

Statement of Cornell University¹

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To the Roundtable Discussion on Campus Sexual Assault

Hosted by

Senator Claire McCaskill (D-MO)
Chairman, Subcommittee on Financial Contracting and Oversight
Senate Committee on Homeland Security

Senator Kirsten Gillibrand (D-NY)
Senator Richard Blumenthal (D-CT)

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On behalf of Cornell University, we would like to thank Senators McCaskill, Gillibrand, and Blumenthal for hosting this series of roundtable discussions to explore policies to combat sexual violence on college campuses. In particular, we would like to thank you for inviting Chief Kathy Zoner of the Cornell University Police to participate in the third roundtable on “Campus Sexual Assault: The Administrative Process and the Criminal Justice System.” Cornell University recognizes sexual violence as a serious campus and public health issue that affects every member of our community. It deserves the thoughtful attention of policymakers, and we commend you for the comprehensive approach that you are taking through your survey and this series of roundtables. We share your goal of working to prevent sexual assaults on our campuses, and look forward to working with you as you write legislation or make other policy changes in this area.

¹ Cornell University is a privately endowed research university and a partner of the State University of New York. As the federal land-grant institution in New York State, we have a responsibility to make contributions in all fields of knowledge in a manner that prioritizes public engagement to help improve the quality of life in our state, the nation, the world. Cornell has seven undergraduate colleges and four graduate and professional schools on the main campus in Ithaca, three graduate and professional schools in New York City, an agricultural research campus in Geneva, NY, and medical school in Doha, Qatar. We enroll approximately 21,600 students (14,400 undergraduate, 7,200 graduate and professional) across all campuses. Our students come from every state and more than 120 countries. <http://www.cornell.edu/>

Cornell University's History and Approach

Sexual violence, including rape, occurs with disturbing frequency in society and on campuses across the country. At Cornell, we believe that sexual violence must not be tolerated, and have a long history of leadership regarding sexual assault prevention and response.²

Not quite a year ago, Cornell announced substantial revisions, informed by the Department of Education's 2011 Dear Colleague Letter, to the University's policies that address sexual assault and harassment.³ Under the revised Policy 6.4, sexual assaults involving students are no longer adjudicated under the adversarial hearing-based process of our Campus Code of Conduct. Instead, sexual assault complaints are investigated by a neutral fact-finder, sometimes working with a co-investigator. Final determinations and sanctions are made by a panel of reviewers, using a preponderance of the evidence as the standard of proof.

At the same time, we realized that it would take more than new judicial and administrative procedures to change the climate on campus, and that we needed to involve the entire community in a strategic effort to prevent sexual violence that focuses on the environment, education, and services. President David Skorton established the Cornell University Council on Sexual Violence Prevention⁴ ("CSVP") in September 2013 to develop a campus- and community-wide approach to preventing and effectively responding to sexual violence. Two of us, Vice Presidents Susan Murphy and Mary Opperman, co-chair the Council; Chief of Police Kathy Zoner convenes the Public Safety Advisory Committee, and is a member of the Council. In addition to Chief Zoner, the CSVP is comprised of staff and faculty members, students, alumnae, and local service providers.

The Council is charged with studying and evaluating the campus environment, prevention strategies, policies, procedures, and services and exploring opportunities to foster cultural change, reduce risks, and increase support for members of the community affected by sexual violence. CSVP advises the Executive Committee on Campus Climate, Health, and Safety and other campus leaders on opportunities for

² Cornell Advocates for Rape Education, 20 years of CARE Activities 1984-2004.
<http://share.cornell.edu/files/2013/11/CARE-activities-2004-1r76nnr.pdf>

³ University Policy 6.4, Prohibited Discrimination, Protected-Status Harassment, Sexual Harassment, and Sexual Assault and Violence.
<http://www.dfa.cornell.edu/treasurer/policyoffice/policies/volumes/humanresources/prohibited.cfm>

⁴ The Cornell University Council on Sexual Violence Prevention is comprised of students, faculty, and staff. The Council is charged to "study and evaluate the campus environment, prevention strategies, policies, procedures, and services and explore opportunities for fostering cultural change, reducing risks, and increasing support for members of the community affected by sexual violence."
<http://share.cornell.edu/files/2013/10/CSVP-charge-Sept-2013-267ovy5.pdf>

improving the campus environment, reducing risk, and increasing support for individuals and communities affected by sexual violence.

