

Committee on Education
May 8, 2015

COUNCIL OF THE CITY OF PHILADELPHIA
COMMITTEE ON EDUCATION

Room 400, City Hall
Philadelphia, Pennsylvania
Friday, May 8, 2015
2:10 p.m.

PRESENT:

COUNCILWOMAN JANNIE L. BLACKWELL - CHAIR
COUNCILWOMAN BLONDELL REYNOLDS BROWN - VICE
COUNCILMAN MARK SQUILLA

RESOLUTIONS: 141045

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2 COUNCILWOMAN BLACKWELL: Good afternoon.
3 Thank you everyone for coming. The
4 Committee on Education calls the -- this
5 meeting in order with regard to Resolution
6 141045 that was introduced by Vice Chair of
7 this committee and my colleague Councilwoman
8 Blondell Reynolds Brown.

9 We will now ask the clerk to read the
10 title of the resolution.

11 THE CLERK: Resolution No. 141045:
12 Authorizing City Council's Committee on
13 Education to hold public hearings regarding
14 Philadelphia's institutions of higher
15 education's policies on sexual assault and
16 the national movement towards the adoption
17 of an Affirmative Consent "Yes Means Yes"
18 policy.

19 COUNCILWOMAN BLACKWELL: Thank you very
20 much. We will now call on my colleague who
21 introduced this resolution for her opening
22 statement. And as we do, we will ask Panel
23 One to come forward. That is Michele
24 Rovinsky-Mayer, Associate VP & Title IX

1 Coordinator, Drexel University, and
2 Dimitrios Boufidis with whom I work daily at
3 Drexel University; and also the
4 representative for LaSalle University. Feel
5 free to come up to the Witness Table.

6 Thank you.

7 (Panel One approaches Witness Table.)

8 Now we'll call on Councilwoman Blondell
9 Reynolds Brown for her opening statement.

10 COUNCILWOMAN REYNOLDS BROWN: Thank you,
11 Madam Chairwoman.

12 Good afternoon. Let us welcome you to
13 these chambers and these formal proceedings,
14 to our esteemed universities and colleges in
15 the area, our guests and the Members of this
16 City Council Committee on Education. I was
17 proud to introduce Resolution No. 141045
18 related to policies surrounding sexual
19 assault on college campuses and
20 universities. It's not a week now that goes
21 by in America where we don't see a story on
22 CNN or HLN or CBS and any one of the news
23 outlets, and I pay particular attention.

24 The resolution -- this resolution was in

1 response to recent passage of California's
2 Bill No. SB-967 which was signed into law by
3 Governor Jerry Brown last September 28,
4 2014. This legislation marked a dramatic
5 shift in what constitutes consent. In the
6 past, the standard has required victims of a
7 sexual assault to proactively say no and/or
8 demonstrate verbal or physical resistance.
9 Thus the refrain "No Means No." This new
10 laws require California's higher education
11 institutions to adopt a "affirmative consent
12 standard in the determination of whether
13 consent was given by a victim," or risk
14 losing state funding.

15 Affirmative consent means affirmative.
16 Conscious -- conscious and voluntary
17 agreement to engage in sexual activity.
18 Thus, it is the responsibility of each
19 person involved in a sexual activity to
20 ensure that she or he has the affirmative
21 consent of the other partner to engage in
22 the sexual activity. Perceived lack of
23 resistance, unconsciousness or inebiat --
24 inebriation is no longer a viable defense

1 for an accused attacker. We need to repeat
2 that.

3 Perceived lack of resistance,
4 unconsciousness or inebriation -- otherwise
5 meaning being drunk -- is no longer a viable
6 defense for an accused attacker.

7 Affirmative consent must be ongoing
8 throughout a sexual activity and can be
9 revoked at any time. The existence of a
10 dating relationship between the persons
11 involved or the fact of past sexual
12 relations between them should never by
13 itself be assumed to be an indicator of
14 consent.

15 It can be argued that our current system
16 is rigged. Many would argue it is rigged to
17 protect the attacker and blame, embarrass or
18 discredit the victim. We know that one in
19 five women on college campuses will be the
20 victim of sexual assault. Thus, we need to
21 have an honest, frank, open dialogue about
22 how we unstack the deck against victims of
23 sexual assault.

24 Again, I want to thank my colleague and

1 Chair of this Committee and my staff who
2 have worked with a number of university
3 partners, the Members of this Committee and
4 all of you who have come to voice, register
5 your voice on this pressing issue that
6 remains relevant even today.

7 And with that, I will pass it back to
8 the Chair.

9 COUNCILWOMAN BLACKWELL: Thank you very
10 much. Thank you for that opening statement.
11 We have introduced our first panel, so we
12 invite you to introduce yourself and make
13 your presentation.

14 Thank you.

15 MS. ROVINSKY-MAYER: Good afternoon.

16 COUNCILWOMAN BLACKWELL: Thank you.

17 MS. ROVINSKY-MAYER: Good afternoon. My
18 name is Michele Rovinsky-Mayer. I'm
19 Associate Vice President and the Title IX
20 Coordinator at Drexel University.

21 MR. MOORE: My name is Jim Moore. I'm
22 the Vice President for Student Affairs and
23 Dean of Students at LaSalle University.

24 COUNCILWOMAN BLACKWELL: Give us your

1 name again.

2 MR. MOORE: James Moore.

3 COUNCILWOMAN BLACKWELL: Thank you.

4 MR. BOUFIDIS: Good afternoon. My name
5 is Dimitrios Boufidis. I'm the Director for
6 City Business Affairs at the Office of
7 Government and Community Relations at Drexel
8 University. And thank you for inviting us.

9 COUNCILWOMAN REYNOLDS BROWN: The office
10 of what now?

11 MR. BOUFIDIS: Excuse me?

12 COUNCILWOMAN REYNOLDS BROWN: The office
13 of?

14 MR. BOUFIDIS: Of Government and
15 Community Relations at Drexel.

16 COUNCILWOMAN REYNOLDS BROWN: Okay.

17 COUNCILWOMAN BLACKWELL: Thank you.

18 Feel free to begin your testimony.

19 MS. ROVINSKY-MAYER: Thank you,
20 Councilwoman Blackwell and Councilwoman
21 Reynolds Brown for convening this hearing
22 and for inviting Drexel University to
23 provide testimony on such an important and
24 critical issue as sexual assault prevention

1 at Philadelphia's institutions of higher
2 education. I'm happy to be here.

3 Drexel University takes seriously its
4 obligation to address issues of sexual
5 violence and misconduct and to do everything
6 it can to ensure the safety of our students
7 and other members of the university
8 community. We have spent considerable
9 effort and resources trying to grant the
10 issues surrounding sexual violence and
11 misconduct on our campus the consideration
12 they deserve.

13 On our own initiative, we hired national
14 experts to take a look at our policies and
15 procedures to identify areas where we can
16 improve our prevention and communication
17 efforts and our response to and process
18 around sexual assault complaints. They
19 promptly got to work implementing the
20 recommendations that were made.

21 At Drexel University, we believe that it
22 isn't enough for the university to simply
23 respond to reports of sexual violence and
24 misconduct when they occur. Our goal is to

1 do everything we can to ensure that we are
2 building a culture in which these types of
3 behaviors are not ignored or allowed to
4 flourish under the radar.

5 To that end, we have doubled our focus
6 on education and training all members of
7 Drexel community, not just students about
8 our culture, policies and processes as they
9 relate to sexual violence and misconduct.

10 We are in the process of improving our
11 training to reach all incoming students so
12 they are aware of the issues and prepared to
13 function as positive members of the
14 community as soon as they come through the
15 door.

16 As part of the recommendations we
17 received from the outside experts, there was
18 a modification of our policy, our Sexual
19 Harassment and Misconduct Policy. And our
20 current definition of consent includes that
21 it must be an affirmative consent and that
22 that affirmative consent, whether -- whether
23 verbal or through clear and unambiguous
24 actions, needs to exist throughout the

1 conduct and any contact that the individuals
2 may have. We are currently training not
3 only our students but our faculty and
4 professional staff on that change in our
5 policy.

6 We are also focused on educating our
7 faculty, employees and our professional
8 staff. We have also focused heavily on
9 bolstering our culture through ongoing
10 trainings. Our Title IX team has been
11 working hard to conduct targeted and
12 in-person education program for specific
13 campus groups who have substantial contact
14 with students such as academic advisers, the
15 athletics department, faculty members,
16 fraternities and sororities, residential
17 living staff and student peer leaders.

18 In fall 2015, we will launch our new
19 online training that will educate our
20 university faculty, professional staff and
21 students on Title IX and the Violence
22 Against Women's Act. This training will be
23 required of all employees and all new
24 employees will be required to complete it

1 within 90 days of their hire. We are
2 implementing a Bystander Intervention
3 Program to educate students, faculty and
4 professional staff in the dynamics of sexual
5 violence and the ways in which that we can
6 all work to help stop these incidents before
7 they occur.

8 Prevention is the key piece of
9 everything we do in this area, so
10 strengthening and expanding our outreach to
11 touch more community members is always at
12 the forefront of our efforts.

13 In April 2015, the University joined in
14 the national month long educational effort
15 focused on sexual assault awareness and
16 prevention and launched its own Title IX
17 communication campaign, "See Something, Hear
18 Something, Know Something, Say Something,"
19 to raise awareness of the resources and
20 reporting options on campus.

21 The University maintains an online Title
22 IX resource page with information on both
23 on-campus and off-campus resources. We held
24 focus groups with students and informal

1 meetings to understand their perspectives on
2 this issue, and have been designing our new
3 training programs with this information in
4 mind. Beyond education and training, we
5 have revamped our reporting procedures to
6 centralize the flow of information in a way
7 that respects everyone and ensures that we
8 aren't allowing individuals affected by
9 these issues to fall through the cracks.

10 Our Office of Equality and Diversity is
11 the hub of our centralized process. And our
12 Title IX coordinator, myself, oversees that
13 office. Drexel provides both confidential
14 and private but not confidential reporting
15 options and publicizes those options broadly
16 to the university community. The university
17 also maintains a hotline for anonymous
18 reporting. The university mandates that
19 certain employees refer reports of sexual
20 misconduct directly to the Office of
21 Equality and Diversity.

22 Once a report of sexual assault is
23 received by the Office of Equality and
24 Diversity, we do a preliminary assessment to

1 understand the basic facts and any safety
2 issues to determine what, if any, interim
3 measures need to be put in place. Interim
4 measures can include a no contact order,
5 residential and academic accommodations,
6 interim suspension or other necessary steps
7 to ensure the safety and well being of the
8 individuals involved and the greater
9 university community.

10 We ensure that members of our community
11 know that the criminal and university
12 processes are complementary. That a victim
13 of sexual violence and misconduct has a
14 right to file a criminal complaint. And if
15 the actor is a member of our university
16 community, a complaint under university
17 policy, as well. The Title IX Coordinator
18 and Public Safety work collaboratively with
19 the Special Victims Unit of the Philadelphia
20 Police Department to support victims in
21 pursuit of criminal process.

22 We ensure that members of our community
23 know the resources and processes available
24 to them to address the trauma of sexual

1 violence regardless of whether they want to
2 pursue the criminal or university process.
3 We have hired personnel specifically trained
4 in issues of sexual violence and misconduct
5 to investigate reports and provide resources
6 to those community members who are affected
7 so that we can effectively address incidence
8 of sexual violence and misconduct when they
9 occur and minimize future disruption and
10 harm to those involved.

11 We have formed an integrated team of
12 individuals from various areas and levels of
13 the university to address reports as they
14 arise and to manage individual cases as they
15 move through the various aspects of the
16 process. Our Title IX team is activated by
17 the university's Title IX Coordinator and
18 includes representatives from office such as
19 Public Safety, Dean of Students, Counseling
20 and Health and Residential Living among
21 others. We have made our Title IX
22 Coordinator a part of the President's
23 cabinet, so that we are making sure that the
24 problem of sexual violence and misconduct in

1 our community is always a part of the
2 discussion at the highest levels.

3 I now want to speak to the equity and
4 fairness that is a critical component of our
5 process. It is important to as a university
6 that our process is balanced and fair to
7 both parties involved in an allegation of
8 sexual assault or misconduct. And our
9 approach to investigating reports emphasizes
10 a process that is fair, accurate and
11 thorough.

12 Our investigative process is structured
13 away that information is gathered and
14 considered in a reliable way by an
15 experienced investigator. We have multiple
16 levels of independent review incorporated
17 into the process. In particular, serious
18 cases we utilize independent external
19 adjudicators to determine whether an
20 individual is responsible for the conduct
21 that has been reported and to help determine
22 what sanctions may be appropriate. Our
23 system also sets out an appeal process which
24 provided for an additional layer of

1 independent review before a case is
2 finalized.

3 It is also important to note that we
4 provide resources and information to all
5 parties to a report of sexual violence or
6 misconduct whether they are the individual
7 who has made a report or against whom a
8 report has been made so that they are able
9 to continue their education or employment as
10 appropriate while the process plays out. In
11 short, we utilize a multi-layered approach
12 carried out by trained and objective
13 personnel to ensure that we are treating
14 every individual in our process with the
15 appropriate level of fairness and
16 objectivity.

17 We have taken a comprehensive approach
18 to a difficult and complicated problem.
19 There is always room for improvement, and we
20 are not finished trying to make our process
21 better. But we think the early indications
22 are that our efforts are working. We will
23 be doing an annual assessment of our
24 policies and processes to reflect and

1 incorporate lessons learned from the current
2 year and evolving law and guidance.

