



**HUSCH BLACKWELL**

# **Jana's Campaign Clery Act Update**

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November 2018

# Presenter



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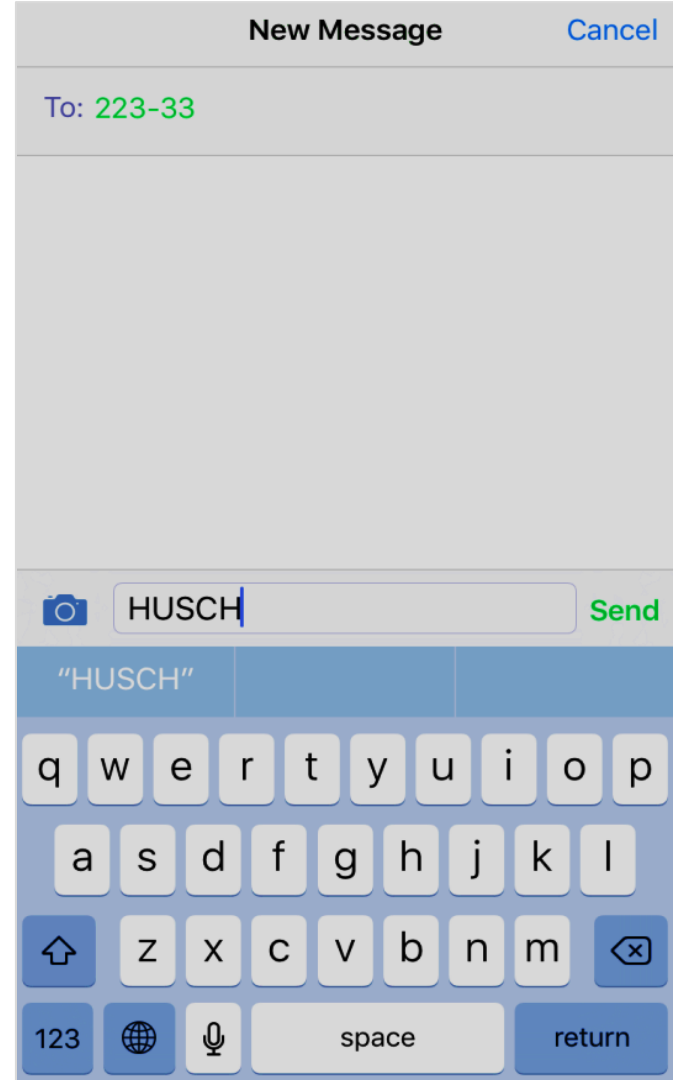
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# Polling login

- Text HUSCH to 22333
- Text in answers to participate in polls



A close-up, angled view of a spiral-bound notebook. The notebook is open to a page that appears to be a calendar or a schedule, with handwritten numbers in blue ink. The numbers include 10.30, 11.00, 11.30, 12.00, 12.30, 13.00, and 13.30. The spiral binding is visible on the left side of the page.

# Agenda

- Clery Geography
  - Difficult classifications
  - Video scenarios
- Requesting Statistics from Law Enforcement Agencies
- Campus Security Authorities
- Timely Warnings
- DFSCA Compliance
- Other Clery issues
  - Making ASR available to prospective students and employees
  - ASR publication and revision
  - 2018 fines



# Clery Geography



# Clery Geography

## Institutions generally understand their:

- On-campus property
- On-campus student housing facilities
- Public property

## Institutions continue to struggle with:

- Non-campus buildings or property
- Separate campus designations

# Noncampus Property or Separate Campus?

## Similarities

- Ownership or Control
- Not reasonably contiguous to main campus

## Differences

- Noncampus Property
  - Frequently used by students
  - Supports educational purposes
- Separate Campus
  - Organized program of study
    - Two or more courses leading to a degree, certificate, or other credential
  - One administrator on-site
    - Does not have to be a high-level administrator
    - Does not have to be a full-time administrator



# Control

- **Controlled** by means that your institution ... directly or indirectly rents, leases or has some other type of **written** agreement (including an informal one, such as a letter or an e-mail) for use of a building or property, or a portion of a building or property. Even if there is no payment involved in the transaction, for Clery Act purposes, **a written agreement for the use of space** gives your institution control of that space for the time period specified in the agreement.



