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SEXUAL ASSAULT ON CAMPUS: WORKING TO ENSURE STUDENT SAFETY

HEARING

OF THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

ON

EXAMINING SEXUAL ASSAULT ON CAMPUS, FOCUSING ON WORKING TO ENSURE STUDENT SAFETY

JUNE 26, 2014

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SEXUAL ASSAULT ON CAMPUS: WORKING TO ENSURE STUDENT SAFETY

THURSDAY, JUNE 26, 2014

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:02 a.m., in room 430, Dirksen Senate Office Building, Hon. Tom Harkin, chairman of the committee, presiding.

Present: Senators Harkin, Murray, Casey, Hagan, Whitehouse, Baldwin, Murphy, Warren, and Alexander.

OPENING STATEMENT OF SENATOR HARKIN

The CHAIRMAN. Good morning. The Senate Committee on Health, Education, Labor, and Pensions will come to order.

This is the 11th in a series of hearings to inform this committee's reauthorization of the Higher Education Act. Yesterday I released my opening thoughts on what a comprehensive Higher Education Act reauthorization should look like. I've asked all stakeholders to submit their thoughts and comments on that proposal by the end of the summer. That's August 29th. And I plan to continue to add to that proposal, and today's hearing will help to determine how best to proceed on that very important topic.

The focus of today's hearing, campus sexual assault, is a profoundly important one. Too many students are being assaulted on our Nation's college campuses. According to current research, an estimated 1 in 5 women are sexually assaulted or victims of attempted sexual assault while in college.

As we will hear today, sexual assault does not just happen to women. Approximately 1 in 16 men are victims of completed or attempted sexual assault.

Research also shows that LGBT students, as well as students with disabilities, may face a higher risk of sexual assault.

No student should have to endure something so terrible as sexual assault while they are in college, and today we are going to hear from the Administration, from survivors and a researcher about the work they're all doing to make our college campuses safer for everyone.

This hearing will also explore the Higher Education Act and Title IX and how these two laws address issues related to campus sexual assault. The Clery Act provisions within HEA, the Higher Education Act, play a critical role in ensuring the proper reporting of

campus sexual assault and that the appropriate supports and systems are in place for when these assaults occur.

Title IX, one of our Nation's landmark civil rights laws, which celebrated its 42d anniversary just this week, also plays a substantial role in ensuring colleges have adequate processes in place to quickly and fairly address reports of sexual assaults. Title IX is critical to providing survivors with some of the supports they need in the aftermath of a sexual assault. Today we will hear about the work the Administration is doing to ensure that colleges meet their title IX obligations.

The Clery Act and title IX seek to address these issues in different ways, and I appreciate that some colleges are finding it challenging to understand their obligations under both Clery and title IX. I hope today's hearing will bring to light how we can make it easier for colleges to understand their obligations under both important laws.

I will close by saying that this is an issue that has for far too long been swept under the rug, been put in the closet to try to hide it. We have to address this forthrightly. We know it's happening. We're getting more and more data that's coming forward. I read the testimonies of the people who are testifying today. There is some compelling testimony in there in terms of how we need to change some of our systems to bring more of this to light, to provide colleges with the kind of flexibility that they might need.

The one thing that came through to me in the testimonies that I read last evening more than anything else was that one-size-does-not-fit-all, that these are not all the same acts. They vary in intensity. They vary in approach. They vary in victims. They vary in perpetrators. They vary in a lot of circumstances. Therefore, perhaps one stringent provision that cuts off all aid, all title IV money to a college—which is never used, by the way—is not really a deterrent at all.

So we have to look both for the deterrents, the adequate penalties and fines that accrue, setting up structures with colleges so that they can prevent this—determines what is the best course of action—and to let victims know that they have recourse and they have the support systems in place so that they can report and bring this to light without the victim being a victim twice or three times over.

I hope that this hearing now will start that process to where we can address this adequately in the Higher Education Act reauthorization.

With that, I will turn to Senator Alexander for his opening statement.

OPENING STATEMENT OF SENATOR ALEXANDER

Senator ALEXANDER. Thanks, Mr. Chairman.

Thank you to the witnesses for coming. We look forward to your comments.

I was once a college president. I have had children in college, and I went to college myself. We know that's a very special experience when you hug your parents goodbye and students are turned over to a college campus, and the parents are anxious and the students are nervous, and you hope everyone is safe and everything is suc-

cessful. Unfortunately, and the focus of the hearing today, is sometimes that turns out not to be true.

So the purpose of what I think we should be doing today is finding out what we in Washington can do to help create an environment that helps campuses discourage sexual assaults, which is the subject of this hearing, and then to make sure that if there are any requirements that we have from here to campuses, that they be clear and that they don't cause campuses to spend more time filling out forms than they do creating an environment to discourage sexual assault.

I think it's important to remember, too, the limits of what we're able to do from here. On campuses in Tennessee, there's a dean of students, and there's a president of the college, and there are trustees, all of whom have the primary responsibility for the environment on the campus and for taking action. And if it's a public institution, where three out of four of our students go, there are legislators and there is a Governor. I know that about the time I was president of the University of Tennessee, the State of Tennessee passed a Crime on Campus bill which was modeled after the Clery Act, which was the work of parents in Pennsylvania whose child was murdered.

Just as we want gun-free school zones, if we really want gun-free school zones in our 100,000 schools, it's primarily the responsibility of those in the community, the principal, the parents, and the students in that school.

Whatever we do here I think needs to make sure that we don't suggest to anybody that we in Washington can make the campuses—should be primarily responsible for making the campuses safe. I mean, I don't think the country would want to look up here and say the Senate, the U.S. Senate that can't even balance a budget and can't even agree on how to consider an appropriations bill, ought to be the one who you look to to be responsible for campus safety in 6,000 institutions with 7,200 campuses and 22 million students. If my child were going to a campus, I would look to the dean of students and to the faculty and to the environment on that campus first.

But there is a role we have to play, primarily because we, along with the States, help fund campuses, and we've been playing that role. There is the Clery Act which I mentioned just earlier, and these are the rules and regulations that any campus administrator will have to consider, these proposed rules and regulations. The question we should have is do these really help to create an environment to discourage sexual assaults, or is there something we can do that's simpler and clearer and more effective.

And then under title IX there are responsibilities and guidances and steps that we need to take.

I'm glad that we're having the hearing. I especially appreciate the efforts of several of our Senators, Senator McCaskill, who is not a member of this committee but is very interested in this. I've met with her about this, and one of the things I would suggest to the Chairman and the other members of the committee, at least one of whom is formally a member of a faculty of a distinguished institution, I think at some point we ought to have informal or formal discussions with the people on the 7,200 campuses who actually have

the job of creating an environment for campus safety, including discouraging sexual assault and responding to it appropriately and making sure that the things that we do from here are helpful and not burdensome, which is sometimes the case.

I welcome the hearing. I congratulate the Senators who have made this a focus of their attention. I look forward to learning from both panels of witnesses.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Alexander.

We will have two panels. Our first panel will basically be our Administration witnesses, and then we'll move rapidly to our second panel.

I would like to start by welcoming our first witness, Ms. Catherine Lhamon. Ms. Lhamon is the Assistant Secretary for Civil Rights in the U.S. Department of Education. Prior to coming there, she was the director of Impact Litigation at Public Council, the Nation's largest pro bono law firm. Before that, she practiced for a decade at the ACLU of Southern California, serving as assistant legal director. She also served as a teaching fellow and supervising attorney in the Appellate Litigation Program at Georgetown University Law Center. She received her J.D. from Yale Law School and graduated from Amherst College.

Next is Mr. James Moore, manager of the Clery Act Compliance Division of the U.S. Department of Education. Mr. Moore joined the Department of Education in 1997 and has become a nationally recognized expert on the Clery Act. He also serves as a representative on the White House Task Force to Protect Students from Sexual Assault.

Welcome. Both your statements will be made a part of the record in their entirety.

Ms. Lhamon, we will start with you. If you could sum up your statement for us in a few minutes, and then we will move to Mr. Moore, afterwards we will open it up for questions and answers.

Welcome, Ms. Lhamon. Please proceed.

STATEMENT OF CATHERINE LHAMON, J.D., ASSISTANT SECRETARY FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, DC

Ms. LHAMON. Thank you so much, Chairman Harkin, Ranking Member Alexander, and members of the committee. I appreciate the opportunity to share our work with you today.

I am Catherine Lhamon, Assistant Secretary for Civil Rights at the U.S. Department of Education. The enormously talented staff that I work with and I have the privilege of enforcing our Nation's Federal civil rights laws in schools, including title IX of the Education Amendments of 1972, and we have made as a country great strides in the 42 years since title IX became law, with many colleges and universities having changed their policies, their practices so that they are not discriminating and in compliance with the law, and I applaud those colleges and universities for recognizing that their core educational mission includes ensuring safety of their students on campus.

Still, sexual violence is pervasive across too many of our campuses. We are committed to ending that reality in schools. In this

Administration, we have investigated more than 100 institutions of post-secondary education. We've issued policy guidance, and we've delivered significant technical assistance to colleges and universities that have reached out to us.

The President and Vice President have prioritized this issue, including by creating the White House Task Force on Protecting Students from Sexual Violence this last January. One key deliverable in the first 90 days from that task force was the issuance from my office of a 52-point questions and answers document that supplements our previous guidance related to sexual violence so that we could answer the many questions that have come to us from colleges, from universities, from the community about ways to comply with the law, the ways that we enforce, and what it is that we expect in schools.

We had already issued guidance in 2001 related to sexual harassment, and then in 2011 this Administration was the first administration ever to issue guidance specifically focused on sexual violence and calling out sexual violence as a civil rights issue.

In addition to issuing that guidance, we have, as I mentioned, delivered significant technical assistance to colleges and to universities who have reached out to us with questions about what they can do to better deliver for their students, and we're very pleased to be able to use that tool, and we use all tools available to us, including our enforcement tool, and I'd like to share some of our recent examples of enforcement in this area as examples of the ways that we've been able to achieve robust agreements to change the experience of students on campus.

Just last fall, we entered into an agreement with the State University of New York, which is the largest institution of public higher education in the country, serving 219,000 students across 29 State-operated campuses. It was the largest single impact that we could have had with a single investigation. I am enormously impressed with the SUNY system for having the courage and the leadership to commit that across all of its campuses they would change their policies so that they are fully compliant with title IX and so that they deliver the message to their students on all of their campuses of disapprobation related to sexual violence.

They have also committed to reopen their case files, their investigative files since 2011 to identify whether there is more relief that can be delivered to the complainants who have come to them and what more should be done. They will report to us what it is in addition that they will do, and if not, why not, so that we can evaluate whether they have changed their practices to make sure that they are responding in a timely fashion to the complainants who come forward to them.

We, as part of our investigation for the SUNY system, reviewed 159 case files across their campuses to take a look at the ways the university system had investigated the complaints that had come to it, and we had significant concerns. We are really impressed with the SUNY system for agreeing to reopen those files and to identify what, if anything more, should be done.

Another really key component of that resolution agreement is an agreement for each of their campuses across the State of New York to bring in the community to evaluate what more may need to be

done to make students safe. That recognizes, as Chairman Harkin noted, that there is no one-size-fits-all approach. What works at SUNY Albany may not be the same thing that is necessary at SUNY Stony Brook. So they are involving their communities to identify what needs to be done at each campus to make sure that the students are safe, and they will report to our office what it is that the community members have asked for; what, if any, changes they will make; and if not, why not, so that we can be part of ensuring the full community response and the solution at those schools.

Moving from a very large institution to a much smaller scenario, just this last spring we entered into a resolution agreement with the Virginia Military Institute, which has about 1,500 students. It's a much smaller campus, a much smaller institution, but also very significant concerns and very significant resolution that commits for retraining, a change in policy at the campus, and ensuring safety for all the students on that campus, even after some fairly significant harrowing sets of facts that included a system that had a policy that required students who became pregnant to leave the Virginia Military Institute altogether and could no longer be students there. That has also changed as a result of the resolution agreement.

But as against that backdrop, the institution had failed to involve the title IX coordinator when a senior cadet had issued wire hangers to young women cadets and called them their abortion tools. The school had not taken appropriate steps to discipline the student and also to ensure that the title IX coordinator was involved in making sure that that campus could be safer. That will be changed going forward. I'm very pleased that the Virginia Military Institute has agreed to enter into a resolution agreement to change those practices and ensure non-discrimination for all of the students on that campus.

And then moving from the large and the small to the mid-size campus, also last spring we entered into a resolution agreement with Tufts University, and on the next panel you'll hear from a student at Tufts about his experience there as well. I'm really impressed with Tufts for agreeing to new training to rectify a situation where they had not had a title IX coordinator at all for a year and a half during the course of our investigation, and for agreeing to make sure that they do provide interim relief for students, that they do investigate the complaints that come to them appropriately, and that they change their policy to end practices, for example, of including students' prior sexual history as part of an investigation, which is, as we know, inappropriate, consistent with title IX.

We have entered into very robust agreements with universities of a variety of size across the country in our enforcement space. I'm enormously proud of what my staff has been able to achieve, and I look forward to continuing because it is so critically important that we change the current practice where there are people who think that they don't need to comply with the law and that we don't need to satisfy what it is that title IX has very clearly set out.

I look forward to answering any questions from this committee, and I again really appreciate the opportunity to share our work experience with you.

[The prepared statement of Ms. Lhamon follows:]

PREPARED STATEMENT OF CATHERINE E. LHAMON, J.D.

Chairman Harkin, Ranking Member Alexander, members of the committee—thank you for this opportunity to share the work of the Department of Education's Office for Civil Rights, which enforces our Nation's civil rights laws to ensure equal educational opportunity for young women and men attending more than 7,000 colleges and universities across the United States. It is critically important that we ensure safe, nondiscriminatory learning environments for students in schools and I am privileged to lead a dedicated, experienced, and visionary staff that is committed to that critical work.

OFFICE OF CIVIL RIGHTS

As Assistant Secretary for Civil Rights at the Department of Education, I am charged with enforcing Federal civil rights laws, including Title IX of the Education Amendments of 1972, which prohibits sex discrimination in education programs and activities receiving Federal funds. Since the beginning of this Administration, my office has investigated over a hundred sexual violence cases at the postsecondary level, issued policy guidance documents regarding sexual harassment and sexual violence, and provided technical assistance related to sexual violence. Over my office's decades of work in this area, OCR has developed significant expertise in these issues that we regularly share with our Federal partners in the effort to address sexual violence in schools.

As effective as we have been over the years, the problem of sexual violence has nonetheless persisted across too many of our students' experiences in institutions of higher education. The best available research suggests that 20 percent of college women, and roughly 6 percent of college men, are victims of attempted or completed sexual assault.

Operating from the fundamental principle that one student subject to sexual assault is too many, President Obama established the White House Task Force to Protect Students From Sexual Assault on January 22, 2014, directing the Task Force to focus specifically on permanently ending the cultural prevalence of sexual violence during our young people's typical transition from home to independence through college or university degree completion. This charge from the President commits the Task Force to "develop a coordinated Federal response to campus rape and sexual assault" to end what the President rightly called "an affront to our basic decency and humanity."

Colleges' and universities' core mission to educate students necessarily includes ensuring that their students are safe to learn in class, in school facilities, on their campuses. Sexual assault denies students the right to learn in an educational environment free from sex discrimination. When universities fail to respond adequately to campus sexual assault, they may be forcing the affected students to attend school in a sexually hostile environment. This environment deprives them of their freedom to go to class without being re-traumatized by a perpetrator sitting a few seats away, walk on campus without being harassed by a perpetrator's friends, attend a party on-campus, or even feel safe in their own dorm rooms. And it can profoundly damage students' physical and emotional well-being in ways that deprive them of the opportunity to obtain an education altogether.

I am pleased to see that many colleges and universities are stepping up to the challenge of addressing the problem of sexual assault. For example, within months of the release of the Department of Education's Office for Civil Rights 2011 Dear Colleague Letter on sexual violence, many colleges and universities revised their sexual violence policies and procedures consistent with our guidance. We applaud these schools for taking the initiative to keep their students safe without waiting for enforcement intervention from my office or from the Department of Justice.

But some schools still are failing their students by responding inadequately to sexual assaults on campus. For those schools, my office and this Administration have made it clear that the time for delay is over. This Administration is committed to using all its tools to ensure that all schools comply with title IX so campuses will be safer for students across the country.

COORDINATING ACROSS GOVERNMENT AND WITH STUDENTS, SCHOOL OFFICIALS, AND OTHER STAKEHOLDERS

President Obama launched the White House Task Force to Protect Students from Sexual Assault (Task Force) in January 2014. This interagency effort is charged with addressing campus sexual assault by coordinating Federal enforcement efforts; consulting with advocates, students, colleges and universities, and other stakeholders; and developing recommendations and resources for students and higher education institutions. Led by the Office of the Vice President and the White House Council on Women and Girls, the Task Force includes designees of the Attorney General, the Secretary of the Interior, the Secretary of Health and Human Services, the Secretary of Education, the Director of the White House Office of Science and Technology Policy, the Director of the White House Domestic Policy Council, and the Cabinet Secretary. I serve as Secretary of Education Arne Duncan's designee on the Task Force.

During its first 2 months, the Task Force prioritized hearing from people across the country who are invested in this issue, holding 27 listening sessions (12 webinars and 15 in-person meetings) with thousands of people including survivors; students; alumni; faculty, staff, and administrators from colleges and universities; parents; national survivors' rights and education associations; local and campus-based service providers and advocates; law enforcement; civil rights activists; school general counsels; men's and women's groups; Greek organizations; athletes; and researchers and academics.

After hearing from these stakeholders, the Task Force delivered its first report to the President in April 2014, which included recommendations and resources aimed at preventing and addressing campus sexual assault. Key deliverables in that first Task Force report included a 53-page detailed question and answer (Q&A) document issued from my office on April 29th of this year, regarding title IX requirements for campus investigation and enforcement regarding sexual violence; the creation of a new website—*www.NotAlone.gov*—that compiles, in one place for the public to access, information related to the law, enforcement, and available government and nongovernmental resources; a compilation of materials related to effective training for students and for school and health center and victim services staff regarding such important topics as trauma-informed responses and best practices for investigations; a chart detailing a school's reporting obligations under title IX and the Clery Act, and how each intersects with the Family Educational Rights and Privacy Act (FERPA); and a public service announcement about the need for transformation in attitudes toward sexual violence.

Among other provisions, the report calls on colleges and universities to conduct a campus climate survey to assess perceptions of safety on campuses and help identify areas for targeted safety efforts, identifies resources on primary prevention strategies and bystander intervention programs, provides schools with a sample reporting and confidentiality policy so that it is clear to whom on campus students can report confidentially, and delivers a checklist for colleges and universities to use while developing a sexual misconduct policy.

The Task Force report also details commitments to conduct more research, develop additional sample policy language on other key issues, develop training programs for school officials and investigators, and identify promising practices for investigating and adjudicating campus sexual assault cases. For example, several universities have volunteered to pursue research that will help us better understand and prevent sexual assault.

The Task Force report also details this Administration's commitment to improving and better coordinating our enforcement efforts within and across responsible agencies. For example, the Department's Federal Student Aid (FSA) office is responsible for Clery Act compliance, whereas OCR enforces title IX, and sometimes our efforts overlap. The Clery Act requires institutions of higher education to provide current and prospective students and employees, the public, and the Department with crime statistics and information about campus crime prevention programs and policies. The Clery Act requirements apply to many crimes other than those addressed by title IX. For those areas in which the Clery Act and title IX both apply, the institution must comply with both laws. To clarify roles and increase efficiency, FSA and OCR have formalized an agreement to ensure effective handling of complaints and to facilitate information sharing.

Similarly, OCR and the U.S. Department of Justice's Department's Civil Rights Division (CRT) both enforce title IX, and we have committed to improving our coordination and collaboration. The two offices have entered into an agreement to enhance our collaboration and strengthen enforcement. These changes will improve

the Administration's collective enforcement efforts to ensure that schools comply with title IX.

Finally, the Task Force report announced our commitment to make OCR enforcement activity more transparent, in this and all areas. Shortly after the Vice President released the Task Force report, my office began making public the list of colleges and universities we are investigating regarding sexual violence concerns. This new transparency adds an important tool to the culture change President Obama called for when creating the Task Force, beginning a new era when our collective disapprobation of sexual violence holds fuller salience and effect at colleges and universities.

OCR'S EFFORTS TO ADDRESS SEXUAL ASSAULT ON COLLEGE CAMPUSES

OCR's work begins with the recognition that each school has the ultimate responsibility for creating a nondiscriminatory learning environment and ensuring that its policies, practices, and procedures protect all students from discriminatory abuse, violence, and harassment. There is no universal, one-size-fits-all approach that will be right for every school or all students; and the Department makes no effort to mandate a single approach. School policies will vary in detail, specificity, and components, reflecting differences in State or local legal requirements and each school's students, size, administrative structure, and what it has learned from past experiences.

Issuing Policy Guidance on Title IX and Sexual Violence

OCR issues policy guidance to inform schools and the public about critical and emerging issues arising under the laws and regulations OCR enforces, as a complement to our technical assistance and enforcement activities. This policy guidance offers clear direction to schools in areas of pressing concern, including sexual violence.

Despite the fact that schools have had a longstanding obligation under title IX to respond to sexual harassment and sexual violence against students, our enforcement work and the technical assistance requests that we receive indicate that schools have been unsure of how to handle some of the unique issues that arise in this context. For example, through our investigations, we know that some colleges and universities are:

- Retaliating against students for filing complaints thereby discouraging other survivors from filing complaints;
- Delaying investigations for months or longer;
- Delaying services and support to survivors when their investigations are pending or providing inadequate interim relief;
- Utilizing policies and procedures that are not clear, transparent, or fair, or not following its own procedures;
- Addressing sexual violence solely as a criminal matter and not under title IX or delaying the title IX investigation pending the conclusion of the criminal investigation; and
- Allowing the perpetrator to remain in school after being found responsible for sexual assault and then sexually assaulting another student.

To address this, OCR issued guidance in April 2011 in the form of a Dear Colleague letter (2011 DCL) to help schools better understand their obligations under title IX to prevent and respond to sexual violence. OCR's 2011 DCL marked the first time that any Administration had issued guidance under title IX specifically dealing with sexual violence.

The 2011 DCL affirms that the title IX requirements for sexual harassment and OCR's 2001 guidance on sexual harassment also apply to sexual violence and lays out the specific title IX requirements applicable to sexual violence. It addresses the unique concerns that arise in sexual violence cases, such as the role of criminal investigations and a school's independent responsibility to investigate and address incidents of sexual violence, regardless of whether a criminal violation is found. It also provides guidance and examples about key title IX requirements and how they relate to sexual violence—including schools' obligations to have a policy against sex discrimination, the important role of title IX coordinators, and the requirements for a school's grievance procedures to be prompt and equitable. The 2011 DCL discusses the proactive efforts schools can take to prevent sexual violence and to educate employees and students and provides examples of the types of remedies that schools and OCR may use to respond to sexual violence.

Our release of the 2011 DCL is widely credited with having sparked significant changes at colleges and universities as they worked to meet title IX's requirements consistent with the 2011 DCL. Those efforts generated many further questions from

schools and students about how to apply the requirements and recommendations articulated in the 2011 DCL. To answer those questions, OCR issued a Q&A document on title IX and sexual violence (Q&A) on April 29, 2014, to give schools and students the information they need to ensure compliance with title IX, and, more importantly to prevent and effectively respond to victims of sexual violence.

The Q&A answers questions OCR has received since the release of the 2011 DCL, provides perspective based on our more recent sexual violence investigations and resolutions, and offers recommendations for good policies and practices. It provides more guidance on what OCR means when we say that title IX requires schools to take interim measures before the outcome of an investigation. It makes clear that title IX protects all students from sexual violence, regardless of whether they have a disability or are international or undocumented, and regardless of their sexual orientation and gender identity. The Q&A provides answers to a number of questions OCR received with respect to confidentiality requests and employees' reporting obligations. It also provides more information on training, education, and prevention, including detailed guidance on training employees to understand their role in protecting student's rights and education and prevention programs aimed at students. Finally, the Q&A answers questions that OCR has received regarding the intersection of title IX and the Clery Act. The Q&A explains that title IX and the Clery Act are two separate statutes and that schools must comply with both. It also reiterates that the amendments to the Clery Act in the Violence Against Women Reauthorization Act of 2013 in no way alter schools' obligations under title IX, including those set forth in OCR's 2011 DCL.

Providing Resources and Technical Assistance

OCR has 12 regional offices around the country that are equipped to provide technical assistance to school officials, parents, students, and others to inform them of their rights and responsibilities under the law. OCR does this through a variety of methods, and the form of our assistance is dictated largely by the needs of the school, group, or individuals requesting information. In some instances, a school will contact OCR because it has questions about the best way to comply with title IX, and OCR will have a phone or in-person meeting with the relevant administrators of the school to listen to their concerns and provide guidance on how to ensure compliance. This provides schools with a way to come into compliance without the threat of enforcement action. Likewise, OCR routinely participates in trainings and conferences conducted by groups that count college and university leadership among their members, such as the National Association of College and University Attorneys. Again, this type of assistance provides schools with an outlet to ask questions and receive answers directly from OCR—without worrying about opening themselves to an enforcement action. OCR also participates in community meetings, and publishes and disseminates materials to students, parents, teachers, administrators, schools, and community groups.

Enforcing Title IX

OCR's complaint process allows any member of the public to file a complaint with our office. Since the beginning of this administration, OCR has received 260 complaints involving sexual violence in educational institutions as of June 19, 2014. Of those 260, 147 were at the postsecondary level. My office also launches proactive investigations, such as compliance reviews and directed investigations, to remedy possible violations of students' rights. We initiate compliance reviews to examine potential systemic violations based on various sources of information, including statistical data, news reports, and information from parents, advocacy groups, and community organizations.

We can also initiate directed investigations when a report or any other information indicates a possible failure to comply with the regulations and laws enforced by OCR. A directed investigation is a review that allows for immediate investigation of urgent and critical civil rights problems where the effects of possible discrimination are sufficiently serious to deny or limit the ability of students (and others) to participate in, or benefit from, the educational program or activity. Since January 2009, OCR has initiated 20 proactive investigations (i.e., compliance reviews and directed investigations) focused on sexual violence and 14 of these are at the postsecondary level. The Obama administration has prioritized addressing sexual violence in our Nation's schools: sexual violence compliance reviews are almost 13 percent of the total number of compliance reviews that my office has initiated since 2009, while sexual violence complaints are less than 1 percent of the total number of complaints we receive.

Under the statutory enforcement scheme, when we find a recipient of Department funding to have violated title IX or any of the civil rights provisions we enforce, we

must attempt to obtain voluntary compliance by the recipient. If OCR cannot secure voluntary compliance from the recipient, OCR may initiate an administrative action to terminate and/or refuse to grant Federal funds or refer the case to the DOJ to file a lawsuit against the school. To revoke Federal funds—the ultimate penalty—is a powerful tool because institutions receive billions of dollars a year from the Federal Government for student financial aid, academic resources and many other functions of higher education. OCR has not had to impose this severe penalty on any institution recently because our enforcement has consistently resulted in institutions agreeing to take the steps necessary to come into compliance and ensure that students can learn in safe, nondiscriminatory environments.

OCR has strengthened our enforcement procedures, including instituting time limits for negotiating voluntary resolution agreements. The voluntary resolution process is usually much faster than litigation but it can still take time and include frustrating delays. To ensure efficient as well as effective resolution of noncompliance findings, and to help guard against the risk that a school might extend negotiations to delay enforcement, OCR has placed a 90-day limit on voluntary resolution agreement negotiations where we have found a school in violation of the civil rights laws we enforce, including title IX. In addition, we have changed our procedures to make explicit that schools should provide survivors with interim relief—such as changing housing or class schedules, issuing no-contact orders, or providing counseling—where necessary because of safety concerns pending the outcome of an OCR investigation.

These outcomes highlight the robust remedies we require in our resolution agreements, which are designed to empower the entire school, college, or university community to address issues of sexual violence. Our remedies engage schools and communities to create lasting and meaningful change, and we remain actively involved in monitoring to ensure that paper promises translate into lived reality for students in affected schools.

Increasing Transparency

Soon after I took office in August 2013, I instructed my staff to post nearly all recent resolution letters and agreements with recipients on our website, except those documents that raise individual privacy concerns. In addition, as discussed above, we have posted sexual violence resolution agreements and letters on NotAlone.gov to make them more accessible to students, parents, and community members. And, as discussed above, we have made public, for the first time, a list of all colleges and universities under OCR investigation for the handling of sexual violence and harassment complaints. My hope is that this increased transparency spurs community dialog about this important issue. I expect that this additional transparency regarding resolution agreements, as well as institutions under investigation will be an important enforcement tool, raising public awareness regarding the issues and prompting action at additional schools to achieve fuller compliance with the laws.

Consistent with these transparency efforts, the Department also plans to collect and disseminate a list of title IX coordinators at the postsecondary level starting in 2015. Every college and university is required by law to designate at least one title IX coordinator, an employee charged with coordinating the school's title IX responsibilities. Schools are required to notify students and employees of the name and contact information of the title IX coordinator. However, there is currently no central, national repository of coordinator contact information. My office is working with the Department's Office of Postsecondary Education to collect and disseminate the list of higher education title IX coordinators annually so students, employees, parents, and community members can easily locate their school's coordinator. We also hope that this information will encourage title IX coordinators to communicate with each other and share best practices for title IX compliance.

CONCLUSION

As Secretary Duncan has said,

> "All members of the campus community bear responsibility for acting now to end campus cultures that tolerate sexual violence. The days of telling survivors they should just forgive and forget sexual assaults must come to an end."

Along with the rest of the Administration, we at OCR are committed to helping colleges and universities achieve these goals. By coordinating with other government agencies, vigorously enforcing title IX, increasing transparency in our investigations and resolutions, issuing policy guidance on title IX and sexual violence, and providing resources and technical assistance, OCR continues to work to remedy hostile campus climates and make campuses safe for all students.

I would be happy to respond to questions from the committee.

The CHAIRMAN. Thank you very much, Ms. Lhamon.

Mr. Moore.

