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TESTIMONY
*“Preventing and Responding to
Sexual Violence and Sexual Assault”*

The Committee on Health, Education, Labor, and Pensions
United States Senate

Submitted for the record
by

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Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify before the committee on the extremely important issue of sexual violence and sexual assault on college and university campuses. I am Janet Napolitano, President of the University of California. Recognized worldwide for its academic distinction, the University of California includes more than 238,000 students, 198,300 faculty and staff and 1.6 million living alumni. UC has 10 campuses at Berkeley, Davis, Irvine, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Cruz and Santa Barbara; five medical centers, which provide broad access to specialized care, support clinical teaching programs, and develop new therapies; the Division of Agriculture and Natural Resources (ANR), which administers research, education and outreach programs throughout California; and three national laboratories UC manages for the Department of Energy.

I have been asked to testify today on the efforts the University has undertaken to implement a consistent and transparent model for preventing, responding to, and reporting incidents of sexual violence and sexual assault on our campuses. First let me state that the UC system has no tolerance for sexual violence and sexual assault, and I see the issue of sexual violence and sexual assault on colleges and universities as a matter of national importance. In fact, looking at the totality of sexual violence, including stalking, dating violence, domestic violence, and sexual assault, this constitutes a serious public health issue in this country.

Recognizing this, in June 2014, I formed a systemwide Task Force to develop recommendations for implementing strategies to support excellence in prevention, response, and reporting of sexual violence and sexual assault, based on evidence-informed solutions and approaches, and to identify steps to improve UC's current processes in order to drive cultural change in sexual violence and sexual assault prevention. The University of California was taking steps to improve its prevention, response, and reporting efforts even prior to the creation of the Task Force.

For example, in February 2014 UC significantly broadened and clarified its policy against sexual violence and harassment to include domestic violence, stalking and date rape. With this policy revision, UC also adopted an affirmative consent standard that defines consent as unambiguous, voluntary, informed and revocable, before California enacted its "Yes Means Yes" law. This policy was revised to comply with the requirements outlined in the Campus SAVE Act, as part of the 2013 Reauthorization of the Violence Against Women Act (VAWA) and incorporates guidance from the Department of Education's Office of Civil Rights April 4, 2011, Dear Colleague Letter.

The UC Task Force is led by Senior Vice President and Chief Compliance and Audit Officer, Sheryl Vacca, who reports directly to me and to the UC Board of Regents. To be successful in a system as diverse and large as the University of California, we knew that it required a range of expertise and participation. Task Force members were selected based on their subject matter function and expertise. They include representatives from the UC Regents, survivors, students (undergraduate and graduate), campus police chiefs, Title IX officers, student conduct officers,

advocates, faculty, legal, compliance, human resources, academic affairs, and student affairs. In addition, additional subject matter work groups, student groups, affinity groups, and faculty research expertise are incorporated into the overall approach of the Task Force.

I wanted to ensure that students are actively involved in the process at both the undergraduate and graduate level from multiple UC campuses. The student perspective is vital to help the University continuously review and improve its efforts.

I gave the Task Force a very firm—and short—timeline to make significant changes across the system, and I believe that over the course of the last year the Task Force has made outstanding progress in meeting that charge. To meet this demanding timeline, the Task Force and its work groups met regularly over the summer of 2014 to develop its initial recommendations and plan of action. The campuses were then directed to implement the first phase of recommendations on a set timeline with a report back to my office and the UC Regents in January 2015. The remaining recommendations will be implemented no later than January 2016.

In September 2014, the Task Force identified seven initial recommendations that form the foundation for the overarching UC model, which are to:

1. Establish a consistent “response team” model at all 10 UC campuses. This model utilizes two teams with different functions. The first is a case management team responsible for ensuring timely, objective, and fair institutional responses for survivors and respondents. The second is responsible for guiding the campus in preventing and responding to sexual violence at a campus level with respect to policies, community relations, prevention and intervention.
2. Adopt systemwide investigation and adjudication standards, including sanctions.
3. Develop a comprehensive training and education plan for the UC community including students, staff and faculty that focuses on prevention and intervention and is specifically tailored to each population and includes on-going education.
4. Implement a comprehensive communication strategy to educate the community and raise awareness about UC programs. The strategy leverages national, UC system, and campus communication efforts including the White House campaign, *It's on Us*, and *Yes Means Yes*.
5. Establish an independent, confidential advocacy office for sexual violence and sexual assault on each campus that is available to student survivors on all UC campuses.
6. Create a comprehensive systemwide website to provide general content, information and resources to all campus populations that can also be customized for each campus.
7. Develop a systemwide standard data collection system that leverages current information collected, which will allow the campuses and the University system to better track claims of sexual assault and foster accountability and transparency.

