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REAUTHORIZING THE HIGHER EDUCATION ACT: COMBATING CAMPUS SEXUAL ASSAULT

HEARING

OF THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

ON

EXAMINING REAUTHORIZING THE HIGHER EDUCATION ACT, FOCUSING ON COMBATING CAMPUS SEXUAL ASSAULT

JULY 29, 2015

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REAUTHORIZING THE HIGHER EDUCATION ACT: COMBATING CAMPUS SEXUAL ASSAULT

WEDNESDAY, JULY 29, 2015

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

The committee met, pursuant to notice, at 9:01 a.m., in room SH–216, Hart Senate Office Building, Hon. Susan Collins presiding.

Present: Senators Collins, Alexander, Cassidy, Murray, Bennet, Warren, Baldwin, Casey, Whitehouse, Franken, and Murphy.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. The Senate Committee on Health, Education, Labor, and Pensions will come to order.

Good morning. Today's hearing marks the committee's seventh of this Congress on the reauthorization of the Higher Education Act. This morning, we will be discussing sexual assault on college campuses and legislative proposals aimed at lessening this crime and providing justice for the survivors and alleged perpetrators.

Before we begin, I would like to share a brief statement from Chairman Lamar Alexander, who asked me to read the following:

> "I've asked Senator Collins to chair today's hearing because I have had to go to Nashville for the funeral of a close friend. Before she was elected to the Senate, Senator Collins worked at Husson University in Bangor, ME, so she brings a valuable perspective to this discussion."

Oh, it's weird to be reading what someone else is saying about you.

[Laughter.]

> "I thank her for doing this, and I thank the witnesses for attending. The goal of Federal regulations and rules should be to help our 6,000 colleges and universities create campus environments that make students safer from sexual assault.
>
> "In doing that, we should be careful to (1) eliminate duplicative laws and regulations so that instead of spending unnecessary time filling out forms, colleges have more time to counsel students and create a safer environment; (2) help colleges better coordinate with law enforcement agencies but not turn colleges into law enforcement agencies; and (3) establish procedures that are fair and that protect the due process rights of both the accused and the accuser."

I know that the Chairman regrets very much that he could not be here today.

One of the things that I most enjoy as a U.S. Senator is the opportunity to meet with students from my home State of Maine, a sentiment I'm sure that many of my colleagues share. Yesterday, I had breakfast with my summer interns who attend six different colleges and universities. We discussed the incidence of sexual assault on their campuses and what can be done to halt this crime and meet the needs of survivors.

These students had three insightful recommendations. First, they all support mandatory, ongoing training for all students. Second, they emphasized that students who are assaulted need a confidential advisor to whom they can turn. And, third, as Chairman Alexander mentioned, they believed it was important to make sure that disciplinary procedures are fair both for those who are assaulted and for those who are accused.

There are two Federal laws to help combat sexual assault on campuses, the Clery Act and Title IX of the Education Amendments of 1972. Last Congress, provisions of the Clery Act were updated by the enactment of the Violence Against Women Act reauthorization. Senator Casey, a member of this committee, helped lead the effort to include important reforms in VAWA related to sexual assault prevention on campuses.

On July 1, the Department of Education issued new regulations implementing these amendments to ensure that campuses have policies and procedures in place to prevent and respond to sexual assault, domestic violence, dating violence, and stalking. These laws include requirements that educational institutions file annual reports on the crimes occurring on campus, institute security policies and have fair disciplinary procedures for sexual assault cases, employ a title IX coordinator, educate students and staff about sexual assault prevention and awareness, notify survivors about their rights and the resources available to them, and provide for staff training.

Many colleges and universities are also engaged proactively in raising awareness about sexual assault among the student body. For example, the University of Maine launched its Office of Sexual Assault and Violence Prevention last year and has undertaken a campaign to educate students through posters, brochures, presentations, and training.

Mercedes Dobay, an intern in my office and a senior at the University of Southern Maine, who happens to hail from my hometown of Caribou, told me that the Office of Greek Life requires students in sororities and fraternities to participate in sexual assault, domestic violence, and alcohol and drug awareness training each year.