3 Thank you again for giving me the
4 opportunity to testify on such an important
5 topic.

6 COUNCILWOMAN BLACKWELL: Thank you very
7 much. We will take all the testimony and
8 then ask questions if there are any.

9 Thank you.

10 MR. MOORE: You ready?

11 COUNCILWOMAN BLACKWELL: Yes.

12 MR. MOORE: Thank you for the
13 opportunity to be here and for raising this
14 important topic. I have -- I believe you
15 have copies --

16 COUNCILWOMAN BLACKWELL: Oh, excuse me
17 one moment. Let me note that Councilman
18 Mark Squilla is here, who's also on this
19 committee and we're very glad to have him.

20 MR. MOORE: Thank you.

21 COUNCILWOMAN BLACKWELL: Mr. Moore.

22 MR. MOORE: I believe you have copies of
23 my testimony.

24 COUNCILWOMAN BLACKWELL: Yes.

1 MR. MOORE: And I'm not going to read
2 through this, but I would like to
3 highlight --

4 COUNCILWOMAN BLACKWELL: Thank you.

5 MR. MOORE: -- a few parts of this.

6 And in the student affairs profession
7 for decades we have been working on Title IX
8 issues. And in recent years as the Violence
9 Against Women Act have been developed, we
10 have incorporated that into our planning.

11 And so, this has been a topic of
12 conversation, many national meetings, of
13 training programs and of college campuses
14 across the country and in the city and
15 certainly on our campus.

16 And so, as the implementation date of
17 this legislation approached this past year,
18 we looked at a variety of ways to address
19 this. Last summer, a group of faculty and
20 staff worked all summer to provide us some
21 guidance. And so, one of the
22 recommendations in the area of student
23 education was that we use an online program
24 that both provided education and assessment

1 of student knowledge both pretest and a post
2 test. And so, we implemented that program.
3 It's from a company called Student Success.
4 It's called "Not Anymore." And -- and there
5 was -- there was some sentiment that this
6 needed to be required. As we talked about
7 that, we felt that if it was an imposed
8 requirement, it might not have the buy-in
9 that we hoped for. And so instead, we
10 communicated a message that this was
11 expected. And I was delighted at the
12 turnout.

13 We had over 70 percent of our student
14 body completed this survey. But what was
15 equally encouraging is that the buy-in from
16 faculty and staff and students across campus
17 was outstanding. We have faculty making
18 this a part of class assignments, extra
19 credits, student organizations challenged
20 each other. And so, it truly became a part
21 of our culture.

22 At the beginning of the school year at
23 our opening meeting of faculty and staff, we
24 encouraged the campus community to look at

1 this as a way to change the culture, not
2 look at this as something that was a
3 requirement. It is a requirement, but we
4 really wanted to focus on how could we
5 benefit from this. And so, the results of
6 the initial program with the Not Anymore but
7 then a variety of other things. There were
8 classes that made posters, student groups,
9 the challenges and got together. And our
10 fraternity counsel decided to take the lead
11 on violence prevention and bystander
12 education. So over the course of the year,
13 it really has become a part of our whole
14 conversation. And so, there is still work
15 to do. But I think this past year we have
16 gotten a great start.

17 We have developed a training program for
18 our faculty and staff, and we will be
19 rolling that out over the rest of the summer
20 and into the next school year. And so, some
21 of the things that our colleagues at Drexel
22 are doing are very similar to the things
23 that we're doing. But the thing that just
24 sticks with me is how at meetings and

1 student organization events, students have
2 bought into this. And so, that's been the
3 most gratifying example to me of how our
4 early efforts to try and change the culture
5 are taking off as well as the support of our
6 faculty and staff who have really made this
7 a priority this past year.

8 I think I will stop at that point. And
9 if you have questions later, I will be glad
10 to respond. Thank you very much for raising
11 this issue.

12 COUNCILWOMAN BLACKWELL: Thank you very
13 much. Certainly, thank you Mr. Moore and
14 Ms. Rovinsky-Mayer and Dimitrios Boufidis.

15 Are there questions?

16 COUNCILWOMAN REYNOLDS BROWN: Just a
17 couple.

18 COUNCILWOMAN BLACKWELL: Councilwoman
19 Blondell Reynolds Brown.

20 COUNCILWOMAN REYNOLDS BROWN: Good
21 afternoon. Thank you for your important
22 testimony. The good news is that at the
23 beginning of this hearing we are learning
24 that universities understand the importance

1 of it and are addressing it in a way that as
2 much as we can, send the young -- when
3 parents send their young people off to
4 college, that's one call they never want to
5 receive. And to know that you have some
6 measures in place is certainly gratifying.

7 I would like to know from Ms. Michele
8 Rovinsky-Mayer, you said based on what --
9 "based on early observations our efforts are
10 working." So elaborate on that just
11 briefly.

12 What does that mean? What does that
13 look like?

14 MS. ROVINSKY-MAYER: So -- so our early
15 efforts, we see the number of reporting --
16 the reports that we're receiving in our
17 office have increased. We have no
18 indication that there's additional danger on
19 our campus, but there are people who are
20 reporting. And they're reporting things
21 that have happened in the past. Some of
22 them are reporting current things, but we
23 are also seeing reports that individuals
24 felt fearful of making maybe in the past and

1 now they're coming forward.

2 And so, we provide the resources and
3 information to those individuals. And if
4 there's a process that's available to them,
5 the criminal process or our individual
6 process at the university, we make sure that
7 they're aware of that and guide them through
8 that. So, that's one part of the piece of
9 we know it's working.

10 We understand from having conversations
11 with students, we have the additional
12 training programs and the outreach that are
13 going on including the focus groups that I
14 spoke of. And so, we are hearing feedback
15 from students that the level -- that they
16 see that the university is doing something
17 and the conversation is happening from the
18 highest level.

19 President Fry has communicated to the
20 university community on multiple occasions
21 about the seriousness of this issue and his
22 commitment to that. And so, I think that
23 there is response there, as well. Students
24 at Drexel -- at Drexel on their own

1 initiative put together a video that's
2 called "It's On Us." It's on YouTube.

3 COUNCILWOMAN REYNOLDS BROWN: What is it
4 called again?

5 MS. ROVINSKY-MAYER: "It's On Us." They
6 are making the statement that it's on us.
7 Members of a fraternity and sorority
8 councils.

9 COUNCILWOMAN REYNOLDS BROWN: Okay.

10 MS. ROVINSKY-MAYER: They put together
11 that video of their own initiative. So --
12 and they are also engaged, I mentioned the
13 communication campaign that we did in April.
14 We distributed a thousand T-shirts that
15 communicated our logo of See Something, Hear
16 Something, Know Something, Say Something.
17 And there was -- there was student
18 participation and collaboration in that
19 initiative. They were working side by side
20 with members of our Title IX team in getting
21 the message out, distributing those shirts
22 and providing information to the university
23 community about our process and the
24 resources that are available.

1 There has been constant engagement with
2 the students on that issue.

3 COUNCILWOMAN REYNOLDS BROWN: Okay.
4 Have you, like LaSalle, incorporated any of
5 the, I guess, recommendations or execution
6 measures in the Violence Against Women's
7 Act?

8 Has Drexel incorporated any of that --
9 any of what that act recommends, as well?

10 MS. ROVINSKY-MAYER: Yes, we have,
11 including enhancing our training. We -- we
12 are piloting a bystander intervention
13 training that's going to launch to all
14 students in Fall of 2015. We are also
15 educating all of our faculty professional
16 staff on these issues.

17 COUNCILWOMAN REYNOLDS BROWN: So, there
18 is training across the board?

19 MS. ROVINSKY-MAYER: Across the board.

20 COUNCILWOMAN REYNOLDS BROWN: As I have
21 heard at LaSalle, as well.

22 MS. ROVINSKY-MAYER: Absolutely.

23 MR. MOORE: Yes, ma'am.

24 COUNCILWOMAN REYNOLDS BROWN: How big is

1 your department at LaSalle for the
2 department that you recommend?

3 MR. MOORE: So, I represent -- I
4 represent the Student Affairs Division, so
5 that's about 60 people.

6 COUNCILWOMAN REYNOLDS BROWN: Sixty
7 professionals?

8 MR. MOORE: In my area, yes. But this
9 broader than just student affairs. Really
10 the whole campus is brought into this. On
11 this coalition that I mentioned, there are
12 now about 50 people, about half of them
13 faculty and staff and the remainder are
14 students. And so, we keep adding to that
15 over the years.

16 So, it -- we're a part of a web of a
17 number of things that are going on related
18 to both implementing VAWA. We changed our
19 student conduct processes to be compliant to
20 protect both the victim and the accused
21 student.

22 COUNCILWOMAN REYNOLDS BROWN: Okay.

23 MR. MOORE: And then in the training
24 things, we are working with our Human

1 Resources Department as well as the things
2 related to students.

3 COUNCILWOMAN REYNOLDS BROWN: Okay then.
4 For Drexel, how big is the department or the
5 professionals that deal with this issue? I
6 am just getting a sense of -- any sense of
7 uniformity across universities knowing that
8 every City university is distinctively and
9 uniquely different.

10 MS. ROVINSKY-MAYER: Right. So, I'm the
11 Title IX Coordinator. And I currently have
12 two trained investigators on my staff. We
13 are adding a third investigator within the
14 next month. And then, we will be adding
15 another staff person within the next three
16 months to manage data and training to make
17 sure that we're -- we currently track the
18 data and the training, but we're enhancing
19 that and putting a person -- hiring a person
20 specifically to be looking at the data and
21 the training efforts that we're doing.

22 COUNCILWOMAN REYNOLDS BROWN: Does Title
23 IX have its own funding stream or no?

24 MS. ROVINSKY-MAYER: At Drexel

1 University?

2 COUNCILWOMAN REYNOLDS BROWN: Anywhere.

3 I don't know. I'm asking the question.

4 MS. ROVINSKY-MAYER: No. It's
5 university funded.

6 COUNCILWOMAN REYNOLDS BROWN: Okay then.
7 And for those staffers that deal with Title
8 IX specifically at LaSalle, the number is
9 about what?

10 MR. MOORE: There's really nobody
11 specifically that deals with Title IX. This
12 is --

13 COUNCILWOMAN REYNOLDS BROWN: Okay.
14 It's folded into.

15 MR. MOORE: Right. We have -- we have
16 our Title IX Coordinator that works with our
17 Office of Finance and Administration. So I
18 and several other people are definitely
19 coordinators. I have four people working
20 with me in student affairs because we're
21 dealing with student issues. So, there is
22 many of us that are dealing with Title IX
23 issues.

24 COUNCILWOMAN REYNOLDS BROWN: Okay. My

1 last question is, are there -- how diverse
2 are your departments in terms of ethnicity?

3 MS. ROVINSKY-MAYER: My staff is very
4 diverse. I have -- out of current members,
5 one African-American individual, one who is
6 Asian -- actually, two African-American. We
7 have a male on our staff and another
8 biracial individual.

9 COUNCILWOMAN REYNOLDS BROWN: Okay. And
10 LaSalle?

11 MR. MOORE: In Student Affairs we are
12 about 10 percent, maybe 15 percent diverse.

13 COUNCILWOMAN REYNOLDS BROWN: Very well.
14 Okay then, thank you. I asked because I
15 worked in higher ed in Admissions for Penn
16 State University for five years and have a
17 lot of experience in that world and know
18 that that -- it matters when you are
19 recruiting students.

20 Thank you both for your testimony.

21 MR. MOORE: Thank you.

22 MS. ROVINSKY-MAYER: Thank you.

23 COUNCILWOMAN BLACKWELL: We have another
24 question.

1 Councilman Squilla.

2 COUNCILMAN SQUILLA: Thank you, Madam
3 Chair.

4 One question. I know we were talking
5 about this subject. But also it seems to
6 come sometimes within -- within hazing when
7 you read about happening in colleges and
8 fraternities and things like that.

9 Does that also come into play during
10 this process? Do you oversee that?

11 MR. MOORE: So, what's paramount to me
12 is student safety and -- and that needs to
13 drive us in a whole bunch of things. And
14 so, hazing falls into that category. There
15 is also physical safety. But we, and I
16 think all of the institutions in the area,
17 have -- have programs that address this with
18 organizations that are likely to do hazing,
19 you know, student groups that historically
20 maybe have done some things.

21 It's a part of training for fraternities
22 and sororities and our student athletes get
23 great training on this. Going on for many
24 years. There might be other groups that do

1 those things, but it's not historically part
2 of what's we're doing. And so, we address
3 it quite seriously.

4 If there are instances where that
5 happen, we go through our student conduct
6 process. And we could go up to expelling an
7 organization as well as dealing with
8 individuals from a student discipline
9 standpoint. So, that would be a separate
10 process than these issues of sexual
11 violence. But they would be treated also
12 very seriously.

13 COUNCILMAN SQUILLA: Sometimes hazing
14 also has sexual violence as part of hazing.
15 And it seemed like it may somehow intertwine
16 with that. I didn't know if that's
17 something that you would look at
18 differently. But as long as we're looking
19 at both aspects of it.

20 MR. MOORE: If it did, if there were
21 both aspects, both would be folded into the
22 process. So, the Title IX kind of thing is
23 required to do some things to change the
24 environment. But in terms of holding people

1 accountable, we would deal with all of the
2 relevant issues in a given situation.

