is acceptable."

To which Grossman replied, "*Probably need to keep most off of email, other than scheduling.*" (emphasis added.)

Jones responded, "Yeah, I just wonder if we can acceptably ask them to hold off on responding until the call."

Grossman said that in his view, calls to VCPBs were needed to ensure "the right person got the survey" and that the VCPBs were "aware and engaged." During both the non-resident admissions audit and the UCOP Audit, UCOP and campus officials observed that sometimes state audit staff would go to the wrong people for information. According to Grossman, the call was intended to ensure that the State Auditor's office was connecting with people who were best positioned to respond and give "accurate information." Grossman said he instructed Jones to keep communications with the VCPBs off email because feelings about the State Auditor at UCOP were "very high, very negative" at the time and he was concerned that people would make uncomplimentary remarks in emails about the State Auditor that could be damaging if the auditor obtained them.

That same evening, Jones asked Hicks via text, "Are we in bounds to ask the PBs to hold off on responding on survey response until a call?" Hicks responded:

"I would not put that in an email. I think we need to be very careful here. In the auditor's voicemail to me, she asked that if I get any questions from the campuses, that we forward those to them. I think if the auditors hear from any of the campuses any indication that we are attempting to control how they respond to the survey we will have problems." (emphasis added).

Jones then texted Grossman:

"I think this needs to be a group call, but more importantly one off calls. Matt thinks we are on fairly shaky ground."

Grossman replied to Jones, "Let me know if I need to call Nathan tomorrow." He then cautioned Jones again, "*Don't want anything in email that could be problematic if made it [sic] way back to the auditor.*" (emphasis added)

For Hicks, the October 20 text exchange with Jones concerned him sufficiently that he consulted with Vacca that night. Hicks was concerned that Jones was "pushing the boundaries of what they should do," and Hicks wanted to make sure Vacca was comfortable with him pushing back. Vacca agreed that Hicks should push back. Vacca said she was concerned that, because she was leaving UCOP soon, Jones would try to put Hicks in an awkward position with the UCOP Audit. Vacca wanted Hicks to know that UCOP's internal audit function (ECAS), and in particular Hicks, should feel comfortable pushing back where appropriate. ECAS considered itself to have a good working

APPENDIX A

relationship with the State Auditor and her staff, and Vacca didn't want Hicks put in a position of pushing back against the Auditor and her staff because it might affect that relationship, the independence of ECAS, and the professional reputations of its staff.

- b) Jones and Brostrom Place Calls to Vice Chancellors of Planning & Budget re Surveys.

On the morning of October 21, Jones spoke to three VCPBs regarding the surveys and texted Grossman that two of the three were "100% on the same page and proactively raised their approach." The other "was a bit more reserved," but, as Jones wrote, Jones had "delivered the message." Jones did not recall the entirety of the "message" he delivered, nor what he meant by the two VCPBs being "100% on the same page." He said he thought it involved instructions to "run the responses past the Chancellor" before they were sent to the State Auditor's office. Otherwise, Jones thought the "message" was likely focused on "coordination and process," such as, "this is where the survey went, if you don't have it, please find it on your campus."

Jones also texted Grossman that Brostrom had reported speaking with three other VCPBs, and was going to be speaking with two more. Brostrom remembered making calls to some VCPBs and that the calls were "brief" because he was out of the office on a family outing. He recalled telling them that there were two surveys, and that the Assessment Survey was meant to be filled out by the VCPB and then sent directly back to the State Auditor's office. He also recalled informing the VCPBs that they would be responsible for filling out a portion of the Services Survey. He did not recall telling them that senior campus leadership, such as the Chancellor, should review the surveys.

5. *UCOP Communications with Campus Chancellors.*

- a) Grossman Plans Calls to Chancellors.

On the morning of October 21, Grossman texted President Napolitano:

"One other thing going on is that the state auditor sent a survey to all the campus audit directors and another survey to all the campus CFOs. The surveys ask about their assessment of OP services and performance. Matt is convening a call of all the internal audit directors. Nathan is going to speak with each of the campus CFOs individually."

Napolitano responded:

"As we know, this is a witch hunt. Glad we're in front of it. Should you let chancellor [chiefs of staff] know so they can see what is being submitted?"

When asked what she meant by the term "witch hunt," President Napolitano said that the term was "saltier language" than she normally used, but unsurprising "[i]n the context of what was going on at the time and the relationship with the auditor." To her, it meant that she believed the UCOP Audit had a predetermined outcome.

Grossman responded to Napolitano's text:

APPENDIX A

“Yes, great idea. Nathan [Brostrom] and I are speaking with each of the chancellors individually early next week to let them know they should see the responses to both sets of surveys before they are submitted.”

Both Jones and Grossman said that the “message” to the Chancellors was that the Chancellor should vet the campuses’ survey responses before they went to the State Auditor’s office. Grossman also intended to recommend to the Chancellors that they confirm they were comfortable with who was responding to the survey questions.

b) Grossman and Brostrom Place Calls to Chancellors re Surveys.

On October 24 and 25, Grossman and Brostrom made calls to a number of Chancellors to discuss the surveys. Grossman recalled that he and Brostrom “split up” the calls to the Chancellors.

Senior campus officials, including Chancellors, who remembered such a call taking place recalled the gist of the call being that (1) there needed to be a senior campus leader responsible for collecting the survey responses, and (2) that the Chancellor, being the CEO of the campus, should make sure the responses reflect his or her views. Some officials characterized the call as a “brief heads-up,” but at least two officials stated that a further message was imparted. One official reported that on the call UCOP expressed concern about the audit’s political nature and relayed a message that the campus should provide its view and cooperate but that this was not the time or place to air grievances. The other reported that UCOP had informed the Chancellor that the outcome of the audit needed to be positive.

C. November 2–16, 2016: UCOP Develops and Implements Review Plan.

1. Discussion at November 2 Council of Chancellors Meeting.

On November 2, 2016, President Napolitano and the campus Chancellors took part in their monthly Council of Chancellors (COC) meeting. A UCOP official who regularly took notes during COC meetings penned notes that reflect a discussion taking place about the UCOP Audit during this meeting. The notes read, in pertinent part:

- *JN mentions state audit as well*
- *PK describes surveys from state auditors and how difficult it is to respond*
- *internal auditors asserting independence*
- *Chancellors concerned that IA doesn’t have full information*
- *JN suggest adding comments. She will raise issues in meeting next week.*

One Chancellor also took notes of this portion of the meeting, which similarly indicated a discussion of the UCOP Audit taking place, and that there was a “lot of concern about what is going out from the internal auditors.”

APPENDIX A

A UCOP official present at the meeting recalled that some Chancellors expressed concerns about the ways the surveys had been distributed to the campuses – particularly that the surveys were sent directly to the IADs. One Chancellor said his IAD had told him the IAD might not be able to share the responses with the Chancellor. This official recalled Napolitano listening to the Chancellors' complaints about the surveys but not saying much. The official remembered Napolitano saying something to the effect that Grossman would figure out what was going on and see if he could get it more coordinated. One Chancellor also recalled President Napolitano saying Grossman and Jones would be in touch regarding process.