The system we have in place is designed to allow administrators to intervene quickly on behalf of students in a way that is separate from the judicial system. I hope that this hearing will inform the committee of what in the current system is working, what needs to be changed, and whether additional reforms are needed to help keep students safe while respecting the privacy of sexual assault survivors who may be reluctant to report these crimes and providing due process rights for all students.

This committee has formed a bipartisan working group to explore campus sexual assault and campus safety in greater detail. I look forward to hearing from our witnesses on how we can build consensus around this important issue.

Our first panel today is comprised of four Senators who have worked tirelessly together on legislation to combat campus sexual assault and have introduced the Campus Accountability and Safety Act. Senators McCaskill, Heller, Gillibrand, and Ayotte are four of the original co-sponsors of this bill and have devoted a great deal of time and energy to this effort. I also want to recognize the work of Senators Blumenthal, Grassley, Warner, and Rubio.

The Campus Accountability and Safety Act includes several provisions that merit our full consideration. All of the Senators who will be testifying have shown great leadership in addressing campus sexual assault, and I want to thank each of them for their participation this morning.

It's now my great pleasure to turn to the Ranking Member, Senator Murray.

Senator Murray, I will say, this feels like old times when we led the Transportation HUD Appropriations Subcommittee.

STATEMENT OF SENATOR MURRAY

Senator MURRAY. Well, thank you very much, Madam Chairman. It's great to be working with you on this committee. I note that the women of the Senate have come today to be on time and to be here for this.

[Laughter.]

I want to thank all of our witnesses as well who represent a wide array of perspectives, and I appreciate all of you for taking the time to join us. I join with Senator Collins in recognizing the work of our first four witnesses, Senators McCaskill, Heller, Gillibrand, and Ayotte, for all of their time and attention to this really critical issue.

Fighting back against campus sexual assault and violence really requires coordination and input and focus at every level. I'm grateful that all of our witnesses took the time to be here today to talk about this.

I've said before that higher education is an important pathway to the middle class. It's an opportunity for students to grow personally and to develop skills that will prepare them to succeed in today's economy. With all of that to focus on, the last thing a student should have to worry about is whether they are safe on campus.

The harsh reality is that one out of five women is sexually assaulted in college, and men as well. In 2013 alone, college campuses reported 5,000 forcible sex offenses, and a recent study indicated that number could be much greater.

There should be no question that sexual violence on campus is a widespread, growing, and unacceptable problem. Simply put, in colleges and universities across the country, basic human rights are being violated. All too often, current systems and campus climates encourage underreporting rather than action.

As we talk about the seriousness of this problem, it's important to acknowledge the work already underway to address it. Survivors like Ms. Dana Bolger, who is a witness on our second panel, have

bravely stepped up to make clear they expect far better from their schools and their communities. In doing so, they have forced a national conversation and they have shown other survivors that they are not alone.

President Napolitano—great to have you here today—Ms. Flounlacker, and other university leaders have made fighting campus sexual assault a top priority. They have developed new partnerships between schools, communities, and law enforcement to coordinate and improve response and taken important steps to focus on prevention and improve compliance with the Clery Act, which is something Ms. Stafford has worked on closely.

Just last month, thanks to the work of many here today, including Senator Casey, a member of this committee, regulations went into effect as part of the Violence Against Women Act of 2013 that will require schools to increase transparency about sexual violence and assault and strengthen prevention efforts. These are critical steps, but, without question, there is much, much more to be done.

I see our conversation about reauthorizing the Higher Education Act as a critical opportunity for continued and urgently needed progress. I'm very pleased that key Senate leaders are here today with us to discuss their Campus Accountability and Safety Act legislation that would take steps to improve campus climate by requiring far greater transparency about the prevalence of campus sexual assault, put in place key protections for survivors, improve coordination with law enforcement, and impose harsher penalties on schools that are not meeting requirements.

As a mother, a grandmother, and a U.S. Senator, I certainly want to know that when a student is attacked, her school and her community will be ready to respond with compassion, respect, and accountability. I think we can all agree that we need to do everything we can to engage students and schools so that sexual assaults don't happen in the first place.