STATEMENT OF JAMES L. MOORE III, COMPLIANCE MANAGER, CLERY ACT COMPLIANCE DIVISION, U.S. DEPARTMENT OF EDUCATION, PHILADELPHIA, PA

Mr. MOORE. Good morning, Chairman Harkin, Ranking Member Alexander, and members of the committee. My name is James Moore, and I manage the Clery Act Compliance Division at the U.S. Department of Education. Thank you for inviting me to discuss the Department's role in enforcing the Clery Act, and especially the implementation of the amendments to the Clery Act in Section 304 of the Violence Against Women Act reauthorization.

College should be a special time in the life of every student, a time of exploration, discovery, and joyful memories. But for far too many of our students, they have been denied the best of the college experience because of the crisis of sexual assault and other violent crime on campus.

As you know, the Clery Act promotes consumer protection and transparency about crime and other public safety matters by promoting transparency and by requiring institutions that participate in the Federal Student Aid programs to provide accurate and realistic views of campus crime on campus and in the surrounding area.

It is essential that campus safety and crime prevention information as provided to students, parents, and employees is of the highest quality. Members of our campus community should not have to wonder if the crime information that is provided to them is accurate, or have to worry that the information has been purposefully manipulated to create false impressions or to protect their school's brand. For young people who are often new to a community on campus, anything that creates a false sense of security is especially dangerous.

To hold institutions accountable, the Department created a dedicated team to monitor and enforce these rules. The original Clery team was formed in 2010, and in 2012 FSA, Federal Student Aid, realigned the team to strengthen it and make it more prominent within the Office of Program Compliance. In a short time, the team now known as the Clery Act Compliance Division has had a significant impact on the way that institutions confront campus crime. This team of highly skilled professionals that I am honored to lead is dedicated to the cause of campus safety and carries out its mission with the safety of the Nation's students and educators foremost in their mind.

The Department is committed to improving Clery Act compliance and campus safety through a balanced approach of enforcement and technical assistance. One of our operating principles is that we will assist schools whenever we can and enforce whenever we must.

The campus crime program review process is the primary component of our enforcement effort. The Clery Division conducts these reviews to assess compliance with the Act and the Department's regulations. It also works with institutions to ensure that corrective actions are implemented and sustained.

Recently, most of our reviews have been driven by complaints from our students, who are always our best source of information and who help us understand how crime is affecting their lives on campus. Here, I must pause to thank the new generation of student advocates and activists who have developed a sophisticated understanding of the Clery Act and title IX. These students are using their knowledge to assist survivors and to make their campuses safer for everyone.

I also want you to know that we supplement our complaint-based reviews with proactive compliance examinations that we conduct as part of a partnership with the FBI. In addition, our Office of Program Compliance conducts about 300 program reviews each year. Most of those reviews focus on financial aid compliance matters, but we have added a Clery Act and Drug-Free Schools and Communities Act test component to each of those reviews, and my team oversees the work that those teams do on these matters to ensure consistency across the country.

The Clery Division also monitors media coverage of campus crimes, and we conduct assessments of major incidents to determine if institutions have complied with the Clery Act in response to those incidents.

I would like to share with you a little bit of information about the recent work that we've done to implement the Violence Against Women Act reauthorization components of the Clery Act. As you know, last week the Department published proposed regulations that will fully implement the changes made to the Clery Act by VAWA. I can tell you that in my 17-plus years in this agency, I have never been more impressed or proud of a rulemaking effort.

Work began on our implementation strategy immediately after VAWA's passage, and from the very beginning we have focused on reaching out to the people who are most affected by campus sexual assault and to top experts in the field who have dedicated their lives to addressing this problem. In May and June of last year, the Department held public hearings where we heard from students and advocates and institutional officials on a range of campus crime topics, including the proper role of law enforcement in campus sexual assault investigations and the need to find a balance between transparency and confidentiality.

In fall 2013, we conducted outreach sessions with student groups, campus safety advocates, campus law enforcement and other stakeholders to develop our understanding of their concerns and to hear directly from them about how the law should be implemented. We also built relationships with colleagues across the government and higher education so that our rulemaking effort and enforcement program could benefit from their expertise.

From January through March of this year, we brought together 28 negotiators, including one who will be on your next panel, representing a broad range of experience, interests, and perspectives, including campus law enforcement professionals, victim advocates, school attorneys, title IX coordinators and, most importantly, our students themselves in three negotiating sessions. After careful consideration and extensive discussion, the committee reached consensus on proposed regulatory language on April 1st. This is a truly great accomplishment. While we always strive to reach con-

sensus during our negotiated rulemaking sessions, it is often difficult to do so with so many competing interests and perspectives represented.

After reviewing and considering the public comments we receive on the proposed rule, we plan to issue final regulations by November 1st of this year.

The Department is confident that the new VAWA provisions will provide powerful tools to prevent incidents of campus sexual assault, dating and domestic violence and stalking, and to more effectively respond when these crimes do occur. These changes will also ensure a fair and more orderly path for survivors and their advocates to seek redress through campus disciplinary bodies and ensure better access to the accommodations and services to which survivors are entitled.

It is my sincere belief that these improvements to the Clery Act, along with the hard work of our OCR colleagues and the outstanding contributions of the White House Task Force to Prevent Students from Sexual Assault, on which the Assistant Secretary and I both serve, will result in meaningful and lasting change.

In closing, I want to reiterate that we look forward to continuing our collaboration with this committee, with our institutional officials and our students in pursuit of our collective goal to put an end to campus sexual assault. Thank you, and I would be happy to take your questions.

[The prepared statement of Mr. Moore follows:]

PREPARED STATEMENT OF JAMES L. MOORE III

Good afternoon Chairman Harkin, Ranking Member Alexander, and members of the committee. Thank you for inviting me to discuss the Department of Education's (Department) and specifically Federal Student Aid's (FSA) role in enforcing the Clery Act and the implementation of the amendments to the Clery Act in Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013).

CLERY ACT

The Clery Act promotes consumer protection and transparency about crime and other public safety matters by requiring institutions which participate in the Federal student financial aid programs under Title IV of the Higher Education Act of 1965, as amended (HEA) to provide accurate and complete information about campus safety and crime prevention to the campus community. The Clery Act requires schools to:

- Collect and disclose statistics for the most serious incidents of crimes against persons and property that are reported to Campus Security Authorities and local law enforcement agencies that occur on the campus or in the near-campus community;
- Prepare, publish, and distribute to students and employees an accurate and complete Annual Security Report that includes 3 years of campus crime statistics, policy statements, and other safety-related information;
- Issue Timely Warnings and Emergency Notifications in response to serious ongoing threats;
- Maintain an open and easily understood daily crime log (if they have a campus police or campus security office);
- Submit crime statistics to the Secretary of Education annually for inclusion in the Department's publicly available websites;
- Comply with fire safety requirements, including statistics, policies, and drills (if the school maintains on-campus student residential facilities); and
- With the passage of the amendments to the Clery Act in the VAWA 2013 reauthorization, take additional specific steps to disclose statistics, policy statements and other safety-related information on sexual assaults, dating and domestic violence, and stalking on campus.

The Department's Clery Act Compliance Division (Clery Division) within FSA has developed a monitoring and enforcement program to assess compliance with these requirements. The Clery Division conducts in-depth campus crime program reviews to identify any violations of the Clery Act or the Department's regulations and appropriate responsive corrective actions that need to be taken by the institution. There are 47 open Clery Act-focused program reviews or investigations. Additionally, many reviews are the result of complaints filed by victims of campus crime or their advocates—we are currently assessing 46 complaints filed by students or other stakeholders.

The Department proactively conducts non-complaint-based reviews. Some of these latter reviews are conducted jointly with staff from the Federal Bureau of Investigation (FBI) under a Memorandum of Understanding between FSA and the audit unit of the FBI's Criminal Justice Information Service. Of the 47 open Clery-Act focused program reviews or investigations, 17 are part of our Quality Assurance Review (QAR) partnership with the FBI.

In addition, FSA's Office of Program Compliance also conducts approximately 300 program reviews each fiscal year to evaluate selected institution's compliance with the Department's regulations. While these reviews focus primarily on financial aid issues, a Clery Act and Drug-Free Schools and Communities Act testing component is a part of each general assessment review. We developed procedures for regional teams to guide the conduct of the compliance checks and provide training to regional office staff as well. In addition, we review each finding of non-compliance for accuracy and completeness and revise them as needed. Since we implemented this consultation process in June 2012, we have completed work on 531 program review and audit findings.

The Clery Division also monitors media coverage of campus crime activity and conducts a preliminary assessment of major campus crimes to determine if any additional investigation is needed to determine if the institution complied with the Clery Act in response to these incidents. Since this program was put into place in January 2012, 477 incidents requiring an assessment have been identified. To support this work, the Clery Division has developed a strategic plan through which they are leveraging crime analytics and other technology to more effectively monitor crime trends and identify possible compliance failures.

The Department also utilizes the services of Westat, a Federal contractor, to collect campus crime statistics from institutions and to provide customer support services. At the beginning of each year, Westat assists the Department in collecting annual crime and fire safety data from postsecondary institutions. In January, Westat sends a broadcast email to all institutions participating in the title IV programs, reminding them of their responsibility under the Clery Act to make a good-faith effort to collect crime statistics from local and State law enforcement agencies. The process includes reminding institutions of their obligations, administering the online data collection of crime statistics, monitoring submissions by institutions, and data review and correction, if necessary.

Westat also maintains a year-round Help Desk to provide assistance to postsecondary institutions and agencies without interruption. All Help Desk staff members receive annual training on all Clery Act requirements, the content of the annual data collection, and the online data collection tool. In 2013, the Help Desk responded to 5,207 incoming phone calls and 1,684 incoming emails from postsecondary institutions or agencies looking for guidance on Clery Act compliance or seeking assistance in submitting their annual statistics.

VAWA 2013

Over the years, Congress has amended and expanded the Clery Act to confront new and emerging security threats, and to address impediments to campus safety. In March 2013 President Obama signed VAWA 2013, which strengthened Clery to more effectively address, and ultimately reduce, all forms of violent campus crime, including many insidious 21st Century safety threats such as cyber-stalking and other acts of harassment and intimidation that are committed by electronic means.

Soon after VAWA 2013 was signed into law, the Department developed a strategy to ensure that these new provisions were implemented as quickly as possible and in a manner that ensured that the specific goals of section 304 were achieved. Like each of you, we at the Department are very concerned about the crisis of sexual violence on college campuses. Because of that concern, we have focused a great deal of time and attention on issues of campus crime, including a particular focus on campus sexual assault.

First, in May 2013, the Department provided guidance to institutions explaining the basic requirements of the law, and how they would be impacted by the rule-

making process. Because we knew the changes made to the Clery Act would take effect before we had an opportunity to finalize our regulations, we informed institutions that they should prepare to make a "good faith effort" to comply with the law in this year's reports, which are due on October 1, 2014. As schools begin to compile those reports over the next few months, the Department will be reaching out with more detailed guidance on how best to comply with the law in the absence of final regulations. This outreach will include direct communication with institutions' chief executive officers, financial aid administrators, and chief campus safety officers at all title IV institutions. The Department will continue to offer support and technical assistance to institutions as they make their good faith effort to comply with the new requirements between now and October.

At the same time, the Department has been working to finalize the regulations that will fully implement the changes made to the Clery Act under VAWA 2013.

I can tell you that in my 17+ years in this agency, I have never been more impressed or proud of a rulemaking effort. Planning efforts began immediately after VAWA's 2013 passage, and we strove from the beginning to gather as much input directly from the people who have been most affected by campus sexual assault and from those with expertise in addressing this problem. In May and June last year, the Department solicited written comment and held public hearings, where we heard from student advocates and institutional officials on a range of topics, from the appropriate level of enforcement to the need to balance transparency with requests for confidentiality. In the fall of 2013, in anticipation of our negotiated rulemaking sessions, we reached out to students, survivors, campus safety advocates, campus public safety officials, and other institutional officials to learn more about the issues they believed were most critical to the implementation of the law and to deepen our understanding of their concerns. We also built relationships with colleagues across the government and higher education, including the Departments of Justice and Health and Human Services (HHS), and the Centers for Disease Control and Prevention in HHS, so that our rulemaking effort and enforcement program could benefit from their expertise.

From January through March of this year, we brought together 28 negotiators representing a broad range of experience, interests, and perspectives including campus law enforcement and security professionals, victim advocates, school attorneys, title IX coordinators, student affairs professionals, and most importantly, students themselves, for three negotiating sessions to develop the regulations.

Working together under considerable time pressures, the committee reached agreement on proposed regulations that would:

- Clarify definitions for dating violence, domestic violence, and stalking;
- Develop instructions for counting incidents of the new VAWA 2013 crimes—especially patterns of stalking;
- Specify requirements for prevention and awareness programs and campaigns;
- Ensure that institutional disciplinary proceedings are prompt, fair, and impartial;
- Set standards for the protection of survivor confidentiality while still ensuring survivors have access to the support, treatment, and disciplinary and legal options they need; and
- Ensure that accused individuals are treated fairly in student disciplinary proceedings.

After careful consideration and extensive discussion, the committee reached consensus on proposed regulatory language on April 1st. This is a great accomplishment—while we always strive to reach consensus during our negotiated rulemaking sessions, it is often difficult to do so with so many competing and affected stakeholders. We published the proposed regulations in mid-June to once again receive feedback and guidance from the public. After reviewing and considering the public comments we receive, we plan to publish final regulations by November 1, 2014.

In the rulemaking process for VAWA 2013, the Department made clear that the VAWA 2013 amendments to the Clery Act in no way alter on a school's obligations under title IX. Nothing in section 304 or any other part of VAWA 2013 relieves a school of its obligation to comply with the requirements of title IX, including those set forth in Q&A documents, Dear Colleague Letters, or forms of guidance issued by the Department.

The Department is confident that the new VAWA 2013 provisions will provide powerful tools for preventing and addressing campus sexual assaults, dating and domestic violence, and stalking. These changes will ensure a fairer and more orderly path for survivors and their advocates to seek redress through campus disciplinary processes, and will help to ensure better access to the accommodations and services to which survivors are entitled.

COMPLIANCE

In addition to our recent rulemaking effort, institutions that participate in our programs have been put on notice that the Department has expanded and enhanced its compliance monitoring and enforcement program—we now have 13 staff dedicated to ensuring Clery compliance. For example, FSA and the Office for Civil Rights have formalized an agreement to ensure the most efficient and effective handling of complaints and to facilitate information sharing. The Department takes its responsibility to monitor and enforce compliance with the Clery Act very seriously, because all students should have the opportunity to pursue their education without fear.

For that reason, we also continue to work proactively with institutions to develop effective campus safety operations and to enhance their Clery Act compliance programs. In recent years, we have enhanced our guidance on Clery Act compliance and will be publishing a new version of our *Handbook for Campus Safety and Security Reporting* to inform institutional officials about the new VAWA 2013 requirements. We have also ramped up our training efforts on compliance with the Clery Act and the Drug-Free Schools and Communities Act, a companion law that we also enforce. We have had the opportunity to train institution officials at several national and regional training conferences including FSA's National Training Conference, which consistently draws more than 5,500 institutional officials each year. In an effort to complement this work, FSA is in the process of developing a new online Clery Act compliance training module that will be available to all schools free of charge.

WHITE HOUSE TASK FORCE

In addition to my work at Federal Student Aid, I am honored to serve on the White House Task Force to Protect Students from Sexual Assault. As part of the Task Force's work, we have had the chance to hear from many of our key stakeholders and have had the unique opportunity to contribute to an ambitious effort that has as its ultimate goal to finally put an end to campus sexual assault. All of us at the Department will continue to partner with each other and to collaborate with this committee, the advocacy and law enforcement communities, and, most importantly, with our students, in pursuit of that goal.

CONCLUSION

Once again, it is an honor to have this opportunity to be here and on behalf of Secretary Duncan and my colleagues at the Department, I thank you for your leadership on this issue and for all that this committee is doing to make America's college campuses safer and I welcome the committee's questions.

The CHAIRMAN. Thank you both very much for your statements.

We will now turn to a round of 5-minute questions.

Ms. Lhamon, about title IX and enforcement mechanisms for title IX: basically terminating all Federal funding for an institution, if I remember right in reading your statement last night, you said that has never been used.

Ms. LHAMON. It has never been used in an institution of higher education. It has been used with school districts.

The CHAIRMAN. But not for an institution for this kind of an incident.

Ms. LHAMON. We have not had to actually withhold Federal funds for a college or university. If I may, just last April we have, I think, the best example of how well that tool is working for us. Tufts University, after they entered into a resolution agreement with us, purported to revoke that agreement, and I sent them a letter telling them that they were in breach of the agreement and telling them that they had 60 days to cure or that we would begin the process to revoke Federal funds. Within 2 weeks, Tufts University came back into compliance, not into compliance with title IX but into compliance with the resolution agreement itself.

So the threat of withholding Federal funds is a very significant enforcement tool for us. It's one of the reasons that we've been able to see our institutions enter into agreements with us.

The CHAIRMAN. You've given me one example, but your statement says it's never been used.

Ms. LHAMON. It's never been used that we've actually had to withhold the funds. It has been used as an incentive for the institutions to be able to comply with the law.

The CHAIRMAN. What we call a nuclear option around here.

Ms. LHAMON. And it's a pretty good nuclear option. My concern would be not having the nuclear option because——

The CHAIRMAN. It is a very good option. It may be something that you have in the background, but there may be other options that you can use, such as diverting funds for example—in other words, saying as part of your title IV money, because of this violation now, some of those funds have to be diverted to campus-based programs for prevention and information and support activities for students.

Ms. LHAMON. With respect to that, Senator Harkin, I think we do have that opportunity. As part of the resolution agreements, we do enter into agreements with institutions that they change their practices, which have costs associated with them. The institutions have to have counsel who——

The CHAIRMAN. You have the authority to divert funds.

Ms. LHAMON. Not to divert funds, but we do have the authority to direct them to take steps that have to use funds and that are costly.

The CHAIRMAN. But you don't have the authority to tell them that, no, you have to direct funds for that.

Ms. LHAMON. I think that's a semantic difference. The schools, when they have to take steps that cost money, do divert funds toward those practices, and those practices include, for example, paying damages to complainants who have come forward. They include retaining additional staff who have to focus on a particular project and report to us about it. They include creating climate surveys and conducting them on their campus. They include taking steps to train students that cost money, and to train staff that cost money. That is a diversion of funds, and that's very significant for the campuses.

In my 17 years as a civil rights litigator before I came to this Administration, what I did was use what is a nuclear option, which is to say there will be a very significant consequence.

The CHAIRMAN. Are you telling me you don't need any more authority or anything else from this committee or from the Congress to carry out your oversight and your ability to sanction, to redirect funds at any of these institutions? You don't need anything else from us? You have all the authority you need?

Ms. LHAMON. I am saying I think I have all the authority I need. It's not my view that we lack a tool that is meaningful for us.

The CHAIRMAN. That's amazing to me.

Ms. LHAMON. And it's very satisfactory for me.

The CHAIRMAN. That you have all the tools you need.

Ms. LHAMON. I think that we have the enforcement tool that we need.

The CHAIRMAN. Because obviously something is not working out there. I'm sorry, Ms. Lhamon, but some things aren't working.

Ms. LHAMON. Some things are not working.

The CHAIRMAN. Students still continue—even you in your testimony said that through your investigations we know that colleges and universities are retaliating against students for filing complaints, discouraging other survivors from filing complaints, delaying investigations for months or longer, delaying service and support to survivors when their investigations are pending, or providing inadequate interim relief, and on and on and on, addressing sexual violence solely as a criminal matter and not under title IX. You're saying this is what's happening out there.

Ms. LHAMON. Those are very, very significant concerns, and those are things that we want to see changed on campuses all over the country, anywhere that they happen. I think that we've been able to enter into robust agreements that are taking those steps. I would be delighted to work with you and your staff on this as we go forward. It's critically important to us to make sure that all of our students are safe, and I think that we're moving in that direction.

The CHAIRMAN. Maybe I'm not hearing this right, but I guess what you're saying is nothing more needs to be done on our end. You have all the authority you need to take care of this.

Ms. LHAMON. I apologize if I even suggested that that were true. I would love to identify ways that we could work together. My view is that the importance of the threat of withholding Federal funds is something that should not be undermined, and that that is something that has been a very effective tool for us. I think that we should be clear that that is so, and that there may well be more things that we could do, and I would welcome them to add to the arsenal because I think it's critically important that we deliver for all kids.

The CHAIRMAN. Mr. Moore, let me ask you—my time is running out, I only have 1 second left. But in terms of information on the Clery Act, schools are required to provide this information to the students, and the general public at large. How good a job do they do of informing incoming students and their families as to what the incidences are of sexual violence on the campus? I mean, in other words, when students look at colleges, where they ought to go, are they able to look at this information? Is this presented in a format that they can see and compare from one college to another what's happening?

Mr. MOORE. Thank you, Senator Harkin, for the question. All institutions are required to notify prospective students and employees about this material, what we call the Annual Security Report, and make it available upon request. Most schools have put it on their websites and it's right there when you go on to apply to a school for a job or for enrollment.

The CHAIRMAN. So are you saying, again, that the schools are basically doing a good job of this, that they're being accurate, they're being honest about reporting this to prospective students and their families?

Mr. MOORE. They're doing a relatively good job of producing the reports. We do find significant violations at some institutions with

the statistics. So I would say that there are violations out there. We know that. We find those in our cases, and where we find them, we take action. We're hoping that these new requirements under VAWA, they will give us some additional tools and require additional disclosures that will allow students to have better information about the environment that they're going into with regard to sexual assault.

The CHAIRMAN. Got it. Thank you very much.

Senator ALEXANDER. Thanks, Mr. Chairman.

Ms. Lhamon, Mr. Moore, you're both in the U.S. Department of Education, right? Same department.

Ms. LHAMON. That's correct.

Senator ALEXANDER. And Mr. Moore has just talked about regulations that you are proposing under the Violence Against Women Act amendments to the Clery Act. You've gone through a public notice, or you're about to go through a comment period on these where institutions will have a chance to say what they think about it, anyone else will as well. Is that correct?

Mr. MOORE. That's correct, Senator.

Senator ALEXANDER. Ms. Lhamon, you talk about something called "guidance," and I have here about 66 pages of guidance under title IX. Do you expect institutions to comply with your title IX guidance documents?

Ms. LHAMON. We do.

Senator ALEXANDER. You do. What authority do you have to do that?

Why do you not then go through the same process of public comment and rule and regulation that the same department over here is going through under the Clery Act?

Ms. LHAMON. We would if there were regulatory changes.

Senator ALEXANDER. Why are they not regulatory changes? You require 6,000 institutions to comply with this, correct?

Ms. LHAMON. We do.

Senator ALEXANDER. You do, even though you're just making an edict without any chance for public comment, without any regulatory approval? How can you do that?

Ms. LHAMON. I would not describe it that way.

Senator ALEXANDER. I would. How can you do that? Why would you not go out and ask institutions and people who might have been assaulted what they think about your guidance before you apply your guidance to 22 million students on 7,200 campuses?

Ms. LHAMON. First, we do. We have quite a long list of conversations that we've had in person and through letters and——

Senator ALEXANDER. But you're in the same department of the U.S. Department of Education. Under the Clery Act, he's going through a regulatory process which publishes what he's doing after stakeholder meetings, after discussions. He's asking for comment. Then there's a regulation, and the Congress actually has a chance to weigh in. But you're over there issuing your own opinions, as far as I can tell. Correct?

Ms. LHAMON. No, that's not correct. We have gone through the regulatory process——

Senator ALEXANDER. Who is responsible for this? You?

Ms. LHAMON. I am, yes. But those are not just my opinions. That is actually what the law is, and it's guidance about the way that we enforce.

Senator ALEXANDER. Is this the law? I thought we made the law.

Ms. LHAMON. You do.

Senator ALEXANDER. Do you make the law?

Ms. LHAMON. I do not make the law, but we explain——

Senator ALEXANDER. All right. Then why do you say this is what the law is?

Ms. LHAMON. Because it's an explanation of what title IX means.

Senator ALEXANDER. Who gave you the authority to do that?

Ms. LHAMON. With gratitude, you did when I was confirmed.

Senator ALEXANDER. We told you that you could make the law in title IX? Then why does he go through a public notice and comment under the Clery Act if you don't have to?

Ms. LHAMON. I do have to go through a public notice and comment period when we regulate. This is not regulatory guidance.

Senator ALEXANDER. I greatly disagree with that. I greatly disagree with that. I think what you're doing——

Ms. LHAMON. I hear that.

Senator ALEXANDER. What you're doing is writing out detailed guidance for 22 million students on 7,200 campuses, and it could be your whim, your idea. We make the law. You don't make the law. Where does such a guidance authority come from? Has it just grown up over time? Why would the same department—how often do the two of you meet within your department? How many times in the last year have you met?

Ms. LHAMON. I couldn't count them because it is so many. Jim and I work together very, very closely.

Senator ALEXANDER. And did you have input in his rules that are proposed to be rules?

Ms. LHAMON. Yes. A member of my team has been part of the notice and comment process.

Senator ALEXANDER. I'm very concerned about the arbitrariness of an individual in the Department saying what the law is when I thought we were supposed to do that.

I understand your two offices have signed a formalized agreement to better handle title IX and Clery Act complaints and to share information. Is that correct?

Ms. LHAMON. That's correct.

Senator ALEXANDER. Is that because in the past you have really failed to coordinate and have created a good deal of confusion on college campuses about how to coordinate the responsibilities for dealing with sexual assault as they look up at title IX and look up at the Clery Act?

Ms. LHAMON. Again, I wouldn't describe it that way. But I do think that there was room for growth for us, and I'm really pleased with the collaboration that my office and the Federal Student Aid Office have been able to enter into and to effectuate for students, certainly in the 10 months that I've been here, and I think it's been working extremely well.

Senator ALEXANDER. What kind of formal procedures did you have to discuss your guidance with institutional officers who have

to comply with your guidance? How many meetings did you have with institutional officers around the country?

Ms. LHAMON. I don't have the number off the top of my head, but it took about 3 years to prepare that question and answer document that followed the 2011 guidance, and in those 3 years we had many, many meetings with college and university officials, with associations of college and university officials, with student activists, with survivor organizations, with title IX coordinators. We had a tremendous number of actual in-person meetings, telephone conversations, letters that came to us asking questions, telling us what more we need. It was a long, iterative process that involved many stakeholders with many different opinions so that we could give them greater guidance and clarity about the ways that we enforce.

Senator ALEXANDER. My time is up. But I would say to my colleagues who are here, I think we should carefully consider, not just in this case but in other cases, whether it's FDA or anything else, what the difference is between a law and a regulation which is proposed by the Department of Education and this growing business of issuing guidance where there's no opportunity for the kind of public comment and approval that the regulatory procedure has.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Alexander.

In order, I have Senator Murray, Senator Warren, Senator Hagan, Casey, Baldwin, Murphy, and Whitehouse.

Senator Murray.

STATEMENT OF SENATOR MURRAY

Senator MURRAY. Thank you very much, Mr. Chairman. I really appreciate your holding this important hearing.

The Department of Education investigates allegations of title IX and Clery Act violations, and earlier this spring listed 55 colleges, including Washington State University, under investigation for title IX violations. What are some of the best practices in the field that universities can take to proactively prevent sexual assault?

Ms. LHAMON. Thank you, Senator Murray. Among the best practices that we hope to see is the conduct of a climate survey as a way of identifying how students feel, how faculty feel about safety at campus as a way of identifying whether the campus message has been received by the students and the community at that campus about where to go, what is tolerated, what is not tolerated, whom to complain to if necessary, and whether there is a feeling of safety on the campus so that schools can respond. So we think that a climate survey is a really important first step.

In addition, it's critically important to communicate disapprobation about sexual violence on campus, about sexually hostile environments so that the entire school community is clear about what is and is not acceptable on the campus.

It's also critically important to let students know who a title IX coordinator is, where to go if the students need help, how to complain, and who are resources on that campus so that students can access those resources if they need them.

And then finally, it's extremely important to have a transparent and fully functional investigative process where students need to complain so that interim relief is available to students when they

need it so that students can be clear that effective and appropriate steps are taken to address sexual violence when it occurs.

Senator MURRAY. Very good. I really appreciate that response.

I have sponsored, along with Senator Baldwin and many other members of this committee, the legislation called the Tyler Clementi Higher Education Anti-Harassment Act that requires colleges and universities to prohibit harassment and establishes within the Department of Education a grant program to support campus anti-harassment programs.

Wouldn't such a grant program be helpful in addressing campus sexual assault?

Ms. LHAMON. It would be enormously helpful. I can't tell you how much that tool would mean to us to be able to deliver for students around the country. As part of my role in representing Secretary Duncan in the White House Task Force to Protect Students From Sexual Assault, I visited campuses around the country as part of the Office of Violence Against Women in the Department of Justice grant program to see what kinds of successes they're able to see from the grants that they're able to deliver, and I have to confess that I have real jealousy that they're able to give those grants and to ask for changes that they know need to be made and for research about best practices that can come from the delivery of those grants. It would be incredibly meaningful for us.

Senator MURRAY. Wonderful.

Mr. Moore.

Mr. MOORE. Yes, Senator, thank you very much for your work on that initiative. What we find with the Clery Act, and it's one of the reasons why we are very excited about the work of the task force and the work that the CR is doing with regard to climate surveys, you have to understand what the campus climate and culture is before you can address it effectively.

One of the other tools that is in the new VAWA requirements is that we are going to require schools to have primary prevention programs. Primary prevention, again, only works in a proactive way, if you understand what's going on on your campus. If you have problems in an ROTC program, in the athletic department, in fraternities and sororities, then you have to make sure that that training is designed to address all of those issues.

To get to these issues of culture and climate and tradition that are problematic on campuses, we have to get an understanding of harassment, hazing, several other factors if we're going to be effective. Thank you very much.

Senator MURRAY. Perfect. Thank you very much to both of you.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Warren.

STATEMENT OF SENATOR WARREN

Senator WARREN. Thank you very much, Mr. Chairman.

The topic of this hearing couldn't be more important. Our young people go to college to learn about the world, to start their careers while they're working hard to build their futures. They should at the least feel safe on campus, and they should feel confident that if they are victims of crimes, the people around them will respond quickly and with respect and compassion.

