

October 26, 2015

Daniel Hare, Chair  
Academic Senate

Re: Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment

Dear Chair Hare:

We applaud the over-arching goal of the proposed Policy on Sexual Violence and Sexual Harassment: to make the University of California an environment that is free of sexual violence and sexual harassment. However, the decision to define as a “responsible employee” virtually every employee on campus, including faculty and graduate student teaching assistants, will work counter to the overall goal of the policy. (1) The policy will have a chilling effect and will harm survivors of sexual violence and harassment. (2) Requiring faculty to dishonor student requests for confidentiality damages the relationship of trust between faculty and students. (3) Such a broad designation of “responsible employee” is not legally required. We urge Academic Council to recommend that the definition of “responsible employee” be limited and not include Senate faculty, lecturers, or graduate student instructors.

### **(1) Harm to Survivors**

Rape, sexual assault, and sexual harassment are traumatic in part because the victim loses control over his or her own body. A clearly established principle for recovery from these traumatic experiences is to rebuild trust and to reestablish a sense of control over one’s own fate and future.<sup>1,2,3</sup> When a survivor’s experience of sexual victimization is reported to authorities, in disregard of her or his explicit request for confidentiality, great psychological distress is a likely result.<sup>4,5,6</sup> Moreover, the likelihood that the survivor will continue to engage with the investigation of the offense is reduced.<sup>7</sup> Reactions from other people that involve attempts to control a survivor’s actions and choices lead to increased post-traumatic stress disorder (PTSD) symptoms<sup>8,9</sup>. The act of reporting against the will of the survivor is a violation of trust that may be experienced as institutional betrayal which is associated with anxiety and other psychological symptoms<sup>10</sup>.

Ironically, the sample Policy Fact Sheet that accompanies the Policy as Appendix III acknowledges this point when it states: “Immediately reporting a case to the police could be more traumatic for the victim than beneficial. *Let them make the decision to report (or not report).*” (emphasis added). This is exactly the right advice and applies as much to institutional (e.g., Title IX) reports as it does to police reports.

### **(2) Faculty-Student Relationship**

APM 15 makes clear the importance of the faculty-student relationship and how trust is integral to it: “The integrity of the faculty-student relationship is the foundation of the University’s educational mission. This relationship vests considerable trust in the faculty member, who, in turn, bears authority and accountability as mentor, educator, and evaluator.” APM 15 also quotes the AAUP Statement on Professional Ethics: “[Professors] respect the confidential nature

of the relationship between professor and student.”<sup>11</sup> Requiring faculty to violate student trust places us in a precarious position with respect to the ethics of our profession.

### **(3) Legal Requirements**

Universities are not required by law to designate all employees as responsible employees; they have discretion. Harvard Law professor Vicki C. Jackson, a Reporter for The American Law Institute, one of the most respected legal research institutions in America, has recently written this about federal guidance: “Nothing in the official OCR [Office of Civil Rights] regulations or guidance appears to require that all faculty be designated as mandatory reporters.”<sup>12</sup>

Although the 2011 *Dear Colleague Letter* from the Office of Civil Rights<sup>13</sup> led to some confusion on this point, OCR’s 2014 Q&A document affirms university discretion: “A school must make clear to all of its employees and students *which staff members are responsible employees* so that students can make informed decisions about whether to disclose information to those employees.”<sup>14</sup> The clear implication is that not all university employees need be designated as responsible employees.

Other universities have chosen policies that define responsible employee more narrowly. For example, here is text from the policy of the University of North Carolina, Chapel Hill:

*“Employees with administrative or supervisory responsibilities on campus or who have been designated as Campus Security Authorities, are considered Responsible Employees. This includes, for example, members of the Board of Trustees, the Chancellor, Vice Chancellors, Deans, Directors, Department Chairs, Coaches, Student Affairs professionals (including Resident Advisors), and faculty who serve as advisors to student groups.”*<sup>15</sup>

Because a broad definition of “responsible employee” is not required by law, will damage the recovery and well-being of survivors, will harm the relationship between faculty and students, and will work counter to the goal of eliminating sexual harassment and sexual violence on campuses, we ask Academic Council to urge that the Policy be modified to more narrowly define the category of responsible employee, and to exclude Senate faculty, lecturers, and graduate student instructors and teaching assistants from this designation.