Recent research by the Centers for Disease Control and Prevention, which is part of the administration's ongoing efforts, has identified campus sexual assault as a public health issue and has shown that sustained, comprehensive education programs can help prevent sexual assault, especially by preparing students to fight back against the damaging myths that surround rape and assault. Efforts to encourage bystander intervention can help break down social norms that implicitly sanction sexual violence.

I am very eager to hear from all our witnesses today about programs and policies aimed at prevention. But, of course, as much as more effective programs and requirements can make a huge difference, we cannot expect to fix this problem just by changing the rules. We have to do something much more difficult, and that is to change culture.

For example, just a few years ago, Ms. Bolger brought to light the fact that at her alma mater, Amherst College, a fraternity had printed tee shirts depicting a woman being roasted on a spit like a pig. Those students went unpunished. Take a minute to think about the message that sends to students, male and female, about how much their community values women. Unfortunately, this is just one example of countless cases to choose from across our country.

That's why the national conversation that students like Ms. Bolger have started and that other leaders, including many here today, have stepped up to support is so absolutely critical. A country that values women and all individuals is stronger for it. We all need to do our part to keep this conversation going, and we need to make it louder.

We have done far too little in Congress over the years to support survivors and to be a voice for women across the country, daughters and granddaughters, who are counting on us. I'm glad that Chairman Alexander and I agree that the HELP committee needs to join the debate on campus sexual assault much more fully.

Again, I want to thank all our witnesses, including our colleagues who are here today, for taking the time to be such a critical part of this discussion and for the work that all of you have already done with the many other members on both sides of the aisle who are very much focused on this fight. As we continue our conversation about our country's higher education system and throughout our work on this committee, we have an opportunity to stand up for survivors, make clear the status quo is completely unacceptable, and help continue the conversation about changes we absolutely need to see.

I am very committed to seizing this opportunity. I want to thank Senator Collins for being here today, and I want to recognize Senator Alexander as Chairman of this committee for stepping up to this. Thank you all very much.

Senator COLLINS. Thank you, Senator Murray.

I'm now very pleased to welcome our colleagues as the first panel of witnesses today. Missouri Senator Claire McCaskill has a long history of fighting sexual violence, going back to when she prosecuted sex crimes and established a Domestic Violence Unit in the Kansas City region, and leading to her current work in the Senate to curb sexual assaults in the military and on college campuses. She is the lead on the Campus Accountability and Safety Act.

Nevada Senator Dean Heller has been an advocate for sexual assault survivors since his tenure in the House of Representatives, where he led a bipartisan effort to reduce the rape backlog and to help bring closure to victims and families of this horrendous crime.

New York Senator Kirsten Gillibrand has been a key voice on the issue of sexual assault on college campuses and also in the military, particularly in her role on the Senate Armed Services Committee.

And New Hampshire Senator Kelly Ayotte, drawing on her experience as New Hampshire's chief prosecutor and former attorney general, has also worked hard in the Senate to stop sexual assault and domestic violence.

Thank you all for being here today, and we'll start with Senator McCaskill.

STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Thank you very much, Chairman Collins and Ranking Member Murray, for holding this important hearing on this issue. These crimes are troubling to parents, students, and educators.

As a mother and a grandmother, but maybe most importantly informed by my former work of many years in the courtroom prosecuting 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. I am very proud to work with Senators Heller, Gillibrand, Ayotte, Grassley, Blumenthal, Warner, and Rubio. We introduced last year a version of the Campus Accountability and Safety Act, or CASA.

We didn't stop with the version that we introduced last year. Over the past 15 months, our coalition of eight offices has met with over 60 organizations, including groups representing students who have been victims of college sexual assault, colleges and universities and their associations, law enforcement, victim advocacy, researchers, and parents of those young people who have been accused of sexual assault on college campuses.

After introducing last year's version of CASA in July 2014, as we continue to meet with stakeholders and gather additional feedback, we have made significant improvements to the bill. We have reintroduced this bill with an even larger bipartisan coalition.

Currently, the bill has 33 co-sponsors, 12 Republicans and 21 Democrats. That's a bipartisan coalition we all know we don't see every day in the U.S. Senate. Our legislation is so much stronger for it. We are all enormously proud of the work we have done together.