In April, CSVP workgroups presented a series of recommendations to establish a comprehensive approach to sexual violence prevention and response, including expansion and improvement of data collection; educational programs and other prevention initiatives for students, faculty and staff; comprehensive support services for survivors; and enhanced reporting and enforcement mechanisms. These are consistent with the recommendations of the White House Task Force to Protect Students from Sexual Assault.⁵

Among the policies recommended by the White House already in place at Cornell:

- **Confidential victim assistance:** Those affected by sexual assault have access to confidential services, including Cornell's Victim Advocate, medical care and counseling for students at Gannett Health Services, including Counseling and Psychological Services, and the Faculty and Staff Assistance Program (FSAP).
- **Around-the-clock services:** The campus community has access to 24/7 services related to sexual assault, through the local Advocacy Center, SANE Nurses (Sexual Assault Nurse Examiners) at Cayuga Medical Center's Emergency Department, Cornell University Police officers trained to investigate reports of sexual assault, and Gannett Health Services medical or counseling after-hours phone consultation.
- **Education and training:** *Respect at Cornell*, an online training program, is designed to educate faculty and staff on their reporting and consultation obligations, should they become aware of an incident of sexual violence. More than 6,000 faculty and staff have completed the program to date.
- **Prevention, Bystander Intervention programs:** Men at Cornell are actively involved in creating awareness and preventing sexual violence through the Wingman 101 bystander intervention campaign and the recent White Ribbon campaign coordinated by Men Against Sexual Violence ("MASV").
- **Student education and awareness programs:** We offer a variety of programs that educate our students about sexual violence prevention and establish caring community standards, starting during New Student Orientation and in the first-year residence halls. At new student orientation, we require students to attend a session called *Speak About It*, an hour-long performance-based presentation that addresses consent, sexual assault, and bystander intervention. We established a

⁵ Not Alone: The First Report of the White House Task Force to Protect Students from Sexual Assault http://m.whitehouse.gov/sites/default/files/docs/report_0.pdf?utm_source=White+House+report+blast+to+everyone&utm_campaign=White+House+April+Blast&utm_medium=email/

new CORE RA position in residence halls to build community through moral and ethical awareness, multicultural competence, academic engagement and intellectual inquiry. Ongoing monthly CORE RA training covers bystander education, the effect of social media on attitudes and mores about sexuality, sexual violence, and societal components that contribute to sexual violence.

- **Comprehensive on-line resources:** We provide information about these and other programs and services on a dedicated website.⁶

An action plan based on these recommendations is being developed, and will be informed further by the White House Task Force report, implementation of the VAWA/Campus SaVE regulations, and the recommendations that result from your efforts in Congress.

Recent Legislative and Regulatory Changes

Federal policymakers are looking closely at the laws and regulations that govern sexual assault on college campuses. The 2013 reauthorization of the Violence Against Women Act significantly expanded the existing sexual assault and sexual violence reporting and policy requirements of the Clery Act.⁷ Final regulations to implement the statutory changes to the Clery Act will not be effective until after the Department of Education completes its rulemaking process in November.⁸ Until those regulations are issued, the Department expects Cornell and other institutions to make a good faith effort to comply with the statutory requirements in accordance with the statutory effective date. As noted above, we already have revised our policies and procedures to include new procedural requirements and notices to students involved in disciplinary proceedings, and have implemented a number of education programs for students and employees. We will revisit all of these areas when the regulations are enacted.

More recently, the Department of Education's Office of Civil Rights issued 46 pages of additional guidance⁹ to help campuses comply with our Title IX obligations to address sexual assault as a form of sexual harassment. This builds upon the Dear Colleague Letter issued in April 2011¹⁰ and guidance issued in 2001.¹¹ In addition, the White

⁶ <http://www.SHARE.cornell.edu>

⁷ Section 304 of the Violence Against Women Reauthorization Act, P.L. 113-4 (March 7, 2013).

⁸ <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/vawa.html>

The Department of Education will publish the proposed rules for comment on June 20. The Department will accept comments until July 21, with the final rule to be published on November 1.