# “Reasonably Contiguous”

- One-Mile Rule from Clery Handbook
  - Generally speaking, it is reasonable to consider locations within one mile of your campus border to be reasonably contiguous with your campus.
- Logical inference?
  - Presumably, locations outside of one-mile from your campus are not reasonably contiguous and thus may be noncampus property (or possibly a separate campus).



<b>University-Sponsored Trip Scenario</b>	<b>Include in Clery Geography?</b>
<b>Students stay one night in a hotel*</b>  *For purposes of this chart, “hotel” also includes other housing arrangements	Not part of Clery Geography (because doesn’t meet frequently-used-by-students requirement)
<b>Students stay multiple nights at a hotel on a single trip</b>	Classify hotel as non-campus building or property for the dates and times specified in the agreement with the hotel.
<b>The same hotel is used for students on multiple occasions, even if it was just for one night each time</b>  (the repeated use can occur within the same year or in consecutive years; it does not matter if the same students or different students are staying at the hotel each time)	Classify hotel as non-campus building or property for the dates and times specified in the agreements with the hotel.
<b>A different/host institution makes all hotel arrangements for a sport; similar situations</b>	Not part of Clery Geography (because doesn’t meet “control” requirement)

A young man with dark hair and glasses is looking intently at a laptop screen. He is wearing a red and black plaid shirt over a white t-shirt. The background is slightly blurred, showing what appears to be an office environment with a plant. The text "SCENARIO ONE PART ONE" is overlaid in white on the image.

# SCENARIO ONE

## PART ONE

## What, if any, obligation does the University have to report the incident in its Annual Security Report?

None – the incident is not a Clery crime and it did not occur on the institution's Clery Geography.

None – though the incident is a Clery crime, it did not occur on the institution's Clery Geography.

Must be reported in ASR – the incident is a Clery crime and it occurred on the institution's Clery Geography.

# For discussion...

- Is a timely warning necessary?



SCENARIO ONE  
PART TWO

# For discussion...

- How do the new facts in Part Two change your analysis of the obligations College University has under the Clery Act?

A photograph of three people in a meeting. A man on the left is looking at a laptop. A woman in the center with glasses and a scarf is looking towards the right. A woman on the right is partially visible, looking towards the center. The background shows a bookshelf. The text "SCENARIO TWO" is overlaid in white.

# SCENARIO TWO



**The University partners with local universities in Columbia and Ireland, but does not provide any faculty/staff for these programs. Students can only take classes offered by the sister institutions and have the option to live on or off campus. Should these locations be considered noncampus property, separate campuses, or neither?**

Noncampus  
property

Separate  
campuses

Neither

**The program in Italy is operated out of a University-owned building which includes housing for students. University faculty and staff are at this location. All courses offered at this location are from the University's catalog. Should this location be considered noncampus property, a separate campus, or neither?**