Finally, we want to bring this crime out from the shadows and make it a priority on our Nation's campuses. As a former prosecutor, I take special interest in assuring that those who have been victimized by sexual assault are given adequate support and feel empowered to make informed decisions in a very complicated situation.

There are different systems. There is the legal system, and there's title IX. There are different obligations, depending on who learns of the crime. These young people need to have information they can rely on as they navigate this complicated scenario. At a moment, they are traumatized, emotional, and really are worried that they have no place to turn for reliable information or where they will be treated with credibility.

Our legislation would establish new campus resources and support services for victims who have been—who are alleging they have been victims of sexual assault. Colleges and universities would be required to designate confidential advisors to these students. The confidential advisor may be the most important part of our legislation. This is a person that guides the student through the process of understanding the potential legal and campus reporting processes following a sexual assault and can provide confidentiality through that process.

Not only would the confidential advisor coordinate support services for those who have been assaulted, they would provide critical information about options for reporting these crimes to campus authorities and/or local law enforcement. Confidential advisors will support the students every step of the way and will put them back in charge of what happens to them moving forward.

We have heard from advocates and those who have been assaulted that they need someone they can talk to in order to learn

about their options without being forced to make a permanent decision right away. Because the confidential advisor works solely at the discretion of those who have been assaulted and provides important information on reporting sexual assault, I believe their creation is critical to tackling the underreporting that pervades this issue and leaves perpetrators unaccountable.

It's my hope that this provision empowers the student who is assaulted on a Friday night to know on that same Friday night who he or she can call and where he or she can go for good information and confidential support.

I also want to mention that our bill now includes a provision to ensure more transparency about the campus judicial process. Our bill requires that both the victim and the accused have timely notice of an institution's decision to proceed with an institutional disciplinary process regarding an allegation of sexual misconduct. This would provide both the victim and the accused student with the opportunity to meaningfully exercise the rights afforded to them under institutional policy.

It is critically important that both of the parties participate on a level playing field in the campus disciplinary process. We must continue to work to improve 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. In addition, we must make sure that these provisions provide transparency for those who are accused.

I look forward to working with my Senate colleagues and members of this committee on the provisions of this bill and the larger Campus Accountability and Safety Act in the coming months. We think that there is—between all of us who have worked on this and all of the input we have taken, we believe there are several key provisions that could be included in the reauthorization of Higher Education that could make a real difference going forward, and we really appreciate this committee taking the time to deal with it today.

We've tried to divide up the testimony in a way that we won't be too repetitive, and I hope we won't. It's hard for us all not to want to be here, so we really appreciate you putting up with all four of us wanting to get our words in this morning. Thank you.

Senator COLLINS. Senator Heller.

STATEMENT OF SENATOR HELLER

Senator HELLER. Chair Collins and Ranking Member Murray, I want to thank you for the opportunity to testify on this particular issue that is critically important. But most importantly, I want to thank you for your opening statements, from both of you, and for your understanding, concern, and support of moving something forward here so that we can make sure that these campuses are safe.

I'm proud to work along with my colleagues here. I'm glad to see, after Senator Murray's comments, that there are more male Senators that have shown up.

[Laughter.]

It was lonely for a while, but I assure you that there are other male Senators that are just as interested and devoted to this issue as I am.

When we first started working on this legislation, it was important for me to sit down with stakeholders in the State of Nevada. Last June, I held a roundtable in Las Vegas. I received input from title IX coordinators, from police officers, from victim advocacy groups on ways to prevent sexual assault and assist student survivors.

I brought their ideas back to Washington, as my colleagues did the same in their States. Much of that feedback helped us draft our first bill, and this is only one example of outreach that most Senators do.

Since the first introduction of our bill, our bipartisan working group continued to meet with stakeholders across the Nation, including survivors' groups, students, colleges and universities, law enforcement, and others to help strengthen and improve our new bill that we introduced earlier this year. From the beginning, we've also worked diligently with your committee to ensure our final bill incorporated comments from experts on our Nation's educational system.

Our working group strongly believes we have put together a comprehensive product that will provide our schools with the tools that they need to make our campuses safer. I know for me and for many parents, watching your children go off to college is one of your prouder moments. Parents want to be confident that their sons and daughters will be safe and have access to resources that they need from their schools. Unfortunately, that's not always the case.