President Napolitano described the “gestalt” of the discussion as concern that this was an audit “designed to be negative.” She remembered certain Chancellors raising “questions” about the surveys. IADs were “expressing independence” and the Chancellors were concerned that the IADs did not have “full information.” In general, the concern was that the surveys might not have gone to the right person on campus.

In one important respect, President Napolitano's and Grossman's recollections of the November 2 COC meeting differed from the accounts of other witnesses. Grossman recalled “a discussion that [UCOP] should take a role reviewing the survey responses” taking place at the COC meeting, and said that he came out of the meeting with the feeling that it had been decided that UCOP “would play some role in reviewing the surveys.” President Napolitano also recalled discussing with the Chancellors that UCOP “would play a coordinating role” with the surveys. She stated that she came out of the COC meeting in the “state of mind” that the review would occur. However, most of the campus-based witnesses with whom we spoke were not aware of any plan for UCOP to review the responses until a later call with Associate Chancellors on November 14. Other UCOP witnesses also remembered this plan being formulated later than the COC meeting.

Although neither President Napolitano nor Grossman so stated, it is possible that the Chancellors' supposed “questions” about the surveys could have given UCOP the impression that the campuses were confused, and thereby provided the justification for UCOP's involvement. However, the balance of the witness statements, as well as the above referenced notes taken by meeting attendees, suggest that the gist of the Chancellors' comments about the surveys reflected concern and displeasure, not confusion. While some notes reflect Chancellor-level concerns that IADs lacked “full information,” this does not seem to indicate *confusion* regarding to how to complete the surveys. Nor is there any evidence that the Chancellors requested that UCOP review the survey responses.

2. Discussion at November 10 Internal UCOP Meeting.

On November 10, President Napolitano hosted an internal UCOP meeting with Grossman, Jones, Vacca, Hicks, and Nelson Peacock, Senior Vice President for Government Relations.

APPENDIX A

a) Purpose and Tone of Meeting.

Witnesses agreed that the meeting was intended to address the UCOP Audit, including, in part, to discuss the behavior of the state audit staff vis-à-vis UCOP staff. According to Grossman, there were “very strong negative feelings” at UCOP about the conduct of the state auditors at that moment. UCOP witnesses spoke of reports of audit staff making UCOP workers “uncomfortable,” even “cornered and threatened,” and of “audit staff roaming the halls” of UCOP headquarters and “cornering people with flash drives and asking them to download their hard drive.”

According to one witness, at the meeting President Napolitano was “very upset,” complaining about how “these auditors have free range here at OP.” This witness said Napolitano was so agitated that she swore several times. This witness also sensed that Napolitano felt her reputation was at risk and was concerned that UCOP did not have enough management or control over the audit. One attendee recalled the President mentioning the reports of state audit staff behavior and saying that she had been the head of large, complex agencies and had never seen behavior like that. This witness described the President as “displeased” and “frustrated,” but not angry. One witness said that at one point, Napolitano instructed that no one from the State Auditor’s office was to be allowed into the building “until we know who they want to meet with.” It was decided that Jones and Hicks would meet with the auditors to discuss ground rules for their fieldwork and set up a protocol for UCOP-auditor engagement.

Napolitano similarly recalled the meeting being about the behavior of the state audit staff. She said, “[Vacca] was recording a lot of problems about how the auditor was behaving. The purpose [of the meeting] was to get a better sense in terms of who from auditor’s office was in the building, to schedule interviews instead of waiting outside offices. [Vacca] was reporting that people were feeling sabotaged.” According to Napolitano, they discussed what could be done to get better control of or provide more structure to the process.

b) Discussion Regarding Campus Surveys.

One witness recalled that the discussion in the meeting then turned to the issue of the surveys. This witness remembered Napolitano stating that the reason she called the meeting was that she had heard from a Chancellor that the IAD would not let him see the survey responses. Napolitano was very concerned about this, and wanted to know how they could get more “control” over the surveys. According to this witness, Napolitano kept asking what they could do to get this “control,” until finally, Vacca suggested that if UCOP was so concerned about the surveys, they should collect the responses from the campuses and review them before the campuses submitted them to the State Auditor’s office. According to the witness, the President said, “Fine,” and that was that. They moved on to another topic.

Vacca’s suggestion shocked this witness, because it was not something ECAS would normally suggest, particularly given that the intent of the Audit surveys was to get feedback from the campuses about UCOP. The witness expressed the opinion that Vacca was on the verge of retirement from UCOP and was maybe a little less cautious in what

APPENDIX A

she said than usual as a result. The witness also thought Vacca's statement was not so much a *recommendation* rendered from ECAS but rather a casual suggestion about one thing UCOP *could* do. The witness did not think that at the time she made the suggestion, Vacca was aware of the survey instructions requesting that the campuses should not share their responses outside of campus.

Vacca stated that she did not recall making this suggestion. She said she could not imagine she would suggest that, and it would be out of character for her, but that it was not out of the realm of "possibility." She stated she did not see anything wrong with UCOP requesting to see the surveys, because the campuses were "not without their ability to say what they think" and she was certain that UCOP would not have sought to influence any campuses to change answers. If UCOP saw that a response was incomplete and asked for clarification, she said, "that's not a bad idea because this Auditor is known for taking a little thing and blowing it up." Thus, Vacca said, she would have supported such a decision.

Other witnesses with whom we spoke also did not remember Vacca making the suggestion. As discussed above, Napolitano and Grossman recalled the decision was made during the November 2 COC meeting, or perhaps immediately thereafter. When interviewed, President Napolitano, Grossman and Jones did not recall Vacca suggesting that UCOP could review the responses at the November 10 meeting as a means of gaining more "control" over the surveys, nor did they claim that they relied upon a suggestion by the Chief Compliance and Audit Officer in reaching their decision to implement the review plan.

The record nonetheless suggests that the decision was most likely made, or at least articulated, during or as a result of the November 10 UCOP meeting. In contrast to the detailed recollections of a witness at the November 10 meeting, none of the Chancellors present at the November 2 COC meeting remembered any discussion regarding a plan for UCOP to review the campuses' survey responses. A UCOP staffer's notes of the COC meeting that do not reflect discussion of a review plan, nor did that staffer recall any such discussion. No witness recalled UCOP staff discussing the plan after the November 2 COC meeting.

In contrast, documents and witness recollections evidence a flurry of activity regarding the review plan starting immediately after the November 10 meeting. This activity intensified on November 14, after a call with the Associate Chancellors, described below.

3. *UCOP Moves Forward on Decision to Review the Survey Responses.*

Both Napolitano and Grossman recalled that Jones was put in charge of the survey review effort. President Napolitano recalled that she asked Grossman who should be tasked with coordinating the review and he recommended Jones. Grossman recalled that Jones was selected to lead the review because he was already in charge of gathering materials for the audit, and he had "deep knowledge" of UCOP's programs and services.