3 MS. ROVINSKY-MAYER: Yes. With regard
4 to hazing, there is a separate process, a
5 hazing policy. But as you've mentioned,
6 oftentimes there is a sexual or other
7 component to the hazing and could be racial,
8 could be gender, et cetera.

9 Because we have centralized reporting at
10 Drexel, anything that happens on our campus,
11 let's say, it was raised as a general hazing
12 issue, if that has any issues that have
13 Title IX implications, it's mandatory that
14 that is reported into the Office of Equality
15 and Diversity. We also have a Title IX team
16 approach. So we meet -- we meet regularly
17 with members as I mentioned: Public Safety,
18 Residential Living, Student Affairs
19 Fraternity and Sorority. I am regularly in
20 contact with the Director of the Athletic
21 Department. And so those issues, we talk
22 about issues, the common issues. And also,
23 so we each know what is happening in our
24 areas.

1 I think that any issue of hazing that
2 has gender implications or Title IX
3 implications at Drexel will be brought into
4 the Office of Equality and Diversity.

5 COUNCILMAN SQUILLA: Okay. Thank you.

6 COUNCILWOMAN REYNOLDS BROWN: My last
7 question is, we will try to limit this to a
8 yes or no which is really unfair because
9 every world is different. But do you
10 believe that we in Philadelphia need to
11 stretch as far as California has with their
12 Bill 967 with a "Yes Means Yes" policy?

13 Just given where you are, what this
14 university is and what this law means, what
15 would your response to that be?

16 MR. KERSHENBAUM: Yes.

17 MR. MOORE: Mine would be no.

18 MS. ROVINSKY-MAYER: Drexel currently
19 has that -- has the policy of yes. Either
20 it needs to be clear and unambiguous either
21 by words or actions. Unambiguous.

22 COUNCILWOMAN REYNOLDS BROWN: Okay.

23 MS. ROVINSKY-MAYER: That's what our
24 policy is.

1 COUNCILWOMAN REYNOLDS BROWN: That's
2 helpful because the resolution allows us to
3 get the discussion up on the radar screen,
4 gather information. And then will inform or
5 instruct my staff and I on what we do next.
6 So having that -- having a response is just
7 helpful to us.

8 Thank you very much.

9 MS. ROVINSKY-MAYER: Thank you.

10 MR. MOORE: Thanks.

11 COUNCILWOMAN BLACKWELL: Thank you all
12 very much. We will ask the Clerk to read
13 those from Panel Two and invite them to come
14 forward.

15 THE CLERK: The next panel is Sister
16 Carol Jean Vale, President of Chestnut Hill
17 College and other representatives. And
18 University of the Arts is also here. If
19 anyone has any questions, they are more than
20 happy to come up and also answer them.

21 (Panel Two approaches Witness Table.)

22 COUNCILWOMAN BLACKWELL: Good afternoon.
23 Feel free to introduce yourself for our
24 record and begin your testimony.

1 MS. STRIMKOVSKY: I'm Laurie
2 Strimkovsky. I'm the Senior Vice President
3 for Financial Affairs, Chief of Staff and
4 the Title IX Coordinator at Chestnut Hill
5 College.

6 COUNCILWOMAN BLACKWELL: Thank you.

7 MS. de SANTIS: Good afternoon. I am
8 Maria de Santis. I'm the Associate Vice
9 President and Dean of Students at the
10 University of the Arts.

11 MS. WANNAMAKER: Good afternoon. I'm
12 Candice Wannamaker, and I am the Associate
13 Dean of Students and a Deputy Title IX
14 Coordinator at the University of the Arts.

15 COUNCILWOMAN BLACKWELL: Thank you very
16 much. Feel free to begin your testimony.

17 MS. STRIMKOVSKY: As with our colleagues
18 earlier, Chestnut Hill is committed to the
19 health, welfare and safety of our students.
20 And we have put in place a system that we
21 believe covers many of the areas and sets
22 the foundation for a safe environment for
23 our students. And we seriously consider all
24 reports of sexual assault and sexual

1 violence with the care and attention that
2 they deserve.

3 Our policy includes a statement that
4 there must be clear, knowing and voluntary
5 consent to sexual activity, which is
6 comparable to the "Yes Means Yes" policy.
7 We have a Title IX team of eight individuals
8 from across campus that work together
9 regarding the policy, having training in
10 place for students, faculty and staff. And
11 the training ranges from just simple
12 understanding of our policy to the nature of
13 sexual assault.

14 We have implemented bystander
15 intervention training which we call Step Up
16 For the Dear Neighbor in response to the
17 Violence Against Women Act. All of our
18 first year students and all of our athletic
19 teams have completed the Step Up training as
20 have many offices on campus. And our goal
21 is to have every student, faculty and staff
22 member attend the training.

23 We also actively participated in the
24 It's On Us plan with both our students, our

1 athletes and our President Sister Carol Jean
2 Vale signing a pledge to implement It's On
3 Us policy.

4 I am assisted as Title IX Coordinator by
5 Krista Bailey Murphy, our Dean of Students.
6 That's graduation at the college tomorrow,
7 so she's unable to be here today. But
8 between us, we work with a team of six other
9 individuals and meet every other week
10 whether or not there's an issue to discuss
11 so that we remain on top of our policies,
12 our compliance and clarity for the college
13 community.

14 We have a policy in place that I'd be
15 happy to share with you that talks about how
16 we handle each situation, but it is in
17 compliance with the 2011 Dear Colleague
18 Letter and has been adapted to our college
19 community and any changing in the
20 environment since then.

21 And then lastly, this spring we
22 conducted a campus client survey which we
23 requested feedback from students, faculty
24 and staff. And I would include in that,

1 that even adjunct faculty. We asked
2 everybody that was part of the community.
3 And then we will be using that information
4 to drive future training on campus, and are
5 also doing an annual review of our policy at
6 this time.

7 COUNCILWOMAN BLACKWELL: Thank you.

8 MS. de SANTIS: Thank you for inviting
9 us to talk about this issue. At the
10 University of the Arts, we've been working
11 very actively to respond to the changing
12 recommendations from the Department of
13 Education and the rule making and
14 regulations that have emerged from VAWA.
15 And all of that taken together along with
16 our existing policies, we have continued to
17 focus on sexual misconduct, taking it very
18 seriously and ensure taking the security and
19 the safety of our students as our highest
20 priority.

21 When we do receive a complaint of sexual
22 violence or sexual misconduct, we
23 immediately implement our well established
24 policies and we apply those policies equally

1 to all students, to those that bring the
2 complaint forward and also to those who are
3 accused. We know as do probably most of the
4 other people who are here today, that sexual
5 misconduct cases are among the most
6 complicated that we deal with in the
7 university's conduct system. And because of
8 the complexity of these issues, we really
9 strive to treat everyone involved with
10 compassion and integrity.

11 Our policy on sexual misconduct contains
12 a statement of consent that we also believe
13 is in line with the affirmative consent
14 ideas. Our actual language is to define
15 consent as the clear, voluntary and
16 unambiguous communication indicating a
17 willingness to engage in a particular
18 activity. We also say that consent may not
19 be inferred from silence, passivity, lack of
20 resistance or lack of active response. In
21 the absence of an outward demonstration,
22 consent does not exist. And consent can be
23 withdrawn by either party at any point. And
24 we have some additional language, as well.

1 The University of the Arts has
2 implemented in the last year a Title IX
3 structure with a university-wide Title IX
4 Coordinator who reports to the President of
5 the university and three deputy Title IX
6 Coordinators. Associate Dean Wannamaker is
7 one of the three deputy coordinators. Our
8 Associate Provost is another deputy
9 coordinator. And our Associate Vice
10 President for Human Resources is the third
11 deputy Title IX Coordinator. So, we have a
12 structure for Title IX Coordinators.

13 All of our staff, faculty and students
14 receive training and education regarding
15 sexual assault and prevention. Students are
16 required to participate in an online course.
17 We have had this in place for, I believe,
18 two years now. We use a course called Think
19 About It, which is designed by an
20 organization called Campus Clarity. It is a
21 course that is interactive. It takes
22 several hours to complete. Students
23 complete assessments at different stages of
24 the course, and the course covers sexual

1 assault, substance and alcohol abuse,
2 bystander education and many other topics.

3 We are able to go into this system and
4 actually review the assessments completed by
5 the students. And we are, you know, very
6 happy to see that after completion of this
7 course, 98 percent of the students respond
8 with the correct information when, you know,
9 they complete these assessments about
10 policies, procedures and strategies for
11 dealing with sexual violence.

12 We require that course, once again. And
13 so, our completion rate for that, you know,
14 is 95 percent. They are required to do it.
15 In addition, we implement a campus climate
16 survey in compliance with VAWA's
17 recommendation to do that by July 2015. So,
18 we probably will receive the data from that
19 survey soon.

20 The survey that we used was prepared by
21 the Higher Education Data Sharing
22 Organization, HEDS. It's been used by
23 consortium of colleges, so we reviewed that
24 and chose that one. And again, we hope to

1 get a lot of valuable data from that.

2 I think in all instances as a
3 university, we are trying to respond
4 promptly and appropriately to any
5 allegations of sexual misconduct and with
6 respect for the rights of each individual
7 involved.

8 Like to see if Candace has anything to
9 add.

10 MS. WANNAMAKER: Just in addressing the
11 VAWA guidelines as well, we have done
12 comprehensive training with our orientation
13 leaders and our residential assistant staff
14 so that they are, I want to say, becoming
15 experts in recognizing the needs of our
16 students and to talk to them as well like a
17 train-the-trainer on bystander interventions
18 to be able to help our residential students
19 and our commuter students, as well.

20 COUNCILWOMAN BLACKWELL: Thank you.

21 Give us your name again.

22 MS. WANNAMAKER: Candace Wannamaker.

23 COUNCILWOMAN BLACKWELL: Thank you.

24 Thank you.

1 COUNCILWOMAN REYNOLDS BROWN: My
2 question to you is the same as the
3 proceeding panel. Do you believe given the
4 current practices in place, that
5 Philadelphia and, therefore, the
6 Commonwealth needs to move towards a "Yes
7 Means Yes" policy like that in California?

8 Yes, no, maybe so?

9 MS. de SANTIS: I will say yes. I think
10 our policy is -- uses language -- our
11 current policy in our definition of consent
12 already uses language very similar in the
13 proposed -- to what's in the proposed
14 legislation.

15 MS. WANNAMAKER: I would agree with that
16 and also say as a caveat, part of our
17 education plan goes about conveying that
18 message as well and educating our student
19 population on that message.

20 MS. STRIMKOVSKY: I would also say yes.

21 COUNCILWOMAN REYNOLDS BROWN: How old is
22 the Violence Against Women's Act? How old
23 is it?

24 MS. STRIMKOVSKY: Less than a year? No?

1 So it's the amendment.

2 COUNCILWOMAN REYNOLDS BROWN: I note
3 that one of our next
4 presenters/testifiers/experts will be able
5 to give us some back history on that.

6 And so, the reason why I ask is then
7 data -- I'd be curious to know what's a year
8 or two, three, four, five years from now
9 look to see what the data suggests from the
10 "Yes Means Yes" law in California, and look
11 to see what would be the outcome or the new
12 yield given this new legislative measure.
13 And time will only answer that question.

14 MS. de SANTIS: May I just add another
15 observation? I think Candace said it well.
16 I think policies will support what we are
17 trying to do, but education and, you know,
18 from our perspective in student affairs, the
19 development of the students and the
20 education of the students so that they are
21 in a position to make choices and to
22 communicate effectively. To -- to consent,
23 you know, to participate appropriately in
24 these relationships is a real big priority

1 for us.

2 COUNCILWOMAN REYNOLDS-BROWN: Agreed
3 2000 percent. You say it's required. So if
4 it's required, does that mean they get
5 course credit?

6 MS. de SANTIS: If they don't do it, we
7 fine them. And then once the fine is
8 applied, they tend to do it. And then we
9 can remove the fine.

10 COUNCILWOMAN REYNOLDS BROWN: Okay. All
11 right then. Thank you all for your
12 testimony.

13 COUNCILWOMAN BLACKWELL: Thank you very
14 much.

15 MS. STRIMKOVSKY: Thank you.

16 COUNCILWOMAN BLACKWELL: Any questions?

17 (No further questions from Committee.)

18 Thank you. We will ask the Clerk to
19 read the Panel Three guests.

20 THE CLERK: The third panel is Michelle
21 Madden Dempsey, Professor at Villanova
22 School of Law; Carol E. Tracy, Executive
23 Director, Women's Law Project; and Joseph
24 Cohn, Legislative Policy Director for

1 F.I.R.E.

2 (Panel Three approaches Witness Table.)

3 COUNCILWOMAN BLACKWELL: Thank you very
4 much for coming. We will ask you to
5 introduce yourself and begin testimony in
6 any order.

7 MS. DEMPSEY: Hello. My name is
8 Michelle Madden Dempsey. I'm a Professor of
9 Law and Associate Dean for Faculty Research
10 Development at Villanova University School
11 of Law. Thank you very much for inviting me
12 to be here with you today. My area of
13 expertise concerns criminal law as well as
14 violence against women. So, the primary
15 bulk of my scholarship concerns issues
16 around rape, sexual assault, domestic
17 violence, sex trafficking. And I have
18 written on these issues in my scholarship.
19 And I'm currently writing a book on these
20 issues, as well.

21 So, thank you very much for inviting me
22 to be here with you today. I should say at
23 the outset that my comments are offered in
24 my personal capacity as a scholar and not on

1 behalf of Villanova University or the School
2 of Law.