In January 2015, the Task Force provided further detail on implementation of the recommendations, which builds on current strengths of the campuses and focuses efforts on enhancing or overhauling, as appropriate, existing efforts throughout the system. At that time four of the recommendations had been implemented, including the CARE Advocate, consistent

response team models, the communication strategy, and the systemwide website. Additionally, the Task Force identified an eighth recommendation: the importance of ensuring that respondents receive appropriate support based on their circumstances.

I would like to highlight the work of the Task Force and the campuses in implementing the recommendation to establish a “CARE: Advocate Office for Sexual and Gender-Based Violence and Sexual Misconduct” at every campus. These full-time CARE Advocates have received the training required to be confidential and privileged on-campus advocates for survivors of sexual violence and sexual assault. They utilize a trauma-centered approach to work with and meet students’ needs and they are available to UC students on a 24/7 basis. This responds to what the Task Force specifically heard from students—that they wanted more on-campus resources. The implementation of this recommendation is also in line with legislation introduced by Senator Barbara Boxer and Representative Susan Davis, the Survivor Outreach and Support Campus Act (SOS Campus Act), and could serve as a model for the nation.

Last week, the UC Board of Regents received an update on the four remaining Task Force recommendations. These included updates on the adoption of investigation and student adjudication standards—including a consistent approach to sanctions—across the UC system. The Task Force also reported on the development of a common educational framework with standardized content goals, objectives, and definitions for mandatory annual education for faculty, staff, and students. This means that more than 400,000 faculty, staff, and students will receive education around preventing and reporting sexual violence and sexual assault. The update also outlined progress in providing support services for respondents—important to ensure that all parties receive appropriate support and information during the investigation and student adjudication process. These recommendations will be fully implemented by January 2016.

The work of the Task Force is not finite and the members will continue to monitor progress, gather metrics, and review implementation. They will focus on evaluating the new changes put into place and will work with researchers and other experts to assess the effectiveness of the changes made across the University of California. We want to make sure our efforts are making a positive difference—and indeed changing the culture across our campuses.

The University did not operate in a vacuum in developing and implementing these changes to our processes and approach to addressing sexual violence and sexual assault. Research and review of current practices across the country were of paramount importance to the work of the Task Force. There is a myriad of interconnected psychological, social, emotional, legal, and administrative issues involved in trying to understand how best to prevent and respond to sexual violence and sexual assault. The Task Force reviewed relevant core concepts, current UC processes, practices from other universities, and academic research. The Task Force consulted with constituents and experts both within and outside the University and evaluated and discussed specific issues that cross functionalities, processes, and responsibilities throughout the system. The Task Force focused on identifying practices which would reflect outcomes demonstrating effectiveness.

The Task Force and its work groups reviewed sexual violence and sexual assault prevention practices from 115 universities across the nation. These universities received grants from the Centers for Disease Control and Prevention (CDC) or the U.S. Department of Justice (DOJ) Office of Violence Against Women (OVW) to address some portion of sexual violence and sexual assault.

Academic research linked to sources from the *White House Task Force on Sexual Assault and Violence Prevention*, as well as accepted “evidence-informed” research of best practices on policies, training and education, case management, and survivor support, was reviewed throughout the Task Force’s work. The Task Force also called on various internal and external experts to advise on and review various parts of the recommendations. As new studies, reports, and campus agreements from the U.S. Department of Education’s Office of Civil Rights (OCR) were unveiled, these too were reviewed and incorporated into the Task Force’s efforts.

State Legislative Activity

The Task Force continues to develop plans and strategies for implementing the remaining recommendations even while the legal landscape is changing based on legislation that has been enacted or proposed at both the federal and state levels. California state law continues to evolve in this area. In January 2015, the state’s “Yes Means Yes” bill became effective. The law now requires colleges and universities to adopt certain policies concerning sexual violence, domestic violence, dating violence, and stalking, such as an affirmative definition of consent and a preponderance of evidence standard. The bill also requires UC and other institutions to collaborate with campus and community organizations and implement comprehensive prevention and outreach programs. UC, having already adopted an affirmative consent policy in addition to many of the other requirements of the bill, supported the legislation.

