



COMMONWEALTH of VIRGINIA

GOVERNOR TERRY MCAULIFFE'S TASK FORCE ON
COMBATING CAMPUS SEXUAL VIOLENCE
CHAIR ATTORNEY GENERAL MARK HERRING

JANUARY 8, 2015, 1:00 PM
PATRICK HENRY BUILDING, WEST READING ROOM

MEETING MINUTES

DRAFT - to be formally approved at March 18, 2015 meeting

Members Present: Peter Blake, Fran Bradford, Ángel Cabrera, Judy Castele, Jean A. Cheek, Leah Cox, Maggie Cullinan, Brandon Day, Daniel Dusseau, Dorothy Edwards, William R. Grace, Allen Groves, Melissa Ratcliff Harper, Tom Kramer, Penelope Kyle, Shannon Sinclair (proxy for Michael Maxey), Daphne Maxwell-Reid, Donna Poulson Michaelis, Christopher Ndiritu, Nancy Oglesby, Ellen Plummer, Marianne Radcliff, Abby Raphael, Emily Renda, Tracy Russillo, Rosemary Tribble, Kristi VanAudenhove, John Venuti and Raychel Whyte.

Members Absent: Dorothy Edwards, Nancy Oglesby and Frank Shushok, Jr.

Staff Present: Victoria Cochran, Shannon Freeman, Elizabeth Griffin, Kay Heidbreder, Rachel Levy, Melissa McMenemy, Barry Meek, Kevin O'Holleran, Dietra Trent, Tonya Vincent and Mary Vail Ware.

Meeting Summary

Attorney General Mark Herring called the meeting to order at 1:08 pm and welcomed and thanked task force members. He noted recent events that have brought the issue of campus sexual violence to the forefront in the Commonwealth and stated that while such awareness and urgency is positive, it also means that many are looking to the task force for the best, most well-considered ideas on how to prevent and respond to campus sexual violence. He reminded task force members that they were selected because of their expertise, experience, and commitment and acknowledged the outstanding progress the subcommittees have been making since the first meeting. He encouraged the group to now shift from information-gathering to the development of recommendations, noting that some of these recommendations, slated for presentation to the Governor by June 1st, may be policy changes, program recommendations, and/or legislative proposals. He reminded task force members that their mission and top priority should be to prepare the report for the Governor by the deadline he has established.

Attorney General Herring acknowledged recent attention to this issue legislatively, and applauded legislator engagement, emphasizing the complicated nature of the issue involving the interaction of federal laws and regulations, and striking the right balance between the rights and needs of survivors along with the need to keep the university community safe. He noted that the Office of the Attorney General is helping ensure that legislators have the information they need to make good, informed decisions about campus sexual violence if they choose to consider legislation this session. He stated that the OAG was asked to help secure presenters for a joint meeting of the House Education and Courts committees scheduled for January 16th, where members of those committees will have a chance to hear from experts about federal

regulations, laws and guidelines; the needs of survivors; and the challenges with investigating and prosecuting these kinds of cases.

Attorney General Herring acknowledged that committee members, because of their expertise, might be approached in an individual professional capacity for input on legislation. He reminded members that while they are free to share their knowledge and expertise, the official positions of this Task Force will be determined by acceptance or rejection of recommendations within subcommittees and by the committee as a whole later this spring.

Attorney General Herring then noted that though not on the agenda, the first order of business was approval of the meeting minutes of the first full task force meeting. **Abby Raphael** made a motion to approve the meeting minutes as written, seconded by **Donna Michaelis**. With no opposition, the minutes of the October 9th meeting were accepted as written.

Attorney General Herring introduced **Secretary of Education Anne Holton**, who offered her thanks to task force members for their leadership, acknowledging the difficult work that each subcommittee has undertaken. She noted the recent work of the Council of Presidents, which included a pledge of increased focus on campus security. She also recognized the substantive work in which the University of Virginia has engaged, with both administrative and student involvement, including the recommendations that were released by the University yesterday. She encouraged task force members to continue their efforts reviewing policies and maximizing best practices, urging them to stay focused on the vital mission at hand.