Sincerely,

Eileen Zurbriggen, Professor of Psychology, UCSC  
Heather Bullock, Professor of Psychology, UCSC  
Regina Langhout, Associate Professor of Psychology, UCSC  
Nameera Akhtar, Professor of Psychology, UCSC  
Gail Hershatter, Distinguished Professor of History, UCSC  
Ben Crow, Professor of Sociology, UCSC  
Christine King, Kresge College Lecturer, UCSC  
Christine Hong, Assistant Professor of Literature, UCSC  
B. Ruby Rich, Professor of Film and Digital Media, UCSC

Carla Freccero, Distinguished Professor of Literature, History of Consciousness, and Feminist Studies, UCSC  
Ronnie D. Lipschutz, Chair & Professor of Politics, UCSC  
Sean Keilen, Associate Professor of Literature, UCSC  
Jennifer Derr, Assistant Professor of History, UCSC  
Megan Moodie, Associate Professor of Anthropology, UCSC  
Jean Fox Tree, Professor of Psychology, UCSC  
Helene Moglen, Professor Emerita of Literature, UCSC  
Chelsea Blackmore, Assistant Professor of Anthropology, UCSC  
Megan Thomas, Associate Professor of Politics, UCSC  
Deborah Gould, Associate Professor of Sociology, UCSC  
Guriqbal Singh Sahota, Assistant Professor of Literature, UCSC  
Jessica K. Taft, Assistant Professor of Latin American and Latino Studies, UCSC  
Craig Reinerman, Professor of Sociology, UCSC  
Andrea Steiner, Continuing Lecturer in Community Studies, UCSC  
Maureen Callanan, Professor of Psychology, UCSC  
Shelly Grabe, Associate Professor of Psychology, UCSC  
Sylvanna Falcón, Assistant Professor of Latin American and Latino Studies, UCSC  
Leslie López, Director, Oakes CARA Program and Lecturer in Community Studies, UCSC  
Giulia Centineo, Lecturer in Languages and Applied Linguistics, UCSC  
Campbell Leaper, Professor of Psychology, UCSC  
Sharon Daniel, Professor of Digital Arts and New Media, UCSC  
Cindy Cruz, Associate Professor of Education, UCSC  
Lisa Rofel, Professor of Anthropology, UCSC  
Chris Connery, Professor of Literature, UCSC

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<sup>1</sup> Herman, J. L. (1997). *Trauma and recovery*. New York: Basic Books.

<sup>2</sup> Ranjbar, V., & Speer, S. A. (2013). Revictimization and recovery from sexual assault: Implications for health professionals. *Violence and Victims, 28*, 274-287.

<sup>3</sup> Frazier, P. A. (2003). Perceived control and distress following sexual assault: A longitudinal test of a new model. *Journal of Personality and Social Psychology, 84*, 1257-1269.

<sup>4</sup> Campbell, R., Greeson, M. R., Bybee, D., & Fehler-Cabral, G. (2012). Adolescent sexual assault victims and the legal system: Building community relationships to increase prosecution rates. *American Journal of Community Psychology, 50*, 141-154.

<sup>5</sup> Campbell, R., Greeson, M. R., Fehler-Cabral, G., & Kennedy, A. C. (2015). Pathways to help: Adolescent sexual assault victims' disclosure and help-seeking experiences. *Psychology of Women Quarterly, 21*, 824-847.

<sup>6</sup> Patterson, D., & Campbell, R. (2010). Why rape survivors participate in the criminal justice system. *Journal of Community Psychology, 38*, 191-205.

<sup>7</sup> Campbell, R., Greeson, M. R., Fehler-Cabral, G., & Kennedy, A. C. (2015). Pathways to help: Adolescent sexual assault victims' disclosure and help-seeking experiences. *Psychology of Women Quarterly, 21*, 824-847.

<sup>8</sup> Orchowski, L. M., Untied, A., & Gidycz, C. (2013). Social reactions to disclosure of sexual victimization and adjustment among survivors of sexual assault. *Journal of Interpersonal Violence, 28*, 2005-2023.

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<sup>9</sup> Peter-Hagene, L., & Ullman, S. (2014). Social reactions to sexual assault disclosure and problem drinking: Mediating effects of perceived control and PTSD. *Journal of Interpersonal Violence*, 29, 1418-1437.

<sup>10</sup> Smith, C. P., & Freyd, J. J. (2013). Dangerous safe havens: Institutional betrayal exacerbates sexual trauma. *Journal of Traumatic Stress*, 26, 119–124

<sup>11</sup> <http://www.aaup.org/report/statement-professional-ethics>

<sup>12</sup> Vicki C. Jackson, Harvard Law School, Reporter, “Project on Sexual and Gender-Based Misconduct on Campus: Procedural Frameworks and Analysis,” The American Law Institute, Preliminary Draft No. 1, October 23, 2015, at 16.

<sup>13</sup> Available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>

<sup>14</sup> <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (April 14, 2014) (emphasis added).

<sup>15</sup> Univ. of N. Carolina Chapel Hill, “Policy on Prohibited Discrimination, Harassment and Related Misconduct including Sexual and Gender-Based Harassment, Sexual Violence, Interpersonal Violence and Stalking,” available at <http://policies.unc.edu/files/2013/04/PPDHRM.pdf> (emphasis added).