Noncampus  
property

Separate  
campus

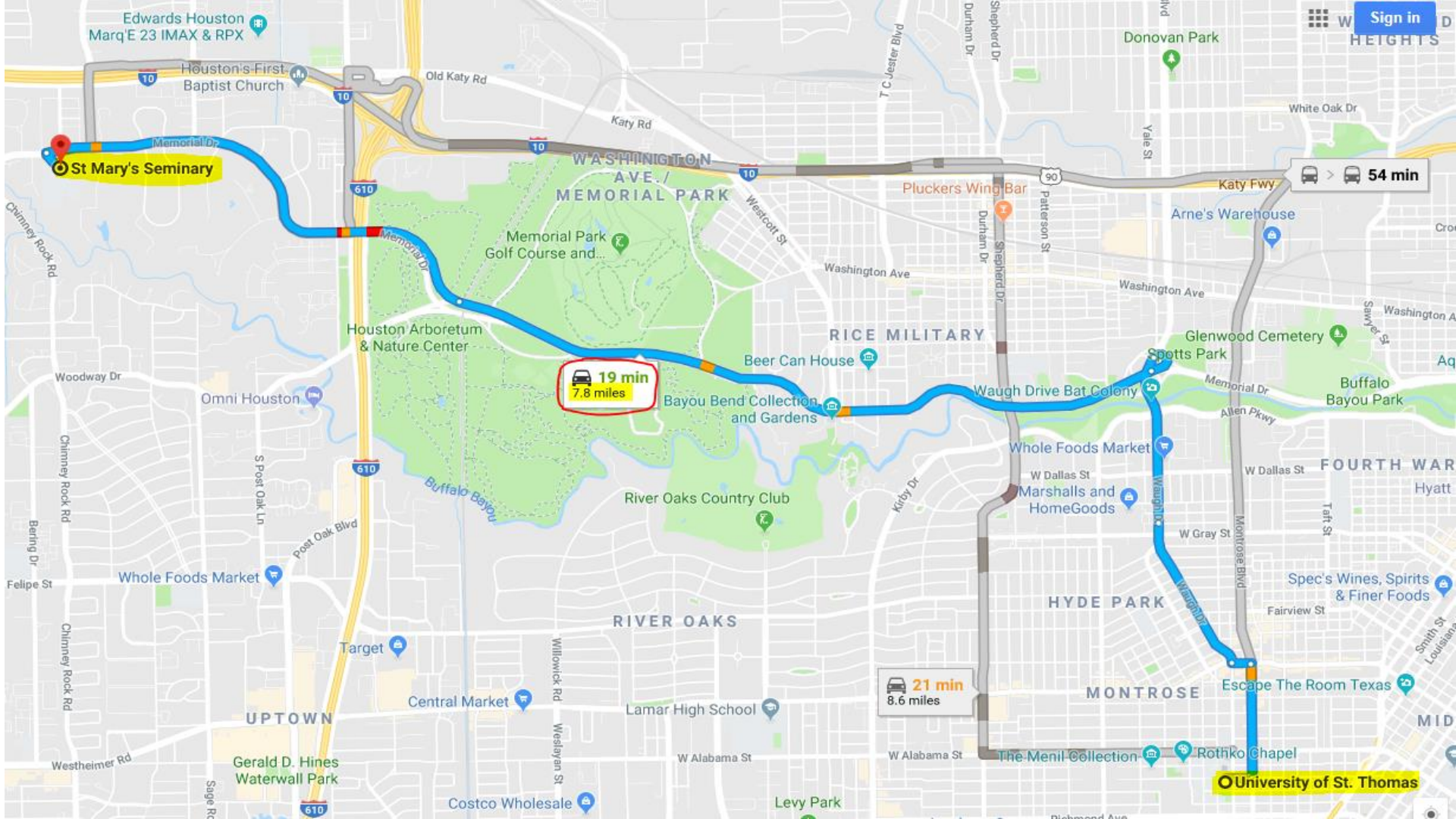
Neither

**The program in Germany has essentially the same arrangement as the program in Italy, except the University shares rented space with another U.S. institution. Which of the following statements is true?**

Both schools must treat the location as noncampus property

Both schools must treat the location as a separate campus

The schools can agree to which school “controls” the property for Clery purposes, but this must be set out clearly in a written agreement for documentation purposes



St Mary's Seminary

19 min  
7.8 miles

54 min

21 min  
8.6 miles

University of St. Thomas

# Do you have an inventory of your Clery Geography? (tracking chart)

Campus Property	Description	Type of Property	Agreement	End	Renewal Date	Educational Purpose



# Requesting Statistics from Law Enforcement Agencies



# Reasonable, Good Faith Effort

Must make a reasonable, good faith effort to obtain Clery crime statistics from all law enforcement agencies that have jurisdiction over some or all of your institution's Clery Geography