APPENDIX A

Jones recalled meeting with Grossman following the November 10 meeting to discuss the “next steps” in the review plan, including arranging two calls the following Monday, November 14, to discuss the plan with the campuses’ Associate Chancellors/Chiefs of Staff. Jones recalled that it was at this time the three-parameter approach for the review crystallized. These were the parameters that UCOP would apply to each set of responses in its review: (1) were the responses factually accurate; (2) were they within the scope of the audit, and (3) did they represent the views of the campus’ Chancellor. If there were “concerns” that the responses might not fit these parameters, the responses would be flagged and sent back to the campus.

On the evening of November 10, Jones sent an email to the Associate Chancellors informing them of a “need to discuss an important audit related matter,” and offering two possible times for the call on November 14. Jones then circulated, early the morning of November 11, an email to some of the November 10 meeting attendees with “the major do-outs from the meeting.” The fourth item listed as a “major do-out[] from the meeting” for Jones is “Schedule call with all ACs regarding survey results (Schedule: Thur, Call: Monday. (COMPLETE).”

4. November 14 Conference Call Between UCOP and Campus Associate Chancellors/Chiefs of Staff.

On Monday, November 14, at 10:00 a.m. and 2:00 p.m., Jones and Grossman held the two scheduled calls with the Associate Chancellors to inform them of the review plan. Participants recalled that Jones and/or Grossman told them that UCOP wished to review each campus’ survey responses before they were sent to the State Auditor’s office.

One witness recalled that the “stated intent” of the plan, as articulated by Jones and Grossman, was “to ensure that the responses from senior leaders at the campus were ‘within the scope of the audit.’” Several witnesses recalled statements that the President wanted to make sure that the answers in the survey were “accurate.” Three witnesses also stated that Jones and/or Grossman then cautioned that the surveys were not the place or form in which to air “dirty laundry.” One witness recalled Jones making the remark; another recalled Grossman making it. The third was not sure whether Jones or Grossman made it. One witness emailed campus leadership after the call, indicating that “Bernie and Seth” at UCOP were “requesting/requiring” that the campus share its survey responses before submitting to the State Auditor’s office. The email stated, “They said that they will not edit our responses but will highlight areas they think may need more ‘executive level attention’ prior to submittal.”

Several Associate Chancellors with whom we spoke also described an implicit message conveyed on the calls: that campuses would be accountable for any survey responses critical of UCOP. One witness recalled Jones stating that UCOP wanted a “heads up” regarding problem areas that may be revealed by the audit, so it could improve its services to the campuses. This witness sensed, however, that the request was about more than that, and that Jones was being “very careful” about phrasing. To another, it was “obvious” that UCOP wanted to make sure the survey responses would reflect well on Napolitano. This witness stated that Jones did not come out and say that UCOP might request changes to responses, but the implication was clear: if you provide a negative

APPENDIX A

answer about UCOP, UCOP is going to know. According to this witness, "The pressure couldn't be any more obvious."

Jones stated that he did not recall making any comments about airing "dirty laundry" and did not recall Grossman making any. Instead, he recalled that Associate Chancellors were told that he and Grossman would review for scope, factual accuracy, and Chancellor perspective, "flag things that we felt weren't within parameters," then return the surveys to the campuses. Grossman stated that he did not make such a comment himself and did not remember Jones doing so, but stated that Jones was leading the calls while he, Grossman, was multitasking and "not paying the closest attention." However, given that three Associate Chancellors separately reported recalling that particular phrasing of the comment (i.e., "dirty laundry"), the weight of the evidence suggests that the comment was made on the call.

Grossman stated that if Jones made such a comment, it would not have been appropriate. Napolitano also felt that such a comment would have been inappropriate, and said if she had known about it she "would have stopped it."

5. *UCOP Requests Legal Opinion on Review.*

a) *Campuses Express Concern.*

The review plan as articulated by UCOP caused concern at some campuses. One IAD emailed Hicks on November 14, saying he had heard that UCOP wanted to review the survey responses, and asked if it was true. When Hicks responded that it was, the IAD replied, "Why? What is the use of a survey like this if it has to be vetted through OP. The CSA will have a field day with this."

At another campus, the IAD was alarmed when she was briefed on UCOP's plan and expressed that concern in a meeting of campus senior leadership, including the Chancellor. According to this IAD, the Chancellor sympathized with her concern and asked the campus' Associate Chancellor to "[a]sk if OP is going to be OK if we don't send the response to them and let them know that we've looked at the survey and it's fine." After speaking with UCOP, however, the Associate Chancellor reported back that UCOP had told her that the Office of General Counsel had signed off on the review plan (see below). As a result, the Chancellor and other campus leaders decided to send their responses to UCOP as requested.

One Chancellor reported being concerned, although not surprised, that UCOP wanted to review campus survey responses. According to that Chancellor, there had been much more "micromanagement" under the current administration than with prior Presidents. It was routine for Napolitano's administration to ask to review campus communications both externally and within campuses. Because of this "total emphasis on control of messaging," this Chancellor said it was not surprising that UCOP was asking to see drafts of the survey responses.

APPENDIX A

b) OGC Provides Legal Advice.

The record indicates that beginning on November 15, the day after the Associate Chancellor calls, some campuses called Jones to express their concerns with the plan. That morning, Jones sent Grossman a series of texts, stating that he got a call from two Associate Chancellors. One reported that the “[f]eeling on campus is that sending us survey responses for review violates the direction by the auditor” (specifically California Government Code Section 8545(b)); another reported a similar concern. Campus witnesses also described discussions during which at least one campus decided it would request an express opinion from the UC Office of General Counsel on the legality of the review plan before it would agree to send the surveys to UCOP as requested. Another campus’ counsel was also alarmed by the plan, and expressed the concern directly to the Office of General Counsel.

Jones told Grossman he “asked Karen [Petrulakis, UC Deputy General Counsel] for her perspective, but I do think this is our most vulnerable area and it wouldn’t surprise me if one or more IADs snitched us to the CSA.” Grossman replied: “Since the audit is of ‘UC,’ it does not seem like it is violating confidentiality for the responses to be shared within that entity. Does it violate confidentiality for one part of the campus to share with another part?” Jones replied, “I agree. I also believe Karen agrees.”

That morning, Jones had emailed UC Deputy General Counsel Petrulakis:

Karen,

I got a call of concern from a campus contact about our plan to review responses to the audit survey. Can you provide me some guidance on this? The specific language being referenced in the email and in the opener to the survey: “Please also note that California Government Code, Section 8545 (b) requires the state auditor to keep confidential any information pertaining to any audit not yet completed. We appreciate your assistance in keeping the survey confidential until the audit report is made public by not sharing it with others outside of your campus.”