The California legislature continues to contemplate legislation addressing campus sexual violence, including legislation introduced this year that seeks to require colleges and universities to carry out uniform processes for disciplinary proceedings and consistent standards of discipline for students found responsible for sexual assault. The California legislature is also considering a bill that would require a student’s transcript to include a notation when that student has been suspended or expelled.

Federal Legislative Activity

The University of California is committed to fostering a healthy and inclusive environment where all members of the University community can work and learn together free from harassment, exploitation, intimidation, or physical harm. UC supports federal proposals to help all institutions of higher education navigate the complex set of issues they face in preventing, responding to, and reporting incidents of sexual violence and sexual assault. UC also supports broader coordination and accountability among other partners in this endeavor, such as prosecutors and the courts.

Before outlining my views on S. 590, the Campus Safety and Accountability Act, or CASA, which is the subject of this hearing, I would like to note UC’s underlying principles:

- Federal legislation must be flexible enough to allow for institutional differences, yet strong enough to ensure full accountability.
- Existing rules and regulations now in place through the Higher Education Act, including for example, the Clery Act and Title IX, along with the Violence Against Women Act (VAWA) and Department of Education oversight through the Office of Civil Rights (OCR) must be better coordinated. The definitions, regulations, program guidance, timelines, and other programmatic components are not synched, resulting in overlapping investigations, confusing interpretations, and at times contradictory legal advice. The Department of Education could begin—even before federal legislation is enacted—to streamline its internal procedures to better guide institutions toward full compliance with current laws and regulations.
- Any new laws or regulations must not “undo” or contravene programs and policies institutions have implemented that are based on sound research and represent best practices for action. With MOUs, as one example, there must be flexibility for compliance based on what is already in place, and assurances that if federal guidance and standards are adhered to, they will stand up against challenges from the courts.

UC Views on CASA

Implementation of the Task Force recommendations I have outlined brings the University of California into voluntary compliance with many of the provisions of the Campus Accountability and Safety Act (CASA), which are aimed at enhancing campus resources and support services for student survivors.

The Task Force recommendations that will be implemented at UC over the next months, including developing a comprehensive education and training program on each campus and unified investigation and student adjudication standards, build on that progress. UC looks forward to working with Senator McCaskill, Senator Gillibrand and the other co-sponsors of CASA on the provisions of the bill.

Here are UC’s comments on the legislation as it now stands:

Support for Survivors of Sexual Assault

UC strongly supports CASA’s requirement for institutions of higher education to designate a confidential advocate that survivors can report to anonymously and directly. I am pleased that the legislation requires each employee of an institution of higher education who has responsibility for conducting an interview with an alleged victim of sexual violence to complete minimum training requirements in victim-centered, trauma-informed interview techniques. This is consistent with what we have implemented on our own campuses.

However, the University does have a few comments and concerns with other aspects of this provision:

- The level of “confidentiality” these advisors can maintain may be dependent on federal and state law. Any legislation in this area must ensure that the “confidentiality” of services provided by these advisors is clearly defined by the institution and shared with students in plain language.

- UC does not believe that institutional size should be the determinant factor for the number of confidential advisors on a campus. CASA would direct the Department of Education to define, through a negotiated rulemaking process, an “adequate number” of confidential advisors that an institution must appoint based on the institution’s size. While institution size is one of many factors, instead, as the UC Task Force recommended, the staffing level should be sufficient to provide support at any time of day for all survivors given the size and needs of the individual campus.
- The University is concerned that the legislation’s requirement that the confidential advisors collect and report statistics about crimes as required by the Clery Act may diminish the perceived confidentiality of the advisor. I cannot stress enough the importance that these advisors must be confidential and independent. While a confidential advisor is not obligated to report crimes to the institution under CASA, they would still have to report crime statistics as part of the Clery Act, which may make students feel the advocates are not confidential and independent.

Amnesty Policy

UC is pleased CASA’s amnesty requirement is narrow enough in scope to preserve an institution’s ability to protect the health and safety of its campus community. UC policy and California law already have existing amnesty provisions that ensure that a student who is a complainant or witness in an investigation of sexual violence is not subject to disciplinary sanctions for violations of student codes of conduct at or near the time of the incident. However, both California state law and UC policy allow the institution some flexibility for egregious violations such as an action that places the health or safety of any other person at risk. Federal law should not contradict or undo stronger provisions in state law.

Student Disciplinary Proceedings

As evidenced by the steps the UC Task Force is taking to develop consistent student adjudication and investigation standards, including disciplinary proceedings, I support CASA’s provisions related to developing common, consistent practices and standards in response to sexual violence across campuses. Further, I am pleased that the current version of CASA has clarified that the provisions apply to student proceedings. As previously noted in my testimony, this is another area where state law and UC policy are already moving in this direction and so I caution against any action in federal legislation that may undo those actions we have already taken.