Secretary of Public Safety and Homeland Security Brian Moran thanked task force members for the time they have devoted to this effort, acknowledging that it was a great asset for Virginia to be able to rely on task force members' expertise. He stated that it was a privilege to work with task force members wrestling with such challenging issues, and noted efforts of the Office of the Attorney General and the Department of Criminal Justice Services to increase training opportunities for law enforcement and campus administrators, including Title IX coordinators, noting the complex interplay between Title IX, Clery Act, and criminal code. He acknowledged that legislators are well within their purview introducing legislation dealing with matters of campus sexual violence, further noting that these are complicated issues that require a deliberation and collaboration.

Attorney General Herring thanked the Secretaries for their ongoing involvement and leadership in the work of the task force. He then introduced **John DiPaolo, Deputy General Counsel for Departmental Law and Postsecondary Education with the U.S. Department of Education**. Mr. DiPaolo began by recognizing the leadership of Governor McAuliffe, noting that it requires a group of this caliber to find solutions to make our schools as safe as possible for our students. He noted the stark dissonance between the idea of our campuses as safe, nurturing places and the violent crime of sexual assault. He stated that he would be speaking to the federal context that creates legal regulatory structure, clarify points, and take questions from the group.

He stated that Title IX is enforced by the Office for Civil Rights (OCR), noting that if you take money from the federal government, you commit not to discriminate (similar to Title XI based on race). There are 12 regional OCR offices receiving thousands of complaints annually in addition to performing compliance reviews. He noted that in campus sexual assault cases, the non-discrimination requirement is not triggered by the sexual misconduct, but rather by the university response. The university's obligation is

to stop the hostile environment, prevent it from occurring in the future, and redress the effects. Additionally, the Clery Act is a campus safety law which affects any institution that has a federal financial aid program. It requires reporting and keeping track of crimes and also deals with preparedness/procedures for emergencies. Policies that are required to be in place in accordance with Title IX need to be prompt, fair and impartial, with both the accuser and the accused having timely access to information and simultaneous written notification of results in proceedings. OCR and the Federal Student Aid Program provide guidance to institutions on these issues. As a point of clarification, he noted that laws are passed by Congress, regulations are promulgated by federal agencies, and sub-regulatory compliance documents are provided to instruct how the law is going to be interpreted when enforced.

In considering why investigating/responding to sexual assault should be a university responsibility when it is clearly a crime and a law enforcement issue, Mr. DiPaolo noted that the adjudication/response on campus has a different purpose: while law enforcement officers and prosecutors have discretion, universities have an obligation to respond that is mandatory under Title IX. While law enforcement is looking for evidence of a crime, the university is responding to a broader range of misconduct, including sexual harassment, which may or may not be criminal.

Mr. DiPaolo noted critical elements necessary in addressing sexual assault, noting the composition of Sexual Assault Response Teams (SARTs), with different types of people playing different roles, trained and integrated into one process happening in real time. He acknowledged that an institution's Title IX coordinator needs to have authority to guide the process, and that victim advocates play a pivotal role with the victim to help them figure out resources, but they should not be charged with adjudicating or figuring out interim measures. He noted the important role the state can play in mapping out roles/templates and integrating different laws into a set of seamless procedures, with protocols and trauma-informed training. He emphasized that those individuals deemed "responsible employees" need to be trained to listen and report appropriately: they are not investigators or mediators. He noted that training was an opportunity at the state level to leverage resources. He also emphasized prevention, noting that the current public conversation is a moment of opportunity. He noted that alcohol is involved in 95% of cases, so that is also a potential area for impact, and also acknowledged that there is lot of room for and value in talking about healthy relationships. He mentioned recent work by the CDC on promising prevention practices that included bystander intervention, sustained work by coaches, addressing social norms, and attempts to build relationship skills. He also noted that brief one-session education programs are ineffective with college students. In closing, he emphasized his office's desire to assist in our efforts and be partners in our work to make our campuses safer.