Best,
Bernie

In a separate email the same day, Jones had described the plan to Petrulakis as follows:

“1) [to] finish a process of review that almost universally concluded with the Chancellor reviewing all the results, 2) [to] save the content to a single document, to ensure answers are preserved and can be reconciled with how the auditor uses them, and 3) that each campus will send Seth and [Jones] ‘final’ versions of the survey responses for review and where appropriate, comment (we won’t be doing any direct editing and focus will be on issues of scope).”

Petrulakis was traveling at the time, so UC General Counsel Charles Robinson responded by email that he would look into the question Jones posed. Robinson added:

“The Regents is a single entity, so I do not think that the statute prohibits information sharing within the entity, but we’ll confirm. I think the process you already started of convening telephone calls with the campuses to provide some general guidance relating to the survey responses and process is the right one. I

APPENDIX A

think there is risk that if UCOP makes substantive edits to the campus survey responses, that information -- the drafts as compared to the finals -- will be accessed by the auditor and will be subject to criticism.”

Later that day, Robinson emailed Jones back with more formal legal advice:

Bernie:

In response to your question, the statute cited in the CSA's request to the campuses, Gov Code 8545 (b), applies only to a release by the CSA, and only to a public release. Accordingly, it does not preclude the campuses from sharing their survey response with OP. Further, while we are aware of a statute that arguably forbids release of audit-related information by the target of an audit before publication of the final audit report, we know of no statute, and none has been cited to us, that forbids internal intra-agency communication, especially when one part of the agency has oversight responsibilities over the other. The CSA may argue that the surveys are a means of it gathering witness testimony, and that any effort by OP to influence the responses amounts to witness tampering. In my view, such an argument is a stretch, especially given that there are no outstanding subpoenas or court processes pending, and therefore the risk presented by such an argument is low, but not zero. In my view, the greater risk is political, not legal. OP should think carefully about creating an appearance that OP is biasing the results of the survey, which likely would be a subject of criticism in the final audit report. Let us know if you have any other questions.

Charlie

Jones forwarded this email to Grossman with the note: “FYI. With this in hand, are you OK with my returning to the campuses that our original plan can and should hold?” Grossman replied, “Thanks. Yes, ok with returning to the campuses who have raised a question.”

Petrulakis, who had been cc'd on these emails, responded that:

“[T]he campuses would feel more comfortable not complying with the auditor's request not to share the survey outside their campus if UCOP informed the auditors that it is reviewing the surveys. I know you'd prefer not to do that, though it seems likely that the auditors will find out one way or another, such that it might be better to be up front about it.”

Neither Grossman nor Jones replied to this email. The following morning, November 16, Jones texted Grossman:

“I assume we aren't alerting the auditors that we are reviewing survey responses and our ongoing expectation is that campuses provide us those responses for review. Just wanted to be sure following Karen's note from last night.”

Less than one minute later, Grossman replied, “Yep.”

Grossman explained that his instructions not to alert the State Auditor or her staff reflected internal UCOP discussions involving UCOP, ECAS, and the Office of General Counsel. He further stated that he thought it was “inevitable” that the Auditor would find out about the review, but also that the Auditor would get wrong information if they did not review and it would be impossible to dislodge. They were concerned with the “policy implications” of the wrong information getting out there, and made a reasoned decision that it was better to start with the correct information even if the State Auditor later requested earlier drafts, rather than vice versa.

APPENDIX A

Napolitano said that UCOP senior leadership was not communicating effectively with the State Auditor or her staff and, in UCOP's view, state audit staff were not communicating with them—for example, by sending surveys to campuses without UCOP's knowledge, or not informing UCOP whom the auditors wished to interview. She said, "There was a total breakdown of communication."

6. *November 15 Dinner at Napolitano's Residence.*

The evening of November 15, President Napolitano hosted a dinner at her residence for the campus Chancellors. Two Chancellor attendees reported that at this dinner, President Napolitano referenced UCOP's plan that the campuses should send the survey responses to UCOP for review before submission to the State Auditor's office. President Napolitano also made clear that the Chancellors were expected to review the survey responses before they were sent to UCOP. As described by these attendees, Napolitano's remarks mirrored those given to the Associate Chancellors on the November 14 call with Jones and Grossman: (1) that the Chancellors should look over the surveys before they were submitted to the State Auditor's office and were encouraged to make changes they thought appropriate; and (2) that UCOP wanted to review the submissions prior to submission to the State Auditor's office. One Chancellor recalled having a "visceral reaction" to what Napolitano was suggesting regarding the surveys, but did not say anything.

Another Chancellor present at the dinner said that Napolitano told the group that the audit was politically motivated and that if there were real substantive issues that needed to be aired or discussed, the campuses should do that in a more appropriate context. According to this Chancellor, Napolitano said if there was too much negativity in the audit, it would reflect badly not just on UCOP but also on the campuses. This Chancellor recalled specifically asking, "Should I be the one who actually makes the final call on each of the answers, or to what extent do I need to defer to the answers that were given by the people whose names were put out [as the subject-matter experts]?" This Chancellor also remembered that Napolitano responded "very clearly" that the Chancellor should be answering the survey on behalf of the campus, and should take full responsibility for each of the answers. To that Chancellor, that meant the Chancellor would be held accountable when the responses were submitted to UCOP for review.

Napolitano stated that if she made any comment about the surveys, it was to suggest that the campuses send the surveys to UCOP to allow UCOP to review for scope, accuracy, and Chancellor perspective. She denied making any statement regarding negative survey responses.

7. *Changes Made by Senior Campus Leadership to Survey Responses Prior to UCOP Review.*

Although the State Auditor focused in her report on changes that campuses made to surveys after they were reviewed by UCOP, there were at least three campuses that, in response to UCOP's communications with campus representatives regarding the surveys, made changes to draft responses even before the responses were submitted to UCOP.

APPENDIX A

At one campus, during an internal review of the campus' responses, a senior campus official flagged a concern that the respondent "didn't get the message. . . that this is NOT the vehicle to critique UCOP." This message was similar to the language multiple witnesses recalled Jones or Grossman using in the November 14 calls. The response in question was criticized for containing "too much detail" (despite being "dead on right, btw"), and the senior official requested that someone "reach out to [the respondent] and have him consider eliminating his long textual answers and possibly changing/upgrading a few of his assessments." A revised version was circulated the following day. The revised version now answered "No" to the query regarding whether the UCOP program was redundant or partially redundant, and the narrative statement was now less than half a typewritten page, with all discussion of redundancies excised.

At another campus, the Chancellor personally revised the responses. This campus had arranged for an internal meeting to review the responses, which was scheduled to take place after the November 14 call but before the November 15 pre-Regents meeting dinner with the Chancellors. An internal document circulated before the meeting posed several questions to consider when reviewing the responses:

- "1) Should there be consistency in the tone?
- 2) Do poor ratings represent one person's experience or that of the campus?
- 3) Should we round up or down in the case of multiple ratings?"