Today, we have over 100 colleges and universities under investigation for violation of title IX in their handling of campus sexual violence. While we've all seen news stories after news stories about these tragic events, the reality is there are many more survivor stories that haven't been heard and haven't been told.

Sexual assault is a crime that more often than not goes unreported, which is one of the reasons why data provided by our Nation's institutions simply do not reflect the prevalence of this crime. In fact, there are many colleges and universities that have reported zero incidents of sexual assault to the Federal Government.

I strongly believe that one of the most important provisions of our bill is the campus climate survey. This survey will improve access to accurate, campus-level data by allowing students to anonymously share their experiences related to sexual assault.

Under our bill, schools will give their students anonymous, online surveys to gauge the scope of sexual assault on campus and the effectiveness of current institutional policies on this issue. The Department of Education will be responsible for developing this survey, as well as picking up its cost. Schools just need to ensure an adequate, random, and representative sample of students taking the survey.

The survey results will be reported to Congress and published on the Department of Education's website. Because this survey will be standardized, the American public will be able to compare the campus climate of all schools.

As a father of four children, I wish I had access to this kind of information when my kids were preparing to attend college. Now, as a grandfather of two, my hope is that when they grow up and

go off to school, our Nation's campuses will be safer than ever before.

The campus climate survey will be a useful educational tool for both students and parents, as well as an invaluable resource for institutions to help create or enhance efforts to prevent sexual assault, assist survivors of this crime, and improve campus safety overall. This provision is just one example of how Congress can act today and make ending this crime a priority.

While Congress cannot legislate away sexual assault, and no bill is perfect, I believe the Campus Accountability and Safety Act is a step in the right direction toward combating this heinous crime and guaranteeing survivors have access to the resources they need and deserve.

Thank you again for the opportunity to testify today. I look forward to hearing from my colleagues that are here at the witness table, and it has been an absolute honor and pleasure to serve with them and work with them to get this work done. Thank you very much.

Senator COLLINS. Thank you, Senator.

Senator Gillibrand.

STATEMENT OF SENATOR GILLIBRAND

Senator GILLIBRAND. Well, thank you, Chairwoman Collins and Ranking Member Murray. I'm so grateful for your attention to this issue and your commitment to this issue. I'm also grateful for Chairman Alexander's interest in having this hearing. It is invaluable.

About a year ago, we outlined a path forward to protect students from campus sexual violence, and we heard from survivors who spoke very passionately about not only the harm and physical assault they endured but the second injustice, the injustice of feeling betrayed by a school that they loved, an administration that they trusted. We listened to law enforcement, we talked to campus officials, we talked to the advocates for the rights of the accused, all who wanted their voices heard.

As Senator McCaskill said, this bill, this second bill that we've introduced, is truly a superior version of the first bill. This bill's fundamental objective is to flip the incentives so that the first time, it would actually be in the school's best interest to solve the problem, to actually do it aggressively and get it right. We did it because, obviously, the price of a college education should never be the risk of a sexual assault.

Every day, it's becoming increasingly clear that too many schools are failing, because they do not take sexual assault seriously enough. They do not see it as the violent felony that it actually is. They do not treat these as life-altering assaults, and they don't treat them as violent crimes.

Schools all across the country will routinely withhold a diploma if you don't pay your fees. They'll routinely kick you out if you cheat on a test. The statistics for students who have violated other students, who have sexually assaulted or raped them and found responsible, show that only one-third are actually expelled for the crime. In other words, two-thirds of students who were found responsible for sexual assault are still on their college campuses.

What does it say about our schools' priorities if some colleges have tougher justice for a student cheating on an exam than for someone who has raped another student? The Campus Accountability and Safety Act would transform the way colleges and universities deal with this crime.

With this bill, instead of pretending these crimes don't happen, schools would be held accountable for reporting their sexual assault statistics accurately and publicly. Every college and university in the country would give their students an anonymous standardized survey to assess students' experiences with campus sexual violence. The results of this biennial survey would give students, parents, and campus administrators a snapshot in time of what's happening on their campuses that would paint a far more comprehensive picture of the scope and depth of this national problem.