I know now that for 20 years the Federal Government has been collecting and disclosing data on alleged campus crimes under the Clery Act. Mr. Moore, you just noted that last week the Department of Education released draft rules on expanded data collection.

Data can be a powerful tool in helping us understand the problems we face and possible solutions. I want to ask about how the data are used. Mr. Moore, can you tell me about what kind of analyses the Department of Education conducts with Clery Act data and, taken as a whole, what these analyses have shown?

Mr. MOORE. Yes. Thank you, Senator, for the question. What we do to validate this information is we go out to schools and we conduct assessments, compliance assessments, and when we do that we will look at substantial samples of incident reports to see if they were classified the right way.

Senator WARREN. All right. Just so I'm following you here, what you're saying is you go out and you validate that you're getting good data that come in.

Mr. MOORE. Correct.

Senator WARREN. And so you make an independent, on-the-ground evaluation. You look through what kinds of records?

Mr. MOORE. Police incident reports, security documents, student conduct records, sometimes the HR records. Sometimes you have to go into athletic departments or fraternity offices. Anybody who can adjudicate, discipline, or investigate issues of discipline, we have to look at records from those offices.

Senator WARREN. OK. So you look at the records, you look at what was reported, and you see how good the match is, and then you know about the quality of your data. And I presume if the match is not good, then you have an ongoing relationship with the school about how it is they need to improve their data reporting.

Mr. MOORE. There are several things we do. There's a technical assistance and corrective action component, and if what we find constitutes a substantial misrepresentation, the school could be subject to administrative action. Usually that would mean a fine.

Senator WARREN. OK. So you try to get everyone in compliance in terms of reporting the information. Now my question is, we have this information, we've been collecting information for 20 years now. Presumably, the quality of the information has gotten better over time and more complete over time. What do you do with the information?

Mr. MOORE. We do collect that information from all of our institutions, and we do analyses of it to try to track trends in campus crimes——

Senator WARREN. You look for trend lines on a school-by-school basis?

Mr. MOORE. Sometimes on a school-by-school basis, but also across sectors of education. We will often look at community colleges and look for trends there. Obviously, the crime environment is very different at a community college that doesn't have dormitories versus, let's say, for-profit educational institutions that don't have the big sports programs, big fraternity programs, those kinds of things, and then we'll look at our traditional institutions that are likely to have more types of crime occurring.

Senator WARREN. And do you make all of those reports public when you do these analyses? Are you putting them out there, making them public?

Mr. MOORE. The statistics are publicly available.

Senator WARREN. I understand the statistics are publicly available.

Mr. MOORE. The analysis is not.

Senator WARREN. You do the analysis. Then what happens with it when you discover a problem?

Mr. MOORE. Basically, we use it to formulate our compliance program, we use it in the conduct of our cases, and it also gets used in terms of possible proposals for changes to the rules.

Senator WARREN. Actually, then, let me switch it over to Ms. Lhamon. Do you use these data as part of your enforcement strategies and designing your enforcement strategies?

Ms. LHAMON. We do, and we use it in two ways. One is that Jim and I work together when we collectively have concerns based on the analysis that Jim and his staff have done. He may refer something to us so that we can begin to investigate. We also take a look at the data itself to decide whether we should do a proactive investigation of our own. It may be a little bit counter-intuitive, but sometimes very low data from a school is a reason for us to go in and investigate because it will seem like they may not be reporting appropriately. But we use the data very often in our own assessments for where we should look at a school, and also when we have a complaint that comes to us, what we should do as we're evaluating that complaint.

Senator WARREN. I'm just about out of time here, too. But let me ask one more question that ties this together. Are there other data that you should be collecting or that you would find helpful in making your decisions about where you have compliance and where you don't that you feel ought to be there?

Ms. LHAMON. Sure. There's one that I think is coming that we will access and another that I would like to have that we don't have now. The one that's coming——

Senator WARREN. Very quickly.

Ms. LHAMON. I'll get to the one we don't have. I have a civil rights data collection that I conduct for the K–12 schools around the country, and it gives me a picture of equity health for those schools that I find enormously useful for the enforcement work that we do. I don't have that same data access at the higher education level, and I think it would be terrifically useful in this area, among others, for civil rights compliance in higher education. I think it would be very, very helpful to have it.

Senator WARREN. As I said, I've run out of time. I very much appreciate this. I do think that we have to be very careful about the quality of our data—I'm very glad to hear about this part of it—how we use those data to identify and analyze problems and collect more and better data if we need it, because I think the focus on prevention needs to be far more intense than it has been.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Warren.

Senator Casey.

STATEMENT OF SENATOR CASEY

Senator CASEY. Mr. Chairman, thank you very much. I appreciate you having this hearing, and I want to thank our witnesses for your testimony and for your work on this.

I have to commend, even though we have a long way to go on this issue, I have to commend the work that you've done, the White House, Vice President Biden, and so many others who are working on this problem. This problem has persisted now for generations, and we're finally getting to the point where we're reacting appropriately to it.

We should react with a sense of outrage. This is the ultimate betrayal of a woman who attends college. We all say we want people to get higher education. We all say it's important. And then we send them to institutions where many institutions—not every, but many—don't seem to take this issue very seriously.

It should be under the category of a zero tolerance effort, and the perpetrators should be labeled as such, or labeled with words like "coward" and "monster" and whatever else we can come up with. I know that upsets some people, but it's the way I see it. There should be zero tolerance, and that means the institutions should be doing a lot of things already without any laws, without any regulations, but some of them haven't gotten the message, so you have to send the message more directly and have some rules.

I'm glad that we made great progress when we reauthorized the Violence Against Women Act. One of the component parts of that was my Campus SaVE law, which you're now working on implementing. We're grateful for that. I'm grateful to Senator Leahy in his work to get that done.

We've made progress with Campus SaVE. We have to get it implemented, but I'm sure there will be gaps and other matters that weren't addressed. So we've made progress; we have a long way to go.

In light of the Campus SaVE elements which you've spoken to a little bit, Mr. Moore, I think on page 4, talking about clarifying definitions, keeping data, having better prevention strategies, getting bystanders involved—too many students who don't want to do what they should be doing to help when they're bystanders. A whole range of changes that will take place.

But the one thing I wanted to ask you in particular was now, that you're in the process of making sure these provisions get implemented, how long will schools have to come into compliance?

Mr. MOORE. Thank you, Senator, for the question, and thank you for your work on the Campus SaVE Act. As a fellow Pennsylvanian, you make me very proud, sir.

Senator CASEY. Thank you.

Mr. MOORE. What we have been very clear on, and we're going to issue additional guidance in the coming days to reiterate that institutions have to make their best good-faith effort in this first year, OK? Their best good-faith effort to comply with the statutory language, since we don't have final regulations. When institutions issue their annual security reports in October of this year, what we're going to be looking to see is indicia that schools are looking for ways to implement these requirements, and then we will have

a full year to recalibrate that properly with the schools, issue additional guidance to clarify where there are problems. With all the work we've done on this, you can guarantee that there's a piece here or there that we didn't consider, and we will have to go back and address that in our guidance.

We are also going to have a complete re-write of our handbook for Clery Act compliance, and that will be available to the schools. We're also working on some other training materials that will be available free of charge to all of our schools. So by the time we get to October 1, 2015, everybody should be on the same page.

Senator CASEY. That's great. I wanted to ask as well, in the remaining time I have, about the education of institutions. I realize that institutions tend to feel that they're overwhelmed with rules, but this is one they have to comply with. You can't really call yourself a university or college if you're allowing this problem to persist. So tell me a little bit about how currently, or how upon implementation, the Department will be helping to educate institutions going forward.

Mr. MOORE. One of the things we've done is we've increased our presence at training conferences, and we have increased both the number of guidance documents that we've put out and the quality of those documents. We've brought them down to a level that will be, that should be easy for all institutions to implement. That's one of the issues with the Clery Act, that you have 6,000 schools, some of them with 25 students and maybe 3 or 4 employees in a strip mall running a cosmetology school, up to a mega State university. It's actually a very flexible program. A lot of what's in the Clery Act is not terribly prescriptive. It requires schools to take that law and implement it at their schools. They need an implementation plan.

In this new guidance that we're putting out, we want to give them best practice information that will allow them to develop that implementation plan in an appropriate way at the very little school and the large school.

Senator CASEY. That's great. I appreciate that. I'm over time, but thanks for your work.

[The prepared statement of Senator Casey follows.]

PREPARED STATEMENT OF SENATOR CASEY

I would like to thank Chairman Harkin and Ranking Member Alexander for calling this hearing today to address one of the most serious issues facing the higher education community: campus sexual assault.

In recent months, there has been renewed attention on this troubling issue, for which I am deeply grateful. Too many survivors of sexual assault have suffered in silence, or been silenced when they have attempted to speak out, and it is fitting that we are giving them a voice and shedding light on this issue.

In that vein, I am particularly honored to welcome the two survivors here today, Emily Renda and John Kelly. I admire their strength in coming forward to tell their stories in such a public forum, and for advocating on behalf of all survivors of sexual violence.

I have been working to address sexual assault on college campuses for several years now, and I am pleased that, with Senator Leahy's help, we were able to include significant improvements to the Clery Act in the reauthorization of the Violence Against Women Act last year, based on my legislation called the Campus Sexual Violence Elimination Act or Campus SaVE Act. These provisions are now referred to as the "VAWA amendments to the Clery Act."

The Campus SaVE Act represents a significant step forward in providing clear standards and guidance to institutions of higher education on what they should be doing to prevent sexual assault and how they should respond to sexual assault. The law provides flexibility, recognizing that a large public university is very different from a small private university in terms of its resources, its administrative structure and how it handles law enforcement. But it also firmly establishes the need for these institutions to have robust procedures in place that are fair for both the survivor and the accused individual; that respect the survivor and his or her needs; and that promote safer campus communities.

I would also like to emphasize that while we are primarily discussing sexual assault, Title IX and the Campus SaVE Act both address the full range of intimate partner violence, namely domestic violence, dating violence, sexual assault and stalking. In many cases, the needs of the survivor are the same (access to healthcare and mental health services; changing living, working or academic arrangements; the ability to pursue campus or legal proceedings), but the specifics of a response may differ based on the specific incident that occurred and the parties involved.

The Campus SaVE Act is currently being implemented by the Department of Education. I am pleased to recognize, in particular, James Moore, who is from my home State of Pennsylvania, and who currently serves as the Compliance Manager for the Clery Act Compliance Division at the Department of Education. The Department recently released the proposed rule implementing the Campus SaVE Act, following a successful negotiated rulemaking committee, and I am grateful for the hard work that the negotiators and the Department put in to making the regulations a reality.

Implementing the Campus SaVE Act is one of my top priorities, and I believe that the law will lead to significant improvement in how colleges and universities prevent and respond to cases of sexual violence, dating violence and stalking. However, I recognize that we may need to take further steps once the law is fully implemented to ensure that institutions of higher education are living up to their moral and ethical responsibilities to protect their students from sexual violence, so I look forward to hearing the testimony and suggestions from our witnesses today.

The CHAIRMAN. I thank you, Senator Casey.

Senator Baldwin.

STATEMENT OF SENATOR BALDWIN

Senator BALDWIN. Thank you, Mr. Chairman.

Earlier in this session of Congress we took some incredibly important and, I would argue, very long overdue steps toward com-

bating the epidemic of sexual assaults in the military. In examining the problem of sexual assaults in the military and the steps that were taken, I discovered that there was no specific focus on looking into and collecting data on sexual violence in Reserve Officer Training Corps programs on our Nation's college campuses.

I view ROTC programs as standing at the intersection between the crisis of sexual assaults in the military and the issue of sexual assault on campus. Nearly 40 percent of all new officers commissioned into the Army and Navy combined since 2012 have come out of ROTC programs on our Nation's campuses, and I really think it's critical that we understand how the issue of sexual assault is being addressed among the commissioning source of so many of our military's future leaders.

That's why I earlier this session asked the Department of Defense and the White House to ensure that data from ROTC programs contributes to the full understanding of the problem of sexual violence at our colleges and universities. I was disappointed that the report by the White House Task Force to Protect Students From Sexual Assault that was released in April didn't address these issues, nor does, as I understand it, any Department of Education title IX guidance speak specifically to how ROTC codes of conduct should address this issue.

And to both of our panelists, while I understand that instances of sexual assaults against students who are in ROTC programs should be investigated and reported in the same manner as other campus sexual assaults, my questions are: have you undertaken any formal or informal collaboration with the Defense Department on the issue of sexual violence in ROTC programs on college campuses, and can you tell me why the Department of Education has not apparently spoken specifically to this aspect? I would ask both of you to respond.

Ms. LHAMON. Thank you. I, No. 1, want to say that I'm sorry to have disappointed you in the task force so far, and I hope that we can redeem ourselves going forward.

Senator BALDWIN. It's a focused criticism.

Ms. LHAMON. A fair point. Thank you.

No. 2, I want to be sure that I say that our goal, especially in the most recent frequently asked questions document, was to make very, very clear that there is no student on a college campus whom the college title IX obligations do not extend to. It was our goal not to take away from that overarching message that title IX obligations extend to every student of every type on every campus so that the schools will make them all safe, and I had some worry that if we disaggregated any particular type of student, we would undermine that message.

I would be very pleased to work with your office as we go forward about ways that we can make sure that we are sending a clear message also about the ROTC students. I want to assure you that we have been in our investigative space working specifically with ROTC students.

One complaint that comes to mind—this is in the K–12 space. But a young woman came to us with a complaint that she had not been able to be promoted to a commander in her Army ROTC, and we investigated. We found some really harrowing facts about the

way that she was treated and the way that the ROTC lead talked to her in sexually discriminatory ways in that school, and her mom thanked us at the end of the resolution to let us know that she was the first young woman ever to be promoted in that ROTC campus.

So we are working in this space in our enforcement work. We're trying to send a really clear message. And specifically to your question about the ways that we work together with the Department of Defense, we're working arm-in-arm with them in the White House Task Force, and our work is ongoing. We put out our first 90-day report, but the President has directed us and reminded us repeatedly that he expects an annual report with new progress each time going forward. So there will be further steps.

Senator BALDWIN. Thank you.

Mr. Moore.

Mr. MOORE. Senator Baldwin, I want to thank you for your work on the Defense aspect of this. I think one of my takeaways from the fine work that you all did was that you have to have meaningful punishments for sexual assaults if you're going to change the culture.

One thing I can assure you of is that in our work, we look at institutions across the board. We're looking at crimes that occur on campus regardless of where they occur. But one of the important changes under the VAWA amendments, again, is that we're going to start to look more closely at issues of culture, climate, damaging traditions. There's lots of that in the military that we see, especially along the lines of hazing. But when you create that culture where these things are allowed to occur, then one of the next things you get is sexual assault happening in high numbers without any proper law enforcement response or disciplinary response.

This is something that we would definitely like to work with you on going forward, and to also look beyond ROTC to the very enduring problems that we see in athletic programs, fraternities and sororities, and other kinds of organizations on campus.

The CHAIRMAN. Thank you, Senator Baldwin.

Senator Murphy.

STATEMENT OF SENATOR MURPHY

Senator MURPHY. Thank you very much, Mr. Chairman.

Thank you both for being here.

I wanted to followup on the question Senator Murray asked. She was asking about best practices with respect to prevention. I wanted to turn to the investigation and disciplinary process, a fairly well publicized case in Columbia. Emma Sulkowicz talks about the fact that many students there feel a second victimization when they go through the process of reporting and testifying to the abuse. She tells the story of being asked some incredibly insensitive and irrelevant questions in the process of trying to gain justice and speaks to a much broader concern about there being a rather uninformed and sometimes under-trained set of investigators and people who are overseeing the disciplinary process.

So what have we learned from what happened at Columbia? What are the recommendations that you're making to schools so that we don't have a reputation of re-victimization happening when

someone has the courage to report and bring it to a disciplinary board?

Ms. LHAMON. Thank you. It's critically important. We have seen all too often that the investigative process at a school can be so invasive, so unpleasant, so ill-handled that students elect not to use it, which sends its own message to students on the campus that it's just not worth coming forward and this is not safe.

That's one of the key things that we want to see campuses change, that they need to be sending a message to their students that the process will be fair, that it will be effective, and that it will be impartial and it will not involve inappropriate questions about students' backgrounds, it will not involve a way of further victimizing people who have the courage to come forward.

One thing that we've tried to do about that is to put information specifically about the conduct of investigations in the Frequently Asked Questions document that we just released this spring. We also are making our investigation results more public so that schools can see the kinds of things that we find unacceptable when we investigate. Going back to the Tufts example, that specific set of concerns is exactly what we saw with Tufts. It's exactly what we saw with Virginia Military Institute. It's exactly what we saw with SUNY, frankly.

We have been able to highlight what it is that we thought was wrong with the way that those investigations were conducted. We have been able to highlight what it is that the universities have agreed they will do to change that going forward, and we're monitoring those changes to make sure that they are lived reality for students in the next years.

Senator MURPHY. Let me ask you that question. How do you monitor these processes? These processes happen behind closed doors. You don't get data about the kinds of questions that are being asked, I can't imagine. So how do we track whether this is getting better or worse for students other than hoping there's a handful of students who go through an experience that is unpleasant and report it back through a chain that ends up in your hands?

Ms. LHAMON. Certainly at the schools where we have resolution agreements, we do get their case investigation files, and so we do get to see the ways that they investigate. That's a subset of all the schools, but that's a very important piece of data for us, and it's also a very important component of getting to a place where we can say, "OK, this school is now behaving in an appropriate manner so that we do not need to keep monitoring." So we will see the ways that the schools investigate, what it is that they do, the degree to which they comply with their policy which says that they can't do those things going forward, and the degree to which they satisfy their obligations for their students.

Senator MURPHY. Mr. Moore.

Mr. MOORE. Senator Murphy, this is a very key point. Whatever number you look at, if it's one in five, if it's one in six, if it's something else, what we know is that campus sexual assault is vastly underreported, and one of the main reasons is that there's not a good path for redress, OK? The criminal justice system is often revictimizing, and these campus judicial systems, if they are not well formulated, can be even more so.

One of the things that we did in these new rules is that we tried to fix some of the procedural elements around these hearings. For instance, now there is a notice requirement. There have been students who have come to us and shown with documentation that they were given an hour, 2 hours to prepare for a hearing, or evidence that is supposed to be provided to both sides was given to them as they entered the door for the hearing with no opportunity to review it. We now will allow on both sides, both the accused and the accuser, to have an advocate with them, an advisor of choice.

One thing that may be valuable to consider in the future would be a basic relevancy rule in these hearings. I can tell you, having reviewed documents for many of these hearings, the kinds of information—you can't call it evidence—that is submitted and considered by these boards of under-trained people very often is frightening. I have seen cases where people take things off of Facebook pages and something like this and have that submitted as evidence, as if it's dispositive of something. This is something that we might want to look at going forward, a basic relevancy rule that says only relevant evidence should be admitted, and even relevant evidence should be excluded if it has a substantial risk of unfair prejudice.

Senator MURPHY. Makes sense to me.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murphy.

Senator Whitehouse.

STATEMENT OF SENATOR WHITEHOUSE

Senator WHITEHOUSE. Thanks, Mr. Chairman, and thank you both for being here.

It strikes me that the relationship between the college or university and the local police department is very important, and that missteps in that relationship are fraught with danger both for the alleged victim and the alleged perpetrator, including loss of an opportunity to gather necessary evidence if the police aren't brought in quickly enough, interference by the university or college in an ongoing criminal investigation.

There is a public safety value to making sure that these offenses are reported, and there's a potential liability to universities if it keeps one student's confidence and that causes another student to be attacked by the individual about whom they had not brought that information to the police. That's a doctrine that is so longstanding that it's a common law crime to commit misprision of a felony, which is concealment of a felony even if you had nothing to do with it, even if you're just aware of the information. And, of course, investigation is not a core expertise of a college or a university that we expect.

My sense is that the handoff between the university and the local law enforcement authorities is not very well managed in a lot of places and that there are very simple things that could make a big difference. I think it's probably a very big difference if the victim or the alleged victim is having her conversation—presumably her, but also his conversation—with the university if they say, "well, you should consider reporting this to the police, and they're downtown, and we may give you cab fare." As the student, you're

kind of going off into the unknown, waiting in line in the police station, not knowing who you're going to talk to, versus we have a very good relationship with the local police department, and Officer Jones is right outside, she works all these cases, we know her very well, you really should let her into this conversation because you'll be making choices now that will really change the way you can pursue this down the road if you don't have her or him in this conversation. That seems to be an area that isn't getting the attention that it deserves.

So I guess my question to you is, have you identified colleges and universities that have what you would consider to be a model relationship with their local police department in terms of making sure that handoff between the two isn't mishandled from the perspective of the students that have their interests involved?

Ms. LHAMON. Yes, we have. And also I want to say how strongly I agree with you about the concern certainly from the perspectives that you raise, but also from some of the college and university staff that I've heard from where they say that there isn't even a local law enforcement agency nearby that has the capacity to take a rape kit, as one example. So there is certainly the dimension of the problem that you described, which is that the connect isn't good between the school and the place that they could go. But there's also the disconnect where there isn't a place to send students that's nearby in the first place. It's a very significant issue for us.

Senator WHITEHOUSE. What are your model relationships between a university and a police department? I don't expect you have them at the top of your head right here, but I would like, as a response for the record——

Ms. LHAMON. Sure.

Senator WHITEHOUSE [continuing]. To have each of you identify where you think model relationships exist between campuses and the local police department and what you think the elements are in that relationship that make them a model relationship. I was a U.S. Attorney. I was an Attorney General. I come at this from a little bit of a different perspective, and it's a little bit alarming to hear how much completely untrained, completely inexperienced, completely unauthorized people are meddling around in a matter in which a felony has been alleged.

Ms. LHAMON. Yes.

Senator WHITEHOUSE. And if you don't bring people in who have the proper authority, who know what they're doing, and who have the process in place to make sure that evidence is gathered, which degrades very rapidly in some cases, then you've created a real problem. And similarly, if you force the college to go and maintain an investigation and produce a report at a time when the police are saying,

> "For God sake, we're investigating this, knock it off, we're trying to interview these witnesses, we can't have you running around and interviewing witnesses, this is interference with a criminal investigation."

That seems to me to be a pretty serious challenge as well.

Ms. LHAMON. If I could, Jim and I have been working together, and also with the Department of Justice, to create a model memorandum of understanding that colleges and universities could have

together with local police departments. We hope that will be out in the world in just a few weeks. So we should be able to at least give you those points. I have seen——

Senator WHITEHOUSE. My time is up, so I should ask you to followup for the record rather than extend this.

Ms. LHAMON. OK.

Senator WHITEHOUSE. But I know that our police departments and universities in Rhode Island would welcome that.

Ms. LHAMON. Thank you.

The CHAIRMAN. Thank you very much.

I know we want to get to the second panel, but I want to clear up perhaps a misunderstanding with Ms. Lhamon here. On the next panel there will be a witness, Ms. Renda, Emily Renda. This is what she said, and I read it last night. She said that,

> "The disproportionate and impractical nature of the only sanction available to OCR hinders its efforts at enforcement. OCR should be given the latitude to design smaller and more flexible sanctions appropriate to the violations."

Not everything rises to the level, I would say to my friend, to the level of a felony.

> "Additionally, rather than simply imposing fines of varying sizes, OCR should be empowered to impose fines in the form of forced budgetary reallocations to help push schools into compliance."

When we were talking earlier, I think you may have thought that I was trying to say that we should take away the nuclear option. That's not what I'm saying. That's fine. But if that's the only thing you have in your arsenal, then it makes it very hard to respond to incidences that may not rise to the level of a felony but still are egregious actions on the part of one student to another student.

I wanted to make that clear. I thought you were saying, no, you don't need anything other than the nuclear option.

Ms. LHAMON. If I may, I just want to say that I think it is really useful to us to have the nuclear option in our back pocket. I didn't hear you saying you would take it away. I have a worry that if we have a lesser tool, then it would make it harder for colleges and universities to expect us to use the nuclear option, and that is a very valuable tool for us.

The CHAIRMAN. Then you're going to disagree with Ms. Renda. I thought maybe you were, but I see now that that's not the case.

Second, again I say to Senator Whitehouse, I've been involved in some of these in the past, too, when my wife was a prosecuting attorney. A lot of times, students who are the victims of this, just need to know what to do. They need to have somebody that they can trust to go to, like an ombudsman on a campus that has been trained, that has the qualifications to at least initially be on the side of the person who has been victimized to give them the kind of information about where they should go.

How many colleges have that kind of ombudsman? Do they have them or not?

Ms. LHAMON. The title IX coordinator can function as an ombudsman, and every campus is supposed to have a title IX coordinator.

The CHAIRMAN. But the title IX person is sort of in the hierarchy of the school, and that's the problem, that's the problem.

Ms. LHAMON. Yes.

The CHAIRMAN. You need somebody not in that hierarchy of the school. OK, got that.

Are military academies exempt from title IX? I'm told they are. I just found that out. Do we know?

Senator Warren, do you know?

Ms. LHAMON. I think the answer is yes. I'm stuck on Virginia Military Institute, but I think it's because it's a different institution.

The CHAIRMAN. No, I'm talking about our military academies. I've just been informed that they're exempt from title IX. No one seems to know.

Senator WARREN. Does that mean they're not reporting data, either? Do they report data to you?

Mr. MOORE. Senator, the military academies are exempt from the Clery Act.

Senator WARREN. So you collect no data from the military academies?

The CHAIRMAN. They don't even have to report? They don't even have to report.

Mr. MOORE. It's something that probably should be corrected. But because of the way the title IV financial aid rules are written——

Senator WARREN. You think?

[Laughter.]

Mr. MOORE. The rules say that if you don't receive funds from our programs, you don't have to comply with the Clery Act. The Clery Act simply doesn't apply to those institutions.

The CHAIRMAN. Now, wait a second. I thought that applied to any school that receives Federal funds.

Mr. MOORE. Not the Clery Act, because it's only in title IV.

Senator BALDWIN. Mr. Chairman, just on that topic, and I asked the earlier question about the ROTC programs, Congress did take some new steps on combating military sexual assaults, in the Defense authorization budget we did include the military academies under those provisions. And yet, ROTC was not included, which is why I feel like we have to focus some attention on the training of many of our future officers. But you're accurate about title IX.

The CHAIRMAN. So they don't have to report under the Clery Act like other colleges. I didn't know that.

Thank you very much, panel. I really appreciate it very much.

Now we will call our second panel. There are some votes coming up at 11:45.

Ms. LHAMON. Thank you.

The CHAIRMAN. Thank you both very much.

We'll call Emily Renda, John Kelly, and Jane Stapleton.

Senator WHITEHOUSE. Mr. Chairman, while the next panel is assembling itself——

The CHAIRMAN. Yes?

Senator WHITEHOUSE [continuing]. Let me say that I understand that there are circumstances that come through the sexual assault reporting mechanism at these universities that amount to less than criminal activity. My point is that unless you have somebody in the room who understands what felony sexual assault is, and an ombudsman is not anywhere near as expert as a prosecutor or police officer, and if the institution can't support connecting with the police department in a way that is easy and supportive for the alleged victim, then you have real problems down the road, because by the time they do figure it out, it could easily be too late to gather the appropriate evidence. All sorts of statements have been made that will foul up a criminal prosecution. You've really put the individual at risk in terms of defending her rights as a victim through the law enforcement process.

The CHAIRMAN. I got that. But I think we'll hear from some on this panel that maybe a victim doesn't—they get caught up and they get pushed into a felony accusation, and that takes on a life of its own when maybe that's not really what they were seeking, and maybe they get a little reticent to go down that pathway.

Senator WHITEHOUSE. If the person presents the risk of being a serial offender, there are very good reasons why sometimes the law enforcement process goes forward even with an uncooperative victim. We do it in violence against women prosecutions all the time.

The CHAIRMAN. Sure.

Senator WHITEHOUSE. A woman recants, but you go ahead with the excited utterance and you make the prosecution because of the statistical likelihood of re-offending.

The CHAIRMAN. I think this panel has some thoughts on this subject.

We'll start with Emily Renda, a recent graduate of the University of Virginia, completed a thesis in Sociology on the relationship of title IX compliance to sexual assault reporting rates. As an intern to the university president, she also completed research on sexual assault resource utilization. I am told now that she works as a special intern for the office of the vice president and chief student affairs officer at the University of Virginia to help with title IX compliance efforts.

And then next we have Mr. John Kelly, a rising senior at Tufts University, where he studies Religion. He is a survivor of intimate partner violence and rape while a college student. He is the special project organizer for Know Your 9, a campaign that aims to educate all college students about their rights under title IX.

We are grateful that you are here.

And then Jane Stapleton, a co-director of the University of New Hampshire Prevention Innovations: Research and Practices for Ending Violence Against Women. She has extensive experience in working to end violence against women in college and university settings. She's a lead developer and evaluator of the Know Your Power bystander social marketing campaign. She trains colleges, universities, and community organizations in how to facilitate and implement comprehensive strategies to end this kind of violence.

With that, your statements will be made a part of the record in their entirety.

I'll start with you, Ms. Renda. Could you start and sum up maybe in 5 minutes the essence of yours? And then we'll move to Mr. Kelly, and then Ms. Stapleton, and hopefully we'll have time for some questions and answers.

Welcome, Ms. Renda.

STATEMENT OF EMILY RENDA, SPECIAL INTERN, OFFICE OF THE VICE PRESIDENT AND CHIEF STUDENT AFFAIRS OFFICER, UNIVERSITY OF VIRGINIA, CHARLOTTESVILLE, VA

Ms. RENDA. Thank you, Senator Harkin, Senator Alexander, and other members of the committee present today, for the opportunity to speak. As noted, my name is Emily Renda, and I'm a recent graduate of the University of Virginia. In my experience as a survivor, and in the course of my work as an advocate and activist, I have learned a great deal about the dynamics around campus sexual assault that I hope will be informative for the committee today. I want to lay out several observations I've made about the challenges survivors face and the way that Federal law and regulation influence or could influence those challenges.

As requirements under title IX and Campus SaVE amendments expand the mandate for prevention and education outreach, it is critical we ensure colleges are also providing education about peer support to their students. Self-blame and victim blame are among the primary factors that deter victims from reporting. Personal feelings of responsibility for an attack, especially when reinforced by peers, undermine a survivor's sense that it is his or her right to seek justice.