After concluding his remarks, Mr. DiPaolo then took questions from the task force. **Abby Raphael** asked about the intersection of Title IX and law enforcement investigations, and Mr. DiPaolo noted that colleges should pause their investigation during a law enforcement investigation because LE has expertise. He acknowledged that coordination is important because colleges benefit from LE fact-finding, and noted that some schools have considered joint-interviewing. **Donna Michaelis** inquired about the potential intersection with threat assessment teams, mandated through legislation in VA in 2008. Mr. DiPaolo stated that there is indeed a great deal of overlap, but also acknowledged the specific obligations under Title IX. He stated that there was value in exploring ways of integrating them.

Ellen Plummer asked about the types of scope/scale models he has seen for training, outreach, and education for responsible responders, noting varying capacities/resources among institutions. Mr. DiPaolo noted that not everyone is a responsible employee: only those designated by the university or those that the student has reason to believe would be considered one. He emphasized making sure those deemed responsible employees are very familiar with their role and are aware of the policies and rules. He also acknowledged the issue of mandatory reporting, noting that reporting options are an opportunity for state law. He emphasized, however, that there need to be opportunities for students to make their own decisions

and have safe places to go for support. He expressed concerns about the chilling effect of mandatory reporting, noting that some students may not come forward if they know the crime will be reported. When asked by **Secretary Holton** about federal implications of state-enacted mandatory reporting legislation, wondering if it would be counter to federal laws/guidelines, Mr. DiPaolo noted that he hadn't looked at the law and could not give an official opinion. **Secretary Moran** asked if he was familiar with any states that had such legislation, and Mr. DiPaolo offered to research the issue and follow up.

After thanking Mr. DiPaolo for his remarks, Attorney General Herring then introduced **Tammi Slovinsky, Assistant Director for Sexual Assault and Intimate Partner Violence and Stalking Advocacy Services at Virginia Commonwealth University**. Ms. Slovinsky acknowledged Attorney General Herring's lengthy history of working to end violence and thanked the task force for the opportunity to share her insight with them, based on twenty years of work in the field. She stated that sexual violence is a consequence of oppression, and cautioned that because its basis is so complex, a handful of policies/laws that attempt to create generalized responses will likely help some, but may also prevent others from coming forward. She acknowledged the need for a framework and policies, but also encouraged listening to survivors from diverse communities to know what will work for them. She cited victim-blaming tendencies as one of our culture's biggest challenges, noting that the only people that benefit from these victim-blaming beliefs are the small percentage of people committing sexually violent acts, because the accountability is wrongly placed. She shared an interest in changing our language to shift the burden to the person responsible for obtaining consent, and encouraged bystander intervention models for prevention, which get everyone involved in the issue and in intervening in safe ways to support their peers.

Ms. Slovinsky then shared the following additional strategies:

- Present a variety of choices for services and reporting.
- Know that authority figures can be intimidating for students.
- Provide timely and accurate information on the choices, which means exploring options with the people who know the potential outcomes.
- Avoid the giving of advice.
- Understand that trauma takes its toll- they may not recall details of the assault, later recall of details may emerge or they may not remember options provided.
- Never discourage students from reporting, but do inform them every step of the way and continue to provide options and flexibility when possible.
- Be clear on confidentiality- students want to know how far their information will be shared, and how, which is challenging. OCR recommends confidential advocates, but universities are approaching it differently since we are currently without advocate privilege in the Commonwealth. Confidential advocates would be beneficial for our students.
- Permit the survivor to have a support person of their choosing so they don't have to go it alone.
- Offer specialized support for college students.
- Think broadly- use the CDC model of prevention in designing educational and awareness programs and tap into resources in our own backyard, such as experts from the VA Sexual and Domestic Violence Action Alliance.
- For students who are ready, offer ways for them to get involved to prevent violence in ways that feel safe for them- from developing social media, to reviewing documents, to attending advisory meetings.