After the pre-Regents Meeting dinner, however, at which some Chancellors recalled Napolitano making clear that the Chancellors should take full responsibility for the survey responses, this campus' Chancellor personally reviewed and revised the responses. According to this Chancellor, his revision consisted of making changes to ensure that the responses "went up" (i.e., were changed to be more favorable to UCOP). He stated that he made these changes with the "compelling sense that [the survey] would be seen by [UCOP]" and that too many negative responses would be unwelcome.

A comparison of this campus' survey responses before and after this Chancellor's review reveals significant differences between the two versions. For example, some scores have been revised upwards and most of the narrative responses had been either removed or made terser. It should be noted that the earlier draft included lengthy and sometimes conflicting narrative responses on the same topics by different respondents, arguably necessitating the need for consolidation and editing. Furthermore, several of the comments in the revised response still point out redundancies or otherwise make comments unfavorable to UCOP. However, the record indicates that the Chancellor removed or edited some of the most unfavorable comments to UCOP, and did so because of the knowledge that UCOP would be reviewing them.

Lastly, another campus struggled internally with how to handle a critical comment that the campus' Chancellor's Office felt did not align with the campus' overall view. Campus officials stated that the response in question "stood out" from the others, so much so that one senior leader penned a "disclaimer" to precede the response. This statement would have read:

"Note - The following comment represents the individual response from one of the survey recipients. It is not consistent with other comments received on this survey

APPENDIX A

but included as it underscores [this campus'] values with respect to ensuring that all voices get heard."

After reviewing the response in question, however, the Chancellor of the campus suggested a revised version to submit as the final version. Although the final version did still include some criticism of UCOP's services, on the whole the revised comment was more positive and favorable to UCOP than the original comment. Some internal staff expressed concern about the Chancellor revising the response, but another senior official replied by email that the Chancellor had received communications from UCOP that the Chancellor had "authority" and "latitude" to edit the comment "to be more reflective of the overall campus view."

D. November 15-29, 2016: UCOP Review of Surveys and Communications with Campuses.

1. Submission of Drafts to UCOP.

Between Wednesday, November 16 and Friday, November 18, seven UC campuses sent one or both sets of survey responses to Jones before submitting them to the State Auditor's office. Another campus submitted its responses to Jones a few days later, on Wednesday, November 23, but still before submitting to the State Auditor's office. Two other campuses submitted responses to Jones on Monday, November 21, only after first submitting the responses to the State Auditor's office.

On November 16, in the late afternoon, Jones and Grossman exchanged the following texts:

- **JONES:** "I just received the first survey . . . How would you like to handle these? We split them up? We both review each? And how would you like me to send them to you/facilitate your review?"
- **GROSSMAN:** "We can split them up. They're due on Friday, right? If so, it would be good if you (or Jenne) could get me hard copies and I'll review on Friday morning."
- **JONES:** "Sounds good. Preference on campuses? Or random?"
- **GROSSMAN:** "Random is fine."

Jones explained that this plan to "split" up the surveys soon evolved: Jones would review each campus' responses as it arrived, mark with physical flags certain passages, then "walk[] into" Grossman's office and go through the responses with Grossman. Jones stated that this occurred with every survey on which Jones eventually delivered comments to the campuses. Grossman recalled that he and Jones split up the responses after Jones received them, and they both went through their respective responses. Jones then followed up with the campuses. Grossman said that he was not involved after that.

APPENDIX A

2. *Eight Campuses' Surveys Are Reviewed by UCOP Before Submission to the State Auditor's Office.*
 - a) Five Campuses Receive Calls from Jones to Discuss Survey Responses.

Five campuses reported receiving calls from Jones regarding the campus' draft responses. In all five instances, the purpose of the call was to relay UCOP's feedback on the survey responses.

(1) UC Riverside.

At UC Riverside, a senior campus official received a call from Jones, who asked the campus to consider whether one portion of a narrative response was outside the scope of the audit. The official agreed that the comment did not fit with the purpose of the audit, and made the change. Jones also asked the official to consider whether it made sense to modify one response about services the campus would like to see from UCOP. The official ultimately made a slight modification to that response. Lastly, the campus was asked to reconsider all "fair" ratings. The official specified that Jones never said to *change* the "fair" ratings, but his request still raised a red flag for the official, because it did not seem to reflect Jones' stated concern that the campus' responses stay within the scope of the audit. Rather, the request concerned the totality of the "fair" ratings. Jones did not recall making this request, and said he did not think he would have done so, because "fair is not a bad rating." UC Riverside did not change any of the ratings.

(2) UC Merced.

At UC Merced, a senior campus official received a call from Jones, who asked the campus to "revisit" one "poor" rating and to take a second look at whether they really wanted to air UC's "dirty laundry," as the campus official put it, in this way. Jones did not recall having a conversation with this official but said it was certainly possible he asked the campus to revisit the question to make sure it fit within the three parameters for which he was reviewing (i.e., factual accuracy, scope of the audit, reflective of Chancellor's views).

After the call with Jones, the campus official asked the campus IAD to reach out to the individual that provided the "poor" rating in question ("the respondent"). The IAD informed the respondent that he was asked "to follow up on the one item that you marked as Poor. . . to verify that, upon reassessment, you stand by the poor rating." The respondent replied, "I do. Poor consultation, no strategy, no support." The IAD reported this response to the senior official, who informed the campus' Chancellor that the respondent intended to stand by the rating. Indeed, the final version of the survey did not change this "poor" rating.

(3) UC San Francisco.

According to one witness at UC San Francisco, Jones called a senior campus official and flagged one of the narrative comments—a comment that described a UCOP service as

APPENDIX A

being redundant and causing significant delays. The witness did not know if Jones specifically told the official to delete the comment, only that UCOP had issues with it. To this witness, it seemed like UCOP was “getting nitpicky” and “trying to make themselves look good”; it seemed that UCOP was trying to take out the bad comments. The final version of the survey submitted by this campus did not include this comment, although neither witness found the comment to be particularly significant. One senior campus official reported that the campus would not have made the change if they were not comfortable with doing so.

(4) UCLA.

A senior official in the Chancellor’s Office at UCLA received a call from Jones after sending him the campus’ survey responses. That official sent an internal email shortly after the call with Jones, indicating that “[Jones] offered his perspective about our responses.” This “perspective” included, as characterized by a campus official:

- “Some of the responses fell more in the realm of complaints, and that under a different set of circumstances, that feedback to OP could be productive, but in the context of the audit, it could be used politically to reduce funding to OP and ultimately to the campuses”;
- “Poor” ratings “could be used as a weapon against OP and the campuses,” and the campus should “stay away from poor ratings, fair or better will not likely be used against the university”;
- “For the narrative responses, less is more”; and
- The Chancellor “owns the responses” and “should be responsible for shaping or editing the responses in a manner that considers the impact on the university,” considering, “If the President were sent a survey about the campus, what type of issues would be handled internally, and what would you want said for public consumption.”