One survivor I worked with did not report her gang rape until almost a year later because immediately after the attack she confided in peers who did not believe her, who told her that she was wrong about what had happened to her because "those were all great guys." Her friends' responses took away her confidence to report or seek help, which meant those five young men went unpunished and remained a threat to the other students throughout that year. Education on supporting a survivor can prevent these re-victimizing responses from peers.

Though the current national media spotlight has almost exclusively focused on the lack of punitive sanctioning for students found responsible in sexual assault cases, we must maintain a range of available sanctions for colleges to employ to respect survivors' various needs and wants. Especially in cases where the perpetrator is known, or in cases of relationship abuse, many survivors I have known were initially scared to report because they did not want to "ruin his life" or "get him into trouble."

In the case of one young woman in an abusive relationship, the dean of students was only able to convince her to take disciplinary action by reassuring her that the disciplinary process could be used to get him help. Her views may have changed later down the line, but that's what got her in the door. Had mandatory expulsion been the only option, she would have waited much longer to report, if she ever came forward at all.

A range of sanctions is about getting survivors in the door with respect for their agency and their shifting needs. Getting more survivors through the door rather than discouraging them gives uni-

versities a better chance to be fully aware of and combat hostile environments.

Also, as title IX investigations shed light on the way that cases are mishandled in universities, it may discourage future survivors from coming forward out of mistrust for their own institutions. In order to rectify that potentially chilling effect on reporting and seeking resources from that publicized title IX investigation, resolution agreements with OCR should incorporate recommendations and requirements to form working committees of students and administrators to help keep students informed and involved in the steps that a university is taking to rectify the issues from that initial public complaint. A top-down communications approach of university to student does not ameliorate fears and concerns about mistreatment as much as student-to-student communication about what the administration and students are working on together.

The knowledge of and opportunity for input is also certain to reassure students that the administration is transparent about the way it handles cases and will handle cases in the future. By including formal requirements for student-administrator working groups, resolution agreements can help address some of the fears raised by publicized complaints so that survivors can feel safe and supported when they seek resources from the offices and administrators best suited to connect them to those resources and remedies.

Additionally, in order to address some concerns about equity commonly being raised, it may be helpful to statutorily define the requirements and procedures for sexual assault hearings on campus raised by OCR in their guidance. By specifically codifying some of the recommendations, it may clarify concerns colleges have about how to appropriately adjudicate. Many colleges appear hesitant to strongly sanction because of concerns that the accused student may appeal or sue the school, as more and more young men are now doing. This may then contribute to schools insufficiently sanctioning in cases where a hostile environment exists. Statutory clarification of how procedures ought to look based on OCR recommendations may help distinguish the campus process from criminal proceedings and draw distinct boundaries between the two so that colleges have a clear sense of how to proceed and address hostile environments without fear of civil action from accused students.

When it comes to OCR's enforcement of title IX, the impractical nature of the only sanction available hinders its efforts to what you spoke to before. Their only stick for enforcement is really more of a tree trunk. OCR should be given the latitude to design smaller and more flexible sanctions appropriate to the violations. Rather than simply imposing fines of varying size, OCR should be empowered to impose fines in the form of forced budgetary reallocations to help push schools into compliance. Rather than a purely punitive financial sanction which may take resources away from students, budgetary reallocations could force schools to appropriate resources for students to improve its title IX efforts. For example, a sanction could mandate that a school must allocate $50,000 a year, per year, for 4 years to fund a trauma-specific counseling position at the student health center.

Finally, while it may fall outside the scope of today's hearings, I think it's important to note that while the use of title IX to address sexual assault and sexual discrimination is an incredibly important tool, a more comprehensive approach to the issue of sexual assault would also consider potential reforms to State and Federal criminal law. If we improved our prosecution efforts, we would not have to rely so heavily on colleges to address the problem of sexual violence. Colleges may be more effective at addressing sexual violence, and offenders would be addressed outside of the college context much more meaningfully. Options for criminal reform may make it possible to better address this problem holistically.

Thank you so much for the opportunity to speak, and I'm happy to answer any questions.

[The prepared statement of Ms. Renda follows:]

PREPARED STATEMENT OF EMILY RENDA

SUMMARY

The following are the primary points raised in this testimony:

• **Mandated prevention programming must include education about supporting peer survivors to foster a culture of reporting.** Self-blame and victim-blame strongly discourage survivors from seeking remedies or disciplinary action. Peers are the most common primary disclosure point, and a negative response to an initial disclosure can invalidate a survivor's confidence about his or her experience. To help reduce negative peer responses that reinforce self-blame, prevention programs should incorporate information on how to support and respond to survivors.

• **Universities should ensure access to advocacy and/or counseling to increase reporting.** Mental health care and crisis counseling can critically address issues of self blame and help survivors to recognize an assault as wrong. Confidential resources often facilitate formal reporting and seeking resources, so colleges should ensure access to these critical services to help encourage survivors' well-being and confidence to report assaults formally.

• **Colleges must maintain a range of sanctions so as not to deter survivors from reporting and respect the variety of resolutions survivors seek.** Though much attention has focused on pushing for harsher sanctioning, many survivors resist reporting or seeking disciplinary action because of the prospect of punitive sanctioning, especially in cases of intimate partner violence or where the perpetrator is known. Maintaining informal resolutions and lower level sanctioning encourages survivors to seek remedies while respecting their wishes with regard to the accused.

• **Resolution agreements should foster cooperation between administration and students to combat mistrust of the university that could deter reporting.** Especially following highly publicized allegations of universities mishandling of cases, students may fear their complaints would be similarly treated and decide not to come forward. Establishing formal collaborations between administrators and students on recommendations and requirements by resolution agreements will facilitate communication among students about a university's changes and help ameliorate fears of mistreatment.

• **Structured followup and public progress reports by a university following a title IX investigation will help ensure—and communicate to students—a university's commitment to rectifying its policy and procedures.** Joint committees of students and administrators could issue reports on progress to OCR and the university communities on recommendations for title IX compliance to help hold the institution accountable and keep open channels for feedback regarding procedural or programming changes. Creating a feedback loop between students and administrators in particular will help reassure students who might seek help from administrators.

• **Codification of OCR recommendations for title IX may ameliorate due process concerns about equity for accused students.** As more men accused of sexual misconduct bring title IX suits against their schools, it seems that statutory clarification of the hearing procedures and rights afforded each student involved in the process may alleviate tensions schools face when attempting to balance due process rights of the accused and title IX rights of the complainant.

• **Provide OCR with more flexible sanctions and forced budget reallocations.** The current sanction available to OCR in title IX complaints is too heavy handed and has never been used. By allowing OCR to levy smaller penalties, OCR could mete out fines that could be enacted as forced budgetary reallocations—appropriating a certain amount of a school's budget to funding for prevention programming, trauma counseling, etc. in order to assure that the fines change university behavior while benefiting students at the school with greater provision of resources.

• **A holistic approach to the issue of sexual assault cannot ignore possibilities for criminal law reform at the Federal and State level.**

EXPERIENCE AND CONTEXT

Like many others who work on the issue of campus sexual assault, my connection to this cause is a personal one. Nearly 4 years ago, 6 weeks into my first year, I was raped by a fellow student on my campus after a night out with friends. In the time following the assault, I became active in peer sexual assault education, worked for the University of Virginia's Women's Center, interned with the Commonwealth Attorney's Victim Witness Program, worked with U.Va. administration to improve prevention and response efforts, and chaired Take Back The Night, a national campaign to raise awareness about sexual violence.

Beyond prevention and response work, I also conducted research on topics including intimate partner violence prevalence on campus, the relationship of title IX compliant policy elements to reporting rates, and how survivors' primary disclosure point affects subsequent resource seeking.

This past year, I helped organize and presented at the national conference U.Va. hosted to discuss sexual misconduct at colleges and universities. Finally, I also consulted with the Whitehouse's Task Force to Protect Students from Sexual Assault. I am now working in the office of the vice president for student affairs at U.Va. as we try to revamp our prevention and response efforts, taking into account recent guidance from the Department of Education's Office of Civil Rights.

In my experience and course of work, I have learned a great deal about the dynamics around campus sexual assault that I hope will be informative for the committee. In this testimony, I lay out several key observations I have made about the challenges survivors of sexual assault face and the way that Federal law and regulation influence—or could influence—those challenges.

Section One

This section will address four points relating to the way Federal regulation or oversight on university campus-level policies can help address challenges specific to survivors.

I. Mandated prevention programming must include education about supporting peer survivors to foster a culture of reporting.

Self-blame and victim-blame are among the primary factors that deter victims from reporting.[1] Personal feelings of responsibility for an attack, especially when reinforced by peers, undermine a survivor's sense that it is his or her right to seek justice.

One of the student survivors I worked with, Jenna*, was gang-raped by five fraternity men early in her freshman year. Despite the severity of the assault and injuries she sustained, Jenna still experienced a feeling of personal responsibility. Looking for affirmation, she sought out peers and told her story. Sadly, each and every one of the friends she reached out to responded with varying denials of her experience; these responses worsened her feelings of self-blame—that she must be confused because that fraternity "is full of great guys"; that she must have made them think she was "down for that"; questioning how no one else at the party could have heard what was going on if she was telling the truth; or discouraging her from seeking help because "you don't want to be one of those girls who has a reputation" for reporting "that kind of thing." These statements haunted Jenna. She told me that they made her feel crazy, and made her question whether her own understanding of the rape was legitimate.

Survivors who receive disaffirming responses to initial disclosures are more likely to experience negative mental health consequences as well.[2] These negative and victim-blaming responses from her peers reinforced Jenna's sense of fault, and prevented her from coming forward to the University's administration or the Police. When she finally sought assistance from the Dean of Students' office, after struggling and nearly failing out of her classes for two semesters, it was difficult for the

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* Not the survivor's real name for the purpose of confidentiality.

university to conduct a meaningful investigation because much of the evidence had been lost, and witnesses were more difficult to locate.

Though assault "severity" (i.e., degree of physical force) is typically correlated with faster self-identification as a victim, powerful cultures of victim-blame and self-blame hinder that self-identification that would encourage help seeking and reporting.[3] In my own case, despite explicit force (e.g., strangulation, loss of consciousness and injuries to my head and torso), I still felt responsible for the assault because I had been drinking and had willfully gone to my assailant's dorm room. If victimized students are unable to overcome feelings of responsibility reinforced by victim-blaming statements made by peers, we will not see the kinds of reporting behaviors it will take to identify and remove the violent perpetrators on our campuses.

Subsequently, as the VAWA amendments to the Clery Act and title IX recommendations both provide for prevention efforts on campuses (e.g., "bystander intervention training"), these prevention efforts should acknowledge the importance of supportive responses to survivors. A strong culture of bystander intervention should also intervene after an assault has occurred in order to both encourage reporting and encourage seeking resources for the health of survivors individually and the university community more generally.

II. Universities should ensure access to advocacy and/or counseling to increase reporting.

As mentioned above, self-blame and victim-blame are critical factors for discouraging reporting they produce more severe mental health consequences for victims. As such, access to crisis advocacy and counseling services is crucial for helping survivors receive affirmation of their experiences and alleviate feelings of self-blame. Furthermore, support from mental health and advocacy personnel is positively related to formally reporting assaults.[4] By ensuring access to these resources, colleges and universities increase the likelihood that they will receive more information and reports, while also reducing the number of student survivors who are unable to receive the care they need to continue succeeding in the campus environment.

Access to these resources must be free, and universities must offer assistance in helping survivors access them. Simple referral processes by campus mental health services to community providers are insufficient—the process of setting up a second appointment with a stranger after having already taken steps to receive care, not to mention the burden of managing cost and insurance, can all too easily prevent survivors from accessing needed care. I was fortunate to be retained by my university's counseling center for long-term care, but other survivors I worked with, such as a sophomore student named Ashley*, was not accepted for treatment because her needs were "too extensive." Ashley was referred to a community provider, but she did not followup because she felt too overwhelmed by setting up her own appointments and coordinating her insurance and payment. As such, she did not receive adequate care until her parents pulled her out of school for a semester and set up treatment for her close to home (long after she had begun struggling academically). Ashley did not feel comfortable reporting her assault until after she had received counseling, but, by then, it was too late; her assailant had already graduated.

By mandating that universities ensure access to mental health and advocacy services, we can improve the likelihood that survivors like Ashley receive timely care and are able to make informed decisions about reporting.

III. Colleges must maintain a range of sanctions so as not to deter survivors from reporting and respect the variety of resolutions survivors seek.

The current national media spotlight has almost exclusively focused on the lack of punitive sanctioning for students found responsible in sexual assault cases. The knee-jerk reaction is often to move toward mandatory expulsion policies that send a strong message about a community's lack of tolerance for sexual violence and increase the number of offenders removed from campus. This viewpoint narrowly considers those highly publicized cases in which complainants were unsatisfied with the harshness of the penalty after they brought forward a hearing. Oftentimes, though, survivors do not all have the same desires and goals for reporting or for seeking disciplinary action; in fact, many survivors are discouraged from reporting because they are afraid of overly punitive sanctioning for the accused. Especially in cases where the perpetrator is known, and for intimate partner violence in particular, many survivors hesitate to initiate the complaint process or seek informal resolutions because they are only interested in disciplinary action aimed at making their perpetrators acknowledge responsibility or getting their attackers help.

Sarah*, an entering first year student I worked with, had a mentally unstable abusive boyfriend in high school who would also be attending U.Va. with her in the fall. She sought and obtained a protective order through the courts, and a no contact order through the Dean of Students' Office. Her former boyfriend violated the pro-

tective order dozens of times during her first semester, but Sarah was afraid for his well-being (he had, as many abusers do, threatened to kill himself if she came forward) and she did not want to see him get in trouble. The only way she could be persuaded by staff at the Women's Center and by administration in the Dean of Students' Office to seek disciplinary action against him for the protective order violations was by assuring her that the process could be used to mandate that he receive counseling. The ability to seek a "lower-level" or "non-punitive" sanction that offered help for the accused through discipline helped the school to respond to the hostile environment and helped Sarah come forward.

In my own experience, I resisted formally reporting and seeking disciplinary action after the assault because I fixated on the fact that my assailant had parents who cared about him, and that I did not want to ruin his life over what I then viewed as a mistake. Many survivors I have met and worked with echo the same concerns when thinking about bringing a complaint: that he used to be a friend; that he is generally a "good guy"; that it was a one-time mistake. Even though I now disagree with my former self's evaluation of my assailant, and though I quietly disagree with many of these survivors, I know that fear of expelling him or suspending him was a serious barrier to reporting for me, and continues to be one for other survivors.

The prospect of informal resolutions and lower-level sanctions are sometimes a comfort and a reassurance to survivors that they will have some control over the resolution of their case. Mandatory expulsion polices have a strong likelihood of deterring survivors who are initially afraid of holding a friend or romantic partner accountable in a disciplinary setting. Not all survivors want the same resolution, and mandatory expulsion policies assume a one-size-fits-all approach that may have a chilling effect on reporting. It will prevent a college from getting as many reports as possible and from being able to more fully respond to sexual violence to rectify the hostile environment.

IV. Resolution agreements should foster cooperation between administration and students to combat mistrust of the university that could deter reporting.

Highly publicized cases of university mishandling of sexual assault complaints, such as the title IX complaint brought against U.Va. in the fall of 2012, while forcing universities to reevaluate and improve policies and procedures to better serve victims, also paradoxically tend to scare other survivors away from seeking resources or disciplinary action through the school. Many survivors I worked with following news of U.Va.'s title IX complaint expressed strong reservations about going to the Dean of Student's office for information about resources available or filing a report. They assumed that their cases would be mishandled or not taken seriously as was alleged in the public complaint. This prevented survivors from receiving interim remedies (e.g., no contact orders, changes in classes or housing arrangements) because they were too afraid to seek assistance from the Dean of Students.

In order to rectify the chilling effect on reporting and seeking resources that publicized title IX investigations might have, resolution agreements with OCR should incorporate recommendations and requirements to form working committees of students and administrators to help keep students involved in and informed of steps a university is taking to rectify issues from the initial public complaint. Ensuring student involvement is likely to lead to not only a response from the administration that is better tailored in its procedural and programmatic changes to what students actually need, but also improved communication among students about the changes being made. A top-down communications approach of university to students does not ameliorate fears and concerns about mistreatment as much as student-to-student communication about what the administration and students are working on together. The knowledge of and opportunity for input is also certain to reassure students that administration is transparent with students about the way it handles cases (and will handle cases in the future).

By including formal requirements for student-administrator working groups, resolution agreements can help address some of the fears raised by publicized complaints so that survivors can feel safe and supported when they seek resources from the offices and administrators best suited to connect them to those resources and remedies.

Section Two

This section will address four points related to improving Federal oversight of universities and title IX compliance more broadly.

V. Structured followup and public progress reports from a university following a title IX investigation will help ensure—and communicate to students—a university's commitment to rectifying its policy and procedures.

Similar to the point made in IV, structured followup from OCR and public progress reports on recommendations from title IX resolution agreements that are drafted by committees of administrators, faculty, staff and students will help to improve compliance with the agreements. Public progress reports that are jointly drafted and distributed to the university community will help hold the university accountable to the student body and help to inform students of the changes being made. These public reports will help create feedback loops for universities to receive continual input from students on the program and procedural changes, and actively keep OCR aware of steps taken to comply with the resolution agreements.

Jointly drafting progress reports also helps to guarantee that members of all parts of the university have an up to date and consistent understanding of the university's plans and progress. Having stakeholders across the university well-informed helps to standardize the dissemination of information so that all members of the community are receiving consistent messaging about the university's stance on sexual violence, and makes it more likely that survivors are receiving uniform information about reporting options and resources.

VI. Provide OCR with more flexible sanctions and forced budget reallocations.

In OCR's title IX enforcement efforts it seeks to obtain voluntary compliance from universities, but carries sanctioning power as a threat to obtain compliance. OCR's current sanction, however—to remove all Federal funding—has never been used, and is often painted as punishing innocent students rather than the institution for non-compliance. The disproportionate and impractical nature of the only sanction available to OCR hinders its efforts at enforcement. OCR should be given the latitude to design smaller and more flexible sanctions appropriate to the violations. Additionally, rather than simply imposing fines of varying sizes, OCR should be empowered to impose fines in the form of forced budgetary reallocations, to help push schools into compliance.

A fine imposed on a school ultimately detracts from a school's resources that could be used for student services. Rather than a purely punitive financial sanction, budgetary reallocations could force schools to appropriate resources to students to improve its title IX efforts. For example, a sanction could mandate that a school must allocate $50,000 per year for 4 years to fund a trauma specific counseling position at the student health center. A sanction could require a school to set aside $5,000 per year for several years to fund implementation of climate and incidence surveys to require and help a school measure the nature of sexual violence on its campus and respond more effectively. In both of these examples, the financial sanction does not deprive a school of any of its resources, but rather guarantees that students and survivors will directly benefit from budgetary allocations to improve title IX compliance. Smaller, more flexible sanctions would help OCR to obtain compliance more effectively and forcefully, while avoiding penalizing innocent students in the effort to punish the institution.

VII. Codification of OCR recommendations for title IX may ameliorate due process concerns about equity for accused students.

Though OCR and the courts have repeatedly assured that campus disciplinary hearings, including hearings for sexual assault, do not have to mirror the justice system. Public concerns, however, tend to focus on the ways in which accused students are potentially being denied their due process rights because these hearings address conduct that would otherwise constitute a violation of State and Federal law. In order to address concerns about equity, it may be helpful to statutorily define the requirements and procedures for sexual assault hearings on campus. By specifically codifying some of the recommendations and interpretations forwarded by the OCR, it may clarify concerns colleges have about how to appropriately adjudicate. For example, interim measures such as changes to academic and housing arrangements are defined as critical to a quick and effective response to a potential title IX violation. OCR recommends that a school should not place undue burden on the complainant and move his or her schedule or housing while allowing the accused to remain, but there may be some due process concerns about whether it is fair to move the accused while allowing the complainant to remain.[5] The legislature may want to consider whether mandating a particular course of action, such as requiring that both parties be moved in those cases, would ensure greater equity.

Many colleges appear hesitant to strongly sanction because of concerns that the accused student may appeal or sue the school—as more and more young men are now doing.[6] This may then contribute to schools insufficiently sanctioning in cases

where a hostile environment exists (JMU imposing expulsion after graduation for several accused students found responsible for sexual assault is a particularly salient recent example[7]). Statutory definition of how procedures ought to look, based on OCR recommendations, may help to distinguish the campus process from criminal proceedings and draw clear boundaries between the two so that colleges have a clear sense of how to proceed and address hostile environments without fear of civil action from accused students.

VIII. A holistic approach to the issue of sexual assault cannot ignore possibilities for criminal law reform at the Federal and State level.

It is important to emphasize that title IX was extended to address sexual violence on campus mostly because of the recognition that the criminal justice system failed to meaningfully address the issue. While the use of title IX to address sexual assault and sex discrimination is an incredibly important tool, a more comprehensive approach to the issue of sexual assault would also consider potential reforms to State and Federal criminal laws. We would not have to rely so heavily on colleges to address the problem of sexual violence, colleges may be more effective at addressing sexual violence, and offenders would be addressed outside of the college context more meaningfully if we improved our criminal prosecution efforts. Options for criminal reforms may make it possible to better address this problem more comprehensively.

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3. Ullman, Sarah, Stephanie Townsend, Henrietta Filipas, and Laura Starzynski. (2007). "Structural Models of the Relations of Assault Severity, Social Support, Avoidance Coping, Self-Blame, and PTSD Among Sexual Assault Survivors." *Psychology of Women Quarterly*. Vol. 31. 23–37.

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The CHAIRMAN. Thank you very much, Ms. Renda.

Mr. Kelly, welcome. Please proceed.

STATEMENT OF JOHN KELLY, STUDENT, TUFTS UNIVERSITY, MEDFORD, MA

Mr. KELLY. Thank you, Mr. Senator.

When I was an 18-year-old college freshman, I entered into what would soon become an abusive relationship with another student. On the last night of my freshman year, he ignored my noes, raped me, and then physically grabbed and restrained me, not letting me leave his room until I told him I loved him. Three months later, during my first week back at school for my sophomore year, he raped me again.

Since then, I have become an advocate for the rights of student survivors, especially those who are often overlooked, in this case the queer community, my community.

Senators, I thank you for giving me this opportunity to testify on the topic of sexual assault on college campuses. I come here today

with a number of policy recommendations that I hope to address which are outlined more fully in my written testimony provided.

First, Congress must give the Department of Education's Office for Civil Rights the power to levy substantial fines against schools found out of compliance with title IX. As we've heard, the only recompense available to OCR currently is the full removal of Federal funds, something that would hurt the group of students that this law is intended to protect.

Schools found out of compliance must be punished to signal the seriousness of their failure, and also to prevent schools from becoming repeat offenders. In addition, these fines can then go to help subsidize OCR's costs for enforcement, or go directly into victim services.

At Tufts University, we were recently found out of compliance, but no fines were levied. Without this ability, schools cannot truly be held accountable.

Second, Congress must compel the Department of Education to continuously release a list of schools under investigation for title IX complaints. Without this information, complainants may be deprived of information surrounding their own complaints, and prospective students cannot possibly make an informed decision regarding their choice of college.

Tufts University was under investigation when I was applying to schools, and I made the choice to attend Tufts without this information. When I was raped, Tufts was still under investigation, and I still didn't know. Had I known, I could only hope I would have chosen another school to begin with. Perhaps I would have attended Tufts all the same, but it's not within the purview of the Department of Education to deny students the opportunity to make educated decisions for themselves.

I only wish I had known Tufts was under investigation when I began going through my campus' traumatizing judicial process so I could have had at least a modicum of preparation for the humiliation I would endure at the hands of administrators that I trusted to protect me. They didn't protect me, but I had no cause to suspect anything but support from them because of OCR's opacity.

I was thrilled to see that OCR, under the leadership of Catherine Lhamon, recently released a list of schools currently under investigation, but that must become the norm. Please, compel OCR to continuously and publicly release the names of schools under investigation so that my experience can soon become an outlier and not stay the norm.

My partner didn't use physical force at first. Indeed, he didn't use physical force until the last day of our relationship. But in the months and weeks leading up to that fearful moment, he utilized psychological and emotional abuse. It starts out as little things, a controlled move here, an outburst there, and insult here, a putdown there. Most abuse starts like this, with emotional and psychological abuse, but these things are by no means little. Indeed, research shows their effects are just as deleterious as any bruise or broken bone.

In addition, 99 percent of survivors of domestic violence experience economic abuse. In recent rulemaking, the Department of Education and its rulemakers agreed that we did not have the au-

thority to expand the definitions of dating and domestic violence to include emotional, psychological, and economic abuse without the statute stating as much. So, please, state as much. Policies inform expectations and culture, and the expectation should not be to wait until you have a hospitalization under your belt before you can report your abuser and receive justice.

My self-identity as a rape survivor is not contingent on the State or territory in which I currently live, and neither should my ability to receive justice.

It is time for Congress to standardize the definitions of sexual assault and rape that colleges use so that they apply equally to male survivors and survivors in the greater queer community. The estimate of lifetime sexual assault for gay or bisexual men is 30 percent. For lesbian and bisexual women, it is 43 percent.

In addition, about one-third of same-sex relationships involve domestic violence, and about one-half of all trans people experience sexual violence in their lifetime. The queer community as a whole experiences sexual violence at staggering rates, and this Nation's policies on the local, State, and Federal level fail to fully address this. This failure not only perpetuates the silencing of queer survivors but also prevents queer college students from being able to fully access their civil right to education.

Please, make consistent and inclusive definitions so that this ceases to be an issue. All students have a right to education, and policies that discriminate or ignore certain marginalized identities fail to provide us that right.

Senator Harkin, Senator Alexander, members of the Senate HELP Committee, thank you for including me in this opportunity to provide testimony. In summary, transparent, trauma-sensitive and inclusive policies are a must for institutions of higher education and for the Federal Government. Thank you.

[The prepared statement of Mr. Kelly follows:]

PREPARED STATEMENT OF JOHN KELLY

SUMMARY

1. Currently, the only sanction explicitly available to the Department of Education (ED) against schools out of compliance with title IX is the full removal of Federal funding. As such a sanction would devastate the very population title IX aims to help—students, including those dependent on Federal financial aid—I respectfully call upon Congress to provide the Department's Office for Civil Rights (OCR) the authority to levy fines against non-compliant universities.

2. In Spring 2014, the Department of Education took the important step of releasing the names of 55 schools currently under investigation for title IX violations. This one-time release, however, is insufficient. Congress should compel the Department to publish and continuously update the list of schools under investigation, to ensure that current students remain abreast of any issues at their schools and prospective students have the information necessary to choose the safest college for them. Such transparency would similarly allow the public to hold the Department of Education accountable for lengthy investigations that drag on for years with no conclusion.

3. In the recently published rulemaking on the Violence Against Women Reauthorization Act (VAWA), dating and domestic violence are defined to state that each, "includes, but is not limited to sexual or physical abuse or the threat of such abuse." It is imperative that Congress legislate a change in these definitions to explicitly include psychological, economic, and emotional abuse. As these behaviors often precede physical or sexual abuse, we should not wait until behavior manifests itself in bruises or broken bones to call it dating and domestic violence.

4. State laws vary widely in their definitions of rape. Some still maintain that only women can experience rape, while others fail to recognize that it can happen

between individuals of the same sex. At the same time, the Federal Government's definitions are inconsistent, with UCR and NIBRS each offering a different definition, and NIBRS now failing to include male survivors within their definition of rape. These variations must be addressed to define sexual assault and rape in a way that is inclusive of the LGBTQ community and survivors of same-sex sexual violence.

5. The campus judicial system has the unique ability to cater to students' needs in a way that the criminal justice system cannot, through providing remedies and resources to ensure a student's continued ability to access their education. Any move to intertwine the two systems or reduce access to the campus system in favor of the criminal justice system will not only chill reporting, but prevent students from accessing their full title IX rights. In addition, providing multiple paths for reporting promotes a survivor's ability to choose what is best suited to their needs.

FINING AUTHORITY FOR THE OFFICE FOR CIVIL RIGHTS[1]

Congress should propose legislation that gives the Department of Education's Office for Civil Rights the ability to levy fines against universities found out of compliance with title IX.

Currently the Department of Education, through the Federal Student Aid Clery Compliance Office, has the ability to levy fines against schools found out of compliance with the Clery Act, but lacks the authority to do so through its Office for Civil Rights (OCR) for violations of title IX. Currently, the only sanction explicitly available to the OCR against schools in violation of title IX is the full removal of Federal funding. Such a sanction would devastate the very population title IX aims to help—students, particularly those dependent on Federal financial aid—and is an action the OCR has never taken, and never should take.

Congress has the ability to change this course, through legislation that grants the Department of Education the ability to levy fines against schools found out of compliance. Such an action would send a clear message to students, prospective students, alumni, and the public that a university is in violation of Federal civil rights law—and that such noncompliance will not be tolerated.

Fines should be levied based on a sliding scale model. A single set fine amount would unduly burden smaller schools while leaving larger, wealthier institutions virtually untouched. Proportionality could be accomplished by tying the size of a fine to a school's yearly operating budget.

CONTINUED RELEASE OF SCHOOLS UNDER INVESTIGATION

It is imperative that the Department of Education publish on an ongoing basis an updated list of schools currently under title IX investigation.

On May 1, 2014, the Department of Education released a list of 55 schools under sexual violence-related title IX investigations.[2] This was an unprecedented move, one that gave students, prospective students, and alumni more information than ever previously available about their respective universities' track records on sexual violence. However, this vital transparency is not long-lasting: the Department has billed the list as a one-time release, available in the future upon private request but not released publicly in a manner that is transparent and easily accessible to all. I believe students have the right to know whether or not their institution is under investigation for violations of Federal civil rights law, as do all prospective college students and alumni prepared to donate to their alma mater. Know Your IX, as well as other student activists and victims' rights advocates, has long called for clarity and transparency in regard to title IX investigations.