3 So, the first thing I want to say is
4 that the "Yes Means Yes" standard which is
5 basically an affirmative consent standard is
6 not at all controversial. It is a standard
7 that, as we've already heard, has been
8 adopted by a number of universities and
9 colleges both within Philadelphia,
10 throughout the Commonwealth, throughout the
11 country. So certainly, a vast number of
12 institutions have moved toward an
13 affirmative consent standard. And those
14 that have not yet gotten on the bandwagon
15 are moving in that direction.

16 So there is -- I think it's a bit of --
17 obscures the issues really to suggest that
18 what was done in California was so wildly
19 beyond the norm indeed. I think it's quite
20 uncontroversial. So, I just want to start
21 with that understanding.

22 Indeed even beyond higher education
23 where the penalty is merely some sort of
24 suspension or discipline internal to the

1 university or, at worse, expulsion, even
2 beyond that framework, in the criminal law
3 some states have adopted an affirmative
4 consent model. So, there are states
5 including Minnesota, Washington and
6 Wisconsin as well as the District of
7 Columbia that have statutorily adopted
8 affirmative consent model for sexual
9 assault. And then jurisdiction such as New
10 Jersey and Iowa where the courts have
11 interpreted consent to require affirmative
12 consent. So even in the criminal law,
13 obviously, we don't here need to debate
14 whether this sort of policy should be
15 adopted in the criminal law. But I just
16 think at the outset it's worth noting that
17 even in some jurisdictions, this is the
18 standard for the criminal law. So to apply
19 it just within the higher education
20 framework is, as I say, strikes me as
21 entirely uncontroversial.

22 So, the second thing I want to go into
23 is to touch on what the "Yes Means Yes"
24 policy does and what it doesn't do. Let me

1 start with what it doesn't do.

2 First, it does not switch the burden of
3 proof from the accused -- pardon me, from
4 the university to the accused. The burden
5 of proof remains precisely where it was.
6 According to the Department of Education's
7 Office of Civil Rights, the burden of proof
8 in these hearings should be that the
9 university must prove its allegations
10 against the accused to a preponderance of
11 the evidence. That is what the U.S.
12 Department of Just -- pardon me, Department
13 of Education Office of Civil Rights has
14 stated in its guidance to institutions of
15 higher education. And indeed in the
16 California statute that was allegedly
17 controversial, the very same burden of proof
18 remains in place.

19 So to quote from Section III of that
20 statute in California, the requirement is
21 that the policy of the California
22 institutions of higher education must use a
23 standard in determining whether the elements
24 of the complaint against the accused have

1 been demonstrated is the preponderance of
2 the evidence. So again, the California
3 statute is entirely consistent with keeping
4 the burden of proof on the institution. It
5 is not shifting the burden of proof to the
6 accused. So to the extent that that has
7 indeed been stated by one of the panelist
8 here in a blog post regarding this issue, I
9 just want to put that out there as an
10 incorrect interpretation of the law. The
11 burden of proof has not shifted.

12 The second thing that the "Yes Means
13 Yes" policy does not do is that it does not
14 require any kind of special evidence. It
15 does not place any extra burden on the
16 accused to come up with a written contract
17 that someone signed their consent away or a
18 video evidence.

19 For example, again, my colleague to my
20 left has been quoted in a blog post as
21 saying, "How does a person prove they
22 received consent shy of having it videotaped
23 under a "Yes Means Yes" policy?"

24 Implication here is that in those

1 jurisdictions or those institutions that
2 have adopted an affirmative consent policy,
3 the implication that's being made here is
4 that the accused will certainly be found
5 responsible or found guilty in a court of
6 law if they don't have video proof of what
7 happened. And that's entirely not true.

8 The evidence that's relevant to proving
9 violation of a policy in an institution of
10 higher education or even in a criminal court
11 in those jurisdictions where affirmative
12 consent is adopted as the standard is the
13 same penalty of evidence that is used in
14 every case, okay? So, we very frequently
15 are able to prove batteries, thefts. I
16 spent years as a prosecutor before becoming
17 an academic. I nev -- I don't think I ever
18 had videotape in any case. I don't think
19 any defendant ever had videotape in any
20 case. There is evidence that can be
21 gathered, and it does not simply reduce to a
22 he said/she said case. If there are
23 effective investigators in place and the
24 right sorts of questions are being asked of

1 the right sorts of people, then it does not
2 have to amount to a basic he said/she said
3 case. There is no need for any kind of
4 particular burden of some evidence to be
5 produced by the person that's being accused.

6 So again, I think it's a
7 misinterpretation of what the "Yes Means
8 Yes" policy entails. So, those are the two
9 things that this policy doesn't do. We
10 don't have to worry about those issues.

11 Another point is that -- I will throw in
12 a third point about what it doesn't do. Is
13 that the "Yes Means Yes" policy doesn't
14 adjust the procedures. It doesn't address
15 burden of proof. It doesn't address sorts
16 of evidence. It doesn't address any of the
17 procedures regarding a finding of
18 responsibility for sexual misconduct. Those
19 issues whether people ought to be
20 represented, whether they ought to be
21 entitled to cross-examine witnesses, those
22 are all procedural issues that may fall out
23 different ways in different institutions and
24 we can have different debates about those.

1 None of those are impacted by the "Yes Means
2 Yes" policy.

3 Rather, the "Yes Means Yes" policy goes
4 to the question of what counts as consent;
5 and relatedly, what counts as a reasonable
6 belief as to the fact that someone is
7 consenting to engage in sexual activity.

8 So let me move now to what the "Yes
9 Means Yes" policy does do.

10 What it does is it singles -- it signals
11 a shift. In the history of sexual assault
12 and the way we've been addressing it in
13 society, there have been numerous shifts.
14 There was a time where it was legal for a
15 husband to rape his wife with impunity. And
16 there was a time when in every jurisdiction
17 a person who was being assaulted had to
18 resist to the utmost in order for there to
19 be any prosecution or conviction. So, there
20 used to be a physical resistance to the
21 utmost standard, and then it was just some
22 physical resistance. And that was sort of a
23 shift away from that. And then there was a
24 shift toward verbal resistance. By that I

1 mean the "No Means No" standard.

2 No Means No standards are a way of
3 framing the issue in terms of requiring the
4 person who is being assaulted to resist
5 verbally to the assault. So, that was a
6 positive shift in the sense that we moved
7 from requiring physical resistance to merely
8 requiring verbal resistance. However, now
9 we are shifting further. As I said, I think
10 social norms have already made this shift.

11 So, we are shifting along with social
12 norms that expect that when people engage in
13 sexual conduct, they will receive either
14 verbal or through action affirmative
15 consent. So that is just -- it's just
16 another in a history of shifts in protecting
17 people from sexual assault, holding
18 predators accountable. And that's what it
19 does.

20 Another thing that it does relatedly is
21 that it helps inform our understanding of
22 what as a criminal lawyer is called the mens
23 rea that we ought to be looking for when we
24 think about whether or not someone has

1 committed a crime. Obviously, this is not a
2 criminal matter. This is just a student
3 disciplinary proceeding. But there is still
4 an issue of fairness with respect to those
5 cases where an accused says quite honestly,
6 wow, I really thought she was consenting.

7 If an accused comes forward and the
8 victims says I was assaulted and the accused
9 says I honestly thought that she was
10 consenting, that raises similar issues. And
11 the question then becomes according to what
12 standard ought we to judge the
13 reasonableness of the accused's belief.

14 Even if an accused believed that he was not
15 committing any sort of assault, we have to
16 ask ourselves under what conditions is that
17 belief reasonable?

18 So in the past -- and again we are
19 shifting away from this. In the past, it
20 used to be the case that if someone did not
21 resist verbally, if they lay there like a
22 dead fish which is the way one of my
23 students memorably put the point in class
24 one day, if someone just did not resist in

1 any way but also did not engage in any
2 positive way, we thought, well, okay, it
3 might be reasonable then for the person to
4 think that they're getting consent. After
5 all, there was no no, no pushing away, what
6 have you. Now as a society, we are moving
7 toward an understanding that it's just not
8 reasonable to believe that you are getting
9 consent to sexual activity unless the person
10 is actively engaged in the act in such a way
11 that demonstrates consent or they're giving
12 you verbal consent. One of those two
13 criteria have to be present in order for you
14 to hold a reasonable belief that you are
15 obtaining consent.

16 And so, I think that's another thing
17 that the "Yes Means Yes" policy does. It
18 helps shift our thinking about the
19 reasonableness of beliefs regarding consent
20 from perhaps what I call in my teaching and
21 my scholarship, a descriptive account of
22 reasonableness, in which we sort of describe
23 what the average person on the street might
24 think about it toward a more prescriptive

1 standard. Sort of we need to move beyond.
2 We have to do better than what we have done
3 in the past. We have to hold people to
4 standards such that they will know you
5 cannot go forward with sexual conduct with
6 someone unless you're obtaining affirmative
7 consent.

8 So, those are the two things that the
9 policy does. If you ask me the question at
10 the end as to whether or not I think we
11 should go in that direction, my answer will
12 be an enthusiastic yes because I think "Yes
13 Means Yes" policy is important at least
14 symbolically. I am grateful to you for
15 holding these hearings because I think this
16 kind of public discussion around the social
17 norms regarding sexual consent is crucial.
18 This is part of the solution. This is part
19 of the culture shift that we need to see
20 throughout our institutions of higher
21 education and throughout our community more
22 generally.

23 What we really need more than just
24 policies or, I should say, in addition to

1 policies is both improved investigations and
2 a changed culture. And one thing I would
3 recommend both to the Council and also to
4 any folks who are interested to look is what
5 I think is a really interesting and
6 innovative and successful program in
7 changing the culture around sexual assault.
8 It's a program called Start By Believing.
9 And it's created by an organization called
10 End Violence Against Woman International.
11 You can go online and Google, Start By
12 Believing. You will see that there are
13 several jurisdictions throughout the country
14 both in terms of the police departments as
15 well as institutions of higher education and
16 just towns generally that have adopted this
17 policy and engaged in this conversation in a
18 way where they start by believing and they
19 investigate allegations of sexual assault in
20 a way that is more productive because they
21 don't start by thinking the person is making
22 it up. So, I think that's going to help
23 with the improved investigations.

24 So, I think "Yes Means Yes" is going to

1 be help with the substantive understanding
2 of what is acceptable behavior and what
3 constitutes a reasonable believe regarding
4 obtaining consent. And then I think
5 programs like Start By Believing will do
6 some of the work in terms of changing the
7 way we investigate these allegations.

8 Thank you very much.

9 COUNCILWOMAN REYNOLDS BROWN: Thank you
10 very much.

11 COUNCILWOMAN BLACKWELL: Thank you.

12 MS. TRACY: Good afternoon. I'm Carol
13 Tracy. And I'm the Executive Director of
14 the Women's Law Project. We're a public
15 interest law center based in Pennsylvania.
16 We engage in high impact litigation, public
17 policy, advocacy and community education on
18 a broad range of issues affecting the legal
19 rights of women and girls.

20 I have had a long history of working
21 both on sexual misconduct in colleges and
22 universities and on police response to sex
23 crimes. As you know for the past 15 years,
24 the Women's Law Project has been working

1 with the Philadelphia Police Department to
2 improve its response to sexual and domestic
3 violence. This began in response to a
4 publicly reported scandal that revealed that
5 the Department had failed to investigate
6 about a third of sex crimes reported to it.
7 We led a reform advocacy effort which
8 resulted in a reinvestigation of cases and a
9 complete reorganization of the special
10 victims unit.

11 The most notable outcome is an
12 unprecedented annual audit of police sex
13 crimes files by the Women's Law Project,
14 Women Organized Against Rape, the Support
15 Center for Child Advocates and the
16 Philadelphia's Children's Alliance that is
17 now considered a national best practice.

18 In 2010, I testified before the United
19 States' Senate Judiciary Subcommittee on
20 crimes called Rape in the United States, the
21 Chronic Failure to Report and Investigate
22 Rape Cases about both the former problems
23 here in Philadelphia and the reports of
24 similar failures in other cities and

1 jurisdiction. We also led the campaign that
2 in 2012 resulted in the change of the FBI's
3 definition of rape in its Uniform Crime
4 Report to be in line with state crimes
5 codes. I was also an advisor to the White
6 House Task Force to protect students against
7 sexual assault.

8 My work in campus sexual assault began
9 when I was an undergraduate at the
10 University of Pennsylvania in 1973. I was a
11 leader and developed women's sit-in
12 protesting the administration's response to
13 a gang rape that occurred on campus. And
14 then in 1998 -- in 1983 while I was the
15 Director of the Penn Women's Center, I was
16 an outspoken critic of the university's
17 handling of an infamous gang rape at a
18 fraternity. That incident became one of the
19 first documented cases that illuminated the
20 complicated problems of sexual assault on
21 college campuses. And my work led to
22 significant policy reform at Penn.

23 During my 25-year tenure as Executive
24 Director of the Women's Law Project in

1 Philadelphia, I have responded to many
2 requests for assistance from young women
3 assaulted on campus including bringing
4 litigation and filing administrative
5 complaints. I believe you said you were at
6 Penn State. I'm not sure I knew that,
7 Councilwoman. We are the only people that
8 filed -- that sued Penn State for sexual
9 assault prior to Sandusky.

10 Also, just to let you know, for the past
11 20 years I've been a lecturer in Gender
12 Society and Women's Studies at the
13 University of Pennsylvania and at the Bryn
14 Mawr School of Social Work and Social
15 Research. So, I remain very close to
16 campus-related issues. Based on my
17 experience, I have some very clear
18 perspectives on the issues around campus
19 sexual assault.