With this bill, instead of having campus security and local police debate jurisdiction after a sexual assault is reported, every college and university in the country would be required to have a memorandum of understanding with local law enforcement to clearly delineate responsibilities. As Senator McCaskill said, when you go and see that confidential advisor, he or she will be able to tell that survivor what his or her options are. This is the campus route. This is the criminal justice route. There'll be no confusion, and she'll know exactly what happens under each process.

Instead of a survivor feeling like she has to go public with the details of her rape just to capture her school's attention, with this bill she now has a dignified path to justice without having to broadcast the details of the worst nightmare of her life in public and on the cover of the *New York Times*.

I urge my colleagues here to support this critically important bill. I truly believe we have a responsibility to keep our young men and women safe on campus.

Chairwoman Collins, I have for the record a number of letters that I'd like to introduce. I have one from the American Federation of Teachers. I have one from the anti-sexual violence organization, RAINN; one from my State University of New York, a system of 64 colleges and universities, the largest in the country, who has endorsed every provision of this bill.

I also have one from the representatives from the Louisiana Legislature, where a version of the Campus Accountability and Safety Act recently just passed into law, and I have another one from the student advocacy organization called SAFER, Students Active for Ending Rape.

Thank you again for your attention and your dedication, and thank you to all the members who came to this hearing.

[The letters referred to may be found in Additional Material.]

Senator COLLINS. Thank you for your testimony, and those letters will be entered into the record without objection.

Senator Ayotte.

STATEMENT OF SENATOR AYOTTE

Senator AYOTTE. Thank you, Chairman Collins.

Thank you, Ranking Member Murray, and I want to thank Chairman Alexander as well for his focus on this issue. I know that many members of this committee have already become co-sponsors

of our bill and have been real leaders on this issue. We're very appreciative of your attention today.

I'm deeply honored to be here with my colleagues. This has been an important process of continuing to seek feedback and making sure that we are looking at the best practices that occur around the country and also solving some of the worst problems that we've seen and inconsistencies that we've seen around the country. Thank you all for your leadership on this.

This is an example of how members of both parties can work together, when you see the strong bipartisan support for this bill and also the strong bipartisan message that this hearing sends today—that we all appreciate that every student deserves a safe environment on campus so that students can focus on learning instead of being victims of crime or feeling that they have to be in fear. That's really what we want to accomplish and to give the proper tools and focus on this incredibly important issue.

Campus sexual assault is a serious public safety issue that has impacted every State in this Nation, including my home State of New Hampshire. Like Senator Heller, in order to hear directly from stakeholders, I've held roundtables and discussions on this issue at Dartmouth College, Saint Anselm College, and the University of New Hampshire, bringing together students, survivor advocacy organizations, law enforcement, and campus administration officials to talk about these issues in different sized colleges with different challenges.

In New Hampshire, we have seen some positive developments when it comes to ensuring that survivors receive support on campus. This national discussion has forced many colleges to really focus on this issue. Having a hearing like this also causes our campuses to again reexamine this issue.

For example, having met with local law enforcement and administrators and students at Dartmouth College in Hanover, I know that they are engaged in a process and committed to change at Dartmouth. I've also had very candid conversations with the administration there.

The Dartmouth community has struggled with this issue, and there's much more work to do. I'm very encouraged that Dartmouth recently formalized a relationship with the local rape crisis center to provide confidential services to survivors of campus sexual assault.

Over in Durham at the University of New Hampshire, they've actually done some nationally recognized work on rape prevention. Candidly, much of the focus of our legislation is to ultimately bring campus communities throughout the Nation in line with some of the efforts that we've seen at UNH. UNH police chief Paul Dean proudly characterizes UNH's multiple initiatives on prevention and response as a conspiracy of care for the students at UNH.

As a former attorney general in my State, I know that crimes of sexual assault are very serious crimes and need to be handled by law enforcement if victims choose to pursue that route. However, the reality is that for a variety of reasons, these crimes are vastly underreported and often unreported.

Our bill seeks to foster a more cooperative environment between schools and local law enforcement by requiring colleges and univer-

sities to enter what Senator Gillibrand talked about, a memorandum of understanding with the entity that has jurisdiction to report and investigate crimes on campus. The goal of the MOU is to foster a dialog between the school and law enforcement before a serious incident takes place.