Such openness serves a dual purpose. First, it holds schools accountable for their (mis)treatment of survivors, ensuring that the public eye is turned to schools that fail to provide their students with a safe learning environment, and allowing additional student survivors to provide further evidence of wrongdoing to the Office for Civil Rights during an investigation. Second, it serves as a check on the Department of Education, holding the agency accountable for the timely resolution of outstanding complaints. We have heard horror stories of complaints that have been lost, dragged on for over 5 years, or were subsumed by other complaints without

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[1] Special thanks to Know Your IX's ED ACT NOW organizers, S. Daniel Carter, and Nancy Cantalupo for their guidance and assistance with this testimony.

[2] U.S. Department of Education. "U.S. Department of Education Releases List of Higher Education Institutions with Open title IX Sexual Violence Investigations." *http://www.ed.gov/news/press-releases/us-department-education-releases-list-higher-education-institutions-open-title-i.*

notice to the complainant, and ongoing transparency will prevent that from remaining possible.

EXPANSION OF DATING AND DOMESTIC VIOLENCE DEFINITIONS

Congress should legislate the explicit inclusion of emotional, economic, and psychological abuse within definitions of dating and domestic violence, for the purpose of investigation and enforcement on college campuses.

In recent rulemaking sessions on the Violence Against Women Act Reauthorization, dating violence and domestic violence definitions have been defined to state that each "includes, but is not limited to sexual or physical abuse or the threat of such abuse."[3] The committee felt it lacked the power to expand the definition beyond what was specified by law, and also that such a definition would be hard to enforce. However, the Department of Justice Office on Violence Against Women includes emotional abuse, psychological abuse, and economic abuse within its definition of domestic violence, as do numerous other Federal agencies.[4 5] The rates at which these forms of abuse occur are staggering. Nearly half of all women and men experience psychological aggression by an intimate partner in their lifetime.[6] Ninety-nine percent of domestic violence victims experience economic abuse.[7] In addition, emotional, economic, and psychological abuse often serve as stepping stones before behavior becomes physically or sexually violent.[8] It is imperative that students be able to report abuse as soon as it becomes realized and not wait for it to escalate. As the law and regulations currently stand, they incentivize waiting for behavior to become physically manifested. Bruises and broken bones are rarely the first form dating and domestic violence take, and students must be guaranteed safety on their campuses at the first sign of such violence.

The necessity of this legislative change cannot be overstated. Intimate partner homicide makes up around half of all female homicides in the United States, and in 70–80 percent of cases the homicide is preceded by physical abuse.[9] In addition, research clearly shows that psychological abuse often times precedes physical abuse, and can be just as serious in its effects as physical manifestations of abuse.[10] Therefore, in order to prevent domestic and dating violence from escalating, psychological and emotional abuse must be considered part and parcel of their definitions, so students who report abuse in its earlier stages are protected.

The Department of Justice Office on Violence Against Women already utilizes a definition of domestic violence that includes the following: physical abuse, sexual abuse, emotional abuse, economic abuse, psychological abuse, and emotional abuse. We recommend that these added aspects become part of the standardized definitions of dating violence and domestic violence.

STANDARDIZATION OF DEFINITIONS TO INCLUDE SAME-SEX SEXUAL VIOLENCE

Congress should expand existing definitions of rape and sexual assault to be inclusive of the experiences of male survivors and the LGBTQ community.

State law definitions of sexual assault and rape vary widely and only some sufficiently recognize male survivors and victims of same-sex violence. Some definitions still maintain that only women can be raped, while others fail to recognize that assaults can and do happen between individuals of the same sex. The Federal Govern-

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[3] Federal Register. "Violence Against Women Act: A Proposed Rule by the Education Department." *https://www.federalregister.gov/articles/2014/06/20/2014–14384/violence-against-women-act*.

[4] "Domestic Violence." USDOJ: Office on Violence Against Women: Crimes of Focus: Domestic Violence. *http://www.ovw.usdoj.gov/domviolence.htm*.

[5] These agencies include the Centers for Disease Control and Prevention, the Department of Health and Human Services Office on Women's Health, and the Department of Justice Office on Violence Against Women.

[6] Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011). The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. *http://www.cdc.gov/violenceprevention/pdf/nisvs_executive_summary-a.pdf*.

[7] Adrienne E. Adams and others, "Development of the Scale of Economic Abuse," Violence Against Women 14 (5) (2008).

[8] O'Leary, K. Daniel. "Psychological Abuse: A Variable Deserving Critical Attention in Domestic Violence." *Violence and Victims* 14.1 (1999): 3–23.

[9] Campbell J.C., Webster D., Koziol-McLain J., Block C.R., Campbell D.W., Curry M.A., Gary F., McFarlane J.M., Sachs C., Sharps P., Ulrich Y., Wilt S.A. Assessing Risk Factors for Intimate Partner Homicide. National Institute of Justice journal 2003; (250): 14–19. *https://www.ncjrs.gov/pdffiles1/jr000250e.pdf*.

[10] O'Leary, 3–23.

ment's definitions also vary. The National Incident-Based Reporting System (NIBRS) and Uniform Crime Reporting (UCR) each offer a different definition,[11] and NIBRS does not include male survivors within its definition of rape. Instead, NIBRS divides forcible sex offenses into rape, sodomy, and sexual assault with an object. Separating rape into these distinct categories disenfranchises queer and male survivors of sexual violence, and these variations lead to a chronic misrepresentation of rape outside of the male perpetrator, female victim context.[12] Within the Uniform Crime Reporting (UCR) Program, each of these is included in the definition of rape.

Members of the LGBTQ community are disproportionately victimized. In a survey of academic studies of sexual violence within the LGBTQ community, the median estimate of lifetime sexual assault for gay or bisexual men was 30 percent, and for lesbian or bisexual women the median rate was 43 percent.[13] A 2008 study found that 25–33 percent of all surveyed same-sex relationships involved domestic violence.[14]

The Department of Education's Q&A document[15] importantly addresses LGBTQ and male survivors. We ask that Congress follow the Department's example and author legislation that standardize the definitions of sexual violence under title IX. In addition, we ask that this legislation specifically require that schools follow these definitions in order to continue to receive Federal funding. This can be bolstered through requiring that colleges and universities must explicitly state that their policies apply equally to all students, regardless of sex, gender, or gender identity. We support and very much encourage an expansion of this right to all survivors in the next Violence Against Women Act reauthorization.

CRIMINAL JUSTICE SYSTEM AND CAMPUS JUDICIAL PROCESSES

The campus and criminal justice systems must remain separate, in order to protect students' civil right to education.

I reaffirm students' right to report to local law enforcement, a campus official, both, or neither. The White House Task Force to Protect Students from Sexual Assault's extensive research concluded that giving survivors multiple reporting options and control over to whom and how they report is the best way to promote reporting of this vastly underreported crime. In addition, rape crisis counseling best practices continuously point to the importance of returning as much agency and control to the hands of survivors in the aftermath of an assault.[16] Trauma-sensitive policies are a must, and allowing students to choose the path that makes the most sense for them is a major part of restoring agency to student survivors.

Additionally, campus judicial processes provide resources and remedies to survivors that the criminal justice system simply cannot, including academic accommodations, housing changes, and counseling and support services on campus. These responses are available to students without them needing to file a police report or press charges, ensuring access to education whether or not they choose to file a criminal report.

The CHAIRMAN. Thank you, Mr. Kelly, for being here and for being so forthright in your testimony. Appreciate it very much.

Ms. Stapleton, please proceed.

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[11] FBI. "Frequently Asked Questions about the Change in the UCR Definition of Rape." *http://www.fbi.gov/about-us/cjis/ucr/recent-program-updates/new-rape-definition-frequently-asked-questions*.

[12] Federal Register. "Violence Against Women Act: A Proposed Rule by the Education Department." *https://www.Federalregister.gov/articles/2014/06/20/2014–14384/violence-against-women-act#p–227*.

[13] Rothman, E.F., D. Exner, and A.L. Baughman. "The Prevalence of Sexual Assault Against People Who Identify as Gay, Lesbian, or Bisexual in the United States: A Systematic Review." *Trauma, Violence, & Abuse* 12.2 (2011): 55–66.

[14] Mallon, Gerald P. *Social Work Practice with Lesbian, Gay, Bisexual, and Transgender People.* 2d ed. New York: Haworth, 2008.

[15] U.S. Department of Education Office for Civil Rights. "Questions and Answers on title IX and Sexual Violence." *http://www..ed.gov/about/offices/list/ocr/docs/qa–201404-title-ix.pdf*.

[16] Herman, Judith Lewis. *Trauma and Recovery*. New York, NY: Basic, 1992. See also: Yassen, Janet and Mary, R. Harvey. "Crisis Assessment and Interventions with Victims of Violence." *Emergencies in Mental Health Practice: Evaluation and Management.* Ed. Phillip M. Kleespies. New York: Guilford, 1998. 117–44.

STATEMENT OF JANE STAPLETON, CO-DIRECTOR OF PREVENTION INNOVATIONS: RESEARCH AND PRACTICES FOR ENDING VIOLENCE AGAINST WOMEN, UNIVERSITY OF NEW HAMPSHIRE, DURHAM, NH

Ms. STAPLETON. Good morning. Thank you, Chairman Harkin, Ranking Member Alexander, and committee members. My name is Jane Stapleton from the University of New Hampshire and, along with Dr. Sharon Potter, I am the co-director of Prevention Innovations: Research and Practices For Ending Violence Against Women. It is an honor to be asked to testify before the HELP Committee on an issue that has been an important part of both my personal and professional lives for the past 30 years.

Prevention Innovations is made up of researchers and practitioners who work together to create, evaluate, and disseminate evidence-based prevention and responses to sexual and relationship violence and stalking. We are invested in building practitioners' capacities to respond to survivors, measure climate and incidence, prevent violence, and comply with recent Federal laws and mandates. We believe that to truly end sexual and relationship violence on campus, we must understand what works in prevention and response; evaluate effectiveness; document climate, incidence, and readiness to change; and implement evidence-based best practices.

During my career I have had the opportunity to witness a dramatic shift in prevention approaches. In the early days, we attempted to end the problem of sexual assault on campus by educating people about the facts and risk reduction, talking to women on how they can stay safe, and asking men please don't rape. Bystander intervention, however, is a different approach where women are not approached as victims or potential victims and men are not approached as perpetrators or potential perpetrators. Instead, we utilize a community approach to prevention where everyone has a role to play in ending sexual and relationship violence and stalking.

Together, my colleagues and I have developed, evaluated, and implemented bystander intervention prevention strategies where we teach college students, faculty, staff, and administrators to safely intervene before, during, and after instances of sexual and relationship violence and stalking. Prevention Innovations' evidence-based bystander intervention prevention strategies include bringing in the bystander, an in-person prevention program, and Know Your Power, a bystander intervention social marketing campaign. Both have been proven to reduce participants' rape myth acceptance; increase knowledge of the problems of sexual and relationship violence and stalking, and bystander behaviors; increase people's willingness to intervene before, during, and after; and increase people's self-reported bystander behaviors.

Our prevention strategies have been developed with considerable input from students, staff and faculty representing a diversity of backgrounds, and have been adopted by colleges and universities across the country and adapted for the U.S. Army. Several members of Prevention Innovations have administered an Unwanted Sexual Experience Study every 5 years at the University of New Hampshire since 1988. The campus-wide survey measures our male and female undergraduate students' experiences of unwanted

sexual intercourse and sexual contact. In 2012, the survey incorporated questions related to relationship violence and stalking, and included participants from eight New England colleges and universities.

Additionally, my colleagues have developed and evaluated a Community Readiness to Engage Survey for campuses to measure their communities' readiness to change behaviors, social norms, policies and practices to prevent sexual and relationship violence and stalking.

Prevention Innovations has just launched the Campus Sexual and Relationship Violence Prevention Consortium in an effort to provide technical assistance to colleges and universities as they work to meet legislative requirements to reduce campus sexual and relationship violence.

Finally, Prevention Innovations has been asked by the White House Task Force to Protect Students from Sexual Assault on Campus to conduct a study on sexual assault policy education for first-year students. I am delighted to see the extent to which the U.S. Department of Education, through title IX and the Clery Act, have prioritized campus safety not only related to sexual assault but also dating and domestic violence and stalking. When we discuss these important reforms, it is important for us to remember the multiple forms of violence, not just focus on sexual assault, as well as acknowledge a diversity of survivors.

The recent mandates for campuses to ensure swift and effective responses to reports of sexual and relationship violence and stalking, sensitive and confidential support services for survivors, and prevention education are essential to stopping these preventable offenses. All of the recent Federal mandates hold colleges and universities accountable for ensuring safety and accountability on campus. For some campuses, these mandates buildupon work, service, and policies that they have already begun to develop and implement. For many campuses, however, these mandates provide an opportunity to begin this work in formal ways for the first time.

In thinking about how Federal law needs to be reformed and strengthened to better address these issues, I suggest that Federal regulations provide guidance and requirements for colleges and universities to build comprehensive prevention strategies and responses that focus on a continuum of violence that includes dating and domestic violence, sexual assault and stalking; conduct community-wide prevention that engages all members of the campus community—including undergraduate and graduate students, staff, faculty, administrators, parents, community members, businesses, and alumni; conduct regular climate studies that measure the extent and nature of the problems of sexual and relationship violence and stalking. Climate study results should be made public both in academic journals and campus websites, and they must and they can utilize uniform questions; utilize prevention strategies that are scientifically evaluated and evidence-based research-informed.

Too many non-research-based quick solutions are popping up everywhere. For-profit companies with no subject matter experts are seizing the opportunity to make money off recent Federal mandates. A number of these solutions to recent mandates are not research-informed or evidence-based, and this is problematic.

We must assess campus readiness to change. Campuses fall along a continuum of readiness to engage in prevention responses. We must create confidential support services and advocacy for survivors. Campuses need to identify and advertise on-campus confidential support and partner with community-based crisis centers to provide support for survivors and evidence-based research-informed prevention. Most importantly, everything and everyone needs to keep survivors in the center of all prevention, response, and compliance strategies.

I would echo the discussion on the need for the Department of Education to identify a grants program focused on dating and domestic violence, sexual assault and stalking.

Thank you very much for inviting me here, and I'd be more than happy to answer any of your questions.

[The prepared statement of Ms. Stapleton follows:]

PREPARED STATEMENT OF JANE STAPLETON

SUMMARY

BYSTANDER INTERVENTION

• Bystander intervention to prevent sexual and relationship violence and stalking is a different approach where women are not approached as victims or potential victims and men are not approached as perpetrators or potential perpetrators. Instead, we utilize a community approach to prevention, where everyone has a role to play in ending sexual and relationship violence and stalking.

HOW FEDERAL LAW IS WORKING TO HELP PREVENT CAMPUS SEXUAL ASSAULT

• I am delighted to see the extent to which the U.S. Department of Education, through Title IX and VAWA Amendments to the Clery Act, have prioritized campus safety, not only related to sexual assault, but also dating and domestic violence and stalking. When we discuss these important reforms, it is important for us to remember *multiple* forms of violence and not just focus on sexual assault. The recent mandates for campuses to ensure swift and effective responses to reports of sexual and relationship violence and stalking, sensitive and confidential support services for survivors and prevention education are essential to stopping these preventable offenses. All of the recent Federal mandates hold colleges and universities accountable for ensuring safety and accountability on campus. For some campuses, these mandates build upon work, services and policies that they have already begun to develop and implement. For many other campuses, these mandates provide an opportunity to begin this work in formal ways.

• To help ensure effective prevention, response and compliance, colleges and universities need evidence-based and research-informed models of best practice. It is essential that training and technical assistance be provided by subject matter experts and people/organizations that understand a diversity of campus cultures.

IF FEDERAL LAW NEEDS TO BE REFORMED AND STRENGTHEN TO BETTER ADDRESS THESE ISSUES

• Build comprehensive prevention strategies and responses that focus on a continuum of violence that includes dating and domestic violence, sexual assault and stalking.

• Conduct regular and appropriate and community-wide prevention that engages all members of the campus community, including undergraduate and graduate students, staff, faculty, administrators, parents, community members/businesses, and alumni. Prevention strategies should be comprehensive and occur with students during every year of their college experience.

• Conduct regular and appropriate climate studies to measure the extent and nature of the problems of sexual and relationship violence and stalking on campus.

• Prevention strategies should be scientifically evaluated and evidence-based/research-informed. Too many non-research-based "quick solution" programs are popping up and have not been evaluated at all. For-profit companies, with no subject matter experts, are seizing the opportunity to make money off of recent Federal

mandates. A number of these "solutions" to recent mandates are not research-informed or evidence-based. This is problematic.

• Prevention and response approaches need to be translated for a diversity of campuses. For example social marketing campaign images developed at the University of New Hampshire, even though they are effective, will not easily translate to an HBCU campus.

• Campuses fall along a continuum of readiness to engage in prevention and response. Thus, it makes sense that some campuses need different approaches themselves.

• While bystander intervention is important, it is also essential to teach students about sexual consent and healthy relationships, We expect them to be bystanders in instances of sexual and relationship violence if they don't know how to identify sexual consent and healthy relationships. Ideally, this formal education should occur at least in high school.

• Bystanders need to assess the situation for safety. Bystanders need to be safe in order to help others.

• Survivors need access to confidential support services and advocacy. Campuses need to identify and advertise on-campus confidential support AND partner with community-based crisis centers to provide confidential support for survivors and evidence-based/research-informed prevention.

Good Morning Mr. Chairman and members of the Senate HELP Committee: My name is Jane Stapleton and I am the co-director of Prevention Innovations: Research and Practices for Ending Violence Against Women at the University of New Hampshire. It is an honor to be asked to testify before the HELP Committee on an issue that has been an important part of both my personal and professional life for nearly 30 years. I began my work as a student activist responding to a well-publicized gang rape that was perpetrated on the UNH campus in 1987. It was a time when we didn't have words such as "date rape, "acquaintance rape" or "gang rape" and these crimes were often committed as dozen of people could have stepped in to stop the perpetrators, but didn't. The university held administrative hearings where the three men sat with their lawyers in front of a standing room only crowd and the survivor, whose name was published in the local and campus papers, sat silently with her victim advocate. The men were found responsible of "disrespectful behavior" and their punishment was summer suspension. In the criminal justice proceedings, two of the men were found guilty of sexual assault misdemeanors and spent 2 months in the county house of corrections. They returned to the University the following year; one of them became the president of his fraternity; one of them was a bartender at a popular bar; and both of them had their criminal records annulled. The survivor dropped out of school, never to be heard of again. I often wonder where and how she is, if she ever finished college, how she makes meaning of what was perpetrated against her. I would like her to know that things have changed even though more change is needed and that I and many other women and men have dedicated our lives to stopping very preventable crimes. I dedicate my testimony today to her in the hope that she has healed from the pain that perpetrators and those that re-victimized her caused.

PREVENTION INNOVATIONS

I am fortunate to be part of the movements to prevent sexual and relationship violence and stalking on campus. Over the past 10 years, I have been an active member of Prevention Innovations and I currently serve as the co-director, with Dr. Sharyn Potter. Prevention Innovations is made up of researchers and practitioners who work together to create, evaluate and disseminate evidence-based prevention and responses to sexual and relationship violence and stalking. We are invested in building practitioners capacities to respond to survivors, prevent violence and comply with recent Federal laws and mandates. Our research, practice and technical assistance are firmly grounded in the belief that prevention and response strategies that are developed on one campus or community, do not always easily translate to another campus. As many of us know, college and universities differ greatly, in size, mission, demographics of students, geographic location and much more. Thus, we do not advocate a "one-size-fits-all" solution to the problems of sexual and relationship violence and stalking.

Bystander Intervention

During my career, I have had the opportunity to witness a dramatic shift in prevention approaches. In the early days, we attempted to end the problem of sexual assault on campus by educating people about the facts, and risk reduction: talking

with women about how to stay safe and asking men not to rape. Bystander intervention is a different approach where women are not approached as victims or potential victims and men are not approached as perpetrators or potential perpetrators. Instead, we utilize a community approach to prevention, where everyone has a role to play in ending sexual and relationship violence and stalking.

Together, my colleagues and I have developed, evaluated and implemented bystander intervention prevention strategies where we teach college students, staff, faculty and administrators to safely intervene before, during and after instances of sexual and relationship violence and stalking. Prevention Innovations' evidence-based bystander intervention prevention strategies include Bringing in the Bystander®, an in-person prevention program and the Know Your Power® bystander intervention social marketing campaign. Both have been proven to reduce participants' rape myth acceptance; increase knowledge of the problems of sexual and relationship violence and stalking and bystander behaviors; increases people's willingness to intervene before, during and after instances of sexual and relationship violence and stalking; and increases people's self-reported bystander behaviors. Our prevention strategies have been developed with considerable input from students, staff, and faculty representing a diversity of backgrounds and have been adopted by colleges and universities across the United States and adapted for the U.S. Army. We regularly train students, faculty and staff on campuses across the country to facilitate Bringing in the Bystander and are currently working with several colleges and universities to adapt Know Your Power using photos and scenarios from their campuses.

Measuring the Problems of Sexual and Relationship Violence and Stalking on Campus

Several members of Prevention Innovations and other UNH faculty colleagues have administered an "Unwanted Sexual Experiences Survey"[1] every 5 years since 1988. The campus-wide survey measures our male and female undergraduates experiences of unwanted sexual intercourse and contact. In 2012, the survey also incorporated questions related to relationship violence and stalking and included participants from eight colleges and universities. Additionally, my colleagues have developed and evaluated a "Community Readiness to Engage",[2] modeled after the Tri-Ethnic Center at the University of Colorado, survey for campuses to measure their communities' readiness to change behaviors, social norms, policies and practices to prevent sexual and relationship violence and stalking. The prevention strategies for a particular community are dependent on where the community is at with readiness to change/engage. Thus, "prevention in a box" is not always the most appropriate approach to community change, as we can't assume that prevention strategies developed for one community will naturally transfer and translate to another community.

Helping colleges and universities prevent sexual and relationship violence and stalking on campus, effectively respond to survivors, comply with Federal laws and mandates

Prevention Innovations has just launched the *Campus Sexual and Relationship Violence Prevention Consortium* in an effort to provide technical assistance to colleges and universities as they work to meet the legislative requirements and reduce campus sexual and relationship violence. The Consortium is a project between Prevention Innovations university and college campuses across the United States that provides members with training, prevention strategies, technical assistance and evaluation tools to assess and effectively address sexual and relationship violence and stalking in their communities. Technical assistance is provided by leading researchers and practitioners in the prevention, direct services and compliance fields and is grounded in research, theory and evidence-based evaluation. Consortium goals include assessment, implementation and sustainability of compliance, response and prevention strategies to create violence-free university and college campuses.

Prevention Innovations is also working with the 14-member programs of the New Hampshire Coalition Against Domestic and Sexual Violence to build local community-based crisis centers' capacities to respond to the recent Federal legislation related to campus sexual and relationship violence and stalking. Community-based programs have the potential to provide important support to campus survivors and campus communities, both in terms of crisis response and prevention. Unfortunately, many community-based programs do not have in-depth knowledge of recent changes in Federal laws related to campus violence and there are not strong models

[1] *http://cola.unh.edu/justiceworks/reports.*

[2] Modeled after the " Community Readiness to Change" Tri-Ethnic Center at the University of Colorado.

of community and campus partnerships in this area. Community-based programs need to increase their understanding of recent reforms and identify ways that they can meet the needs of campus survivors and campus prevention requirements. Likewise, campuses need to see community-based programs as partners in meeting new requirements. We are piloting this project in New Hampshire and are currently outlining plans to implement this technical assistance nationally.

How Federal Law is working to help prevent campus sexual assault

I am delighted to see the extent to which the U.S. Department of Education, through Title IX and VAWA Amendments to the Clery Act, have prioritized campus safety, not only related to sexual assault, but also dating and domestic violence and stalking. When we discuss these important reforms, it is important for us to remember *multiple* forms of violence and not just focus on sexual assault. The recent mandates for campuses to ensure swift and effective responses to reports of sexual and relationship violence and stalking, sensitive and confidential support services for survivors and prevention education are essential to stopping these preventable offenses. All of the recent Federal mandates hold colleges and universities accountable for ensuring safety and accountability on campus. For some campuses, these mandates build upon work, services and policies that they have already begun to develop and implement. For many other campuses, these mandates provide an opportunity to begin this work in formal ways. Prevention Innovations has had the opportunity to work with many colleges and universities across the country. While campuses are diverse on many levels, our advice to them is structured around the following framework. I believe that these suggestions can also be applied to reform and strengthen Federal laws related to campus dating and domestic violence, sexual assault and stalking.

If Federal Law needs to be reformed and strengthen to better address these issues

- Build comprehensive prevention strategies and responses that focus on a continuum of violence that includes dating and domestic violence, sexual assault and stalking.
- Conduct regular and appropriate and community-wide prevention that engages all members of the campus community, including undergraduate and graduate students, staff, faculty, administrators, parents, community members/businesses, and alumni. Prevention strategies should be comprehensive and occur with students during every year of their college experience.
- Conduct regular and appropriate climate studies to measure the extent and nature of the problems of sexual and relationship violence and stalking on campus.
- Prevention strategies should be scientifically evaluated and evidence-based/research-informed. Too many non-research-based "quick solution" programs are popping up and have not been evaluated at all. For-profit companies, with no subject matter experts, are seizing the opportunity to make money off of recent Federal mandates. A number of these "solutions" to recent mandates are not research-informed or evidence-based. This is problematic.
- Prevention and response approaches need to be translated for a diversity of campuses. For example social marketing campaign images developed at the University of New Hampshire, even though they are effective, will not easily translate to an HBCU campus.
- Campuses fall along a continuum of readiness to engage in prevention and response. Thus, it makes sense that some campuses need different approaches themselves.
- While bystander intervention is important, it is also essential to teach students about sexual consent and healthy relationships. We expect them to be bystanders in instances of sexual and relationship violence if they don't know how to identify sexual consent and healthy relationships. Ideally, this formal education should occur at least in high school.
- Bystanders need to assess the situation for safety. Bystanders need to be safe in order to help others.
- Survivors need access to confidential support services and advocacy. Campuses need to identify and advertise on-campus confidential support AND partner with community-based crisis centers to provide confidential support for survivors and evidence-based/research-informed prevention.

BYSTANDER INTERVENTION RESOURCES

Engaging communities to end sexual violence: Current research on bystander focused prevention [Special issue]. Potter, S.J., & Banyard, V. (Eds.). (2011). *Violence Against Women*, 17(6).

Using a Multimedia Social Marketing Campaign to Increase Active Bystanders on the College Campus. Potter S. (2012). *Journal of American College Health*, 60(4): 282–95.

Bringing in the target audience in bystander social marketing materials for communities: Suggestions for practitioners. Potter S.J. & Stapleton J.G. (2011). *Violence Against Women*, 17: 797–812.

Using Social Self-Identification in Social Marketing Materials Aimed at Reducing Violence Against Women on Campus. Potter, S.J., Moynihan, M.M., & Stapleton, J.G. (2011). Journal of Interpersonal Violence, 26(5), 971–90.

Designing, Implementing, and Evaluating a Media Campaign Illustrating the Bystander Role. Potter, S.J., Stapleton, J.G., & Moynihan, M.M. (2008). *Journal of Prevention & Intervention in the Community,* 36(1), 39–55.

Unwanted Sexual Experiences—Reports *http://cola.unh.edu/justiceworks/reports*.

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Who Are You? *http://whoareyou.co.nz/*.

Stepping Up to Stop Sexual Assault *NY Times http://www.nytimes.com/2014/02/09/education/edlife/stepping-up-to-stop-sexual-assault.html?ref=us*.

Improving College Campus-Based Prevention of Violence Against Women: A Strategic Plan for Research Built on Multi-pronged Practices and Policies. Banyard, V. B. (2014). *Trauma Violence Abuse* ***http://tva.sagepub.com/content/early/2014/02/04/1524838014521027***.

The Evaluation of Campus-Based Gender Violence Prevention Programming: What We Know about Program Effectiveness and Implications for Practitioners, Roberta E. Gibbons and Julie Evans *http://vawnet.org/Assoc__Files__VAWnet/AR__EvaluationCampusProgramming.pdf*.

Changing Perceptions of Sexual Violence Over Time, Sarah McMahon and Karen Baker *http://vawnet.org/Assoc__Files__VAWnet/AR__ChangingPerceptions.pdf*.

What Works in Prevention. Nation, M., Crusto, C., Wandersman, A., Kumofer, K.L., Seybolt, D., Morrisey-Kane, E., & Davino, K. (2003). American Psychologist, 58(6/7).

Engaging Bystanders to Prevent Sexual Violence Packet, National Sexual Violence Resource Center. This online resource collection offers advocates and preventionists information and resources on bystander intervention. It includes resources to use with community members, as well as information and research on the effectiveness of bystander intervention. This 4-part collection was developed for use by advocates, preventionists, and community members. *http://www.nsvrc.org/projects/engaging-bystanders-sexual-violence-prevention/bystander-intervention-resources*.

The CHAIRMAN. Thank you all very much.

We'll try to do a quick round. I'll have basically one question because we have votes starting at 11:45. So we have about 15 more minutes.

Let me ask you, Ms. Stapleton, do we have any information, data, on college orientation? Do colleges have sessions on sexual assault, other forms of violence which you point out, that it's not just sexual assault, it's other forms of violence? It could be stalking. It could be intimidation that Mr. Kelly spoke about in terms of that type of intimidation of students. Do we have any data?

Ms. STAPLETON. We don't, actually, Senator Harkin, have any data. The VAWA amendments to Clery actually do outline, as Mr. Moore did talk about, primary prevention programs for dating and domestic violence, sexual assault and stalking. But we have no data, and that actually is what we've been asked to do a study on for the White House Task Force.

The CHAIRMAN. When is that going to be done by?

Ms. STAPLETON. It actually is a campus-wide study involving seven campuses, and we're conducting it in September, and we will report to the White House in January.

The CHAIRMAN. Ms. Renda, you are also a survivor of assault, and I read your testimony last night, and it seems to me we have a little bit of a difference here with Ms. Lhamon. Maybe we'll work this out, but you are basically advocating that we have different levels of sanctions, "maintain a range of sanctions so as not to deter survivors from reporting, and respect a variety of resolutions survivors seek." That sort of gets into what Senator Whitehouse and I were talking about, do all these rise to the level of felonies but maybe the survivor doesn't want to push it that far?