20 First, I believe that both law
21 enforcement and campus authority have
22 responsibilities to address campus sexual
23 assault. Rape is a crime and a felony
24 second only to murder in severity according

1 to the FBI Crime Index. In educational
2 settings, rape is also a violation of Civil
3 Rights Law called Title IX, which is a
4 federal law that prohibits sex
5 discrimination by educational institutions.
6 It also can be a violation of the individual
7 school conduct policies.

8 Colleges and universities in
9 Philadelphia do not investigate or
10 adjudicate the crime of rape. The criminal
11 justice system does that. Colleges and
12 universities are obliged to investigate and
13 adjudicate the civil rights violation.

14 Second, we need to get rid myths about
15 and biases against sex crime victims that
16 deprive them of justice. Myths and
17 stereotypes about rape and sexual assault
18 are deeply embedded in our culture. Many of
19 these myths blame the victim, trivialize the
20 seriousness of sexual assault, excuse the
21 assailant's behavior or assume the victim's
22 untruthfulness.

23 Historically, victims have not reported
24 their assaults to police or campus authority

1 because they fear that the report will not
2 be taken seriously, they will not be
3 believed or they will be seen as responsible
4 for their own assault. Decades of research
5 documented that the vast majority of sexual
6 assault victims do not report their sexual
7 assault to authorities.

8 In the current public discourse about
9 rape from Cosby to campus, there is very
10 little analysis about why rape victims are
11 profiled as liars. It doesn't matter if the
12 allegation is against a famous television
13 star, an athlete, a fellow student, a
14 stepfather, the guy next door or an inquiry
15 related to access to funding for abortion.
16 When a woman alleges rape, she is viewed
17 with suspicion. The focus is on the
18 victim's behavior rather than the offender's
19 conduct. And that is what has to change.

20 Educational institutions have an
21 important role to play not just in coming
22 into compliance with laws but to get to the
23 underlying causes.

24 Third, there is nothing new about the

1 existence of rape on campus. Recent
2 accounts from women in schools and surveys
3 and research studies have documented the
4 prevalence of rape in our society and, in
5 particular, on college campuses. But for
6 many years, institutions of higher education
7 have turned a blind eye to it rendering the
8 crisis invisible. What is new, however, is
9 a fresh wave of campus-based protest and
10 advocacy from rape survivors and for rape
11 survivors. The new wave of protest that has
12 emerged on college campuses has pushed the
13 subject to the front page. Young women and
14 men throughout the country have come forward
15 to publicly describe not only being sexually
16 assaulted, but also the awful treatment they
17 have received when bringing sexual assault
18 complaints to campus administrators.

19 In a shocking new documentary The
20 Hunting Ground, students described campus
21 proceedings that have been polluted with
22 bias against rape victims as the criminal
23 justice system. Students who expected a
24 more thoughtful and collegiate process have

1 felt betrayed by their academic community.
2 In response, they are demanding equality in
3 sovereignty of their bodies, taking bold
4 actions, are throwing down the shackles of
5 shame and demanding justice by insisting on
6 fair adjudication of their complaints of
7 sexual misconduct.

8 The Obama Administration has clearly
9 heard the call in its Office of Civil
10 Rights. And the Department of Education is
11 aggressively responding to complaints from
12 students all over the country. Our campus
13 leadership should listen, as well.

14 In my view, though, the most important
15 steps for Philadelphia's colleges and
16 universities to take is to ensure that
17 competent investigations and fair
18 disciplinary procedures are in place, that
19 all parties are treated equally in the
20 process and fully informed of their rights
21 and that appropriate support and
22 accommodations are provided. They should
23 also implement prevention programs and
24 conduct campus climate surveys.

1 In Philadelphia, we have an opportunity
2 for our colleges and universities to work
3 closely with our advocacy community and our
4 law enforcement system. We can share
5 resources, examine one another's policies
6 and procedures, review other schools'
7 policies and practices, look at best
8 practices, develop collaborations and create
9 best practices. We have already started
10 doing this.

11 Last August, the Women's Law Project and
12 Women Organized Against Rape organized a
13 meeting between Philadelphia's 14 colleges
14 and university public safety officials and
15 the Philadelphia Safety Collaborative, which
16 includes the Philadelphia Police Department
17 Special Victim's Unit, the Family Violence
18 and Sexual Assault Unit of the Office of the
19 District Attorney, the Medical Director of
20 Philadelphia's Forensic Sexual Assault
21 Response Center, so that the respective
22 parties could have a better understanding of
23 one another's policies and procedures.

24 Public policy -- public safety officials

1 and some Title IX coordinators attended this
2 event also. Those who attended were
3 grateful for the opportunities. Those who
4 could not attend because the meeting
5 coincided with the start of school
6 activities expressed regret. They have
7 asked us to continue to organize such
8 meetings, and we are in the process of
9 setting up such meetings over the summer.

10 Philadelphia has the experience and the
11 resources to help its campuses improve their
12 response to allegations of sexual assault.
13 Woman Organized Against Rape is one of the
14 earliest rape crisis centers in the United
15 States. Philadelphia was among the first
16 cities to create specialized sexual assault
17 units in the police department and the
18 district attorney's office.

19 The Philadelphia Police Department owned
20 up to a crisis 15 years ago and now is the
21 most transparent of any police department in
22 the United States in dealing with sex
23 crimes. And my research suggests that many
24 of our campuses already set an affirmative

1 consent standard in their sexual misconduct
2 policy as we have heard today.

3 We believe that colleges and
4 universities also have an extraordinary
5 opportunity to do what they do best,
6 research and education. We have the
7 opportunity to learn more about the root
8 causes of sexual assault and create more
9 effective means to prevent and intervene in
10 the scourge that has oppressed women for
11 centuries. Our young people are demanding
12 this of us, and we must meet the challenge.

13 I thank you for having this hearing
14 today. And I would like to suggest that you
15 schedule another one this time next year to
16 see what progress we have made.

17 COUNCILWOMAN BLACKWELL: Thank you.

18 Questions?

19 Thank you very much. Your reputation
20 precedes you over the years.

21 Thank you.

22 MS. TRACY: Well, I'm a constituent of
23 yours, as you know, Councilwoman. I live in
24 your district.

1 COUNCILWOMAN BLACKWELL: Thank you.

2 Thank you.

3 Mr. Cohn.

4 MR. COHN: Thank you, Chairwoman
5 Blackwell and Councilmembers. I'm Joe Cohn,
6 the Legislative and Policy Director for the
7 Foundation for Individual Rights and
8 Education or as we're better known FIRE.

9 FIRE is locally headquartered here in
10 Philadelphia. We're a national non-partisan
11 non-profit organization whose mission is to
12 defend a core constitutional rights of
13 university students and faculty. And FIRE
14 comes to this issue of campus sexual assault
15 with a strong belief that while there is no
16 doubt that institutions of higher education
17 have both a legal and moral obligation to
18 effectively respond to known instances of
19 sexual assault, public institutions are also
20 required by the constitution to provide
21 meaningful due process to the accused.

22 And these dual obligations don't have to
23 be intentional. But given the high stakes
24 for both accusers and the accused on campus

1 sexual assault disciplinary hearings, it
2 should be beyond question that neither
3 students' educational opportunities should
4 be cut short unjustly. Just as it is
5 morally wrong and unlawful for a college to
6 sweep allegations under the rug, it is also
7 inexcusable both ethically and legally to
8 expel an accused student after a hearing
9 that provides minimal or inadequate
10 procedural protections.

11 So, I probably don't need to tell anyone
12 in this room that time and time again the
13 news reports demonstrate all too well both
14 the regrettable outcomes that I just
15 described are happening at alarming rates.
16 Yet too many advocates are unwilling to
17 acknowledge when addressing a sexual assault
18 on campus requires thoughtfully considering
19 the rights of all students, the complainants
20 and the accused. So the real question isn't
21 why colleges are involved in addressing
22 campus sexual assaults; instead, we should
23 be asking ourselves what role they should be
24 playing in doing so.

1 Thus far, a great deal of the discussion
2 about how to best address campus sexual
3 assault on campus has accepted the premise
4 that university administrators are qualified
5 to serve as fact finders and adjudicators in
6 these matters. But if there's one thing
7 that all of the sides agree on it's this.

8 Few, if any schools, have demonstrated
9 the competence necessary to capably respond
10 to the problem of sexual assault on campus.
11 Too many campus administrators inject their
12 bias into the system while the rest, despite
13 often trying their best, simply lack the
14 necessary expertise. At the end of the day,
15 we are asking Deans of physics departments,
16 English professors, sophomore studying
17 anthropology to determine whether or not a
18 date rape occurred even though they have no
19 experience and expertise in this area, they
20 have no access to forensic evidence or
21 experience in interpreting it even if they
22 had it. They lack the ability to subpoena
23 witnesses or to place witnesses under oath.
24 They don't have access to discovery. They

1 don't have rules of evidence sorting out
2 what is reliable from what is unreliable or
3 lawyers participating on the process for
4 both sides.

5 Expecting these bodies to consistently
6 reach fair conclusions under those
7 limitations is unreasonable. In fact, it is
8 delusional, okay. And the errors go in both
9 directions. There are places and times in
10 which someone should absolutely be held
11 responsible when they're not under those
12 conditions, and there are places in which
13 people are held accountable when they
14 shouldn't under those conditions.

15 Penn, where I went to law school and
16 completed my Master's in Government
17 Administration, I think that's where I met
18 both of you Councilwomen when I was at Fels,
19 recently gutted their hearing process even
20 further turning to a single investigator who
21 serves as the investigator, judge and jury.

22 COUNCILWOMAN REYNOLDS BROWN: Okay. So,
23 I need you to reread that last couple
24 sentences.

1 MR. COHN: I'm sorry?

2 COUNCILWOMAN REYNOLDS BROWN: I need to
3 reread -- I need to know if I heard that
4 correct.

5 MR. COHN: Recently at Penn, they went
6 even further to gut the hearing process.
7 They now have a single investigator who
8 serves as investigator, the judge and the
9 jury. And only on appeal does a student
10 ever get a chance to have a hearing, a
11 hearing that has substantially limited
12 rights. And we can go into in-depth about
13 that, but I also included in the materials
14 in your folder a copy of a letter from a
15 third of the tenured faculty at Penn Law
16 about why these procedures are inadequate,
17 why they are unfair, why they betray all
18 principles of due process that we hold dear.

19 And FIRE is not alone in our assessment
20 the campus judiciaries are ill equipped to
21 adjudicate campus sexual assault. In fact,
22 I didn't know you were going to be on this
23 panel.

24 So, I actually pulled Ms. Tracy's quote

1 when she echoed our concerns to Philadelphia
2 Magazine. And she said, "My grave concern
3 is the capacity, the competence, and the
4 appropriateness of colleges dealing with
5 rape outside the criminal justice system."

6 And this concern was also expressed even
7 more forcibly by Rape, Abuse, Incest
8 National Network, RAINN, in its comments
9 submitted to the White House Task Force in
10 addressing sexual assault on campus. RAINN
11 told the White House, and I'm quoting here
12 directly:

13 "It would never occur to anyone to leave
14 the adjudication of murder in the hands of
15 schools' internal judicial processes. Why
16 then is it not only common but expected for
17 them to do so when it comes to sexual
18 assault? We need to get to a point where it
19 seems just so inappropriate to treat rape so
20 lightly. While we respect the seriousness
21 with which many schools treat such internal
22 processes and the good intentions and good
23 faith, many who devote their time
24 participating in such processes, the simple

1 fact is that these internal boards were
2 assigned to adjudicate charges like
3 plagiarism, not violent felonies. The crime
4 of rape just does not fit the capability of
5 such boards. They often offer the worst of
6 both worlds, they lack protections for the
7 accused while often tormenting the victims."

8 FIRE cannot possibly agree with RAINN
9 anymore on that point.

10 And while the schools are ill suited to
11 determine the guilt or innocence in a sexual
12 assault case, they still have a moral and
13 legal obligation to ensure that campuses are
14 free from discriminatory harassment and
15 sexual assault. And that makes sense. It's
16 important. To that end, they can meet this
17 responsibility by providing a vast range of
18 intermediary remedies and responses to
19 student complainants.

20 Colleges should be advising students
21 where to turn to ensure that evidence is
22 preserved. They should be helping
23 complainants report accusations properly to
24 law enforcement. They can provide training

1 to first responders to make sure that
2 initial interviews don't chill future
3 complainants from coming forward and to
4 ensure that information gathered during
5 those crucial interviews are helpful to fact
6 finders down the road.

7 Colleges can provide counseling services
8 that can separate students by changing core
9 schedules and dorm assignments. Instead of
10 assuring -- ensuring that we assign
11 responsibilities within higher educational
12 institutional capacities, some advocates
13 have pushed policies designed to help
14 victims by making campus judicial processes
15 friendlier to them. One such policy is the
16 "Yes Means Yes" policy as we're discussing
17 today.

18 And "Yes Means Yes" definitely sounds
19 good. And I know that Professor Madden
20 Dempsey and I disagree profoundly on what it
21 does and doesn't do. But it's dangerous in
22 my view pretty apparently when you look at
23 it closer. No one denies that consent is
24 important. And indeed, it's the lack of

1 consent that converts lawful sexual activity
2 into unlawful sexual activity. The primary
3 problem with affirmative consent is that it
4 does effectively split the burden of proof.
5 And here is where I am going to go into
6 further depth than what my written comment
7 provided to respond directly to what was
8 said before.