This official was also warned that the President might need to “personally intervene[],” and the official “was told, ‘we wouldn’t want to have that happen.’” Jones directed the official to send back a final set of responses for further review before the campus submitted the survey to the State Auditor’s office. The official became concerned about the process at this point, and reported that campus leadership found the call to be inappropriate and upsetting. One witness interpreted the information relayed to “absolutely” be a threat to the campus.

Jones did not recall making most of the statements described in this campus official’s email, including: (a) that the campus should review the “poor” ratings; (b) that “poor” ratings could be used as a weapon against the campuses; (c) that the campus should consider what it would want the President’s Office to say in the reverse scenario; and (d) telling a senior campus official that they would not want the President to have to personally intervene here. He also did not recall telling the official that the audit could be used to reduce funding to the University, but said he did personally think that was a

APPENDIX A

possible outcome. Jones did recall making the point that the survey responses should be reflective of the Chancellor's and Provost's views, or at least thought it was a point he would have raised on this call.

After receiving this initial feedback from UCOP, one senior campus official agreed to "take a look again at the responses and see if I can 'own' them and suggest changes. It might be best and easier to cut rather than edit. They did not seem all that bad to me." A few days later that senior official wrote, "I still find most of our comments pretty anodyne. But if UCOP insists, here are some suggestions for scrubbing our response to the survey." The revisions removed some of the criticisms of UCOP, and shortened many of the longer narrative responses.

The IAD responsible for inputting the survey results incorporated the changes into a revised draft and also notified several senior campus officials, including the VCPB/CFO, that "there is only one poor rating . . . and there are more 'goods' than [sic] 'fairs'." The VCPB/CFO, who had provided the "one poor rating," replied, "If our (my) poor rating . . . is the only one, we should change it to Fair." That VCPB/CFO reported that UCLA was "having significant issues with OP" with regards to that project, and "[didn't] need the survey to exacerbate discussions."

The campus returned the revised version of the survey to Jones, but without first incorporating the change relating to the "poor" rating. Jones then called the same senior campus official who had received the first call to discuss the poor rating as well as one narrative comment written by the VCPB/CFO that remained in the responses. A portion of this comment was critical of UCOP's services, and removing that portion would render the response more positive.

The VCPB/CFO stated that at this time he also received a call from Nathan Brostrom. According to VCPB/CFO, Brostrom "expressed some general concern" about the narrative comment but purportedly "didn't ask [him] to change anything" about the comment. The VCPB/CFO thought that Brostrom seemed very uncomfortable with the conversation. The VCPB/CFO thought that Brostrom seemed very uncomfortable with the conversation. The VCPB/CFO emailed other senior campus officials, "I still believe these comments are valid, but don't have the energy or inclination to fight it. So we should agree to these changes. *For the record, we have been instructed by the Office of the President to revise our response to the survey.*" (emphasis added).

The IAD stated in response, "I am very concerned about the political backlash that this interference by OP may cause."

(5) UC San Diego.

After sending Jones the campus' survey responses, a senior campus official at UC San Diego received a text message from Jones relating to the UCOP Assessment Survey, stating:

"The larger survey looks good to go. I do think the assessment survey could use another look and I can send you a scan with some highlights if that is useful. It seems quite inflammatory in its current form."

APPENDIX A

Jones then sent back the survey with several passages highlighted. The official remembered “very clear marching orders that this needed to be a positive audit,” and that Jones said their survey was “too negative.” This official stated that as a result of Jones’ comments, the VCPB responsible for the “inflammatory” Assessment Survey responses revised the responses to be more favorable to UCOP. A comparison of the revised version of the survey sent back to Jones with the original version reveals that the portions of the comments flagged by Jones were removed, and the “dissatisfied” response flagged by Jones was changed to “satisfied.”

Jones said there was a statement in UC San Diego’s Assessment Survey that was “plain factually inaccurate” and “at the very least did not reflect [the Chancellor’s] views.” He explained that there had been a “complex dynamic” with the VCPB at the time on other matters, and UCOP was concerned that the VCPB might be “venting in a way that was not factually accurate.” According to Jones, the purpose of sending the highlighted draft to a senior UC San Diego official was to guide a conversation he had had with her about the responses by phone. Thus, he thinks the interaction started with the text message, then he emailed the highlighted version, and then they had a brief conversation by phone.

Although the senior campus official who had spoken with Jones stated that he never explicitly said “you *must* change the survey,” the campus’ revision of its survey responses constituted “doing what was clearly the direction from [UCOP].” This official said, “If you’re looking for ‘Was I told to revise this?’ The answer is no. Was it clear that it should be revised? The answer is yes.”

b) Three Campuses Receive No Feedback from Jones.

The record reflects that UC Davis, UC Berkeley, and UC Irvine submitted drafts of one or both surveys to Jones, but that UCOP did not have any comments on these campuses’ surveys.

The State Auditor’s report found that changes had been made to UC Irvine’s survey responses. According to the Auditor, she reached this conclusion by comparing the version of the responses sent to Jones with the version ultimately submitted to the Auditor. However, based on the account of several witnesses and review of related documents, including an email from Jones stating that he had no comments on UC Irvine’s responses, it does not appear UCOP suggested any edits to the UCI surveys. The campus official who entered the campus’ Services Survey responses into the Survey Monkey online portal believes that the portion of one response cited by the State Auditor as being removed was present in the version that he attempted to input into the online portal. Therefore, he believes either the State Auditor’s version is inaccurate or that there was an error on his end in inputting the responses.

Similarly, the VCPB who completed UC Irvine’s Assessment Survey and entered it into the online portal reported that no changes were made to the UCOP Assessment Survey before she submitted it. She said it was possible she changed her mind on a response while entering it into the Survey Monkey portal or she could have erroneously entered a response different than the one contained in the draft sent to Jones. But this VCPB stated that she was certain that nobody asked her to change any of the responses.

APPENDIX A

Indeed, the record reflects that she had already submitted the UCOP Assessment Survey to the State Auditor at the time UCOP requested and received it from UCI.

Accordingly, it appears the differences in the final version of UC Irvine's surveys were the result of errors with the audit submission or changes made by the individuals inputting the survey responses, either by accident or as a result of deciding to change a response at the time of submission.

3. Two Campuses Submit Surveys to State Auditor Without First Sending to Jones.

According to witness interviews and documentary evidence, UC Santa Barbara sent its survey responses to UCOP after it had submitted the surveys to the State Auditor's office, although it is unclear whether UCOP realized this at the time that it received the responses. UCOP did not have any comments on UC Santa Barbara's responses.

UC Santa Cruz also submitted its survey responses to the State Auditor's office before sending them to UCOP. This ultimately resulted in a recall of UC Santa Cruz's submission and changes to the responses before they were resubmitted, as described below.