I'm sort of a little confused myself, because I agree with Senator Whitehouse, you don't want to permit a perpetrator who is guilty of a felony and who may be a serial perpetrator from escaping the provisions of law pertaining to felony assault. On the other hand, you're saying there ought to be other approaches also. Can you help me think this through?

Ms. RENDA. I think the kind of clear point of distinction is that maintaining a range of sanctions is about being able to offer survivors on the front end a range of different outcomes and to be able to say we can use this to mandate that your assailant get counseling or something along those lines. That's not to say though, that once the disciplinary proceeding begins, that a survivor maintains the same goals or wishes. A lot of times the recovery process causes you to change your intentions over time. Many victims feel a lot of self-blame initially that prevents them from really wanting to report in a punitive way. That changes the more the involvement on the school's part really becomes available.

That range of sanctions is a comfort in some ways, and then also allows the school to act. And once a school has initiated its formal disciplinary proceeding, it is entirely possible that they can determine that a hostile environment exists regardless of exactly what the survivor wants and would be able to work with that person to say,

> "I know you didn't want to see this person expelled, but we believe that they pose a threat to other students, and so we have to take that action."

It's a way of cooperating with survivors on their needs with and throughout that process that still allows a school to evaluate a hostile environment and still make choices that are best for the safety of campus as a whole. I think the risk that mandatory reporting would deter someone from coming forward in the first place, which prevents that whole process from taking place.

The CHAIRMAN. Mr. Kelly, again, and perhaps also Ms. Renda, again, the sanctions in the Office of Civil Rights, what they can levy against institutions out of compliance, inform me, Mr. Kelly, inform me about how you might see this. Rather than just this big nuclear option where we threaten to take away all your funds, or we're going to go to the police and have this person prosecuted as a criminal, are there other things that we need to be looking at here and approaches on this, especially as it pertains to the gay and lesbian community?

Mr. KELLY. Yes. Thank you for your question, Senator Harkin. I think that in the testimony that I provided, I think that what makes the most sense is to provide the Office of Civil Rights with numerous avenues for compliance and for the punishment of non-

compliance. So if a school is found out of compliance, right now the only option is either the full removal of Federal funding or no fines at all. There needs to be some sort of middle ground here.

What's been happening recently is students have been using the Clery Act more and more because they levy some fines. But the Clery Act fines are not tied to a campus' endowment or yearly earnings or anything like that. It's just one standard set fine that's pretty low and doesn't really have any effect on schools with hundreds of millions of dollars in their endowment.

I think that what makes most sense is to have fines tied to a school's yearly operating budget or a school's funds in some ways. That way, you see fines that are not unduly affecting the small campuses that Jim Moore was talking about earlier, the small for-profit schools that have 12 students, things like that. But also if you have a school like the University of Michigan or the University of Tennessee, where you have hundreds of millions of dollars, if not more, at their disposal, you're actually having a fine that really does have some effect, and I think that's really important.

The CHAIRMAN. Ms. Renda, do you kind of agree with that?

Ms. RENDA. I would absolutely agree. I think the key issue is that idea of budgetary reallocation on a year-to-year basis that can be flexible, that can cooperate with the current resolution agreements, may provide bystander education. The Office of Civil Rights could mandate that they provide $5,000 a year to fund those programs for a certain number of years as part of that agreement, and that would really kind of push compliance in a way that it's voluntary and in good faith now but I think would have a lot more teeth to it if it was forced.

The CHAIRMAN. What do you think of that, Ms. Stapleton?

Ms. STAPLETON. I'd like to see the discussion focus on prevention as well.

The CHAIRMAN. OK, I got that.

Ms. STAPLETON. Just because I think if we're really, truly looking to stop the problems, of course, we want to have responses to survivors and adjudication, but we really need to focus on stopping the problem.

The CHAIRMAN. I agree. We need colleges to set up better structures, better orientation, provide Clery Act information to incoming students. But they need structures in place that inform students as to what violence is, what campus violence is, what sexual violence is, what stalking, what intimidation is, yes.

Ms. STAPLETON. Absolutely, and I think an important piece of the Clery statistics is that the Clery statistics really aren't—they are what gets reported to formal structures. That's why I think——

The CHAIRMAN. Say that again?

Ms. STAPLETON. The Clery statistics really are reports that come through the university through formal structures. So in many campuses it's the campus police or the Dean of Students' office.

The CHAIRMAN. Right.

Ms. STAPLETON. What we found in our climate studies, our Unwanted Sexual Experience study that we do, is that actually a very small percentage of students who report their sexual assault experiences actually report to those formal structures. Students are most likely to report to a friend or their roommate. That's why I

think bystander intervention is so important, and also it's so important to release the findings of those climate studies so that when a prospective student and their family look at the Clery statistics and they say, "well, this is really low," it's not necessarily indicative of what's happening on the campus. A climate study would give them a much more comprehensive view of what's happening on that campus.

The CHAIRMAN. Great. Thank you.

Senator Baldwin.

Senator BALDWIN. Thank you, Mr. Chairman.

I want to start by thanking this panel for your testimony, and particularly those of you survivors who have taken something horrible and turned it into very positive advocacy and support for others.

I want to continue to highlight one aspect of the issue of campus sexual assault, the one that Mr. Kelly spoke to in his testimony; namely, how it may uniquely impact lesbian, gay, bisexual, transgender and queer people. Same-sex sexual violence has certainly not always been taken seriously by law enforcement, and social stigma and discrimination still mean that many in the LGBTQ community are reluctant to report that they have been victims of crime.

And furthermore, while title IX prohibits all forms of sex discrimination, including that based on sex stereotypes, and the Clery Act requires reporting of campus hate crimes based on sexual orientation and gender identity, there is no Federal law that specifically addresses discrimination in education based on sexual orientation and gender identity.

You heard earlier today with Senator Murray's questioning that she and I and other colleagues have introduced legislation called the Tyler Clementi Higher Education Anti-Harassment Act which would require colleges and universities to address harassment, including cyber bullying, based on sex, sexual orientation, gender identity and other characteristics. This legislation would add to the important protections that we're already discussing today and that are already on the books and ensure that colleges and universities take steps to avoid and to address harassment in all of its forms.

I would like to hear from the panel, but, Mr. Kelly, I'd love to start with you. I know you've outlined some very specific things in your written testimony, but are there other ways in which Congress or the Administration can better ensure that our response to campus sexual assault and other forms of campus violence is truly inclusive of the LGBT community?

Mr. KELLY. Thank you so much for your question, Senator Baldwin, and thank you for your work on the legislation that you were speaking about. I think it's so incredibly important.

I think that when we're talking about the harassment that queer students have occur to them, in a similar way that we talk about sex discrimination under title IX as including sexual harassment and sexual violence, I think we could be talking about sex discrimination that queer students face. The unfortunate reality is that hate crimes still happen on campus, and the unfortunate reality is that sexual violence within the queer community is still pretty rampant.

I think that making sure that policies cater specifically to those who have been most often hurt by it is the best place to start. I know there's been a lot of talk about the place of the criminal justice system here. I tried to go to the criminal justice system, but I have an unwinnable case because I'm a male. I could never prosecute against my assailant. We need to be talking about how better to have State legislation, how better to have local legislation that expands definitions of sexual violence to include male survivors and survivors of same-sex sexual assault.

I mean, some of the States that Senators on the HELP Committee are from, even, have laws that are discriminatory on the books. I was doing a quick search. You see male pronouns when we're talking about assailants. You see female pronouns when we're talking about survivors. Things like that need to be eradicated from the law, from the top-down, and I think the Senate is the place to start with it. You have to start at the top, and I appreciate all the work that you've done on this topic, and it's one that we have to keep talking about and we have to keep legislating. Thank you.

Ms. RENDA. I would reiterate that point about language. Something as simple as it's called the Violence Against Women Act, or the Office of Violence Against Women, it paints a very clear picture of who violence happens to and who perpetrates violence, and it really leaves those people out. I think something to be mindful of as well is that we're requiring colleges now to consider doing climate surveys—and you may speak better to this than I, but those should be made sure to have language that's inclusive that really measures incidence across groups and that doesn't presume opposite-sex partners or opposite-sex assailants.

Ms. STAPLETON. I would agree with my two panelists and say that I know that we work very hard to build prevention strategies that are very inclusive as well. I think, again, we need evidence to know what works.

Senator BALDWIN. Thank you.

The CHAIRMAN. Thank you.

A vote has started. I just have one pointed thing I wanted to bring up and get your thoughts on.

The Department published a proposed rule to the VAWA, the Violence Against Women Act amendments to the Clery Act just last week. One of the provisions that's gaining a great deal of attention is the new provision clarifying that both parties may have others present during an institutional disciplinary proceeding, including an advisor of their choice.

On the one hand some argue that this erodes an institution's ability to control its own proceedings, that it chips away at the institution's ability to marshal its students and community members to police their own. Others indicate that this offers both parties the right to have someone to accompany them and offer advice during what could amount to a very traumatic proceeding on either side.

OK, what are your thoughts on that?

Ms. RENDA. I would say I think both points are very salient in terms of it's really important, especially for a survivor, to have someone present during that hearing, someone to just sit next to

you or to consult with in recess, or just make sure that you're managing your expectations.

Accused students also deserve that right.

The risk, I believe, comes with lawyers and advisory counsel and the inequity that could occur if one student can afford a lawyer and the other cannot, and the types of advice that might be given that would be privileged in one sense to one side of the investigation, but then it's not available because the other student can't afford it. I think that's where that advisory role perhaps presents a serious problem.

The CHAIRMAN. Very, very good point. You're right, one student might have the financial resources to have all kinds of lawyers and legal, and the other person may not. That's a good point.

Mr. Kelly, any thoughts on that?

Mr. KELLY. What I think is really important to note is that it does not limit who the advisor can be, but it gives the school leeway to limit what the advisor can do in the meeting. A school has the ability to limit the advisor to only be present in the room and not allowed to speak, and I think that's really important because oftentimes schools, especially smaller schools, don't have victim resources. I'm talking about rape crisis counselors, domestic violence advocates, things like that. Whereas an outside crisis counseling center, a local crisis counseling center would have those resources.

To be able to limit who the advisor could be to only members within the institution, which I know a lot of schools have historically done, can be really problematic because then you can leave survivors with no one who has training in how best to support a survivor in a difficult time.

I do understand the difficulty with having attorneys present and things like that. But again, if you're limiting what's able to be said in these meetings by advisors, if you're limiting the role of the advisor, as long as you have the ability to have someone present, I think that's what matters the most.

The CHAIRMAN. Yes, exactly.

Ms. Stapleton.

Ms. STAPLETON. I think it's really essential to allow survivors to have outside support people because I think sometimes, and I've seen it happen, colleges and universities do not provide survivors with the most informed and supportive people. I would advocate heavily to have survivors have outside people, and I agree with John on schools can limit what those advisors do.

The CHAIRMAN. But again, I just raise this, and the issue of ombudsmen, having somebody that a student can go to who is not in the hierarchy of the school's structure is of critical importance.

Ms. STAPLETON. Right, very important.

The CHAIRMAN. They're not the athletic director.

Ms. STAPLETON. And particularly if that person can have confidential communications either through a counseling or health center or a victim advocate provision I think is the way to go.

The CHAIRMAN. Yes, they may not be trained legally to know all the legal nuances and stuff.

Ms. STAPLETON. Victim advocates are.

Mr. KELLY. Yes. I was actually about to say that most district attorney offices have victim witness advocates who operate basi-

cally to provide victims of crimes, a variety of crimes, with all of the resources at their disposal and sort of accompany them through the legal process. To have a victim witness advocate liaison to a specific campus I think would be a good solution to that problem.

The CHAIRMAN. Yes, exactly.

I have 2 minutes left, they tell me, to get over there.

First of all, I'd like to thank all our witnesses for sharing their expertise and views with us today. I particularly want to thank the survivors who are here with us today and for your personal courage in coming forward and speaking with us. I must say that when I hear you, I put a lot of weight on what you are suggesting rather than perhaps others. I give a lot of weight to that, and that goes to that issue of having sliding scales and things like that, that I seem to have a disagreement with the Department on. I just want to thank you for that.

Especially Ms. Stapleton, thank you for all the wonderful research you have done. You're absolutely right, I am sort of the father of prevention and health and everything else, and we have to do a better job of having structures in our schools that inform students, that set up preventive type measures. Yes, that is the first.

Ms. STAPLETON. And thank you for all your work.

The CHAIRMAN. We have to do that. But again, we have to do something also to respond to the assault victims that are there. We know it's under-reported.

Ms. STAPLETON. Absolutely.

The CHAIRMAN. Second, I want to say that I just found out that the academies, the military academies don't have to report under the Clery Act. That needs to be fixed, too. That needs to be fixed.

Again, I thank all of you. I thank my colleagues. I especially want to thank Senator Alexander for his partnership on this hearing. He had to go vote, and I know he had a plane to catch, but I want to thank the committee's efforts to examine this very critical issue. It will be a part of our Higher Education Act reauthorization.

Ms. STAPLETON. Wonderful.

The CHAIRMAN. Exactly how it's going to do, well, that's why we're having this hearing, to try to inform us as to what to do.

I request the record remain open until July 10th for members to submit statements and additional questions for the record.

The committee will stand adjourned.

Thank you very much.

Ms. STAPLETON. Thank you.

[Additional material follows.]

ADDITIONAL MATERIAL

PREPARED STATEMENT OF SENATOR BLUMENTHAL

Mr. Chairman, I appreciate the opportunity to submit testimony for the record on the urgently important topic of sexual assault on college campuses. I hosted seven roundtable discussions earlier this year at schools in Connecticut on the issue of campus sexual assault, and that experience really opened my eyes to the shameful prevalence of this crime. I listened to students, faculty, administrators, alumni, and experts give their personal and professional opinions on this pressing and difficult issue—including some who shared deeply painful experiences.

Based on the input I received from these roundtables, I developed and published a College Sexual Assault Bill of Rights Report in May 2014 which is available at *http://www.blumenthal.senate.gov/download/college-sexual-assault-report-final*. I have spoken with schools in Connecticut and urged them to use this Bill of Rights report to ensure that their institutional policies provide all students with the rights and protections that they deserve.

What I heard from the Connecticut community underscores what I have known for a long time: the prevalence of a sexual violence in schools is an urgent civil rights issue. Although this crime is vastly underreported, it is disturbingly common.

Multiple aspects of campus life create the conditions that enable sexual violence to occur. Many students do not understand how to address—or even to recognize—a potentially dangerous situation. Inadequate enforcement of drug and alcohol policies by some schools gives perpetrators easy access to tools that they can use to facilitate the crime of assault. Additionally, social pressure, a lack of information, and apathetic or hostile administrative responses discourage reporting.

We can and must take concrete steps to both reduce the number of assaults and improve how they are dealt with when they occur so that students can successfully achieve their academic goals. Campus communities should strive to establish a culture that treats sexual assault as completely unacceptable, and legislators and regulators should encourage and support this.

I am grateful for the work of my colleague Senator Casey, who has been a leader on this issue for many years. His success in passing the Campus Sexual Violence Elimination Act was a significant step forward, and I look forward to building on his efforts once the Department of Education finalizes the regulations to implement his legislation. I'm also very appreciative that Chairman Harkin has brought additional attention to this issue through this hearing. I have been working on a comprehensive piece of legislation with my colleagues Senators Gillibrand and McCaskill, and I'm hopeful that we can all move forward together in the fight to end campus sexual assault.

The scourge of sexual violence in schools is a difficult issue that we must seek to understand with sensitivity and steadfast commitment. We owe it to those who have been brave enough to share their stories to make concrete and comprehensive efforts to eradicate this pernicious problem.

PREPARED STATEMENT OF SENATOR MCCASKILL

Thank you, Chairman Harkin and Ranking Member Alexander, for holding this important hearing on the issue of sexual assault on our college campuses. As you know, about 25 percent of women and 4 percent of men are victims of sexual assault during their college years. These numbers are troubling to parents, students, and educators. As a mother and former prosecutor of sex crimes, I am working extensively with my Senate colleagues to ensure students are protected from incidents of sexual violence and perpetrators are held accountable.

As Chairman of the Subcommittee on Financial and Contracting Oversight in the Committee on Homeland Security and Governmental Affairs, I recently completed a series of three roundtables to examine sexual assault on college campuses that brought together advocates, sexual assault survivors, prosecutors, police, and university faculty and staff. Throughout the course of these three roundtables, common themes from participants were the importance of the Federal Government offering support to universities to combat this problem, the need to hold schools accountable for protecting students, and the importance of universities working with local police and prosecutors to ensure these crimes are handled appropriately.

As a former prosecutor, I take special interest in ensuring that survivors are given adequate support and feel empowered to make informed decisions regarding the adjudication and disposition of their cases. This cannot succeed without survivors meeting, as soon as possible, with personnel trained in interview techniques designed for victims of traumatic events. This interviewing technique, known as the forensic interview, is a vital tool in supporting survivors as well as ensuring the preservation of evidence to build strong cases against perpetrators. I am concerned that interviews of this sort are used far too infrequently in sexual assaults and hardly ever, if at all, on college campuses.

Additionally, campuses, local law enforcement, and prosecutors must work together to protect students from sexual violence on campuses. This cannot be done without cooperation between colleges and universities and local law enforcement. Rather than compete or work against one another, colleges and universities and local law enforcement must share the responsibility of supporting survivors and punishing perpetrators.

I look forward to working with my Senate colleagues and members of this committee on this issue in the coming months. We must continue to work to improve survivor confidence in the judicial and campus systems, which will, in turn, increase reporting, support survivors, and punish perpetrators of sexual assault on our college campuses.

PREPARED STATEMENT OF JOCELYN SAMUELS, ACTING ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION. U.S. DEPARTMENT OF JUSTICE

The Department of Justice appreciates the opportunity to submit this statement for the record of the committee's June 26, 2014 hearing on combating sexual assault and violence under Title IX of the Education Amendments of 1972 (Title IX) and related legislation. In this statement, the Department will outline its responsibilities under title IX, Title IV of the Civil Rights Act of 1964 (Title IV), and other laws, as well as provide some examples of Department's work on campus sexual violence

issues. Our enforcement work under these statutes and the stories of the brave survivors we have met through that work have further strengthened our commitment to use all of the tools at our disposal to combat sexual assault.[1]

Sexual harassment and assault deny students the ability to live and learn in a safe educational environment—and are a form of sex discrimination that can violate the Nation's civil rights laws when they create a hostile environment. Survivors are often unable to complete their academic work, and suffer serious short- and long-term negative mental health consequences.

Feeling unsafe on campus, they are more likely to leave the university before graduating. The devastating rates of sexual assault remind us of the continuing critical importance of enforcing these civil rights laws to address sex discrimination in all education programs.

I. INTRODUCTION

Passed by Congress on June 23, 1972, title IX bars sex discrimination in education programs and activities offered by entities receiving Federal funds. In the 42 years since its enactment, title IX has improved access to educational opportunities for millions of students, helping to ensure that they all have an "equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities."[2] In 2012 alone, title IX protected over 49 million students enrolled in elementary and secondary schools,[3] as well as over 20 million students enrolled in postsecondary education.[4]

Title IV was passed in 1964 to prohibit public schools, colleges, and universities from discriminating against students on the basis of race, color, national origin, and religion, and was amended in 1972 to prohibit sex discrimination as well. As applicable here, the fundamental principle underlying both title IX and title IV is that students may not be denied educational opportunities based on their sex—a principle that applies to the wide range of educational programs and activities offered by schools, including but not limited to: academic programs; financial aid for postsecondary institutions; student services and counseling; and athletics and physical education. Additionally, educational institutions may not retaliate against a person because he or she opposed, reported, or complained about sex discrimination or participated in a discrimination investigation or proceeding.

These laws protect students from sexual harassment, including sexual assault, that creates a hostile environment. When educational institutions fail to respond adequately to campus sexual assault, they engage in discrimination by forcing the affected students to attend school in a hostile sex-based environment. Under title IX, title IV, and other laws discussed below, educational institutions must respond to sexual assault quickly and effectively, including supporting survivors during the investigation and bringing perpetrators to justice. Ensuring that campus police respond to complaints of sexual assault, and that educational institutions' investigative and disciplinary processes are prompt, fair, adequate, and reliable for both victims and alleged perpetrators is critical to protecting the civil rights of all students on campuses.

II. DEPARTMENT OF JUSTICE ENFORCEMENT AUTHORITY

The Department of Justice's commitment to preventing and responding to sexual assault and to holding schools accountable for fulfilling their obligations under Federal law is one that is shared across different divisions of the Department, including the Civil Rights Division, the Office on Violence Against Women,[5] and the Office of Justice Programs.

The Civil Rights Division of the Department of Justice combats sexual assault through enforcement of four laws: title IX, title IV, Section 14141 of the Violent

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[1] Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of providing consent. Sexual violence includes rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. When using the term sexual assault, this testimony refers to all forms of sexual violence on campus.

[2] *U.S.* v. *Virginia*, 518 U.S. 515, 532 (1996).

[3] "Digest of Education Statistics, 2012," *National Center for Educational* Statistics available at *http://nces.ed.gov/programs/digest/d13/tables/dt13_203.20.asp*.

[4] "Digest of Education Statistics, 2012," *National Center for Educational* Statistics available at *http://nces.ed.gov/programs/digest/d13/tables/dt13_302.10.asp*.

[5] The Department of Justice's Office on Violence Against Women administers grant programs that provide Federal funds to colleges and universities under the Violence Against Women Act (VAWA). The Department's Office of Justice Programs, Office of Civil Rights enforces the provisions of the Violence Against Women Reauthorization Act of 2013 that prohibit discrimination on the basis of sex, among other bases, by recipients of VAWA funds.

Crime Control and Law Enforcement Act of 1994, and the Omnibus Crime Control and Safe Streets Act of 1968. The Department's unique enforcement authority under these four laws enables the Division to address sexual assault in a holistic manner by engaging all of the entities that play a role in preventing and responding to sexual assault, thus strengthening the potential for sustainable and community-wide solutions.

a. Title IX of the Education Amendments of 1972 ("Title IX")

As described above, title IX applies to all educational institutions that receive Federal funds, including all K–12 public school districts and almost every college and university. When the Department of Justice provides Federal funds to a school, it can initiate a title IX compliance review or title IX complaint investigation. The Department of Justice also coordinates title IX enforcement for all Federal agencies and can initiate litigation to enforce title IX upon referral from the agency funding the discriminating school when findings of sex discrimination cannot be voluntarily resolved with the educational institution. In addition, the Department of Justice can intervene, file *amicus* (friend-of-the-court) briefs, or file statements of interest in title IX lawsuits initiated by private parties.

b. Title IV of the Civil Rights Act of 1964 ("Title IV")

Title IV prohibits discrimination on the basis of sex, as well as race, color, national origin, and religion in *public* schools, colleges, and universities, regardless of whether they receive Federal funds. Under title IV, the Department of Justice may conduct investigations and, upon receipt of a complaint, file enforcement actions in court to address sex-based discrimination, including sexual harassment, at public educational institutions.

c. Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994 ("Section 14141") and the Omnibus Crime Control and Safe Streets Act of 1968 ("Safe Streets Act")

These two laws prohibit law enforcement agencies, including campus police, from engaging in a pattern or practice of discriminating on the basis of sex in their response to sexual assault. Section 14141 authorizes the Department of Justice to review whether a law enforcement agency engages in a pattern or practice of misconduct that violates people's Federal statutory or constitutional rights. Where the Department of Justice finds such a pattern or practice of misconduct, it may seek injunctive relief to remedy these violations. Additionally, the Department of Justice enforces the anti-discrimination provisions of the Safe Streets Act. Under this Act, the Department is authorized to investigate and, where appropriate, file suit to address allegations of a pattern or practice of discrimination on the basis of race, color, sex, or national origin by law enforcement agencies receiving Federal funds.[6]

Below, we address the standards applicable under title IV and title IX in more detail.

III. INVESTIGATIVE STANDARDS

Sexual violence is a form of sexual harassment. It refers to physical sexual acts perpetrated against a person's will or where a person is incapable of providing consent. Sexual violence includes rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. An educational institution violates title IX and title IV if: (1) a student is sexually harassed and the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the program (i.e., the harassment creates a hostile environment); (2) the educational institution knew or reasonably should have known about the harassment; and (3) the institution fails to take immediate effective action to end the harassment, eliminate the hostile environment, prevent its recurrence, and address its effects, where appropriate.

To determine whether a hostile environment based on sex exists, the Civil Rights Division considers whether there was any harassing conduct that was sufficiently serious—that is, sufficiently severe, pervasive, or persistent—to deny or limit a student's ability to participate in or benefit from a school program, activity, or opportunity based on sex. Under title IX's administrative enforcement standard and title IV's injunctive relief standard, "severe, pervasive, or persistent" sexual harassment establishes a hostile environment; if an educational institution knew or reasonably should have known of it, the school must effectively address it.

[6] Under the Safe Streets Act, the Department of Justice's Office of Justice Programs, Office for Civil Rights has the authority to investigate individual complaints that grantees of Department of Justice funds have violated the Safe Streets Act's prohibition on discrimination.

In determining whether it is fulfilling its legal obligations, an educational institution must examine from an objective and subjective perspective all relevant circumstances with respect to whether a hostile environment exists, including: the type of sexual harassment (e.g., whether it was verbal or physical or both); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved (e.g., teacher-student or student-student); the setting and context in which the harassment occurred; whether other incidents have occurred at the educational institution; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical, e.g., rape.

As the Office for Civil Rights' (OCR) of the U.S. Department of Education has stated, when a school knows or reasonably should know of possible sexual assault, the educational institution must take immediate and appropriate steps to investigate or otherwise determine what occurred, subject to the survivor's requests for confidentiality, in which case the school must consider a range of factors. These factors are discussed in OCR's recent Questions and Answers guidance about sexual violence issued on April 29, 2014. Investigations must be prompt, thorough, and impartial to reliably determine what occurred. If the educational institution finds that a hostile environment has been created, it must take prompt and effective action to stop the harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, address its effects. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

In its investigation and enforcement work determining whether a hostile environment exists and whether an educational institution has adequately responded to allegations of sexual assault, the Civil Rights Division considers whether schools:

- Have and implement sexual assault policies that are clear, consistent with Federal law, and readily accessible to students;
- Provide appropriate training for school officials and campus law enforcement;
- Respond promptly and effectively to complaints of sexual assault; and
- Eliminate sex-based hostile environments when they are found, including providing meaningful relief to address the impact on affected students and, where appropriate, the larger campus community.

In addition to working with educational institutions to address sexual assault, the Division also provides guidance to courts through its filings of complaints, motions, and *amicus briefs* to ensure the application of proper legal standards under title IX and title IV.

a. Developing Clear and Accessible Policies That Protect All Students

To effectively prevent sexual assault, schools' sexual misconduct policies should provide definitions of sexual assault, sexual harassment, and other relevant terms that are clear and consistent with Federal law. Confusion over what constitutes "consent" or where and when "sexual harassment" should be reported can make it more difficult to hold alleged perpetrators accountable. For example, by definition, being under the influence of psychoactive substances can impact an individual's ability to consent to sexual activity. While the reporting rate for all sexual assaults is low, in cases where the survivor has used alcohol or drugs, reporting rates are even lower. In a recent study of rape among college women, 11.5 percent of survivors reported the rape to law enforcement officials, but only 2.7 percent of survivors who had used alcohol or drugs at the time of the rape reported the crime.[7] Sexual misconduct policies must be drafted to make clear that all survivors can come forward for counseling and to file a complaint.

These policies also should be drafted in culturally responsive and inclusive ways to protect all survivors of sexual violence. Without inclusive policies, schools too often inappropriately treat survivors of same-sex violence and dating violence differently than other victims—by perpetuating the perception that rape is only acted out by a man against a woman or by a stranger, for example.

Schools must also broadly disseminate policies so that students know how to report assaults; who they can talk to—both confidentially and when they want to file a complaint; and how to access support services. Students must be clearly informed that the decision as to whether to file a complaint with law enforcement is the survivor's decision. And most importantly, schools must implement their policies and grievance procedures to ensure safe, nondiscriminatory learning environments for all students.

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[7] Wolitzky-Taylor KB1, Resnick, H.S., Amstadter, A.B., McCauley, J.L., Ruggiero, K.J., Kilpatrick, D.G. Reporting rape in a national sample of college women. *J Am Coll Health.* 2011;59(7):582–7. doi: 10.1080/07448481.2010.515634. available at *http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3211043/*.

b. Providing Appropriate Training for School Officials

Individuals investigating sexual assault and harassment complaints and those responsible for coordinating title IX compliance must also receive adequate training. All first responders and persons involved in the investigation and disciplinary process should be "trauma informed"—meaning that they understand the physiological and neurobiological changes caused by trauma, which affect how survivors behave, recall information, and interact with investigators and prosecutors.

School employees tasked with investigating and adjudicating sexual misconduct must also be trained on the school's policies applicable to the adjudication process, and those policies must be fair to both survivors and perpetrators. And all students on campus should receive training on the school's policies and procedures as well.

Finally, training is also critical for campus law enforcement. Investigating sexual assault can be difficult even for seasoned police officers, and a survivor's interaction with law enforcement can affect whether the survivor is willing to go forward with the case. In addition to jeopardizing an investigation, ineffective or sporadic sexual assault response and investigation training can deprive officers of the knowledge necessary to avoid re-traumatizing survivors.

c. Ensuring Prompt and Effective Responses to Complaints of Sexual Violence

Schools have a duty to respond promptly and effectively to complaints of sexual assault. Delayed investigations and other flawed responses can too often lead to the loss of critical evidence and to students missing class, taking leaves of absence, or dropping out of school due to fears for their safety or retaliation. The Civil Rights Division looks carefully at how campus law enforcement responds to complaints of sexual assault, and how the colleges' investigative and judicial processes treat both survivors and alleged perpetrators. Ensuring that the college adjudication process is prompt, fair, and impartial is critical to compliance with Federal civil rights laws.

d. Delivering Meaningful Relief to Students and Campus Communities

When schools learn of a report of sexual assault, they must offer interim relief as necessary to protect the student's safety and well-being. This can involve a number of accommodations, from providing counseling or legal services to changing the student's living, class, or testing arrangements. The school should provide these supports as necessary regardless of whether the student wants to proceed with an investigation or discipline the accused.