After thanking the task force members for their dedication and for the opportunity to share her perspective, Ms. Slovinsky then took questions from the task force. When asked by **Penelope Kyle** about confidentiality issues, Ms. Slovinsky again noted that Virginia does not have advocate privilege, and noted that students may possibly reach out to clergy or the counseling center. **Judy Castele** noted that

students may reach out to the local community-based rape crisis center and Ms. Slovinsky concurred, but also advocated for confidentiality for on-campus advocates, noting that some students may not want to go off-campus for services. She emphasized that knowing who is confidential needs to be very clear to students. **Secretary Holton** asked about the counseling center as a resource, and Tammi acknowledged that while that is an option for students, the counseling center often sees their role as one of treatment and providing mental health services. She also expressed concern that mental health treatment may still have some stigma associated with it. **Secretary Moran** asked Ms. Slovinsky when she reports to law enforcement, and Ms. Slovinsky noted that she reports in accordance with the Clery Act for timely warnings. When asked by **Ángel Cabrera** about mandatory reporting, she emphasized that victims need choices, noting that while she has amazing law enforcement at VCU, not all campuses/institutions statewide have that luxury. She noted that she is fairly successful with getting victims to make law enforcement contact, but taking away choices and options concerns her, as other means of support may not be in place. **Jean Cheek** agreed, noting that victims need a safe place to go. **Daphne Maxwell-Reid** asked about procedures and processes for the accused, and Ms. Slovinsky noted that at VCU, that is not her role, but most likely they would be able to receive assistance from the counseling center. Ms. Maxwell-Reid expressed concerns about false allegations and Ms. Slovinsky noted the importance of a fair Title IX process, emphasizing that minimizing bias/problems/appeals benefits both parties. Ms. Slovinsky also emphasized that 8% or less of sexual assault reports prove to be false.

After thanking Ms. Slovinsky for addressing the task force, Attorney General Herring noted that former Attorney General Ken Cuccinelli was in attendance at the meeting, and acknowledged Mr. Cuccinelli's public service to the Commonwealth.

Attorney General Herring then invited each subcommittee chair to present a summary of their group's work to date. Summary reports were also provided to each task force member and were publicly available.

Dr. Ellen Plummer - Response Subcommittee

Dr. Plummer began her remarks by honoring Tammi Slovinsky and all of the other advocates statewide. She noted the importance of creating space for multiple problem-solving frameworks.

The following topics are under current consideration by the group moving forward:

- Trauma-informed response for survivors from the point a report is made through adjudication
- Fair and equitable response to the accused
 - Due Process
 - Interim measures
 - Should transcripts be flagged if the accused is found responsible? Should transcripts be flagged if the accused is charged with a violation?
- Collaboration
 - Case management
 - Sharing information and resources between the institution, local advocacy groups, and crisis centers in specific cases
 - Statewide collaboration and sharing of resources between all institutions of higher education

- Training and education regarding reporting options and support services for survivors. Using technology, apps, and social media to raise awareness of how to respond when an incident occurs;
- Establishing standards or metrics for response services and staff (i.e. having a certain number of counselors or confidential aides based on student population and a ratio of law enforcement officers to students); and
- Address and improve the gaps and collisions between federal mandates (OCR, VAWA, FERPA), Virginia law, local law and practices, and college and university policies for response.

Chief John Venuti - Law Enforcement Subcommittee

Chief Venuti shared that Abby Raphael had agreed to co-chair the subcommittee and noted that after hearing John DiPaulo's remarks, he feels encouraged that the group is on the right track.

The following topics are under current consideration by the group moving forward:

- Coordination of criminal and Title IX investigations - consideration of potential parallel investigations
- Campus/municipal law enforcement relationships – best practices for coordination and information-sharing / MOUs addressing sexual assault
- Campus Sexual Assault Response Teams
- Ongoing opportunities for trauma-informed sexual assault training
- Training for municipal law enforcement / prosecutors on Title IX/federal law
- Certification process and training for Title IX investigators, including a potential cadre of Title IX investigators for the state
- Reporting options – including technology options available for reporting
- Minimizing victim reluctance to report – including amnesty options when the victim has engaged in unlawful conduct

Emily Renda - Prevention Subcommittee

Ms. Renda noted the critical goal of reducing campus sexual violence in a measureable way and changing attitudes about the issue.