E. Post-Submission Recall & Review of University of California, Santa Cruz (UCSC) Surveys.

1. UCSC Submits Surveys to State Auditor Without Sending To UCOP.

On Monday, November 21, 2016, Bernie Jones emailed UC Santa Cruz's Associate Chancellor, "checking to see when [they] might expect the documents for [their] review." As the correspondence progressed, it became clear that UC Santa Cruz did not send drafts of the Assessment Survey or Services Survey to UCOP before submitting them to the State Auditor's office on Friday, November 18, 2016.

Senior officials at UC Santa Cruz said they were not aware that UCOP wanted to see the responses before they were submitted to the State Auditor's office. The Chancellor stated that he was aware of it because of the discussion at the President's dinner on November 15, but said he did not explicitly talk about the plan with those working on the UCOP Audit surveys, because he thought they already knew about it from the November 14 conference call.

2. President Napolitano's Call to Chancellor George Blumenthal.

On Tuesday morning, November 22, 2016, Chancellor Blumenthal received an unscheduled call from President Janet Napolitano. Blumenthal was driving into work at the time and was not expecting the call.

APPENDIX A

a) Chancellor Blumenthal's Recollection of the Call.

According to Blumenthal, Napolitano was "furious" because UCSC had submitted the audit to the State Auditor's office prior to review by the UCOP, and she had been clear that UCOP wanted to review first. He described the tone of the call as "certainly angry." She seemed particularly angry with his Associate Chancellor, as she kept saying, "Your Chief of Staff did this." Blumenthal said Napolitano told him UCSC's submission "is going to be very damaging to the University." She repeated herself several times in the conversation, so much so that he tried to maneuver the conversation into something more productive: what was the solution? Blumenthal asked her a couple of times what she wanted them to do about it, and Napolitano responded (as Blumenthal recalls it), "Well, withdraw it, you can withdraw it." Blumenthal said he told her they would do that.

Blumenthal stated that he was so surprised by the tone of the call that he did not have the presence of mind to respond appropriately or resist the instruction to recall the survey to give UCOP a chance to review. He told his Associate Chancellor that the surveys needed to be recalled.

b) President Napolitano's Recollection of the Call.

President Napolitano's recollection of the call differed substantially from that of Chancellor Blumenthal. As she remembered it, "somehow" either Jones or Grossman had learned—perhaps from an ECAS official such as Matt Hicks—that the Santa Cruz survey had been submitted without Chancellor Blumenthal's review. She was asked by either Grossman or Jones to call Blumenthal and "raise that to his attention." So she did so. "I said was he aware that the survey had gone in, had he seen it?; he said that he hadn't. I said something to the effect of maybe you can withdraw the draft to see if you can review it. He said he would look into it." The tone of the call was "matter of fact"—this thing had happened and did Chancellor Blumenthal know? Then she "probably" suggested withdrawing the survey. She was not worried about the appearance of withdrawing the survey and resubmitting a revised version of it. "If the answers were different, they would be different because the chancellor had a chance to review the answers. It was nothing more than that."

3. *UCSC Surveys Recalled from the State Auditor.*

After the call from President Napolitano, the IAD and the VCPB who had submitted the surveys agreed to reach out to the State Auditor's office to see about recalling the surveys. Both of them recalled the Associate Chancellor telling them to say that the Chancellor had not had a chance to review the surveys as the reason for recalling the surveys from the State Auditor's office. The VCPB sent a state audit staffer an email indicating that "[t]he Chancellor's Office did not have a chance to fully review the responses before they were submitted" and claimed to have been "focused on meeting the deadline and [she] misunderstood internal directions." The IAD did not follow the VCPB's lead in "taking the blame," but otherwise sent a similar email indicating the Chancellor's Office did not have a chance to "fully review the responses."

APPENDIX A

4. *UCOP Review of the Surveys.*

On Tuesday, November 22, Jones sent Petrulakis a blank email with the subject line "PRIVILEGED/CONFIDENTIAL." Attached to this email was a version of Santa Cruz's UCOP Services Survey responses with several comments from Jones. That same day, Petrulakis sent back to Jones a version of the survey containing edits made directly to his comments. Petrulakis stated in a later email that she didn't change Jones' comments too much, but did change "recommend" to "consider." She also questioned whether he "even need[s] to say the 'reframe/delete' language – as they'll get the point without being that explicit." And she removed Jones' use of the word "problematic" in a comment.

In her interview, Petrulakis said she recalled telling Jones not to make changes. She did not know why he sent the comments to her, but said it may have been because she was cautioning him not to send any comments at all. She noted that it was fairly common for UCOP personnel to "cc" university counsel on emails or add "privileged/confidential" to an email in an attempt to keep the communication privileged. Petrulakis recalled making a few edits trying to dial back Jones' comments and trying to make sure the language was not "directive." She said she ultimately did not think his comments were prescriptive or directive, but she did not think he should make them at all because it was risky. As she noted in one of her emails, she didn't think there was "any way around the auditor commenting on the changes from the first to second draft and potentially getting a copy of these comments."

After Petrulakis sent back revisions to Jones' comments, Jones sent UC Santa Cruz that version of its UCOP Services Survey containing the various comments. In his cover email, he stated:

"Per our earlier conversations, I am attaching comments on the draft responses to the UCOP Services Survey. My comments primarily fall into three areas: 1) whether answers provided in certain sections are within audit scope and/or go beyond the question posed, 2) whether the answers are factually correct, and 3) whether the answers reflect Chancellor Blumenthal's perspective as the head of the campus. In each instance, I have placed highlights near to where I have provided comments (for readability, since I couldn't highlight many of the answers themselves) and then provided comments via the sticky notes feature in Adobe.

Once you have had a chance to review, I am happy to provide further detail or answer any questions you might have. Please communicate directly with me and I can then brief Seth and the President, as needed. Our expectation is that we review an updated version of the survey responses before it is resubmitted to CSA."

Jones' comments included: (a) flagging a "fair" and a "poor" response to make sure they "accurately reflect" the Chancellor's view and "to ensure [factual] accuracy"; (b) flagging portions of narrative responses to "review" for accuracy, relevance, or scope, and "consider reframing/deleting"; and (c) flagging portions of a narrative response to "review, both for whether the response is outside the scope of the question, and whether the Chancellor believes this answer reflects his perspective of UCOP's efforts. . ."

APPENDIX A

Although Jones consistently referred to the three parameters in his comments, those justifications for the comments seemed, at times, questionable. For example, Jones asked UC Santa Cruz to review responses for “relevance/scope” that are in response to open-ended requests for *any* comments about the services provided by UCOP. The questions specifically asked:

“Do you have *any* specific comments that you would like to share regarding the services provided by the Office of the President’s [relevant division for the section]? Include *any* comments about the importance of these services, the input your campus has regarding services offered, or *anything else* that you believe would be useful and relevant to our audit.” (emphasis added)

One example of a response to one of these questions that Jones flagged to review “for relevance/scope” and that Jones recommended “reframing/deleting” was the second sentence in this response:

“Labor Relations provides an important service to the campuses in the negotiation of systemwide labor agreements. However, it is difficult for individual campuses to get the attention of Labor Relations in order to troubleshoot complex problems, and thus lowering the risk to UC.”