9 It flips the burden of proof because it
10 says unless the hearing panel can conclude
11 that there was consent there, their
12 obligated to assume that it wasn't there.
13 Okay. That's how the flipping occurs, okay.
14 If they can't be sure that it was there,
15 they must now err on the side of assuming
16 that it wasn't there instead of the other
17 direction. That is classically what you
18 mean by flipping who needs to prove what.

19 And that is precisely why the Supreme
20 Court of the State of Washington has found
21 it unconstitutional twice. Twice. Once in
22 terms of the criminal law standard and
23 second time in terms of a jury instruction.
24 That is why multiple courts, including

1 courts of appeal in the military criminal
2 justice system, have also found it
3 unconstitutional. And now while the
4 standards in criminal law aren't identical,
5 the principles and the logic and the
6 reasoning are exactly the same. They are
7 precisely identically the same, which is we
8 make more errors when we require someone to
9 prove something that is almost nearly
10 impossible to prove.

11 And while I said in a blog how do you
12 prove it without having a videotape, I can
13 actually think of one other way you can
14 actually prove within the letter of a law of
15 an affirmative consent standard. If you
16 happen to have the stacks and stacks of
17 communications from the person before and
18 afterwards confirming how wonderful it was,
19 then maybe someone will then say, yeah, it
20 looks like that person consented.

21 But when one person is saying they did
22 and one person is saying they didn't, if the
23 only way an adjudication panel can decide
24 that you are not responsible is if they have

1 proof of consent, I would like to hear from
2 any of these people how if they were
3 defending that student, not if they were
4 prosecuting them, how if they were defending
5 that student they would offer evidence to
6 meet that burden. They can't. No advocate
7 in the country has yet provided a single
8 sentence that can show that they can do that
9 because it hasn't happened in any of the
10 cases.

11 And from FIRE, I'm in a luxurious
12 position of seeing thousands and thousands
13 and thousands of these cases come to my desk
14 where they have used different policies
15 because students send them to us to review
16 their files. And I'm telling you, that
17 schools are using these policies in a way
18 where they are flat out requiring students
19 to prove their innocence, and that should be
20 deeply disturbing to -- to all of us.

21 And it's very tempting as a due process
22 advocate to see the files that come to me as
23 the whole universe and assume that it's just
24 a due process problem. But I meant what I

1 said in my opening which is that there are
2 obviously many people who are very real
3 victims. And we also have to be mindful
4 that the university is bigger than just the
5 due process advocacy. But we need the
6 victims' rights advocates to understand
7 there are also sometimes accusations that
8 are unjust, too, and be just as concerned
9 about that problem.

10 So but I digress a little bit. But the
11 real danger in making campus judiciaries
12 friendlier alternatives to the criminal
13 justice system is that in doing so, we
14 inadvertently divert meritorious claims away
15 from the one system that has the tools to
16 get it right, the necessary power to issue
17 appropriate punishments and the ability to
18 remove predators from the streets.

19 After all, at the end of the day, when
20 you expel a student for sexual assault, they
21 can also still rape someone else. They can
22 still rape someone else that night. And
23 they can also still rape someone else who is
24 attending the very school they were expelled

1 from.

2 So, the one thing we have to keep in
3 mind is that there is a very, very short
4 window for collecting critical evidence.
5 And after 72 hours, you can no longer get a
6 rape kit collected. After 48 hours, you
7 can't draw blood that can show whether
8 someone was drugged against their will or
9 whether they were so darn intoxicated they
10 couldn't have possibly consented. And if
11 this evidence isn't collected properly and
12 if the police are not involved out the gate,
13 the odds of a successful prosecution
14 plummet. Not impossible, but they plummet.

15 So, FIRE would urge you to consider that
16 one of the key things that you can do is
17 ensure that there's prompt notification to
18 police of accusations that come to their
19 attention. The Women's Law Project has done
20 immensely excellent work in improving how
21 law enforcement in this area responds to --
22 to these claims. And I think we do law
23 enforcement a disservice when we paint them
24 with a broad bush of assuming that they

1 don't care about it. I also think we do the
2 world a disservice when we ignore that there
3 are other jurisdictions where there are
4 still tremendously difficult problems in
5 getting law enforcement to deal with it
6 properly.

7 So but, here we have the luxury of
8 knowing that we have District Attorney's
9 Office and Police Department that does
10 really care about it, that is working with
11 the stakeholders. And we should be making
12 sure the Philadelphia institutions get the
13 cases into their hands quickly and
14 universities are coordinating with them at
15 critical times.

16 So, you know, I want to just go back to
17 one last thing about "Yes Means Yes" and
18 then I will wrap up my testimony which is
19 that what people don't tell governing boards
20 when analyzing "Yes Means Yes" is that even
21 the law under No Means No provides important
22 exceptions in every jurisdiction in the
23 country whether through statutory law or
24 through criminal common law. And that's --

1 we've always set aside the obligation to say
2 no or -- I don't want to say always. We
3 have in recent and modern times set aside
4 the obligation to say no or resist when
5 someone was incapacitated, whether they were
6 incapacitated because you are a minor,
7 whether you are incapacitated because you
8 were hit over the head with a brick, whether
9 you were drugged against your will, whether
10 you voluntarily drank too much. We always
11 remove that obligation to say no if you
12 don't have the capacity to do so.

13 We also remove the obligation to say no
14 or resist in any kind if that doing so will
15 subject you to further violence. That makes
16 sense because we don't want people to put
17 themselves in further violence, but we
18 require people to say no when they can when
19 the circumstances don't meet because people
20 aren't mind readers.

21 So, I appreciate the intention of "Yes
22 Means Yes". I think it's clearly designed
23 to help people out, but I think it misses
24 the mark. And as FIRE told the White House

1 Task Force, all of the options of trying to
2 get universities to coordinate with law
3 enforcement and all the remedies they can
4 provide on the ground and many, many more
5 ideas can help ensure that campuses remain a
6 safe place for all students to learn without
7 leaving the ultimate decision of guilt and
8 innocence to tribunals which are proven to
9 be inadequate and ill prepared in doing so.

10 And the only last final thing -- I will
11 be really fast on this -- is that it doesn't
12 really make more than a rhetorical
13 difference whether they are deciding whether
14 or not or someone committed the crime of
15 rape, whether or not they broke their rule
16 by raping someone.

17 At the end of the day, they're trying to
18 make a factual determination about whether
19 or not certain activity occurred and that
20 activity is criminal. And anything a
21 student says in the process is admissible
22 against them in criminal courts later on.
23 So, to ignore that 5th amendment implication
24 and to require students under a "Yes Means

1 Yes" to only be able to defend themselves by
2 proving there is consent possess serious
3 victim implications. Thank you so much for
4 hearing me out. Sorry I took so long.

5 COUNCILWOMAN BLACKWELL: Thank you very
6 much.

7 Questions?

8 COUNCILWOMAN REYNOLDS BROWN: Well, it's
9 clear that the passion of the three of you
10 comes through in a wonderful way. What I
11 don't want to see happen this afternoon is a
12 legal friendly debate about this because
13 right now we're in information gathering
14 stage with the clear understanding that for
15 me, at least preliminarily and I haven't
16 confirmed with my staff, is that there is no
17 uniformity across systems in how this issue
18 is grappled with. And when I say systems, I
19 mean across universities from if your facts
20 are correct, from one professional at Penn
21 to several professionals at another
22 institution dealing with the same type of
23 issues.

24 For me, that raises some level of

1 concern. So, I think I want to leave it at
2 just gathering information at this point
3 unless either one of you want to comment.
4 And it appears that both of you would like
5 to. So what I don't want us to get into is
6 a friendly debate because our time doesn't
7 permit that this afternoon, it's not to say
8 it won't happen in the future. But please,
9 Carol Tracy and then Professor.

10 MS. DEMPSEY: I'll just be very quick.
11 And since there is this issue of legal
12 interpretation of the statute in California,
13 I just -- I didn't lay out my credentials
14 before I testified. It just -- I did submit
15 my C.V. as evidence.

16 COUNCILWOMAN REYNOLDS BROWN: Yes, I saw
17 that.

18 MS. DEMPSEY: Okay. I'm not coming out
19 of nowhere on this. I have my JD from
20 Michigan. I have my LLM from the London
21 School of Economics. I hold a doctorate
22 from the University of Oxford. I have
23 written over 22 scholarly articles and award
24 winning book published by Oxford University

1 Press on these very issues. I've been
2 teaching criminal law for ten years, four --
3 five years of those were at the University
4 of Oxford before I came to Villanova. So,
5 there is absolutely no doubt that the best
6 interpretation of this statute is that it
7 does not shift the burden of proof. And I
8 would be happy to write a dissertation
9 explaining why that's so.

10 But what I want to comment briefly in
11 substance on two things that were said. One
12 has to do with the issue of if the fact
13 finder has to decide whether the person
14 affirmatively consented, that's going to be
15 impossible to do. I just want to remind us
16 for a moment that battery and theft are
17 either a hug or a gift depending on the
18 issue of affirmative consent.

19 If I were to come up to you and give you
20 a great big hug, I'm either committing a
21 battery or I'm -- I'm either committing a
22 battery or doing something that's perfectly
23 acceptable. And it all falls on the
24 question of whether or not you affirmatively

1 consented to hugging me. And we have social
2 norms in ways that signify this. You put
3 our your arms, I put out my arms. We smile
4 and both embrace one another at the same
5 time. That's precisely the way it goes with
6 battery.

7 Also with respect to theft, I like your
8 coffee cup. If I were to walk up to you and
9 take your coffee cup and stick it in my bag
10 and walk away, I'm either committing a theft
11 or you're giving me a gift. And the
12 question falls on the issue of affirmative
13 consent. So, this is not some wacky new
14 standard that goes beyond the pale and
15 creates unjust situations.

16 This is -- if students at a university
17 setting were accused of battery or theft,
18 they would also be called before a student
19 disciplinary commission. And if they didn't
20 want to face repercussions, they'd have to
21 explain themselves why did they think that
22 they were being given a gift rather than
23 stealing something.

24 COUNCILWOMAN REYNOLDS BROWN: Okay.

1 MS. DEMPSEY: And that's -- with respect
2 to the issue of proof and how it's
3 absolutely impossible to prove that someone
4 obtained affirmative consent, I would
5 suggest that it's not impossible. It's the
6 same way you do in those other cases.

7 If I was representing someone who is
8 accused and they did obtain affirmative
9 consent, I would say to them, well, you
10 should go up there and tell them what
11 happened. And I would expect to hear
12 testimony along the following lines. She
13 said yes. She said, oh, God that feels so
14 good. She grabbed my penis, spread her legs
15 open, placed it by her labia, grabbed my
16 buttocks and pulled me towards her.

17 There is a lot of ways that you can
18 prove affirmative consent both in words and
19 actions. So, this is not some sort of
20 difficult standard to prove. This is simply
21 the norms that we expect from people.
22 Because people are not mind readers. That
23 is why we are moving to a standard that says
24 you don't have to read the mind, you have to

1 listen for the yes or you have to watch for
2 the signals that clearly indicate
3 affirmative consent. That's precisely why
4 we're moving toward the standard and why I
5 think we should.

6 Thank you.

7 COUNCILWOMAN REYNOLDS BROWN: Okay.
8 Carol Tracy.

9 MS. TRACY: Just briefly. The quote
10 from Philly Magazine, I believe that my
11 quotation referred to the appropriateness
12 capacity of colleges and universities to
13 investigate the crime of rape, not the civil
14 rights violation of rape. And I think the
15 constant conflation of those two issues --

16 COUNCILWOMAN REYNOLDS BROWN: The
17 constant what?

18 MS. TRACY: Conflation of, yes, it may
19 be the same conduct that we are talking
20 about. One is a very serious criminal
21 violation that can result in a person going
22 to jail and loss of liberty around which
23 many, many procedural protections are
24 necessary, critical. I completely support a

1 very high standard, beyond a reasonable
2 doubt standard of evidence.

3 A civil rights violation, a civil
4 violation is a very different issue. And I
5 am concerned that the two, partly because
6 quite frankly the schools have ignored this
7 for so many years. And all of a sudden, you
8 know, for the last two or three years
9 everyone is up against the wall. And the
10 kind of discussions -- because, actually
11 they're are a number of things.

12 I worry about self-incrimination. I
13 worry about the rapist who is expelled from
14 school who is left on the street. I really
15 worry about that. And I worry about police
16 response throughout the country even though
17 I think we have improved it here. That is
18 still polluted with bias as our prosecutors
19 who won't -- I mean, it's a rare prosecutor
20 that will ever take a case here or anywhere
21 else where drugs and alcohol are involved
22 which, of course, is very common place.

23 This is a complicated issue. There is a
24 lot of unpacking that needs to be done. I

1 think these forum are important to begin the
2 discussions. And I -- as I said, I hope the
3 schools will do more than just come into
4 compliance with the law but really pull
5 apart this issue and -- and engage the
6 community at large in doing so.

7 COUNCILWOMAN REYNOLDS BROWN: I think we
8 have another panel to go, but in many ways
9 you provided my closing comment.

10 Any final comments, sir?

11 MR. COHN: Yeah. Real quick here. I
12 think I there's actually a lot of --

13 COUNCILWOMAN REYNOLDS BROWN: Talk
14 closer to your mic.

15 MR. COHN: I'm sorry. I think there's
16 actually a lot of common ground in terms of
17 everyone's desire to make sure that we, you
18 know, address this issue very well.