Data Collection and Reporting

CASA would require institutions to report sexual violence and sexual assault statistics—such as the number of cases investigated by the institution, the number of cases referred for a disciplinary hearing, the number of cases referred to law enforcement, and a description of the final sanctions imposed on sex offenses—in their Annual Security Reports required by the Clery Act. The University believes that the collection of data is vital for ensuring accountability and transparency and for evaluating our institutional efforts to prevent and respond to incidents when they occur. In fact, proposed state law in California would require the collection of similar statistics and that the data be posted to the University’s website.

UC is concerned, however, that data required for collection in the Clery Act can lead to false or inaccurate conclusions. For example, not all of the sex offenses reported as Clery Act crimes are subject to institutional disciplinary proceedings—for example, if the accused offender is not a UC student. New proposed statistics could result in the mistaken conclusion that an institution is not appropriately addressing all reported student sex offenses. Consequently, we must ensure that any additional requirement to collect statistics on Clery Act offenses be consistent and clear so that the data does not result in misleading comparisons of unrelated information. Further, should state legislation pass, we may be required to collect and report different, though somewhat similar, data points in different manners which could create confusion to those individuals reviewing such information.

Surveys

CASA requires that the Department of Education develop, design and administer a standardized, online, annual survey of students regarding their experiences with sexual violence and harassment every two years. Having just conducted the largest university system climate survey of its kind in the nation, I have significant concerns about the usefulness of a single survey developed for all institutions given the broad diversity in higher education institutions across the nation and the student populations they serve. UC surveyed not only students, but also faculty and staff about their experiences and perceptions of the campus or workplace climate. We now have a rich baseline of data that campuses are analyzing to identify key areas of focus. Institutions should be allowed to develop and use their own climate surveys, as long as they meet criteria and standards defined by the Department of Education and are developed in consultation with stakeholders. Further, I believe that it is inappropriate for the legislation to place the responsibility on the university for ensuring that an adequate, random, and representative sample size of students enrolled at the institution completes the survey. This requirement could compromise the perceived anonymity of the survey and would be especially challenging if the survey would be administered by the Department of Education and not the institutions.

Memoranda of Understanding with Law Enforcement

CASA would require institutions to enter into and review every two years memoranda of understanding (MOU) with “each law enforcement agency that has jurisdiction to report as a first responder to a campus of the institution” to clearly delineate responsibilities and share information about certain serious crimes that shall include, but not be limited to, sexual violence. As noted earlier in my testimony I strongly believe in the importance of MOUs between institutions of higher education and local law enforcement. However, the University is concerned that the specific provisions of CASA fail to recognize that many colleges and universities employ fully sworn peace officers.

The University of California, like many university police departments nationwide, employs fully sworn law enforcement officers with full arrest powers and primary jurisdiction for first-response and law enforcement on their campus. According to a survey by the Bureau of Justice Statistics, this is especially true for large public colleges and universities, and in the 2011-12 school year, 68 percent of the more than 900 U.S. four-year universities and colleges with 2,500 or more students employed sworn law enforcement officers who had full arrest powers granted by a state or local government.

UC police officers are trained and certified consistent with the California Commission on Peace Officer Standards and Training requirements and they investigate incidents of sexual assault and other felony and misdemeanor crimes as both first responders and as trained and experienced criminal investigators. As with local law enforcement, University police follow response and investigative protocols established in the county of jurisdiction, including collaboration with the County District Attorney's office, adherence to county guidelines for sexual assault evidence collection and medical examination by specially trained medical personnel, and collaboration with other law enforcement agencies as appropriate to increase the likelihood of bringing offenders to justice.

CASA's requirements for an MOU that would allow local law enforcement agencies to dictate "training and requirements for the institution on issues related to sexual violence" is unnecessary and fails to recognize the campus police department's primary law enforcement responsibilities for the institution. At UC, our campus police departments are included in our sexual violence and sexual assault training. They receive investigation training, trauma informed training, training from the California Commission on Peace Officer Standards and Training, and mandated training regarding sexual violence and sexual assault, which is much more than may be required through CASA and the training is more focused on the areas that need to be emphasized.