If a school determines that sexual assault has created a hostile environment for the student or for the campus more broadly, it must not only take effective steps to stop the harassment but also to remedy its effects, where appropriate. These steps can include ensuring that the student is safe from further harassment and is able to stay in school with appropriate supports and accommodations, such as medical, counseling, and academic support services. This also can include campus-based remedies such as providing training for students and employees, strengthening school policies, conducting bystander intervention programs with students, and undertaking other activities to prevent the recurrence of sexual assaults. And, of course, institutions should ensure that no student is subject to retaliation for complaining about sexual assault or bringing concerns to the institution's attention.

In our complaint investigations and compliance reviews, the Division works to design resolutions that will bring meaningful relief to student survivors and create lasting change to improve the campus climate for all students. Our agreements addressing sexual assault under title IX, title IV, the Safe Streets Act, and section 14141 agreements are posted publicly on the Department's and White House's websites and provide information to students, advocates, and universities that can be used to help improve schools' and law enforcement's responses to and prevention of sexual assault.

IV. EXAMPLES OF INVESTIGATIVE ACTIVITIES

In May 2012, the Department of Justice announced investigations of the University of Montana at Missoula, the University of Montana's Office of Public Safety (OPS), the Missoula Police Department (MPD), and the Missoula County Attorney's Office (MCAO) to ensure that these entities were adequately responding to reports of sexual assaults and meeting their legal obligations under title IX, title IV, Section 14141, and the Safe Streets Act. With cooperation from the University president, the Departments of Justice and Education reached an agreement with the University of Montana, and the Department of Justice reached a separate agreement with OPS. The Department of Justice also reached separate agreements with MPD and MCAO. These agreements embodied a comprehensive approach to resolving sexual assault issues; it is our hope that they will serve as an example for other postsec-

ondary institutions and law enforcement agencies seeking to ensure compliance in these areas.

In addition, the Department of Justice has pursued title IV and title IX cases in K–12 schools, protecting young people against sexual assault and harassment. In recent years, in Tennessee, Pennsylvania, California, and New York, the Department of Justice has reached settlements or consent decrees with school districts to resolve issues of sexual assault or sexual harassment.

a. Missoula, MT

In Missoula, MT, the Department of Justice engaged in four investigations of sex discrimination using the full breadth of our enforcement authorities under the four applicable statutes just mentioned. As detailed below, the investigations found serious deficiencies in the response to sexual assault by the University of Montana-Missoula, OPS, MPD, and MCAO. In May 2013, the Department entered into agreements with the University, OPS, and MPD to resolve findings related to those parties. In June 2014, the Department entered into an agreement with MCAO. All of the entities have agreed to work cooperatively together and with the Department of Justice to implement these agreements and improve the safety of all students and other members of the Missoula community.

i. University of Montana-Missoula and the University of Montana's Office of Public Safety

The Department of Justice's title IV investigation and the title IX compliance review conducted jointly by the Departments of Justice and Education identified several ways in which the University's response to sexual assault fell short of its legal responsibilities. The Departments found that the reported incidents of rape or sexual assault were sufficiently serious that they interfered with or limited female students' ability to participate in or benefit from the school's program. As a result, students faced a hostile environment—they could not engage in or complete their academic work; they experienced negative mental health consequences; they felt unsafe on campus; and some left the University. The Departments further found that the University failed to take effective action to fully eliminate this sexually hostile environment, prevent its recurrence, and remedy its effects. For example, the Departments' investigation determined that the University's sexual harassment and assault policies did not provide clear notice of the conduct prohibited by the University or clear direction about where and how to file complaints; the University's grievance procedures did not ensure prompt and equitable resolution of complaints of sex-based harassment; and the individuals investigating sexual assault and harassment complaints and those coordinating the University's title IX efforts did not receive adequate training.

In May 2013, with the full cooperation of the University administration, the Departments of Justice and Education reached a comprehensive resolution agreement with the University to resolve the findings of noncompliance under title IX and title IV. The agreement requires the University to, *inter alia*: revise its sex-discrimination policies and grievance procedures; retain a consultant with expertise in addressing sexual assault and harassment to help the University develop effective sexual assault and harassment policies and grievance procedures; conduct extensive training for University employees and students; develop a system for tracking and resolving reports of sexual assault and harassment in a timely and effective manner; and conduct campus climate surveys to assess whether the reforms put in place by the agreement are proving successful at preventing and effectively responding to sexual assaults.

The Department of Justice also conducted a comprehensive investigation of OPS, under the Safe Streets Act and Section 14141, to assess whether OPS was discriminating on the basis of sex in responding to reports of sexual assault. The investigation found that the OPS' response to sexual assaults was compromised by deficiencies in policy, training, and practice. These deficiencies made it more difficult for law enforcement to effectively investigate allegations of sexual assault, depriving female sexual assault survivors of basic legal protections, and reducing the ability of OPS to protect the public safety of the entire campus. In May 2013, the Department reached an agreement with the University that required OPS to develop new policies, training, and supervision related to handling sexual assault cases. This agreement also requires the University to participate in innovative initiatives such as a "community safety audit" focused on sexual assault, and an external group that reviews sexual assault cases handled by the Missoula Police Department and OPS. The implementation of these measures is being assessed and guided by an agreed-upon monitor.

ii. Missoula Police Department and Missoula County Attorney's Office

Using its authority under the Safe Streets Act and section 14141, the Department conducted a comprehensive investigation of the MPD's response to sexual assault at the University of Montana-Missoula and in Missoula more generally. The Department found that deficiencies in MPD's response to sexual assaults compromised the effectiveness of sexual assault investigations from the outset, making it more difficult to uncover the truth and having the effect of depriving female sexual assault survivors of basic legal protections In May 2013, the Department reached an agreement with MPD requiring it to develop new policies, training, and supervision related to handling sexual assault cases. The agreement requires MPD to participate in the "community safety audit" focused on sexual assault and to establish an external group to review sexual assault cases handled by the MPD and OPS. A monitor will assess and guide implementation of all of these measures.

The Department also investigated alleged gender bias in the prosecution of sexual assaults by the MCAO. In June of this year, the Division reached a landmark agreement to resolve its investigation under which the MCAO and Missoula County agree to improve MCAO's response to allegations of sexual assault and eliminate discrimination and gender bias. Under the agreement, the MCAO will take many significant steps to address gender bias and help restore community confidence in the county criminal justice system. These steps include the development and implementation of sexual assault policies and training for county prosecutors, the improvement of county prosecutors' treatment of individuals who report sexual assault, and enhanced county prosecutor collaboration with local law enforcement agencies in conducting investigations and pursuing prosecutions. The MCAO also agreed to hire an in-house survivor witness coordinator and analyze survivor witness surveys to improve coordination and communication with other Missoula stakeholders regarding sexual assault response. The implementation of these measures is being assessed and guided by an agreed-upon technical advisor and the Montana Attorney General's office.

b. Allentown, PA

In July 2012, the Department of Justice and the Allentown School District filed a consent decree addressing multiple complaints of sexual assault of students at an elementary school, including allegations that 6- and 7-year-old students were sexually assaulted by another student in the boys' bathrooms. The Department had intervened in the private title IX lawsuit against Allentown in 2009 to ensure that title IX was properly interpreted and that the serious claims were effectively remedied. In this case, the Department alleged that the sexual assaults occurred on at least five separate occasions; that the district was made aware of each incident immediately after it occurred; and that despite this notice, the district did not take appropriate action, and in some circumstances took no action, to prevent the harassment from recurring. Furthermore, the Department alleged that both before and after the sexual harassment of the students, the district failed to adopt and implement adequate and effective sexual harassment policies and procedure as required by Federal law.

The consent decree requires systemic relief, including: implementation of a comprehensive plan to prevent and address sexual harassment in all district schools; revised and effective sexual harassment policies and procedures, including procedures for communicating with police, hospital, and child protection agencies; and training of administrators, faculty, staff, students, and parents. We have been actively monitoring this consent decree to ensure that the district fulfills its obligations and provides a safe learning environment free of sex discrimination.

c. Nashville, TN

In 2008, the Department intervened in another privately brought title IX case against the Nashville public school district. The parent alleged that her 9-year old autistic child was sexually assaulted by another student while riding a special education school bus. After conducting extensive discovery, the Department determined that the student perpetrator had a lengthy and well-documented history of sexual misconduct prior to assaulting the young autistic boy, that district officials were aware of this history, and that the district did not take steps to protect the passengers on the perpetrator's school bus. In 2010, the Department of Justice successfully negotiated a consent decree with the school district that requires it to take extensive steps to enhance the security of students with disabilities on public school buses. These steps include: staffing bus monitors to assist drivers on all special education buses; implementing comprehensive screening procedures to ensure that students with disabilities are not assigned to buses where they would be at risk of harassment; expediting the investigation of suspected acts of sexual harassment involv-

ing students with disabilities; and ensuring open lines of communication between transportation officials and school-based personnel. The district also agreed to pay the family $1.475 million as part of the settlement. The Department of Justice continues to monitor compliance with the consent decree, including conducting a recent site visit of the district.

d. Other Cases

The Department has addressed sexual assault and sexual harassment in other cases. For example, in 2011, the Department of Justice and the Department of Education reached a settlement with the Tehachapi, CA school district to resolve a complaint of sexual harassment and assault of a middle-school boy who committed suicide. Both Departments also collaborated with the U.S. Attorney's Office in Minnesota in a title IX–title IV investigation involving gender stereotyping and other harassment that culminated in a 2012 consent decree with the Anoka-Hennepin school district in Minnesota.

The Civil Rights Division and the U.S. Attorney's Office for the southern district of New York also successfully intervened in a private title IX case against the Rhinebeck, NY school district, and from 2006 through 2009 jointly monitored the district's implementation of a comprehensive consent decree to resolve the hostile environment created in the district by a decade of sexual harassment of female students by a school principal.

V. OTHER ACTIVITIES

In addition to its investigative and enforcement work, the Department of Justice participates in a variety of programs to prevent campus sexual assault. The Office on Violence Against Women helps colleges and universities improve their response to sexual assault through grant funding. The Office of Justice Programs funds law enforcement agencies developing innovative methods to respond to and prevent sexual harassment and assault. And the Department of Justice coordinates with other agencies and participates in the White House Task Force on Protecting Students from Sexual Assault.

a. Office on Violence Against Women

The Department of Justice's Office on Violence Against Women (OVW) administers grant programs that provide Federal funds to colleges and universities under the Violence Against Women Act. Specifically, the Grants to Reduce Sexual Assault, Domestic Violence, Dating Violence, and Stalking on Campus Program makes competitive grant awards to institutions of higher education, and grantees are required to implement evidence-informed prevention programs like bystander education. The Campus Program strengthens on-campus victim services, advocacy, security, and investigation and improves both prosecution and prevention of sexual assaults. Campus Program grantees must: provide prevention programs for all incoming students; train campus law enforcement or security staff; educate campus judicial or disciplinary boards on the unique dynamic of sex-related crimes; and create a coordinated community response to enhance victim assistance and safety while holding offenders accountable.

Since the inception of the Campus Program in 1999, OVW has funded approximately 388 projects, totaling more than $139 million, for grantees addressing domestic violence, dating violence, sexual assault, and stalking on campuses. The Office solicits applications from institutions of higher education across the country, including community colleges, historically black colleges and universities, tribal colleges and universities, universities and colleges that serve primarily Latino or Hispanic populations, and universities and colleges based in the five U.S. territories.

To reach beyond Campus Program grantees, OVW is working to share information with colleges and universities across the country. In the coming weeks, OVW will launch the first phase of a comprehensive online technical assistance project for campus officials. Key topics will include victim services, coordinated community responses, alcohol and drug-facilitated sexual assaults, and compliance with the Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act (Clery Act). Webinars and materials will include the latest research, promising practices, training opportunities, policy updates, prevention programming, and recent publications. The project will feature strategies and training materials for campus and local law enforcement.

OVW also uses Violence Against Women Act grant programs to help communities institute sexual assault response teams, support sexual assault nurse examiners, train law enforcement on trauma and special investigative techniques, and develop special prosecution units. The Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program is particularly essential to supporting these proven-

effective strategies. In addition, OVW funds cutting-edge technical assistance projects with law enforcement associations, including the International Association of Chiefs of Police and the Police Executive Research Forum. Universities and colleges can collaborate with these community resources to improve and ensure the most effective responses to sexual assault.

b. Office of Justice Programs

In fiscal year 2014 the Department of Justice's Office of Justice Programs (OJP) Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office) is launching the Campus Sexual Assault Perpetrator Treatment Pilot Project. The SMART Office will award a grant to develop a treatment curriculum for campus sexual assault offenders based upon evidence-based approaches with a proven track record. The curriculum will be implemented on one or more campuses, and made available for implementation at other colleges and universities across the country.

c. Coordination with Other Agencies

Partnering with other Federal agencies to combat sexual assault sends a powerful message. For example, the Civil Rights Division partnered with the Department of Education's Office for Civil Rights in its investigation of allegations of sexual assault and harassment at the University of Montana. The Civil Rights Division has also worked closely with the Office for Civil Rights on title IX guidance, and assists other Federal agencies to promote consistent enforcement of title IX.

The Civil Rights Division is also a member of the White House Task Force to Protect Students from Sexual Assault. Created this year by President Obama, the Task Force works to increase transparency, enforcement, public awareness, and interagency coordination to prevent sexual violence and support survivors. The first report of the Task Force was released on April 29, 2014, and on the same day, a website to assist students and schools and to increase transparency was launched at NotAlone.gov. Resources include a sample Sexual Assault Policy Checklist and a sample Campus Climate Survey.

VI. CHALLENGES

In its enforcement efforts against sexual assault and harassment, the Civil Rights Division has encountered numerous challenges, a few of which are included here.

First, it is important to increase reporting of sexual assault and ensure that those who report get the help they need. Vague or unclear policies that create confusion about where to report and/or the misimpression that sexual misconduct needs to be quite severe before reporting contribute to underreporting. This problem can be mitigated by a single comprehensive policy with clear definitions that encourages reporting; wide distribution of available resources; more streamlined procedures for handling reports; and training for all students, employees, and faculty.

The Departments of Justice and Education have further found that too many schools, colleges, and universities fail to respond to complaints properly and effectively, including by failing to conduct investigations or failing to support complainants during and after investigations. We also have found instances when schools did not respond adequately to complaints of retaliation following a report, which in turn exacerbates under-reporting. It is critical that when students report traumatic experiences of sexual assault, those who respond are properly trained to do so. Unfortunately, both Departments have found that individuals investigating and adjudicating sexual assault complaints and those responsible for coordinating title IX compliance across campuses often do not receive adequate training.

Finally, despite recognizing that sexual harassment is a form of discrimination prohibited by title IX, the Supreme Court has established legal standards in two cases—*Gebser* v. *Lago Vista Ind. School District*[8] and *Davis* v. *Monroe County Board of Education*[9]—that impose significant burdens on students who attempt to recover damages under title IX for harassment suffered at the hands of school employees or fellow students. Under *Gebser* and *Davis*, it is harder for students to gain full relief in title IX sexual harassment cases than it is for employees to obtain redress for sexual harassment in the workplace under Title VII of the Civil Rights Act of 1964.

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[8] *Gebser* v. *Lago Vista Independent School District*, 524 U.S. 274 (1998).
[9] *Davis* v. *Monroe County Board of Education*, 526 U.S. 629 (1999).

VII. CONCLUSION

Education is the great equalizer—it offers a lifeline to young men and women for whom a successful future is not predetermined. And for all students to have the opportunity to succeed, all students must feel safe and have confidence in schools' demonstrated commitment to protect them. For that reason, the Department of Justice will continue to vigorously enforce our Nation's civil rights laws, including by ensuring that sex discrimination does not prevent students from achieving their goals and by fostering safe and nurturing environments where every student has the opportunity to prosper.

U.S. SENATE,
WASHINGTON, DC 20510,
July 10, 2014.

Hon. TOM HARKIN, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
Dirksen Senate Office Building, Room 428,
Washington, DC 20510.

DEAR CHAIRMAN HARKIN: I would like to request inclusion of the enclosed letter from the American Civil Liberties Union in the record for the June 26, 2014 hearing entitled, "Sexual Assault on Campus: Working to Ensure Student Safety." I appreciate your consideration of this request.

Sincerely,

ROBERT P. CASEY, JR.,
U.S. SENATOR.

AMERICAN CIVIL LIBERTIES UNION (ACLU),
WASHINGTON, DC 20005,
June 26, 2014.

Hon. TOM HARKIN, *Chairman,*
Health, Education, Labor, and Pensions (HELP) Committee,
U.S. Senate,
Washington, DC 20510.

Hon. LAMAR ALEXANDER, *Ranking Member,*
Health, Education, Labor, and Pensions (HELP) Committee,
U.S. Senate,
Washington, DC 20510.

Re: Hearing on Sexual Assault on Campus—Working to Ensure Student Safety

DEAR CHAIRMAN HARKIN AND RANKING MEMBER ALEXANDER: For nearly 100 years, the American Civil Liberties Union (ACLU) has been our Nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 States, Puerto Rico, and Washington, DC, for the principle that every individual's rights must be protected equally under the law.

On behalf of the ACLU, we thank the committee for convening this hearing on campus sexual assault and efforts to ensure student safety. This is an important and timely discussion, and one in which we are pleased to participate. We very much hope the committee will consider the recommendation offered below as it grapples with these issues.

THE WORK OF THE DEPARTMENT OF EDUCATION'S OFFICE FOR CIVIL RIGHTS (OCR) ON SEXUAL VIOLENCE AND HARASSMENT IN SCHOOLS

OCR is to be commended for its attention to and impactful enforcement of title IX[1] against schools in cases involving sexual violence and harassment. The ACLU's Women's Rights Project has filed complaints with OCR using the administrative

[1] 20 U.S.C. §§ 1681–88 (2012).

process, challenging how a Texas school district[2] responded to a high school student who reported sexual assault and another involving a student at Carnegie Mellon University.[3] The OCR process is an important avenue for relief and has helped bring about comprehensive changes at some schools. We urge continued support for OCR's critically important work on these issues.

DATING VIOLENCE, DOMESTIC VIOLENCE, STALKING, AND TITLE IX

In its April 2011 "Dear Colleague Letter," OCR discussed how title IX's protections apply to actions such as rape, sexual assault, sexual battery, and sexual coercion.[4] Yet OCR did not address how other forms of gender-based violence, such as domestic violence, dating violence, and stalking, fall within title IX's reach. In contrast, other Federal agencies have recognized that discrimination against victims of domestic violence can constitute sex discrimination.[5] Moreover, the Clery Act now requires schools to incorporate domestic violence, dating violence,[6] and stalking into their policies and procedures, and thus the need to explain how title IX applies in those situations is even more pressing.

Congress should urge OCR to address this oversight as soon as possible. OCR should acknowledge that dating violence, domestic violence, and stalking are encompassed by title IX and provide guidance on the issue so as to ensure that survivors of stalking, domestic violence, and dating violence on college campuses have access to the protections of title IX to which they are entitled.

NEED FOR GREATER GUIDANCE ON THE DUE PROCESS RIGHTS OF THE ACCUSED

OCR has made great progress in providing guidance to schools on the rights of students who report experiencing sexual harassment and sexual violence. In guaranteeing those rights, OCR should also give clear guidance on the due process rights and other rights of the accused. OCR acknowledged the rights of the accused in its 2001 Guidance by referring to confidentiality concerns of the accused, due process rights of the accused, and First Amendment issues when "speech or expression are involved."[7] Additional guidance issued by OCR has briefly mentioned the rights of the accused as well.[8] However, OCR guidance does not describe such rights with the level of detail that would inform students and institutions about the rights to which the accused is entitled.[9] Guidance from OCR regarding guaranteeing the accused's

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[2] *See* Sandra Park, *Title IX Victory: Civil Rights Office Condemns School's Actions in Sexual Assault Case*, ACLU BLOG OF RIGHTS (June 20, 2012, 5:16 PM), *https://www.aclu.org/blog/womens-rights/title-ix-victory-civil-rights-office-condemns-schools-actions-sexual-assault-case*.

[3] *See* Complaint, *available at https://www.aclu.org/sites/default/files/assets/2013_12_18_-_carnegie_mellon_complaint_-_redacted_and_sanitized.pdf*.

[4] *See* Letter from Russlynn Ali, Assistant Sec'y for Civil Rights, Office for Civil Rights, U.S. Dep't of Educ. to Colleagues, 1–2 (Apr. 4, 2011), *available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf*.

[5] *See, e.g.,* Memorandum from Sara K. Pratt, Deputy Sec'y for Enforcement and Programs, Office of Fair Hous. & Equal Opportunity, U.S. Dep't of Hous. & Urban Dev. to FHEO Office Directors and FHEO Regional Directors: Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act (Feb. 9, 2011) ("[S]tatistics show that discrimination against victims of domestic violence is almost always discrimination against women. . . . domestic violence survivors who are denied housing, evicted, or deprived of assistance based on the violence in their homes may have a cause of action for sex discrimination under the Fair Housing Act."); *Questions and Answers: The Application of title VII and the ADA to Applicants or Employees Who Experience Domestic Violence, Sexual Assault or Stalking*, EEOC, *http://www.eeoc.gov/eeoc/publications/qa_domestic_violence.cfm* (last visited May 29, 2014) (citations omitted) ("Title VII of the Civil Rights Act of 1964 (title VII) prohibits discrimination based on . . . sex . . . and the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability. . . . Title VII and the ADA may apply to employment situations involving applicants and employees who experience domestic or dating violence, sexual assault, or stalking.").

[6] Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113–4, § 304(a)(1)(B)(iii), 127 Stat. 89 (2013).

[7] *See* U.S. DEP'T OF EDUC., REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENT BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES 16, 22 (2001), *available at http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf*.

[8] *See* U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, QUESTIONS AND ANSWERS ON TITLE IX AND SEXUAL VIOLENCE 13, 26, 43–4 (2014), *available at http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf* (addressing due process, First Amendment, and other rights of the accused); Letter from Assistant Sec'y for Civil Rights, Office for Civil Rights, U.S. Dep't of Educ. to Colleagues (July 28, 2003), *available at http://www2.ed.gov/about/offices/list/ocr/firstamend.html* (addressing First Amendment rights of the accused); Ali, *supra* note 4, at 12 (addressing due process rights of the accused).

[9] For example, the 2001 Guidance refers to due process rights in a general sense by stating,

"A public school's employees have certain due process rights under the U.S. Constitution.

rights, in a manner that preserves the protections afforded to the complainant, would ensure that all parties involved have access to justice.

NEED FOR AN INCREASED K–12 FOCUS

Due to impressive student activism, the issue of campus sexual assault has begun to receive the attention it deserves. School districts' responses to sexual harassment similarly require increased focus, as sexual harassment and assault occur at significant rates in the K–12 grades.[10] Compared to colleges and universities, school districts are less likely to have formal policies, procedures, and trainings on the proper response to allegations of sexual violence. In addition, K–12 students are rarely educated about their rights under title IX. All of these problems were evident in an OCR complaint brought by the ACLU on behalf of Rachel Bradshaw-Bean, a high school student who was accused of "lewdness" after she reported being sexually assaulted at school and was sent to the same disciplinary program as her attacker.[11] Ultimately, OCR found that the school district violated title IX by failing to conduct its own investigation and retaliating against Rachel after she made the report.[12] To avoid additional cases like this one, greater awareness about sexual violence and increased enforcement of title IX at the K–12 level is vitally important.

CIVIL RIGHTS OBLIGATIONS OF LAW ENFORCEMENT

Much of the discussion about sexual violence in schools has rightly focused on the schools' responses and compliance with title IX. It is important to recognize, however, that the criminal justice system is another key player and is also governed by civil rights laws. In some cases, student survivors will report the violence to law enforcement authorities only to have their complaints treated with hostility and dismissal. Moreover, some survivors will be deterred from filing complaints because of this expectation and experience.

When police officers rely on gender stereotypes and bias in addressing sexual violence complaints, they deny victims equal protection under the law. The Department of Justice has exercised its authority under 42 U.S.C. § 14141 and § 3789d to reform how police departments in New Orleans, Puerto Rico, and Missoula, MT respond to complaints of sexual violence,[13] and in the case of Missoula, coordinated its investigation with the Department of Education to also examine the University of Mon-

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> The Constitution also guarantees due process to students in public and State-supported schools who are accused of certain types of infractions. The rights established under title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding. . . . Procedures that ensure the title IX rights of the complainant, while at the same time according due process to both parties involved, will lead to sound and supportable decisions. . . . Schools should be aware of these rights and their legal responsibilities to individuals accused of harassment."

U.S. DEP'T OF EDUC., *supra* note 8, at 22.

[10] A report by the American Association of University Women found that nearly half of middle and high school students experienced some form of sexual harassment in the 2010–11 school year, that 13 percent of girls reported being touched in an unwelcome sexual way, and that 4 percent of girls reported being forced to do something sexual. CATHERINE HILL AND HOLLY KEARL, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, CROSSING THE LINE: SEXUAL HARASSMENT AT SCHOOL 2, 12 (2011), *available at http://www.aauw.org/files/2013/02/Crossing-the-Line-Sexual-Harassment-at-School.pdf*. Another study by researchers at the University of Illinois at Urbana-Champaign found that 21 percent of middle school students surveyed in 2008 experienced a form of physical sexual violence. SARAH RINEHART, NAMRATA DOSHI, & DOROTHY ESPELAGE, SEXUAL HARASSMENT AND SEXUAL VIOLENCE EXPERIENCES AMONG MIDDLE SCHOOL YOUTH 4 (2014), *available at http://www.aera.net/Portals/38/Newsroom%20-%20Recent%20Research/Sexual%20Harassment%20and%20Sexual%20Violence%20Experiences%20Among%20Middle%20School%20Youth.pdf*.

[11] *See* Abigail Pesta, *Kicked out of high school for "public lewdness" after reporting rape,* NBC NEWS (Dec. 23, 2013, 9:41 AM), *http://www.nbcnews.com/news/other/kicked-out-high-school-public-lewdness-after-reporting-rape-f2D11794148*.

[12] *See* Park, *supra* note 2.

[13] *See* U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE PUERTO RICO POLICE DEPARTMENT (2011), *available at http://www.justice.gov/crt/about/spl/documents/prpd_letter.pdf*; U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT (2011), *available at http://www.justice.gov/crt/about/spl/nopd_report.pdf*; U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE MISSOULA POLICE DEP'T (2013), *available at http://www.justice.gov/crt/about/spl/documents/missoulapdfind_5-15-13.pdf;* U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE UNIV. OF MONTANA'S OFFICE OF PUBLIC SAFETY (2013), *available at http://www.justice.gov/crt/about/spl/documents/missoulafind_5-9-13.pdf*.

tana's practices.[14] This work highlights that any examination of a school's response to sexual violence should also include the relevant law enforcement agencies, as all are important components to whether a student has equal access both to educational opportunity and the justice system.

DOJ GUIDANCE WOULD IMPROVE LAW ENFORCEMENT ENGAGEMENT

DOJ's work in this area would be amplified by issuing guidance that addresses the civil rights obligations of law enforcement agencies, including those responding to sexual assault on campus and at schools. Such guidance would address how sexual violence investigations should be conducted, supervision and oversight, classifying and tracking of complaints, and the training provided to officers. The guidance should also tackle issues that commonly arise when sexual violence occurs at school. For example, it should be clear that law enforcement should not dissuade victims from pursuing criminal justice charges by encouraging them to file complaints through school grievance or disciplinary procedures. Additionally, law enforcement should be aware that schools have independent legal obligations to respond to sexual assault and harassment, and thus schools are not bound by the findings of any criminal justice investigation. We urge members of the committee to encourage DOJ to continue its work on these critical issues.

NEED FOR EXPLICIT PROTECTIONS FOR LGBT STUDENTS

We know that students who are, or perceived to be, lesbian, gay, bisexual, or transgender (LGBT), are especially vulnerable to discrimination, harassment, and violence, including sexual violence, in our Nation's schools. A nationwide 2011 survey of more than 8,500 students between the ages of 13–20 found that 8 out of 10 LGBT students reported experiencing harassment at their school within the past year based on their sexual orientation.[15] Six in ten LGBT students reported feeling unsafe at school because of their sexual orientation.[16] Transgender students experienced more hostile climates than their non-transgender peers, with 8 in 10 reporting feeling unsafe at school because of their gender expression.[17] The effect of a hostile school climate on LGBT students has a direct and negative impact on the student's education. Nearly a third of LGBT students reported skipping at least once, and 3 in 10 reported missing at least one entire day of school in the past month because of safety concerns.[18]

Despite these sobering statistics and the clear need for action, there is no Federal law that explicitly protects LGBT students from discrimination. There is legislation modeled on title IX currently pending in the Senate, the Student Non-Discrimination Act (S. 1088), which would establish a comprehensive, explicit prohibition against discrimination and harassment in all public elementary and secondary schools across the country based on a student's actual or perceived sexual orientation or gender identity. Congress should make passage of this civil rights measure a priority.

In the absence of a law like the Student Non-Discrimination Act, guidance like the recent Q&A on title IX and sexual violence from OCR within the Department of Education is even more important. OCR made clear in that guidance that a school's obligation to respond appropriately to sexual violence complaints is the same irrespective of the sex or sexes of the parties involved, and that title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or a failure to conform to stereotypical notions of masculinity or femininity.[19] The guidance further stated that schools should investigate and resolve allegations of sexual violence regarding LGBT students using the same procedures and standards that it uses in all complaints involving sexual violence.[20] This clarity from OCR on the scope of the protections of title IX is very important to LGBT students; however, it should not be read as an excuse for inaction on the part of Congress. The need for an explicit sexual orientation and gender identity non-discrimination prohi-

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[14] U.S. DEP'T OF JUSTICE, ET AL., INVESTIGATION OF THE UNIV. OF MONTANA (2013), *available at http://www.justice.gov/opa/documents/um-ltr-findings.pdf.*

[15] JOSEPH G. KOSCIW, ET AL., GAY, LESBIAN & STRAIGHT EDUCATION NETWORK, THE 2011 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN OUR NATION'S SCHOOLS 23 (2012), *available at http://glsen.org/nscs.*

[16] *Id.* at 20.

[176] *Id.* at 89.

[18] *Id.* at 21.