# Other Considerations

- Requests should be made on annual basis
- Document these requests
- Make annual request even if
  - Agency hasn't responded to past requests
  - Agency posts statistics on a public access website
- Not required to pay for statistics
- Don't forget to make requests for all locations considered to be part of your Clery Geography, including those in different states or foreign countries



## What if...

## Action Item

**Statistics are provided, but can't determine specific Clery Geography? (e.g., on-campus or public property?)**

Disclose statistics as a caveat in the ASR

**Statistics are provided, but can't determine whether they are in your Clery Geography at all?**

Provide statement in ASR that statistics were requested but not available in a usable format

**Request is denied?**

Check open records laws

Include statement in ASR that some/all agencies did not provide statistics as requested



# Campus Security Authorities (CSAs)



## CSAs

Most of your CSAs will likely fall under the following CSA definition:

*An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings*

# Identification—Examples of CSAs from Clery Handbook

- Dean of Students
- Director of Athletics
- All athletic coaches (including part-time employees and graduate assistants)
- A faculty advisor to a student group
- A student resident advisor or assistant
- A student who monitors access to dormitories or buildings that are owned by recognized student organizations
- Greek Affairs Coordinator
- Title IX Coordinator
- An ombudsperson
- Director of campus health or counseling center
- Victim advocates
- Member of sexual assault response team
- Officers from local law enforcement who are contracted by the institution to provide campus safety-related services



# Reporting

- CSAs must have process to report
- Issues to consider:
  1. How will they report – online
  2. What is the content of the report – specify the detail required
  3. Requirements for timely reporting – remember: reports to campus security/police must be reflected on the daily crime log



## Training for CSAs

- Specifically, ***not*** required by the Handbook
- However:
  - ED has noted in Clery program reviews that compliance is difficult to achieve without notification and training
  - ED questioned validity of reporting absent notification and training of CSAs



## CSA Policy?

- Formal policy or procedure
- Contents
  1. Description of the institution's expectations
  2. Notification and training
  3. Reporting obligations and content
  4. Penalties for failure to report

## End of 2018 / Start of 2019 – Good time to...

- Check your inventory of CSAs
- Notify/remind them that they are CSAs and how to file crime reports
- If you haven't already, follow-up with CSAs to confirm they have no crimes to report for 2018
- Provide training and/or other materials to assist CSAs in understanding and meeting their obligations





# Timely Warnings

# Main Timely Warning Considerations

1. Has a Clery crime on Clery geography been reported?
2. Does it represent a threat/ongoing danger to the campus community?



# What are some other things to consider when determining whether a timely warning should be issued?

# Some Other Possible Considerations during the Threat Analysis (non-exhaustive)

1. How much time has passed between the incident and the report?
2. Has the perpetrator been apprehended?
3. Was the incident violent in nature?
4. Were weapons or date rape drugs used?
5. Does the incident appear to be an isolated incident with a specifically targeted victim(s)?
6. Is there a pattern of similar incidents?
7. Are there enough details available to determine whether a threat/ongoing danger exists?

# Clery Handbook

“...the intent of a [timely] warning regarding criminal incident(s) is **to enable people to protect themselves.**”



# DFSCA Compliance

**True or False. The Annual Security Report must include my institution's full student drug and alcohol policy?**

True

False

# Drug Free Schools & Communities Act (DFSCA)

- Requirements
  - Annual notice(s) to students and employees
    - May use the same or different notices
    - The notice can be, but does not have to be, the actual drug and alcohol policy
      - If using a policy as the notice, make sure the policy covers all requirements
  - Biennial review
- Materials can be cross-referenced in ASR
- But, will be checked by ED during Clery program review
  - ~76% of schools fined in 2017 for Clery noncompliance had issues with their DFSCA obligations (update on 2018 fines later...)