Campus Security Authorities and Responsible Employees

CASA would designate all responsible employees of institutions of higher education as campus security authorities (CSAs) as defined by Clery Act regulations, which encompasses a very large number of employees. The University is concerned that this broadening of the CSA definition would require significant changes in the way UC campuses train CSAs and could unnecessarily complicate the processing of Clery reports because all CSAs must report statistics for the Clery Act. Additionally, CASA gives the Secretary of Education, in coordination with the Attorney General, responsibility for determining the minimum training requirements for an institution's "responsible employees." In order to be most effective, I believe that these minimum training requirements should be developed in consultation with institutions and other affected stakeholders. This ensures that the training requirements are based on a clear understanding of institutional practices, challenges faced by "responsible employees," and the needs of the victims.

Grants to Improve Prevention and Response to Sexual Violence and Sexual Assault

UC welcomes the opportunity for outside funding to augment our current programmatic efforts via a new competitive grant program authorized in CASA. The program would allow institutions of higher education to apply for grants for the purposes of researching best practices for preventing and responding to sexual harassment, sexual assault, domestic violence and stalking on college campuses and disseminating such research with peer institutions.

Penalties

CASA would authorize new civil fines of not more than one percent of an institution's "operating budget," as defined by the Department of Education, for:

- violations of Title IX related to sexual violence;

- failure to comply with CASA requirements for establishing MOUs with law enforcement; and
- failure to comply with CASA requirements related to confidential advisors.

I am pleased to see that CASA place the funds into the grant program created in the legislation.

Stakeholder Engagement

UC recommends that the bill require the Department of Education to consult with institutions and other affected stakeholders prior to implementing any new policies or regulations for CASA. This is the best way to ensure that any new institutional requirements are based on a clear understanding of institutional practices and challenges, as well as the needs of the victims and respondents.

Additional Recommendations

The University of California is not unique in its desire to protect its community and improve its practices. UC has strived to implement a robust, comprehensive, consistent, and transparent model to address sexual violence and sexual assault across the University. Much of the work that has and continues to occur at UC can serve as a model for the nation, though much more needs to be done by all universities.

For example, we need more engagement on the law enforcement and legal fronts. At UC, our activities to prevent and respond to sexual violence and sexual assault are well coordinated with our local law enforcement agencies, and this is a key component of our efforts. As I already explained, UC police officers are fully sworn and trained law enforcement personnel who respond to and investigate all crimes, including cases of sexual violence and sexual assault. They also work with other law enforcement agencies as needed. However, as effective as they are, they do not prosecute crimes.

In this spirit of partnership, back in May, California Attorney General Kamala Harris and I unveiled a new toolkit for California law enforcement agencies and higher education institutions to help them improve their coordination and collaboration in response to cases of campus sexual assault and other violent crimes. The template MOU is available but not required if a campus already has agreements in place with local law enforcement that address this type of collaboration and information sharing. It is designed so that it can be adapted to meet local needs, ensure consistency with existing agreements, or revisit existing agreements to reconcile changes in law or policy. In addition to covering various law enforcement entities, if needed, MOUs can be set with District Attorneys, local medical facilities, or other community-based organizations. Using the model MOU will reflect a shared commitment among the parties to justice for survivors and accountability for perpetrators of sexual violence and build trust and ensure appropriate outcomes for criminal acts of sexual violence and sexual assault.

As I stated earlier, much more could be done to improve the clarity and coordination of existing laws and policies. Within the Department of Education, the Clery Act, Title IX, VAWA, and OCR investigations use different definitions, coverage, and reporting requirements, and there is no coordination of investigations between the federal government and individual states. For

example, this can create great confusion because reporting obligations under OCR guidance is driven by who is the victim or perpetrator and under Clery reporting is based on where an incident occurs. Individuals may have obligation to report under one or both. In addition to the fact that there is significant confusion at institutions about what is “recommended” or “preferred,” there are legal and financial implications to this lack of regulatory coordination.

Congress must be aware that there is substantial interplay between federal legislation and regulations and state laws, which adds another layer of complexity to higher education’s efforts to address this important issue. Institutions, in following federal guidance and rules and regulations, should not unintentionally run afoul of state legal and administrative requirements.

I am concerned that an entire cottage industry of consultants has grown to “help” schools manage sexual violence and sexual assault. Personally, I would rather invest the university’s resources in education, training, and prevention programs rather than in untangling the web of overlapping state and federal audits, investigations, and laws.

Conclusion

UC holds itself to the highest standards and will continue to work to ensure that all of our campuses, medical centers, and labs maintain a culture of respect and inclusion. We will continue to review and improve our efforts and practices to make sure UC is a place where all students, faculty, and staff are safe.

Thank you very much for your time and attention to my testimony.