It is unclear how this comment could be outside the scope of or irrelevant to the broad question presented to the respondent.

At other times, Jones asked UC Santa Cruz to “review and consider reframing/deleting” particularly critical clauses of responses such as:

- “While UCOP does indeed exist through a ‘tax’ on the ten campuses, it does serve several essential functions.” (Jones asked UC Santa Cruz to “consider reframing/deleting the first clause.”)
- “Some UCOP initiatives, such as UC Path were at first very poorly and inefficiently run, but they seem to have figured it out and are on the way to bringing a huge and (often) failure prone project to a successful conclusion.” (Jones asked UC Santa Cruz to “consider reframing/deleting” this sentence.)

Similarly, the only two ratings that Jones flagged and asked UC Santa Cruz to confirm it aligned with the Chancellor’s view were a rating of “fair” and a rating of “poor.” Most of the other ratings in the survey are “good” or “exceptional.” Notably, there are eight other “fair” ratings in the survey that are not flagged, but no other “poor” ratings. Overall, Jones’ comments seem more targeted at critical commentary about UCOP than genuine concern that the response may not be “within the scope of the audit” or align with the Chancellor’s views.

APPENDIX A

5. *UCSC Revisions to the Surveys.*

a) UCOP Services Survey.

After Jones sent comments to the survey, Chancellor Blumenthal decided to take responsibility for the back-and-forth with Jones. He said did not want to subject his staff to that correspondence, particularly because at least one of them expressed discomfort with the process. Thus, further correspondence with UCOP from UC Santa Cruz came directly from Chancellor Blumenthal.

Blumenthal stated that he decided to make virtually all of the changes UCOP requested. Blumenthal "didn't quite buy" the various reasons provided by Jones, and said he found it odd that Jones was trying to frame some of the responses as "out of the scope." However, he felt that Jones was speaking on behalf of President Napolitano, and so he felt obliged to make the changes. He chose not to fight back, particularly because he had "already incurred the wrath of the President."

On Wednesday, November 23, Blumenthal sent Jones back a marked up version of the survey reflecting the changes he was accepting. In his cover email he said, "As you will see, I addressed 98% of your concerns and I made a number of additional changes as well (all in a direction you would not find problematic)." A review of the document Blumenthal sent back shows that he: (a) upgraded several ratings; (b) added favorable comments; (c) deleted some of the comments flagged by Jones; and (d) edited some of the comments Jones flagged to reframe or delete. The one comment that Blumenthal did not delete or revise per UCOP's comment was a long paragraph on page 39 relating to the UCOP Ethics, Compliance and Audit Services division.

Jones sent Blumenthal a text shortly after Blumenthal emailed him the revised responses. He said:

"George, this is Bernie from the PEO. Thanks to you and the team for the revised survey. It reads very well. The only item that appears to have gone unaddressed is the long paragraph associated with Ethics and Compliance on page 39. The points are well taken and I will be sure to share with our new interim, but I would question if the response in scope for the purposes of the audit and ultimately productive. With that addressed, all systems go from here to submit. Thanks again. Let me know if I can do anything to help."

Blumenthal then emailed the IAD responsible for sending the UCOP Services Survey to the State Auditor's office to tell him that UCOP is "happy with the entire submittal except for the long paragraph at the bottom of page 39" and that UCOP "said they'd pass the information along to the appropriate office, but preferred that it be removed. I suggest you remove the paragraph and submit it." Accordingly, the UCOP Services Survey was resubmitted on behalf of UC Santa Cruz incorporating all of the comments and suggestions flagged by UCOP.

APPENDIX A

b) UCOP Assessment Survey.

When Blumenthal forwarded a copy of the UCOP Assessment Survey to Jones, he stated in his cover email, "After a quick read, I'm not sure what in here might be found objectionable. I suspect that the comment on UC Path may raise some concerns with you. *But I do need to say that although I did not write that comment, I fully agree with it.*" (emphasis added). Nevertheless, Jones texted Blumenthal in response stating:

"Thanks for your email of last week regarding the assessment survey. I discussed with Seth. We appreciate your raising the section on Path and recognize the issues raised. Our strong preference would be that we underscore the broad concern with the Path team directly, rather than through the State Auditors report. As with other issues raised, I don't think it is relevant to the original scope and won't ultimately result in an improved or productive outcome. Other than that, nothing else for us to raise, so hopefully you can get the survey back well before the new deadline. Thanks much."

Blumenthal relayed Jones' comment to the VCPB responsible for sending the UCOP Assessment Survey to the State Auditor's office, who revised the survey accordingly, deleting the paragraph of concern about UC Path. During his interview, Jones said that he did not think UC Santa Cruz's comment about UC Path was within the scope of the audit because UC Santa Cruz was not "live" on UC Path yet. Therefore, it was not a service that UC Santa Cruz was technically receiving from UCOP at the time.

On Tuesday, November 29, 2016, Blumenthal emailed Jones to inform him "that both audit inputs were completed before the close of business earlier today, including all of the modifications that you recommended."

F. UCOP Reflections Regarding Review of Surveys.

President Napolitano and Grossman both stated that they now regret the decision to review the campuses' survey responses. Grossman stated that he considers the decision to review the responses without informing the State Auditor or her staff that UCOP was doing so to constitute "bad judgment" and that the process as conceived was "terrible." He said, "[UCOP] shouldn't have been involved at all" with the surveys, and "should have told [the State Auditor]." Grossman said that UCOP was "fighting the last war" based on the non-resident audit, which had taught UCOP that inaccurate information had a "very long tail." They were concerned that "half-baked" information would get to the State Auditor. Grossman acknowledged, however, the "inconsistency" of this concern with his stated belief, as described above, that the State Auditor's office would eventually see all drafts of the responses.

President Napolitano stated that it was a "very confusing time," that UCOP "didn't have a good relationship with the auditor," and that the intent behind the review was to make sure the State Auditor actually got "accurate information" and that the Chancellors had seen their campuses' responses. However, she "regrets the process was set up the way it was." She pointed out that UCOP has now "fixed that process and it won't happen again." UCOP has circulated guidelines making clear that campuses should work directly with the State Auditor wherever possible, and that should the campuses require guidance

APPENDIX A

from UCOP, all questions would be routed through the campus internal audit directors to UCOP's internal audit director, and vice versa. She said she regrets the allegation of interference, because that was not the intent and it detracts from the fact that UCOP accepted all of the State Auditor's recommendations in her audit report and has changed its procedures for state audits.

Jones acknowledged that UCOP "overstepped" and said that "if we could do it all over again we'd do it differently." He said he never had any ill intent, and that he acted with the genuine belief that UCOP was "within [their] legal and statutory right" to do what they did and that what UCOP was doing was appropriate. In his interactions with campuses, Jones said he "took great pains to make sure there was no misinterpretation" of his message, and if "misimpressions" occurred, he is "sorry."