The following topics are under current consideration by the group moving forward:

- Climate Surveys
 - Social normalizing: What behaviors are normal and acceptable in our campus community as evidenced by climate surveys?
 - How to use Data: Can climate survey data be used to drive specific campaigns to specific groups?
 - Statewide question set: Many campuses are doing climate surveys~could a set of common questions be helpful in directing prevention efforts? What sort of data might be gained by a consistent set of questions: A working group of those campus-based individuals responsible for those surveys is being formed to focus on this issue.
 - What mobile applications are campuses using relative to prevention?

- Evidence-based Prevention Strategies/Programs
 - Populations: Identify the sub-populations on a campus and how they might best be targeted for education. Also identify the type of students that might be reached through those groups.
 - Timing of education: The "one and done" method of information sharing during Freshman year may not be sufficient. Determine the best times to deliver information to different populations during the school year.
 - Specific outreach strategies: Identify outreach strategies proven to work with different groups and determine if they can be replicated or improved upon.
 - Healthy relationships: Identify successful efforts that help individuals define and practice healthy behaviors within relationships over the life span.
 - Applications being used for prevention: What computer or phone-based applications are being used and what is their efficacy?
 - Bystander intervention: Investigate the success of these prevention efforts and identify those that can be easily replicated.

- Intersectional Issues
 - K-12: What existing prevention efforts in K-12 can be maximized to include information about healthy relationships and age-appropriate messages about sexual assault prevention?
 - Alcohol: Investigate the role of alcohol and other substances as an enabler of sexual harassment and assault and model programs and efforts that address this issue.
 - Hazing: Acknowledge that hazing can create an environment that accepts violence and violation of personal boundaries in an atmosphere that encourages secrecy. Identify hazing prevention programs that might be a natural fit to include sexual assault prevention activities.
 - Healthy relationships: Identify characteristics of healthy relationships and how those messages are incorporated into all campus-based prevention programs.
 - Gender roles: Acknowledge how notions of gender roles can influence the perpetration and acceptance of sexual harassment and sexual assault and identify successful institution and K-12 based efforts to open dialog on this issue.

With the completion of subcommittee reports, Attorney General Herring again thanked task force members for the progress each group has made to date and acknowledged the challenging work that remains.

Attorney General Herring introduced **Ken Cuccinelli**, who had signed up to provide public comment. Mr. Cuccinelli asked the group to consider a disciplinary procedure that removes adjudication from the university, relying on professionals in adjudication, noting that consistency is currently difficult to achieve across institutions. He stated that this would provide heightened transparency, easier oversight, and greater neutrality, acknowledging remarks earlier in the meeting about due process concerns. He proposed a two-tiered adjudication process centralized under the Department of Education, with the first tier leading to expulsion from attendance at all Virginia public universities upon "clear and convincing evidence" of sexual assault, while the second tier would lead to expulsion from the school where the offense occurred if the evidence makes it appear more likely that not that an assault occurred. He expressed his concerns about mandatory reporting legislation, noting that survivors of sexual assault need options to regain control.

After thanking Mr. Cuccinelli for his comments, Attorney General Herring discussed next steps/expectation for the task force. He stated that the next full task force meeting will be scheduled for late March, with each subcommittee meeting twice before then. At the March meeting of the full task force,

subcommittees will present initial draft recommendations to the group. Subcommittees need to work in conjunction with each other to ensure recommendations are compatible with each other's goals, recommendations, and relevant laws and regulations. He noted that committee staff will work with members on report structure.

With no further business to discuss, Attorney General Mark Herring adjourned the meeting at 3:31 pm.