19 But the one thing I just want to revisit
20 is when we are talking about the
21 incrimination aspect of it, it's really not
22 just a minor byproduct. It's really very,
23 very crucially important because we're
24 talking about -- whether or not you want to

1 talk about a civil rights or as the actual
2 criminal, underlying criminal offense.
3 Again, anything a student says in the
4 process can be admitted against them later
5 on.

6 So at the end of the day, you are having
7 18 years old talk about what could be crimes
8 that could constitute decades of time behind
9 bar. In Virginia, actually, it's life
10 imprisonment there dealing with the same
11 issue. And yet, we have to treat it at
12 every step in which you have something that
13 can be used admissibly, we have to treat
14 that very seriously.

15 And the thing about affirmative consent
16 as you just heard from the Professor is that
17 she talked about all the ways it can be
18 proven. All of those things require the
19 person to speak up and be telling their
20 side, okay. Again, a very clear signal that
21 the burden has been shifted when you have to
22 tell your side. That's not ambiguous.
23 That's very clear.

24 So, the last thing I would say about

1 affirmative consent and about "Yes Means
2 Yes," is that almost none of us live by
3 that.

4 COUNCILWOMAN REYNOLDS BROWN: Almost?

5 MR. COHN: None of us live by that in
6 actual day-to-day life. The reason why is
7 because affirmative consent requires
8 permission in advance, okay. And it doesn't
9 matter whether it's verbal or it's physical.
10 That's kind of somewhat of a lark that
11 people, sometimes due process advocates send
12 out there.

13 But the end of the day, is that if
14 someone teaches you in a sexual way that you
15 didn't want, say your partner you've been
16 living with for 20 years, you say no. They
17 stop immediately. They have already
18 technically committed the sexual assault
19 under the letter of these policies. It has
20 already happened because the touching
21 happened first. That is just not how adults
22 actually tend to interact in sexual
23 interactions. It just isn't how we do it.

24 COUNCILWOMAN REYNOLDS BROWN: I believe

1 ultimately -- the legal interpretation I
2 will leave to the legal eagles. I am more
3 deeply concerned about what procedure --
4 procedures and protocols are in place across
5 university systems in Philadelphia. And
6 where are we lacking.

7 MR. COHN: A lot of them are using it.

8 COUNCILWOMAN REYNOLDS BROWN: Forgive
9 me?

10 MR. COHN: A lot of them are using it.
11 Sorry. Didn't mean to interrupt.

12 COUNCILWOMAN REYNOLDS BROWN: A lot are
13 what?

14 MR. COHN: Using affirmative consent.
15 That we don't disagree with.

16 COUNCILWOMAN REYNOLDS BROWN: What I
17 thought I heard from Carol Tracy is only
18 because of what has happened at the federal
19 level where a lot of universities are
20 playing catch up. For me it is disturbing
21 that heretofore, some universities quite
22 frankly drag their feet. And now because
23 the federal level has said no more, it's now
24 time to get with the program, in the

1 vernacular of young people.

2 My focus ultimately will be on what are
3 we doing as institutions to protect both the
4 victim and the accuser. What protocols are
5 in place to ensure fairness and justice in
6 the process. And this is just chapter one.
7 This is just an initial sit down. So, know
8 that the expertise provided by all three of
9 you is quite valuable.

10 Thank you very much.

11 MS. DEMPSEY: Thank you, Councilwoman.

12 COUNCILWOMAN BLACKWELL: Thank you.

13 Before we invite the next panel, just two
14 individuals -- would you hold up a minute.
15 We have a question.

16 COUNCILMAN SQUILLA: One more question
17 to this panel. Just one more thing.

18 And I think this is an important matter
19 because, obviously, nobody wants to have
20 their education and their life put in
21 jeopardy because of mistakes made either by
22 people making decisions or themselves.

23 So if we were in a -- an area where
24 somebody was accused of a sexual assault and

1 that person did not feel that they had a
2 either a fair hearing or decisions made in
3 their value in their case, that would then
4 go to an appeal. Does every university have
5 the same appeal policies?

6 MR. COHN: No, they don't. They all
7 have different appeal policies. Some of
8 them very strongly narrow what the grounds
9 are of appeal. You know, was there new
10 evidence. Was there -- some very strongly
11 narrow the ground. Some of them don't.
12 Some of the appeals go to the same body that
13 already originally heard it, so it's really
14 not an appeal. It's a motion for
15 reconsideration.

16 At the end of the day, if you are in a
17 public university, you can sue in federal
18 court under the Due Process Clause. At
19 private institutions, you can sue for a
20 breach of contract if they provided actual
21 provisions promising particular standards of
22 the process. But if they didn't provide
23 those specifics and just gave a general,
24 sure, we will treat you fair, it's harder to

1 win the breach of contract claim in a
2 private institution.

3 So, the appellant answer isn't really
4 simple. But there -- several schools have
5 multiple layers. I would tell you that
6 multiple layers of -- of panels that don't
7 have the expertise is just as prone to error
8 as having -- it doesn't particularly help.
9 If you never have it being reviewed by
10 panels that don't know what they're doing,
11 even if you have it reviewed by three panels
12 of amateurs, you are still having three
13 panels of amateurs.

14 COUNCILMAN SQUILLA: I know you're
15 being -- go ahead. You want to answer?

16 MS. TRACY: I don't want to belabor this
17 too much. But the criticism against
18 university personnel being involved in
19 adjudication suggests to me that many people
20 have an extraordinarily low opinion of some
21 of the greatest scholars in the world. They
22 have enormous numbers of -- particularly
23 those who are in science. I think you
24 mentioned the physics professor. They have

1 an extraordinary number of rules and
2 regulations that they need to follow
3 connected to their own federal grants.

4 I think they are also like a jury. I
5 think they are capable of doing this. I
6 think schools have a significant
7 responsibility to make sure that those who
8 are on hearing panels have the proper kind
9 of background and training connected with
10 the panel. But I do think they have got the
11 brain power to be able to handle these kinds
12 of situations. They are the same people who
13 are called on juries. We would like them
14 serving on juries.

15 So I just want to --

16 COUNCILMAN SQUILLA: I wasn't looking at
17 it that way. I was looking at it, would it
18 be easier if all schools followed a certain
19 protocol? If it was something by higher
20 education, say, if you have certain protocol
21 for these type of things, if everybody would
22 follow this protocol? I mean, each school
23 would have different people making those
24 decisions, but every school would be doing

1 the same thing across the board.

2 That's where I was going with it.

3 MS. TRACY: I mean, I think that's more
4 up to the schools to answer. But it's also
5 part of the reason that we called them
6 together last year so that there would at
7 least be some uniformity in knowing what our
8 law enforcement system is and their interest
9 in continuing to work, because I think there
10 could be very creative collaborations.

11 Clearly, some schools in Philadelphia have
12 many, many, many more resources, greater
13 opportunity to really have the resources to
14 conduct the appropriate and fair
15 investigations and proceedings and those
16 sorts of things then some of the smaller
17 schools.

18 So, I think that creative collaborations
19 and also more creative ways perhaps in
20 dealing with remedies and making it clear
21 that the rights of all parties are
22 protected. You know, where are in too many
23 silos in many respects.

24 COUNCILMAN SQUILLA: Right. Right.

1 MS. TRACY: So I think that -- I think
2 we can make it better. I think we can make
3 it better because we have had, you know, a
4 very strong advocacy community in this town,
5 and the opportunity to work together on a
6 lot of issues. So, I think we can do that
7 on this. I think we can be the best
8 practice.

9 COUNCILWOMAN REYNOLDS BROWN: Yes.

10 COUNCILMAN SQUILLA: That sounds good.
11 Thank you.

12 COUNCILWOMAN BLACKWELL: Thank you very
13 much. Thank you all. And before we have
14 our last panel come up, we're hoping that
15 Wendella Fox, Esquire who's with us might
16 have some comments to make. This is your
17 area. Office of Civil Rights issue runs
18 education -- education division. So, we
19 hope you'll consider it. Thank you. We
20 will leave that open.

21 We have two more people, then we will
22 ask you to come forward if you will. Thank
23 you.

24 Will the clerk read the title of -- I

1 mean, the individuals on our last panel.

2 THE CLERK: Our final panel is Debasri
3 Ghosh, Director of Education and
4 Communications from Women's Way; and Women
5 Organized Against Rape.

6 (Panel approaches Witness Table.)

7 COUNCILWOMAN BLACKWELL: Thank you for
8 your patience. Good afternoon. Please
9 introduce yourself for the record and make
10 your testimony.

11 MS. GHOSH: My name is Dabasri Ghosh.
12 I'm the Director of Education and
13 Communications for Women's Way, an
14 organization that funds, advocates for and
15 amplifies the voices of women in
16 Philadelphia.

17 Through our funding of organizations
18 such as Women Organized Against Rape and the
19 Women's Law Project as well as through our
20 public policy and education work, we address
21 many intersecting issues affecting women
22 including gender based violence and sexual
23 assault. I'd like to thank City Council for
24 recognizing the need for proactive measures

1 to mitigate a culture of violence.

2 My comments today, you know, I'm not an
3 attorney or a university administrator. So,
4 my comments today will not speak to the
5 legal or procedural implications of this
6 policy but rather to the broader context
7 within which the sexual assault crisis on
8 college campuses and the response to it
9 exist.

10 Last year when California passed a law
11 requiring state schools to use a "Yes Means
12 Yes" standard during campus sexual assault
13 adjudication processes, it started a trend
14 in large part because of the simplicity of
15 this law. It argues that a person not
16 physically fighting back against an
17 aggressor and being silent is not consent.
18 That people who are under the influence of
19 alcohol or drugs, asleep or unconscious are
20 incapable of giving consent. And finally,
21 that consenting to one form of sexual
22 activity does not give blanket consent for
23 all sexual activity and that it can be
24 revoked at any time.

1 As the Professor on the last panel
2 mentioned, this is not a revolutionary
3 concept. This measure simply states that
4 consent requires more than the absence of
5 the word no. There are countless reasons
6 why targets of coercive sexual behavior
7 might not have the safety and the privilege
8 to say no.

9 Factors ranging from socialized and
10 gender politeness norms to fear of being
11 physically hurt or killed inform verbal and
12 physical responses during rape. Arguing
13 that people being assaulted can just say no
14 or should have fought back reinforces a
15 culture of victim blaming, a culture where
16 the oneness to prevent sexual assault is on
17 the survivor rather than the perpetrator.
18 There is a name for the atmosphere that
19 perpetuates these faulty assumptions. We
20 call it "rape culture."

21 Ultimately, affirmative consent is a
22 spring board to greater awareness and
23 education for everyone, but especially
24 parents, administrators, coaches and other

1 people with authority in higher education
2 institutions. "Yes Means Yes" is a crucial
3 step away from a culture of coercive
4 sexuality, one that has historically favored
5 the interest of the powerful, entitled and
6 abusive most of whom, for cultural
7 historical reasons, have been men.

8 This brings up another important element
9 to this discussion, which is that
10 dismantling rape culture will take more than
11 simply enacting policy such as this one. To
12 truly address the pervasive nature of
13 gender-based violence, we have to talk to
14 our sons, our brothers, our nephews.
15 Meaningful sexual assault prevention
16 requires teaching boys before they get to
17 college age about consent, about respect,
18 about honest communication and healthy
19 relationships and, yes, about gender
20 equality. Because while rape is one of the
21 most visible forms of the marginalization of
22 women, it is symptomatic of a system of
23 injustice that privileges the comfort of men
24 over the needs and rights of women.

1 In the most basic terms, affirmative
2 consent reinforces the simple message to
3 students. And while this particular measure
4 only applies to students, I would argue that
5 the sentiment should be applied to all
6 people to only have sex with people who are
7 actively interested in having sex with you.
8 Again, this is not a radical concept.

9 We are very pleased to see Council
10 devoting time and thoughtfulness to
11 strategies like this one that begin to
12 tackle the campus rape crisis. Women's Way
13 looks forward to working with Council as
14 well as our allies here in the room and
15 outside of the room including the many young
16 women and young men on college campuses
17 leading this movement to create safety on
18 college campuses.

19 Thank you.

20 COUNCILWOMAN BLACKWELL: Thank you.

21 MR. JOHNSTON: Good afternoon. And
22 thanks to each of you for the opportunity to
23 be here today to address campus sexual
24 assault from the perspective of

1 Philadelphia's Rape Counseling Center.

2 My name is Scott Johnston. I'm the
3 Director of Counseling Services at Women
4 Organized Against Rape. We are also known
5 as WOAR.

6 We were founded in early '70s. We
7 represent one of the country's first free
8 standing rape crisis centers. This year we
9 project that our services will have touched
10 over 57,000 Philadelphia children, teens and
11 adults through an array of services:
12 Counseling, hotline, court advocacy, medical
13 accompaniment, education and prevention as
14 well as multi-cultural outreach. That
15 number 57,000 grows considerably as we
16 consider the impact of collaborative
17 initiatives that include our partners such
18 as Women's Law Project, Women Against Abuse,
19 Women's Way and others.

20 Over the years and to the point of
21 today's discussion, we've also worked with a
22 number of colleges and universities in
23 enhancing their responsiveness to sexual
24 violence. In the course of our work, we

1 have helped many college and university
2 students survivors of sexual assault. This
3 afternoon we heard testimony addressing
4 sexual assault as it pertains to college and
5 university policy and practice as well as
6 important legal frameworks and implications.

