



FOR IMMEDIATE RELEASE

**The American College of Trial Lawyers Proposes New Standards
for Campus Sexual Assault Investigations that Provide Fairness to All Parties**

IRVINE, CA (April 3, 2017) – The American College of Trial Lawyers (ACTL) today recommended new standards for campus sexual assault investigations that would ensure basic fairness for both the complaining party and the accused student. The recommendations are based on the findings of its *Task Force on the Response of Universities and Colleges to Allegations of Sexual Violence* (the Task Force), which are published in a new [report](#) that is available on the ACTL website.

Bartholomew J. Dalton, president of ACTL, said, “We recognize, and are deeply concerned by, the problem of sexual assaults on college campuses. We believe in the importance of protecting all students from sexual misconduct and ensuring that they are provided an educational environment free of sexual harassment. We also believe that it is important to ensure that students investigated for, or charged with, sexual assault or misconduct violations are afforded basic fairness and due process.”

Pamela Robillard Mackey, chair of the Task Force, said, “We strongly support efforts to remedy the longstanding failure to adequately address the problem of sexual misconduct on college campuses. But we believe that in a well-intentioned effort to address the problem, the Department of Education’s Office of Civil Rights has established investigative and disciplinary procedures that, in application, are in many cases fundamentally unfair to students accused of sexual misconduct. Under the current system everyone loses: accused students are deprived of fundamental fairness, complainants’ experiences are unintentionally eroded and undermined, and colleges and universities are trapped between the two, while facing a potential loss of federal funding.”

ACTL advocates for a system that encompasses essential elements of due process: a fair and impartial investigation and hearing by qualified factfinders, and granting students the right to be advised and accompanied by counsel, to be permitted some form of cross-examination, to examine the evidence, to receive adequate written factual findings, and to be found responsible only if the evidence satisfies the clear and convincing standard.

“The proposal that colleges and universities apply the ‘clear and convincing evidence’ standard strikes a compromise between the ‘preponderance of evidence’ standard of current investigations and the ‘reasonable doubt’ standard applied in criminal proceedings. Our recommended standard diverges from the formal guidance issued by the U.S. Department of Education’s Office for Civil Rights, and we expect that it will generate robust discussion and debate, both from victim advocates who may believe it should be lower, and representatives of accused students who may prefer a more stringent standard. We believe such a debate will be healthy and timely,” said Ms. Mackey.

Elizabeth N. Mulvey, a member of the Task Force, said, “For our part, as trial lawyers dedicated to fairness for all involved, we concluded that the absence of important safeguards available in most civil actions, coupled with the significant, long-term impact of these decisions on the participants, warrant the intermediate standard of proof we have recommended. We submit that the preponderance of evidence standard for a finding of responsibility in these cases is too low when the stakes are so high, and the full protections provided by our traditional judicial system are not available.

“The Task Force carefully reviewed the processes followed in handling complaints of sexual assaults at colleges and universities across America. Our recommendations for improvements reflect the fundamental principles of fairness and due process that are deeply ingrained in our legal system, while recognizing the realities of school resources, the campus setting, and the particular needs of young participants,” said Ms. Mulvey.

The ACTL report observed that there have been recent statements by respected faculty from a number of law schools declaring that those subject to such investigations or charges are being denied fundamental rights. These concerns about fairness and due process have been echoed in a number of recent decisions by state and federal judges in cases brought by accused or disciplined students. There is no clear consensus as to how much process is constitutionally or contractually required to be

provided to the subjects of such investigations

The new ACTL report suggests a procedural framework for colleges and universities to use in these difficult cases that recognizes the need for a fair and manageable process for the complaining party, the accused and the institution.

The Fellows of ACTL are diverse by gender, race, age and field of practice. They represent victims of crime, those accused and the prosecution. The work of the Task Force constitutes one of the first comprehensive statements on the important issue of college sexual assault by a group not representing a particular interest. The members of the Task Force were Pamela Robillard Mackey, Chair; members of the ACTL Board of Regents Ritchie E. Berger and Elizabeth N. Mulvey; Past President Earl J. Silbert; and Fellow A. Gilchrist Sparks III.

About The American College of Trial Lawyers

The American College of Trial Lawyers (ACTL) is composed of preeminent members of the Trial Bar from the United States and Canada and is recognized as the leading trial lawyers organization in both countries. Fellowship is extended by invitation only to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. ACTL maintains and seeks to improve the standards of trial practice, professionalism, ethics, and the administration of justice through education and public statements on important legal issues relating to its mission. ACTL strongly supports the independence of the judiciary, trial by jury, respect for the rule of law, access to justice, and fair and just representation of all parties to legal proceedings. For more information about ACTL, visit its website at www.actl.com.

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