<http://www.ed.gov/news/press-releases/us-department-education-announces-action-help-colleges-keep-campuses-safe>

⁹ Department of Education, Office of Civil Rights, *Questions and Answers on Title IX and Sexual Violence*, April 29, 2014. <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

¹⁰ <http://www.ed.gov/ocr/letters/colleague-201104.html>

House Task Force Report noted that the Obama Administration will increase oversight and enforcement of the Clery Act and Title IX, and strongly hinted that it may seek legislation to implement some of its recommendations.

Likely Legislative Changes

Cornell also takes note of the public statements of Senators McCaskill, Gillibrand, Blumenthal and others, promising to introduce legislation as soon as the roundtables are concluded. We would like to use this opportunity to comment on some of the provisions that have been mentioned as likely to be included this legislation.

Mandatory climate survey: Recognizing that victims often do not report their sexual assault, and therefore reports to authorities do not provide a complete measure of the problem, the White House Task Force strongly recommended that colleges and universities conduct a climate survey during the next school year to determine the prevalence of sexual assault on campus and to test students' attitudes and awareness about the issue. The Task Force provided a tool kit¹² for developing and conducting the survey, and the Justice Department will work with campuses as they conduct, evaluate, and refine the survey methodology. The end result will be a valid climate survey that all colleges and universities can use.

We agree that climate surveys are useful instruments for colleges to determine the scale of a problem. Cornell recently commissioned a climate survey on diversity¹³ that touched on sexual assault. Based on this experience, we would recommend that if Congress mandates a survey, some guidelines or controls – similar to the best practices recommended by the White House – are put in place so that the survey is designed properly to collect the data necessary to define the problem. Not all schools have the staff and resources as Cornell through our office of Institutional Research and Planning, so we urge you to be mindful of the burden that a survey can impose on both students and staff. To the extent possible, it would be helpful to combine a survey on sexual assault with other surveys that institutions offer on a regular basis.

Simplification and clarification of Clery Act/Campus SaVE reporting requirements and Title IX responsibilities: We agree that compliance with the Clery Act and Title IX can be confusing, particularly when multiple jurisdictions and conflicting definitions are involved. The Cornell University Police (“CUPD”) prepares and distributes the Annual Security Report, *Campus Watch*, and crime statistics as required by the Clery Act.¹⁴ CUPD collects statistical information from campus security authorities and local municipal

¹¹ Department of Education, Office of Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, January 19, 2001.
<http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>

¹² <https://www.notalone.gov/assets/ovw-climate-survey.pdf>

¹³ <http://diversity.cornell.edu/sites/default/files/Qualitative-Study-of-Student-Climate-Full-Report.pdf>

¹⁴ <http://www.cupolice.cornell.edu/file/CampusWatch2013-081913.pdf>

police departments. The crime data is displayed in the format required by the Department of Education and often differs from data reported under federal or state Uniform Crime Reporting programs because the Department of Education requires the inclusion of information that does not have to be reported under those programs. Some clarification and simplification in this regard could be helpful, particularly if it leads to uniform crime definitions. As you are thinking about new requirements, however, we remind you that the Campus SaVE regulations – which were the product of painstaking negotiations – will be finalized on November 1. Those regulations go far beyond data collection and include procedural and training requirements that overlap significantly with the Department’s Title IX guidance. We would urge you to wait until the new rules have had a chance to take effect before making further changes in these areas.

Cornell University has appointed a Title IX coordinator team who addresses faculty, staff, and student (including athletics) concerns related to sexual harassment, sexual assault and other actions that fall under Title IX. We make the names, contact information, and responsibilities of the Title IX team readily available to students, faculty, and staff.¹⁵ It would not be difficult to link Cornell’s Title IX information and resources into a national database maintained by the Department of Education. There are membership organizations, such as the Association of Title IX Administrators (ATIXA), that have built a database of Title IX coordinators, share best practices, and provide training and professional development. We encourage you to build on these efforts, rather than add new requirements that duplicate or overlap with existing resources.