[19] OFFICE OF CIVIL RIGHTS, U.S. DEP'T OF EDUC., QUESTIONS AND ANSWERS ON TITLE IX AND SEXUAL VIOLENCE 5 (2014), *available at http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf.*

[20] *Id.* at 5–6.

bition in Federal law remains as vital as ever. This gap in our civil rights laws has left LGBT students uniquely vulnerable to discrimination, harassment, and violence for far too long.

Fifty years of civil rights history demonstrate that laws similar to the Student Non-Discrimination Act are effective in preventing discrimination and harassment from occurring in the first place by prompting schools to take proactive steps to ensure a safe and supportive learning environment for all students who are in their care.

Thank you for the opportunity to offer our views. Please do not hesitate to call Vania Leveille at (202) 715-0806 should you have any questions or need additional information.

Sincerely,

LAURA W. MURPHY,
Director, Washington Legislative Office.

VANIA LEVEILLE,
Senior Legislative Counsel.

IAN S. THOMPSON,
Legislative Representative.

SANDRA J. PARK,
Senior Staff Attorney, Women's Right Project.

RESPONSES BY CATHERINE LHAMON TO QUESTIONS OF SENATOR ALEXANDER, SENATOR WHITEHOUSE AND SENATOR KIRK

SENATOR ALEXANDER

On May 1, 2014, the Office for Civil Rights (OCR) released a list of 55 higher education institutions under investigation for possible title IX violations related to sexual violence. As explained in OCR's press release, the list includes investigations opened due to complaints received and due to compliance reviews. However, the list does not differentiate which schools fall under each respective category. Why doesn't the list indicate whether an institution is under investigation because of a complaint or because of a compliance review?

Question 1a. Did OCR consider providing that additional context? If not, why not?

Answer 1a. In order to best protect complainants and survivors, OCR decided not to indicate if the investigation was a result of a complaint or a compliance review. Consider that if the campus community knew that a particular investigation was triggered by a person (or set of persons), the public might seek to identify that person or persons through contextual clues (regarding timing of the complaint, for example) that could contribute to unwarranted invasions of personal privacy.

Question 1b. Does OCR plan to update the list to indicate when investigations are closed and how they are resolved? If not, why not?

Answer 1b. As you noted, the list only addresses institutions under investigation. When an investigation is closed for any reason, the institution is removed from the list, and both the institution and the complainant are notified of the closure and/or resolution. Due to staffing limitations, OCR does not intend to report in list form how each case removed from the list was resolved. However, OCR provides that information upon request.

Question 2a. When a complaint against an institution of higher education is filed with OCR and OCR initiates an investigation, how does OCR ensure the institution has fair notice of the allegations against it?

Answer 2a. Immediately after OCR determines that it will investigate a complaint and opens the complaint for investigation, it sends a notification letter to the institution that contains the following information:

- OCR's legal authority to investigate the complaint;
- The complaint allegations that OCR will investigate; and
- Contact information for the OCR staff person who will serve as the primary contact during the investigation and resolution of the complaint.

Question 2b. Please describe the process and procedures used by OCR to respond to a title IX complaint involving sexual violence, including all steps from the initial receipt of the complaint to the options for final resolution.

Answer 2b. OCR's mission is to ensure equal access to education and to promote educational excellence throughout the Nation through vigorous enforcement of civil

rights. OCR's Case Processing Manual (CPM) details the specific procedures used by OCR to promptly and effectively investigate complaints and compliance reviews, issue findings, and secure resolution agreements that remedy discriminatory policies or practices. You can find the CPM on our public website here: *http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html*.

Question 3a. How is OCR staff trained to investigate title IX complaints, specifically related to sexual violence? How often must OCR staff complete this training?

Answer 3a. OCR conducts ongoing mandatory and supplemental trainings that cover substantive legal and procedural areas, including sexual violence, for new and current investigative staff, which handle enforcement actions, in OCR's 12 regional offices. In addition, OCR headquarters coordinates training for all staff on sexual violence and other policy issues when new regulations, policy, or guidance are issued or when it is determined that there is a need for such training. Investigative staff also hold regular national discussions among each other about how best to investigate and resolve sexual violence cases.

Question 3b. Please provide any training materials used.

Answer 3b. Training materials vary based on the subject matter. The CPM described in the second question is an example of materials that have been used to train OCR staff on sexual violence investigations.

Question 4. How does OCR ensure the process for conducting investigations of alleged title IX violations related to sexual violence is fair and consistent across the national and regional offices?

Answer 4. OCR's CPM guides all investigations, including those involving sexual violence. The CPM outlines the procedures to promptly and effectively investigate cases, issue findings, and secure resolution agreements that remedy discriminatory policies or practices identified by OCR. OCR issues policy guidance and provides training to staff on its implementation to ensure fair and consistent practices. In addition, OCR management participates in critical decisions commensurate with the complexity of the case, to ensure consistently high-quality casework and to ensure proper procedures have been followed. Also, sexual violence cases require headquarters enforcement staff approval before issuance of any determinations.

If OCR determines that it is appropriate to enter into an agreement with an institution to voluntarily resolve a sexual violence case, the factual and legal justification for the resolution as well as the agreement must be approved by the chief attorney and the director of the regional office that investigated the case. The regional office director then forwards this documentation to headquarters enforcement staff who have final approval authority before issuance of any determinations as a second step to ensure fair and consistent enforcement. This is the same process that is followed for all compliance reviews and sensitive cases.

Question 5a. Have you observed challenges that institutions of higher education encounter when trying to comply with the Clery Act and title IX? If so, please describe those challenges.

Answer 5a. Some institutions have communicated confusion with obligations under different Federal laws such as title IX, the Clery Act, and the Family Educational Rights and Privacy Act (FERPA). OCR is committed to helping schools to comply with title IX and other laws enforced by the Department. To this end, in April 2014, OCR issued detailed guidance on schools' title IX obligations, including with respect to its intersection with other laws such as FERPA and the Clery Act. The guidance notes that Section 304 of the Violence Against Women Reauthorization Act (VAWA) amended the Clery Act, but does not alter a school's obligations under title IX or OCR's title IX guidance. The guidance also explains the information that a recipient must disclose to a complainant in the notice of the outcome of a title IX complaint, and how that requirement intersects with the Clery Act and FERPA. The Department also created a chart, posted on the notalone.gov website, outlining a school's reporting obligations under title IX and the Clery Act, and how each intersects with FERPA. The chart shows that although the requirements of title IX and the Clery Act may differ in some ways, they do not conflict. (See *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/vawa-reviewoftitle9.pdf.*)

Question 5b. What actions has OCR taken to address these challenges?

Answer 5b. We will continue to update ed.gov and notalone.gov with additional resources. In the interim, OCR's 12 regional offices are available to answer questions and provide training presentations for colleges, schools, and others. In fiscal year 2013, for example, our regional offices conducted more than 300 technical assistance activities (not limited to sexual violence issues or higher education).

Title IX and the Clery Act have overlapping, but different disciplinary standards that an institution of higher education must follow to address allegations of sexual assault. Under title IX, an institution's grievance procedure must provide a "prompt and equitable resolution," and the investigation must be "adequate, reliable, impartial, and prompt." Under the Clery Act, an institution's disciplinary procedure must provide a "prompt, fair, and impartial investigation and resolution." Have you discussed with the Clery Act Compliance Division the fact that these standards, at least on their face, are different?

Question 6. In your view are they, in effect, the same or different?

Answer 6. The Clery Act and title IX serve distinct, but related, functions in combating sexual violence. The Department's office of Federal Student Aid (FSA) is responsible for Clery Act compliance, whereas the Department's Office for Civil Rights (OCR) enforces title IX. The Clery Act requires institutions of higher education to provide current and prospective students and employees, the public, and the Department with crime statistics and information about campus crime prevention programs and policies. Title IX prohibits discrimination based on sex in education programs and activities that receive Federal financial assistance. Clery Act requirements apply to many crimes that are not enforceable under title IX, and title IX applies to many forms of sex discrimination that do not constitute reportable crimes under the Clery Act. For those areas in which the Clery Act and title IX both apply, the institution must comply with both laws.

As the Department stated in its Notice of Proposed Rulemaking for the changes made to the Clery Act by VAWA, the Clery Act and its implementing regulations in no way alter or conflict with the title IX requirements. For example, in order to meet Clery Act requirements an institution must state in its annual security report what standard of evidence it uses in its disciplinary proceedings regarding sexual assault, dating violence, domestic violence, and stalking. This Clery Act requirement does not conflict with the title IX obligation to use the preponderance of the evidence standard in title IX proceedings. An institution can comply with title IX and the Clery Act by using a preponderance of the evidence standard in proceedings regarding title IX complaints and disclosing this in its annual security report.

OCR worked closely with the Department's Office of Postsecondary Education and FSA, including the Clery Act Compliance Division, throughout the VAWA rulemaking process to minimize the burden placed on institutions and to better align how schools respond to Clery Act and title IX requirements. And OCR continues to work closely with FSA on sexual violence issues. To clarify roles and increase efficiency, FSA and OCR have formalized an agreement to ensure effective handling of complaints and to facilitate information sharing.

Question 7. After OCR has completed a compliance review or reached a voluntary resolution agreement with an institution of higher education, does OCR affirmatively inform the institution that its policies are title IX compliant? If so, which institutions have received such notification?

Answer 7. Yes. When an institution enters into a voluntary resolution agreement with OCR as a result of a complaint or a compliance review, OCR monitors the implementation of the agreement and requires the institution to submit followup information. OCR concludes the monitoring of a case when it determines that the institution has effectively implemented the terms of the resolution agreement, including any subsequent modifications to the agreement, and is in compliance with title IX. When OCR determines that an institution has fully implemented the terms of a settlement agreement,

OCR notifies the institution in writing of this decision and closes the case. OCR issues this notification in all cases where institutions are compliant.

SENATOR WHITEHOUSE

Question 1. Department of Education regulations require an institution of higher education to act on a report of sexual violence within 60 days of learning of it. I have heard from Rhode Island schools that if the local police are involved, they often do not want a school conducting a parallel investigation because they prefer to keep certain facts confidential for a period of time. Would the Department consider some flexibility around this 60-day requirement in the case of episodes where law enforcement becomes involved?

Answer 1. The title IX regulations do not require a school to complete investigations within 60 days; rather they require a school to resolve sexual violence complaints promptly and equitably. The Department's Office for Civil Rights' (OCR) 2011 Dear Colleague letter (DCL) on sexual violence noted that, based on OCR's experience, a typical investigation takes approximately 60 days.

Regardless of whether there is a parallel criminal investigation, title IX requires a school to take steps to ensure equal access to its education program and activities and protect the complainant as necessary, including taking interim measures before the final outcome of an investigation.

OCR stated in the 2011 DCL, and in a subsequent 2014 Questions and Answers document on title IX and sexual violence (2014 Q&A), that OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is prompt and equitable. Whether OCR considers an investigation to be prompt as required by title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct. The 2014 Q&A specifically notes that OCR recognizes that the investigation process may take longer if there is a parallel criminal investigation.

Question 2. The guidance provided by the White House Task force entitled "Sample Language for Reporting and Confidentiality Disclosing Sexual Violence" states that "[a] responsible employee should not share information with law enforcement without the victim's consent or unless the victim has also reported the incident to law enforcement." Are there, or should there be, any exceptions to this?

Answer 2. Due to the nature of sexual assault, we recognize that it is imperative that colleges work together with local law enforcement to address this issue. OCR's 2014 Q&A stresses that school employees should inform sexual-violence survivors of their right to file a title IX complaint with the school and/or a separate complaint with campus or local law enforcement. The 2014 Q&A also notes that title IX does not require a school to report alleged incidents of sexual assault to campus and local law enforcement, but a school may have reporting obligations under State, local, or other Federal laws. While title IX does not require the school to report such information to law enforcement, there may be situations in which school employees tasked with coordinating title IX compliance may share information about reported sexual assaults with campus law enforcement. For example, the school may share information with the survivor's consent, or may share aggregate data, without personally identifiable information, that may inform campus policing practices. It is important to keep in mind that reporting incidents of sexual assault to law enforcement when the survivor does not wish to initiate a criminal investigation can be detrimental to the needs of survivors and can discourage them from speaking to any campus employee in the first place.

There may be rare circumstances in which employees should share information with local law enforcement even without the survivor's consent. For example, some State laws impose mandatory reporting requirements with respect to certain crimes, and OCR does not interpret title IX to generally prohibit compliance with such State law obligations. Also, FERPA protects the privacy of student education records, which normally include a student's disciplinary records. However, FERPA permits schools to disclose, without consent, personally identifiable information from a student's education records to appropriate parties in connection with an emergency, if knowledge of that information is necessary to protect the health or safety of the student or other individuals.

Question 3. How do victim advocates on campus, who are not licensed counselors, maintain confidentiality regarding a sexual assault? A university could be liable under their State negligence law if the victim advocate, who is not a licensed counselor, keeps the information about the sexual assault confidential and then the suspect sexually assaults another student. In most States, victim advocates are not required by law to keep the information confidential (like a licensed counselor is), so there are no protections under the law if their failure to tell someone about the crime results in subsequent crimes. How should a college/university manage this?

Answer 3. OCR's 2014 Q&A makes clear that responsible school employees generally must report to school officials when they find out about sexual violence against students so the school can respond appropriately in compliance with title IX requirements. But OCR wants students to feel free to seek assistance from victim advocates and therefore interprets title IX to give schools latitude to employ these individuals as confidential resources who are not required to report sexual violence in a way that identifies the students without the student's consent. Although title IX does not require that these individuals be designated as confidential resources, the 2014 Q&A notes that OCR strongly encourages schools to do so because these individuals are valuable sources of support for students. Ultimately, the decision regarding whether to designate these individuals as confidential resources is up to each school. Each school must determine how its policy on confidentiality fits with other school policies and how it complies with the requirements of other applicable

Federal, State, and local laws. For example, employees have legal obligations under FERPA and State mandatory reporting laws.

The 2014 Q&A also makes clear, however, that victim advocates should be instructed to inform students of their right to file a title IX complaint with the school and a complaint with campus or local law enforcement and should assist students in filing such complaints. And OCR encourages schools to collect aggregate data about sexual violence incidents from victim advocates in order to identify patterns or systemic problems related to sexual violence. Schools can then respond by taking actions such as reviewing their sexual violence policies, creating campus-wide educational programs, increasing security at locations where sexual violence has occurred, and conducting climate surveys to learn more about the prevalence of sexual violence at the school.

Question 4. Are there any colleges or universities that have established what you view as model relationships with local law enforcement? If so, what makes these relationships productive and helpful when it comes to responding to campus sexual assault?

Answer 4. Several colleges and universities reported having positive relationships with local law enforcement, which OCR believes is a best practice. In fact, OCR's 2011 DCL on sexual violence and 2014 Q&A specifically discussed the need for colleges to coordinate with local law enforcement on this issue, specifically through an MOU, to enhance coordination and improve communication. The 2014 Q&A provides recommendations for what may be covered by an MOU.

During a recent visit to California State Polytechnic University, Pomona, university officials reported that they believe the university's close working relationship with local law enforcement enables the university and the local law enforcement to provide coordinated services to survivors of sexual assault. For example, university victim advocates may accompany survivors to local police stations to provide support. Additionally, the university may arrange for interviews with survivors and local police on campus.

The University of California, Los Angeles has a close working relationship with local law enforcement. The university's police department, for example, will transport survivors of sexual assault to the Santa Monica-UCLA Rape Treatment Center for treatment.

The Department of Justice's Office on Violence Against Women has received reports of a number of other strong relationships between colleges and universities and local law enforcement through their Grants to Reduce Sexual Assault, Domestic Violence, Dating Violence, and Stalking on Campus program including:

- At Norfolk State University (NSU) in Virginia, the NSU Police Department and the city of Norfolk Police have a close working relationship to investigate, prosecute, and prevent sexual harassment. Together, they have implemented NSU's Campus Program to Reduce Violence Against Women, under which the Office of the Norfolk Commonwealth's Attorney and the city of Norfolk Police provide staff to assist NSU in the delivery of victims' assistance and training to effectively handle sexual assault cases.
- The University of California, Irvine (UC Irvine) works closely with both the UC Irvine Police Department and the Irvine Police Department. The campus police meet weekly with UC Irvine's Campus Assault Response Team to review reported cases and to coordinate campus response. The campus police also provide extensive training on sexual assault; all officers are required to participate in an 8-hour training on sexual assault, and conduct ongoing briefs on issues such as stalking, dating, and domestic violence. The campus police also partner with local law enforcement agencies to provide victim counseling, facilitate communication with a local District Attorney's office, provide access to forensic nurses in a single location, and provide resources to obtain emergency protective orders or temporary restraining orders.
- The University of Iowa (UI) Police work actively with the UI Coordinated Community Response Team (CCRT) to investigate sexual harassment cases and to promote prevention. The UI Crime Prevention Officer serves on CCRT's Education subcommittee, which is developing a survey for education providers aimed at identifying gaps in complying with Federal guidance.
- The University of Northern Iowa (UNI) fosters a strong relationship between the campus and local law enforcement. UNI Center for Violence Prevention has collaborated with campus police to assess and resolve the occurrence of campus sexual violence. The director of public safety helped revise UNI's sexual misconduct policies and serves as a liaison between the Center for Violence Prevention and the University President's cabinet. The director of public safety also helps plan Victim Services Institutes, a program hosted by the Center for Violence Prevention designated to

train campus and community personnel who are points of first contact or service providers for campus victims.

SENATOR KIRK

Question 1. This question is for Catherine Lhamon, Assistant Secretary for Civil Rights, U.S. Department of Education: Some schools have expressed concerns that the notice requirement from the 2011 title IX Guidance conflicts with the Family Educational Rights and Privacy Act (FERPA), which gives broad discretion to schools to disclose student records in the case of violent and non-forcible sex offenses. How can Congress address this barrier when responding to sexual assault claims? How often do schools disclose this information? Are there any repercussions for schools that do not adequately disclose this information? How has the Department addressed the incongruence in law?

Answer 1. Title IX requirements do not conflict with FERPA. The requirements related to notice of the outcome that are discussed in the Department's Office for Civil Rights' (OCR) 2011 Dear Colleague letter and 2014 Questions and Answers document are consistent with a school's obligations under FERPA.

Title IX requires both parties to be notified, in writing, about the outcome of both the complaint and any appeal in cases involving sexual harassment or sexual violence. For title IX purposes, a school must inform the complainant as to whether or not it found the alleged conduct occurred, any individual remedies offered or provided to the complainant or any sanctions imposed on the perpetrator that directly relate to the complainant, and other steps the school has taken to eliminate the hostile environment and prevent recurrence.

If schools are not complying with the requirements related to notice of the outcome under title IX, they risk being found in violation of the law.

FERPA permits any school to disclose to the complainant information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the complainant. FERPA also permits postsecondary institutions to inform the complainant of the institution's final determination and any disciplinary sanctions imposed on the perpetrator in cases of sexual violence (as opposed to all sexual harassment or misconduct covered by title IX), not just those sanctions that directly relate to the complainant.

Question 2. According to "Not Alone," the White House Report on Sexual Assault, the Department of Education offices responsible for title IX and Clery Act enforcement have entered into an agreement to clarify their respective roles. What specifically does the agreement address? Will you disclose to Congress the contents of this agreement?

Answer 2. Specifically, the Department's office of Federal Student Aid (FSA), Clery Act Compliance Division, and OCR commit to work together to increase awareness in the public and within the Department of their potentially overlapping jurisdictions. The offices commit to improve efficiency and reduce the burden on complainants, including by reviewing materials provided to the public (e.g., complaints), to determine ways each office can improve that information and better assist complainants. The offices also commit to share non-confidential information with each other about complaints, investigations, and expected resolutions or determinations. For example, FSA will notify OCR when opening a review involving the portions of the Clery Act that may overlap with title IX.

Since the Clery Act and title IX serve distinct, but related, functions in combating sexual violence we believe that this coordination is important. FSA, through the Clery Division, is responsible for Clery Act compliance, whereas OCR enforces title IX. The Clery Act requires institutions of higher education to provide current and prospective students and employees, the public, and the Department with crime statistics and information about campus crime prevention programs and policies. The Clery Act requirements apply to many crimes other than those addressed by title IX. For those areas in which the Clery Act and title IX both apply, the institution must comply with both laws. As you mentioned, our formalized agreement will help clarify roles and increase efficiency, to improve effective handling of complaints and to facilitate information sharing.

RESPONSE BY JAMES L. MOORE III TO QUESTIONS OF SENATOR ALEXANDER AND SENATOR KIRK

SENATOR ALEXANDER

Question 1. Have you observed challenges that institutions of higher education encounter when trying to comply with the Clery Act and title IX? If so, please describe those challenges.

What actions has the Clery Act Compliance Division taken to address these challenges?

Answer 1. The Department, through the Federal Student Aid office's (FSA) Clery Act Compliance Division (Clery Division), has heard from some institution officials that they may face barriers to implementing the Clery Act's requirements due to organizational resistance, and allegiance to long-standing practices and customs. For example, some institutions report issues with relocating their campus public safety departments within their organizations. While many institutions now have professionalized police forces on campus, some house their campus security staff members under their Facilities or Business Management divisions, which have little or no professional security experience.

The Clery Division is committed to providing institutions with the guidance and technical assistance needed to effectively deal with the types of challenges discussed above, and to ensure their compliance with the Clery Act. While the Department does not have the authority to dictate institutional decisions regarding organizational structure, we have recommended that institutions appoint a Clery Act Compliance Officer or Team empowered with the requisite access and authority to establish policies, practices, and systems to facilitate compliance and greater campus safety. Appointing a Clery Act Compliance Officer or Team can improve an institution's ability to effectively manage its statutory obligation to collect Clery reportable data.

The Department also maintains a Clery Act helpdesk to provide information and technical assistance to institutions by telephone and e-mail to help institutions address challenges as they arise. In addition, the Department provides direct technical support to institutional officials and complainants, in-person training at the FSA training conference, and is developing online training. And the Department will publish an updated version of the *Handbook for Campus Safety and Security Reporting* (Handbook) in 2015 to better inform institutional officials about the Clery Act requirements.

Question 2a. Under the Violence Against Women Act amendments to the Clery Act, an institution is required to, among other things, educate its students and employees about the definition of dating violence in the local jurisdiction. Since not all jurisdictions specifically define dating violence how does the Clery Act Compliance Division plan to evaluate whether an institution is in compliance with the Clery Act?

Answer 2a. The Department published regulations to implement the changes made to the Clery Act by the Violence Against Women Reauthorization Act of 2013 (VAWA) on October 20, 2014.

The Clery Act specifies that the term "dating violence" is to be defined in accordance with section 40002(a) of the Violence Against Women Act of 1994. While incidents that might be considered "dating violence" may not be considered crimes in all jurisdictions, under our proposed regulations the Department would treat such incidents as "crimes" for the purposes of the Clery Act. We believe that this approach would make it clear that all incidents that meet the definition of dating violence in Federal law must be recorded in an institution's crime statistics, whether or not they are crimes in the institution's jurisdiction.

During our investigations, the Department's Clery Division examines an institution's training materials, conducts interviews, and reviews case documents to evaluate the extent to which an institution is educating students and employees about applicable laws and the extent to which an institution is setting a standard and communicating its expectations for acceptable conduct of campus community members. Information about the Department's expectations and recognized best practices will also be included in the next edition of the Handbook.

Question 2b. Similarly, how will the Clery Act Compliance Division evaluate compliance with the requirement to educate students and employees on the meaning of "consent" when it is not defined in the local jurisdiction?

Answer 2b. During the negotiated rulemaking process to develop the proposed rules to implement the changes made to the Clery Act by VAWA, the negotiating committee considered including a definition of "consent" for purposes of the Clery

Act. A definition of consent would provide clarity for institutions, students, and employees for when a reported sex offense would need to be included in the institution's Clery Act statistics. However, some negotiators argued that a definition of consent would create ambiguity in jurisdictions which either do not define consent or have a definition that differed from the one that would be in the regulations. The Department and the negotiated rulemaking committee eventually decided against including the definition of consent in the proposed regulation as we were not convinced that it would be helpful to institutions in complying with the Clery Act.

For purposes of Clery Act reporting, all sex offenses that are reported to a campus security authority must be recorded in an institution's Clery Act statistics and, if reported to the campus police, must be included in the crime log, regardless of the issue of consent.

Question 3. Title IX and the Clery Act have overlapping, but different disciplinary standards that an institution of higher education must follow to address allegations of sexual assault. Under title IX, an institution's grievance procedure must provide a "prompt and equitable resolution," and the investigation must be "adequate, reliable, impartial, and prompt." Under the Clery Act, an institution's disciplinary procedure must provide a "prompt, fair, and impartial investigation and resolution." Have you discussed with the Office for Civil Rights the fact that these standards, at least on their face, are different?

In your view are they, in effect, the same or different?

Answer 3. The procedures an institution must use to address allegations of sexual assault under the Clery Act and title IX are substantially the same. Although they are related, title IX and the Clery Act are separate statutes and their requirements do not conflict with each other. The Clery Division is in close communication with the Department's Office for Civil Rights (OCR) on matters related to compliance by institutions with requirements for the adjudication and reporting of sexual assault. In fact, OCR was one of our most important and active partners during the recent rulemaking process.

Question 4a. In the notice of proposed rulemaking to implement the Violence Against Women Act amendments to the Clery Act, the Department of Education states it is clarifying that an institution is not supposed to remove a reported crime from its crime statistics based on a decision by a court, jury, or prosecutor. Is that the position of the Department?

Answer 4a. The Department has consistently advised, through the Clery Handbook and other sub-regulatory guidance, that institutions should include all reported crimes in the Clery Act statistics, except in the rare case that a crime report is "unfounded." The Clery Act statistics are not based on the identity of the perpetrator. A verdict that a particular defendant is not guilty of a particular charge does not mean that the crime did not occur. If, after fully investigating a reported crime, law enforcement authorities make a formal determination that the report was false or baseless when made, and the crime report was therefore determined to be "unfounded" by sworn or commissioned law enforcement personnel, the institution may exclude from its upcoming annual security report, or remove from its previously reported statistics, the reported crime. The recently published regulations formally address how these situations are to be handled.

Question 4b. If someone is found not guilty in a court proceeding, would that reported crime still be included in Clery Act crime statistics? If so, how does that promote accurate crime reporting?

Answer 4b. The Clery Act requires that institutions report the number of "reported crimes." A verdict that a particular defendant is not guilty of a particular charge does not mean that the crime did not occur. Therefore, as discussed above, all reports of crimes must be included in the statistics, except in the rare case that a crime report is "unfounded."

Question 5a. How is the Clery Act Compliance Division staff trained to investigate Clery Act complaints? How often must Clery Act Compliance Division staff complete this training?

Answer 5a. FSA takes the need for continuous training and improvement seriously, and encourages every employee to pursue training opportunities to improve their performance. All Clery Division staff members receive ongoing training throughout the year. This training is provided during team meetings as well as through fieldwork, scenario-based training exercises, individual self-paced study, formal staff training events, and external training provided by experts in the field.

For example, our office conducted a week-long training event in April and May 2014 which included an in-depth instruction on crime classification, proper applica-

tion of the "Clery Geography" definitions, and the role of campus security authorities, among many other topics. We also heard from guest speakers from OCR and the Clery Center for Security On Campus, Inc. One of our staff members focused on physical security matters attended a training event on the National Threat Assessment Center presented by the U.S. Secret Service. Selected staff also recently attended training on the Safe School Initiative, Safety and Security Considerations for High-Rise Buildings, and Situational Awareness in Active Shooter Incidents. Later this year, several members of the Clery Division team will be taking sexual assault investigator training and others will attend an advanced course in interview and interrogation techniques.

Question 5b. Please provide any training materials used.

Answer 5b. Though training on policy updates varies based on the changes being made, all internal training is based on the Handbook, which is currently being revised to reflect the changes to the statute and recent regulatory changes. We will furnish the revised copy to your office once finalized.

Question 6. How does the Clery Act Compliance Division staff ensure the process for conducting investigations of alleged Clery Act violations related to sexual assault is fair and consistent across the national and regional offices?

Answer 6. The Clery Division works closely with FSA's regional compliance teams to ensure that Clery Act and Drug-Free Schools and Communities Act enforcement is conducted in a fair and consistent manner for all potential violations, including those related to sexual assault. The Clery Division has developed procedures and tools for these teams, and we also provide ongoing training focused primarily on the publication and distribution of Annual Security Reports and the development and implementation of proper drug and alcohol abuse prevention programs. Finally, the Clery Division reviews and approves every finding of noncompliance for accuracy and completeness as a further check on consistency. We also work with a dedicated paralegal specialist and program attorney to ensure proper checks and balances. Since the consultation process was implemented in June 2012, we have completed work on more than 500 program review and audit findings.

Question 7. When an institution is fined for a Clery Act violation, where does that fine go?

Answer 7. Funds collected as the result of civil penalties imposed for Clery Act violations are remitted to the Department of the Treasury.

SENATOR KIRK

Question 1. Currently, there are less than a dozen staff members who are responsible for enforcement of the Clery Act at over 6,000 colleges and universities. How rigorous is the compliance process, and is there insufficient staff to fully accomplish compliance? How often are institutions of higher education audited for compliance, and is there a backlog for establishing compliance? How will the addition of added staff and increased training result in greater compliance and enforcement of Federal regulations surrounding campus sexual violence?

Answer 1. The Department is committed to improving safety for students and employees on our Nation's college campuses and to ensure compliance with the Clery Act. As such, the Clery Division has developed a rigorous compliance oversight and enforcement program that includes assessments of high-profile campus crimes and compliance checks as part of each general assessment review.

The centerpiece of the oversight program is the campus crime program review process, which I highlighted in my written testimony. Program reviews give us an important on-the-ground view of an institution's campus safety and crime prevention operations. While effective, these reviews are labor and time-intensive and as a result, there is a backlog of open cases.

The Clery Division undertakes a number of the regularly recurring reviews. Our team is singularly focused on improving public safety and crime prevention on our Nation's campuses with the well-being of our students and educators foremost in our minds. Following regular recurring review, the Clery Division focuses on enforcement areas that require more targeted reviews. The Department understands that optimum compliance is best achieved through a balanced mix of enforcement and technical assistance.

The Clery Division's 13 full-time employees manage the workload to their best ability with the resources available.

[Whereupon, at 12:02 p.m., the hearing was adjourned.]

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