# Annual Notice Regulation – Substance

- Written standards of conduct
  - Prohibiting **unlawful** possession, use, or distribution
  - By students and employees
  - On institutional property or as part of institutional activities

# Substance (cont.)

- Statement of institutional sanctions for students and employees
- Description of
  - Legal sanctions (local, State, Federal)
  - Health risks associated with abuse
  - Any drug or alcohol counseling/treatment/rehab programs available to students/employees



# Biennial Review Regulations

- Review program every two years
- Determine effectiveness
- Implement needed changes
- Ensure consistent enforcement of disciplinary sanctions





# Other Clery Issues

# ASR Distribution



- In addition to the October 1 deadline to distribute the ASR to all currently enrolled students and employees, you must also make the ASR available to *prospective* students and employees

# Some Approaches for Making ASR Available to *Prospective* Students and Employees

## Prospective Students

- Statement at end of online/hard copy admission application
- Include statement with admissions materials
- Include statement with marketing materials
- Publish statement somewhere on Admissions webpage

## Prospective Employees

- Statement at end of online/hard copy employment application
- Include statement at end of job postings
- Publish statement somewhere on HR/Job Openings website
- Provide to individuals that are interviewed

# Publication Style

- From Clery Handbook:
  - “Whether you produce the report as a separate publication or as part of another publication, it must be **contained within a single document.**”
  - “If your institution has **multiple campuses**, remember that *Clery Act* requirements must be met individually for each separate campus. ... You may publish a single document covering all campuses as long as you clearly identify the policy statements and crime statistics that are associated with each campus.”

# Revising the ASR

- Must update ASR if there are corrections to statistics or changes to statements of policy, procedure and programming
- From Clery Handbook:
  - “When a change is made to the statistics or policies in an annual security report, you should add a note to the annual security report explaining the change. This note should include what change was made, the date the change was made and the reasons for the change.”
  - “Once revised, you must redistribute the annual security report.... If you post the revised annual security report online, you must distribute a notice about the availability of a revised annual security report to each student and employee.”



# What was the average Clery fine levied against institutions in 2018?

\$55,000

\$119,000

\$224,000

\$392,000

# Update on 2018 Clery Fines

- 9 schools were fined for Clery issues
- 5 schools fined for issues with statistics
- All schools were fined for issues with:
  - Policy statements in ASR
  - DFSCA compliance
  - Exception: University of Montana was cited for policy and DFSCA issues, but only fined for issues with crime statistics...

# 2018 Fines (cont.)

- **University of Montana: \$966,614**
  - Public; ~12,000 students
  - Many compliance issues, but entire fine attributed to underreported crime statistics
- **Green River College: \$574,500**
  - Public; ~8,500 students
  - ~\$335,000 of fine amount related to issues with crime statistics
- **Other 7 schools' average: ~\$68,000**
  - High – Wayne State University: \$127,500
  - Low – Valley Grande Institute for Academic Studies: \$35,000



# Key Takeaways



- Clery Geography
  - Do you have an inventory? Is it regularly reviewed and updated?
  - Any noncampus locations that may need to be analyzed to determine if they are separate campuses for Clery purposes?
- Do you send out requests for statistics to local law enforcement agencies with jurisdiction over any part of your Clery Geography?
  - Are you tracking student trips?
  - Should any be included in your Clery Geography? If so, are requests to law enforcement agencies with jurisdiction over those locations being made?
- CSAs
  - Do you have an inventory? Is it regularly reviewed and updated?
  - Do CSAs know they are CSAs and what their responsibilities entail?
  - End of calendar year: certification for any 2018 incidents?
- Miscellaneous
  - Does your institution have a timely warning policy? Is it being followed?
  - Ensure DFSCA compliance (annual notice & biennial review)
  - Make sure ASR is made available to prospective students and employees
  - Ensure you are revising and redistributing the ASR when necessary



**CLERY**

**Compliance**

**Toolset**

A stylized graphic on the left side of the slide. It features several blue hand silhouettes of varying sizes and orientations, set against a light gray background. The hands are arranged in a way that suggests movement or reaching. The graphic is partially enclosed by a white diagonal line that runs from the top left towards the bottom right.

# Comments Questions Experiences



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