We commend the White House Task Force for taking a giant step toward transparency with the launch of NotAlone.gov. This website makes Title IX enforcement data (including resolution letters and agreements) public and includes a step-by-step guide for filing a Title IX complaint with the Office of Civil Rights and the Department of Justice. We believe that this guidance – along with increased media attention – will increase the number of Title IX suits filed against campuses, and that it will not be necessary to lower the standards set in *Davis v. Monroe County Board of Education*.¹⁶ In addition, the Department of Education is strengthening its enforcement procedures by entering into a formal memorandum of understanding with the Department of Justice setting out each agency’s role in enforcement of Title IX. Similarly, the Departments will establish a procedure to coordinate information sharing and enforcement of the Clery Act. We hope that you will closely monitor these efforts as they take root before imposing new requirements.

Codification of “preponderance of evidence” standard for adjudicating sexual assault cases: As mentioned above, Cornell recently revised its policies to adopt a single investigator model that uses the preponderance of evidence standard for adjudication of student sexual misconduct cases. The revision was informed by the guidance provided

¹⁵ <http://share.cornell.edu/policies-laws/title-ix/>
<http://diversity.cornell.edu/commitment-to-inclusion/coordinator-statement>

¹⁶ 526 US 629 (1999).

by the Department of Education, but the change came only after much debate and careful consideration. The Department recently supplemented and clarified this guidance with an extensive FAQ that answers many of the questions with which we struggled with as we revised our policy. Even if Congress does not codify the preponderance of evidence standard, the Department's guidance should give schools the confidence to adjust their policies.

Further, Cornell respectfully reminds Senators that not all colleges and universities are the same, and would caution against requiring a single sexual violence policy. The White House Task Force makes a number of suggestions, including a sample reporting and confidentiality protocol¹⁷ and a checklist for developing a sexual misconduct policy¹⁸ that can be adapted to each college's circumstances. The White House Task Force report said that the Administration will continue to roll out additional training programs, resources, and other useful information through the year. We would encourage the Senate to build on these efforts and provide resources for the Departments of Justice and Education to develop and deploy tools, training programs, and other best practices for colleges to strengthen their sexual assault response and prevention programs.

Partnering with Local Law Enforcement: Senators have suggested that campus police should enter into formal Memoranda of Understanding ("MOU") with local law enforcement agencies to facilitate communication and coordination between investigative bodies. Cornell's campus is very large and spans several different law enforcement jurisdictions. Our police force has long-standing and positive relationships with the area municipal police departments, the New York State Police, and various federal law enforcement agencies. CUPD has a limited MOU with the Ithaca Police Department, which identifies areas where collaboration is possible within its jurisdiction as set forth in New York law. There are limits, however, as our local police are not bound by the Department of Education's rules and regulations, and CUPD cannot enter into agreements that are not sanctioned by New York State law. The White House Task Force said that it would publish a sample MOU with local law enforcement by the end of June. Again, keeping in mind that all campuses and communities are different and must comply with the laws of our home states, the White House's language could provide helpful direction. Cornell looks forward to reviewing the model policies when they are made available.

Increased resources: We understand that Senators are concerned about the lack of resources at the Department of Justice and the Department of Education for enforcement and oversight of Title IX and the Clery Act. Efforts to beef up enforcement – including increased fines for noncompliance – should be coupled with incentives for higher education institutions for training, education, programming around prevention, law enforcement, and research. The revenue raised through increased fines should be funneled back into these incentive programs. We also strongly urge you to target

¹⁷ <https://www.notalone.gov/assets/reporting-confidentiality-policy.pdf>

¹⁸ <https://www.notalone.gov/assets/checklist-for-campus-sexual-misconduct-policies.pdf>

education and prevention programs at middle and high schools to begin to address cultural issues surrounding sex, alcohol and controlled substance usage, and consent before students arrive at college. This would ensure that boys and girls who do not go to college hear the same messages as their classmates who pursue higher education.

Conclusion

Cornell University does not tolerate sexual abuse, rape, sexual assault, domestic violence, intimate partner violence, stalking, sexual coercion, or other forms of sexual violence by or against students, staff, faculty, alumni or visitors. We share the responsibility for creating a safer, more caring campus culture in which bias, harassment, and violence have no place. We thank you for your attention and careful consideration of the issues involved in preventing and responding to sexual violence on college campuses. Cornell University stands ready to assist you in any way as you move forward with legislation or other policy changes.