7 I'd just like to augment these points
8 with a glimpse of the lived experience of
9 sexual assault. While each person's
10 experience differs, there are common
11 scenarios that emerge. To no one's
12 surprise, very frequently alcohol and
13 recreational drugs are contributing factors.
14 As well, we have seen a marked increase in
15 accounts describing suspected date rape
16 drugs being surreptitiously being added to
17 drinks followed by deep sedation, a loss of
18 consciousness.

19 Compounding the obvious effects of these
20 substances are the developmental features of
21 young adulthood for which many are
22 associated with relative inexperience
23 negotiating away-from-home residential
24 living, dating, partying and sex.

1 More than once, our student clients have
2 described confusion pre-assault, that
3 kissing may infer that sex is okay or that
4 consenting to a date is synonymous with
5 consenting to sex. Post-assault, some
6 students survivors thought that reporting to
7 campus police was equivalent to reporting to
8 municipal police. We know this isn't the
9 case and/or that the confidentiality of
10 their disclosure to college personnel would
11 be protected.

12 By statute of privilege, sexual assault
13 counselors at WOAR as well as other
14 Pennsylvania rape counseling centers may not
15 disclose any aspect of a survivors
16 communication or agree to be court examined
17 without the written consent of the survivor.
18 My understanding is that this privilege does
19 not apply to college and university
20 personnel.

21 It's common for survivors of sexual
22 assault to be burdened by shame which, of
23 course, can inhibit reporting. In a college
24 setting, aspects of shame are uniquely

1 amplified. Students are living in a
2 community of peers that is ripe with strong
3 social alliances and loyalties. For a
4 college student weighing the pros and cons
5 of reporting the spectrum of social
6 repercussion represents a daunting and
7 potentially dominating force of influence.
8 If there is good news, it's that many
9 survivors do heal from their trauma. I'd
10 say that as a clinician. While the arc of
11 recovery is a testament to resiliency,
12 empowerment and considerable personal
13 effort, these gains of healing do not erase
14 the psychological scars of the trauma
15 itself.

16 As a community, we are morally compelled
17 to keep these difficult conversations going
18 to break the silence that so often
19 accompanies sexual and domestic violence,
20 and to ensure that our institutions of
21 learning are positioned to model with
22 transparency and efficacy systems that are
23 responsive to the crimes, the civil rights
24 violations and the profound personal

1 sufferings of sexual violence.

2 And in closing, I just wanted to echo
3 Carol Tracy's recommendation that this forum
4 be reconvened in a year so that we're able
5 to chat about what progress has been made.
6 There are many fronts. And I also wanted to
7 suggest that everyone in this room see the
8 film Hunting Ground, which was referenced
9 earlier. As a former documentary filmmaker,
10 my sense is that it was well researched.
11 It's an expose and it's an important message
12 to consider.

13 Thank you.

14 COUNCILWOMAN BLACKWELL: Thank you very
15 much. Any questions?

16 COUNCILWOMAN REYNOLDS BROWN: Just a
17 moment.

18 COUNCILWOMAN BLACKWELL: Yes.

19 COUNCILWOMAN REYNOLDS BROWN: Let me say
20 thank you very, very much. I am going to
21 make that a staff assignment for all of us
22 at my June retreat. Thank you for that
23 recommendation and suggestion. And you can
24 count it as a yes to Carol Tracy's

1 recommendation that we reconvene in a year.
2 It also includes me and staff rereading all
3 of the testimony. Because once we reread
4 all the testimony, that will give us some
5 guidance as to what -- where we go from
6 here.

7 I am curious to know, is W0AR a part of
8 the task force that Carol Tracy already has
9 underway with higher education community?

10 MR. JOHNSTON: Indeed.

11 COUNCILWOMAN REYNOLDS BROWN: Okay.

12 MR. JOHNSTON: Yep, we are partners.

13 COUNCILWOMAN REYNOLDS BROWN: All right
14 then. Given -- I failed to ask this
15 question of the last panel of experts.

16 Given what you know and given your
17 experience, do you believe we need to move
18 to where California is, yes or no, with the
19 "Yes Means Yes" statewide law?

20 MR. JOHNSTON: It's difficult for me to
21 respond with yes or no having especially
22 listened to the last panel's testimony. I
23 think you know our minds are wired in the
24 face of complex problems to seek simple and

1 single solutions. "Yes Means Yes" I think
2 has terrific validity and value as a talking
3 point, as a discussion point. And it may
4 have a role in policy as well. But it's
5 clear that there are complex legal --

6 COUNCILWOMAN REYNOLDS BROWN: Grey
7 areas.

8 MR. JOHNSTON: -- implications that
9 really need to be considered in reaching the
10 yes or no response that you requested.

11 COUNCILWOMAN REYNOLDS BROWN: Well said.
12 Well stated. Thank you.

13 MS. GHOSH: My answer is yes. Although,
14 I will say that I hope to see this as part
15 of a package of measures and initiatives to
16 mitigate a culture of gender-based violence.
17 I think it is a quite sexy talking point.
18 And so, I would hate to see the issue
19 checked off and resolved because of the
20 passage of one particular policy. I don't
21 think that that's a comprehensive wholistic
22 approach that we need.

23 COUNCILWOMAN REYNOLDS BROWN: Is Women's
24 Way at the table, too, with Carol Tracy and

1 the team of professionals?

2 MS. GHOSH: In the context of being a
3 funder of these program, we absolutely
4 support the initiative.

5 COUNCILWOMAN REYNOLDS BROWN: I see. I
6 see. Well, this has been eye opener for my
7 staff and me in terms of the
8 complexity-layered issues that come with
9 where we end up. So again, I want to thank
10 the Chair of the Committee for allowing us
11 to schedule this on a Friday knowing that
12 our lives are full in other ways. And I
13 want to thank all of you for your important
14 testimony. And to remind you that this
15 clearly is chapter one for what we now have
16 to do in my office as we proceed to the next
17 steps.

18 Thank you all very, very much for your
19 important testimony.

20 COUNCILWOMAN BLACKWELL: Again, we want
21 to ask Wendella Fox, Esquire if she can
22 would come forward and give us her title.
23 And we thank you for being here and than you
24 for being asked to come extemporaneously.

1 And your coming forward to do so.

2 Good afternoon.

3 MS. FOX: Not a problem. Good
4 afternoon, Chairwoman Blackwell,
5 Councilwoman Blondell Reynolds Brown, always
6 a pleasure. I will just make some comments
7 and at the end hopefully make a suggestion.

8 COUNCILWOMAN BLACKWELL: Wonderful.

9 MS. FOX: My name is Wendella P. Fox.
10 And I'm the Director for the Office for
11 Civil Rights with the U.S. Department of
12 Education. And as you have heard this
13 afternoon, it is my office that enforces the
14 law Title IX that several of the witnesses
15 have testified about today.

16 It's a federal statute. Title IX is
17 about the -- prohibits the discrimination
18 against sex. It's based on sex
19 discrimination. And part of what we do,
20 part of that statute, not all of it, has to
21 do with discrimination that includes sexual
22 assault against females, students
23 kindergarten through Ph.D.

24 One of the most important services that

1 I believe my office provides is providing
2 information through workshops. And as both
3 of the Councilpersons knows, we will do
4 that. We will come out and provide
5 workshops on various informations.

6 About a year ago May 2014, my office had
7 a workshop that we did here in Philadelphia
8 for more than 100 people. And it was
9 simulcast to Pittsburgh where there were
10 about 50 people that attended. In
11 October 2014, on this very subject of sexual
12 assault on college campuses, again, we were
13 at the University of Pennsylvania and we
14 partnered with them through their Title IX
15 Coordinator. There were about 150 attendees
16 at that workshop, more than 50 institutions
17 of higher education from Pennsylvania, New
18 Jersey and Maryland. In November 2014, we
19 were in Kentucky.

20 We have five states that we are
21 responsible for out of the Philadelphia
22 office. And they include Pennsylvania,
23 Delaware, Maryland, West Virginia and
24 Kentucky. Of those five states, we have the

1 jurisdiction over more than 400 institutions
2 of higher learning. We also have over 100
3 charter schools and over 700 school
4 districts that we are responsible for, for
5 those five states. Just on Tuesday of this
6 week, I and some staff were in Pittsburgh at
7 the University of Pittsburgh where there
8 were almost 300 attendees at a workshop that
9 we did again on sexual assault and sexual
10 violence. The attendees were from more than
11 50 institutions in western Pennsylvania,
12 West Virginia and Ohio.

13 There very advocacy groups there, much
14 like the ones that you heard from this
15 afternoon, local law enforcement. There
16 were there -- they were employees there from
17 the universities from campus police, the
18 President's office, the Title IX
19 Coordinators that you heard from this
20 afternoon, the General Counsel Office, the
21 Dean of Students. They are the ones that
22 are responsible from the resident advisers
23 where the students are in university
24 housing, student affairs, and those that are

1 Title IX investigators if there is an
2 allegation, a complaint filed by a student
3 that they were sexually assaulted.

4 In those workshops, we work -- we walk
5 through issues including consent, what your
6 witnesses this afternoon were testifying
7 about. And particularly consent that is
8 impaired when there are alcohol and drugs
9 involved. And a lot of times in these
10 incidence, there are alcohol or drugs
11 involved. Sometimes these incidence are
12 called -- occur in off-campus housing or in
13 an office-campus event. And we walk through
14 what does that mean and what's the
15 responsibility of the university. We talk
16 about the investigation and their
17 responsibility for it.

18 We have the Office for Civil Rights, the
19 U.S. Department of Education, currently over
20 100 investigations nationally that are
21 occurring.

22 Here is my suggestion, and I thank you
23 kindly for giving me the opportunity to make
24 some remarks and comments.

1 Here is my suggestion. We do these
2 workshops and we have done a couple of them
3 in Philadelphia partnering with a couple of
4 the colleges and universities. I mentioned
5 the University of Pennsylvania in October.
6 As the Director of the Philadelphia office,
7 I would be more than delighted to have a
8 workshop here during the summer with the
9 area colleges and universities as well as
10 the advocacy groups and this esteemed body.

11 We can walk you through the law that we
12 enforce, the responsibilities of the
13 colleges and universities. We encourage the
14 local law enforcement, in this case it would
15 be the Philadelphia Police Department, to
16 come. Some of the universities and colleges
17 have what is called and MOU, a Memorandum of
18 Understanding, with the local police because
19 the -- we call them "victims" -- are
20 encouraged if they are assaulted, that one
21 of your witnesses testify, that oftentimes
22 they may not come forth right away. But if
23 they are, to really contact the university
24 officials immediately but also contact the

1 police because the first 48 hours are
2 critical in any police investigation to
3 collect all of the evidence and to
4 contact -- and to contact the witnesses.

5 So, we have sampled MOUs that we suggest
6 that the universities use with the local
7 police in coordinating some of the
8 information, the evidence and sharing that
9 between the two of them. But that does not
10 say and the law that I enforce -- I need to
11 make that clear, the university is still
12 obligated to continue with its investigation
13 if they are going to conduct one -- that's a
14 whole workshop that we do -- under its
15 obligation under Title IX even though there
16 may be a criminal investigation if there is
17 a complaint filed under the criminal law,
18 but to conduct that to -- to -- to gather
19 that information.

20 So my suggestion is, we would be
21 delighted to convene something in my office
22 to walk through for all of the interested
23 parties for all of the colleges and
24 universities. When we do these kinds of

1 workshops, there is standing room only. And
2 it would be the universities, the colleges.
3 We would invite also the Community College
4 of Philadelphia. They may not have
5 residence hall but unfortunately, sexual
6 assault may occur on that campus. They are
7 obligated to report it under the Cleary Act,
8 which is a federal law. This esteemed body,
9 the members would absolutely be invited and
10 their staff, the Philadelphia Police and all
11 of the local advocacy groups.

12 I thank you for the opportunity to
13 comment. And I thank you for allowing me to
14 make that suggestion, and I will take it up
15 with you later Councilwoman Blackwell and
16 Councilwoman Reynolds Brown to make sure
17 that happens this summer.

18 COUNCILWOMAN BLACKWELL: Well, we are
19 very honored. We thank you for all that you
20 do and all that you have done over the
21 years. And Councilwoman Blondell Reynolds
22 and I will talk about it. We will be happy.
23 We just want to set up the time. As she
24 said, it's all about scheduling.

1 So, we certainly want to thank you for
2 that offer to let you know we're interested
3 in taking up that offer. And we will
4 contact you with regard to the schedule.

5 MS. FOX: We'll make it happen.

6 COUNCILWOMAN BLACKWELL: Thank you.

7 And again, we want to thank all of you.
8 It's been very, very important. That
9 gentleman standing over there who runs our
10 Housing Division, Herb Wetzel is her other
11 half. And we thank him for being here, as
12 well. He was former head of the
13 Redevelopment Authority, many of you will
14 now, for some 14 years as well in addition
15 to running our housing arm here in City
16 Council.

17 So, we thank both of these talented
18 people. We thank all of you. And this
19 hearing will recess, unless my colleague
20 would like to make some closing statements,
21 then we will recess subject to the call of
22 the Chair. Thank you very much.

23 (Committee on Education adjourned at 4:16
24 p.m.)

C E R T I F I C A T I O N

I, hereby certify that the proceedings and evidence noted are contained fully and accurately in the stenographic notes taken by me in the foregoing matter, and that this is a correct transcript of the same.

ANGELA M. KING, RPR
Court Reporter - Notary Public

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