An MOU that clearly delineates responsibilities and requires that appropriate information sharing can ensure that when survivors come forward and choose to report a crime to law enforcement, these crimes are properly investigated. It also can ensure that an accused individual—that there's a clear understanding of what their rights are in this process as well.

We know that too many of these crimes go unreported on campus, and that's why it's so critical—this piece of the confidential advisor—so that victims know what their options are and that they know that there is someone who can represent them in this process and can let them know what their options are if they choose to report to law enforcement and what will happen during the administrative process. These two provisions are critical as you look at this bill.

Unfortunately, one other issue that came up during the course of bringing people together around this—and I know Senator McCaskill has focused on this as well. We've been very outraged that we found out that on some campuses, the way that these crimes have been haphazardly investigated, that you had athletic departments that were investigating crimes of sexual assault and handling these matters. Consistency in ensuring that practices like this never occur again will ensure fairness, not only to the accused, but also to victims of sexual assault.

You can imagine that if you're a victim and the athletic department is the one investigating an athlete that is accused of these crimes, you will not feel that you'll get justice in those circumstances. This bill would end practices like this and ensure that there's consistency and that there's fairness, not only for victims of sexual assault to ensure that a confidential advisor will be given to victims, but that the accused—that there's a fair and clear process to investigate these crimes.

I thank you so much for your leadership, both the Chair and Ranking Member, on this issue and for my colleagues and their incredible work today. Thank you.

Senator COLLINS. Thank you very much. I want to thank all four of our colleagues for coming to testify today and for your outstanding leadership on this issue. I know you have busy schedules, so at this point, you're free to go, and we'll bring forward the second panel.

I am pleased to welcome our next panel of four witnesses today. Our first witness, president Janet Napolitano, is the president of the University of California. I had the pleasure of working with president Napolitano when she was Secretary of Homeland Security and I served as ranking member of the Senate Homeland Security Committee. It's a pleasure to welcome her back to Washington today.

President Napolitano leads a university system with 10 campuses, five medical centers, three affiliated national labs, and a statewide agricultural and natural resources program. Previously,

she served as Governor and attorney general—not at the same time, I might add—of Arizona.

Our second witness, Dana Bolger, is the co-founder of Know Your IX. She leads a national survivor and youth-led campaign to end campus sexual and dating violence. She is also a columnist and a 2014 graduate of Amherst College.

We thank you for being here as well.

Next we will hear from Dolores Stafford, who is the executive director of the National Association of Clery Compliance Officers and Professionals and the Association for Campus Administrators who are responsible for managing Clery Act compliance. She also serves as the president and CEO of D. Stafford and Associates, a professional services firm specializing in safety and security-related issues on college campuses. It's also interesting to note that she served as chief of police at George Washington University for several years right here in Washington.

And, finally, we will hear from Benz-Flounlacker, who is the associate vice president for Federal Relations at the Association of American Universities, where she has worked for some 14 years. She's responsible for higher education policy and funding issues.

Governor Napolitano, we will begin with you.

STATEMENT OF HON. JANET NAPOLITANO, PRESIDENT, UNIVERSITY OF CALIFORNIA, OAKLAND, CA

Ms. NAPOLITANO. Well, thank you, Senator Collins, Senator Murray, and members of the committee for holding this hearing and for the statements of your colleagues earlier this morning as well. I'm really pleased to see the bipartisan support on this issue.

Campus sexual assault and sexual violence is a criminal issue. It is a public health issue. It is a cultural issue. At the University of California, which is the Nation's largest public research university, we have no tolerance for it. The question is what do you do about it. I'm here today to briefly describe what we have done and make just a few brief comments on the legislation.

In June 2014, we established a system-wide task force to develop and implement a model for prevention, response, and reporting of incidents of sexual violence and sexual assault. We broadened the definition to include things like dating violence, domestic violence, and stalking, which previously had not been clearly included. We adopted an affirmative consent standard, meaning consent must be knowing, intentional, and revocable in our cases.

The task force was very broad, but identified eight key recommendations. I'm pleased to see that the recommendations of the task force are really mirrored in the legislation that you are considering now.

A consistent response team; system-wide investigation and adjudication standards, including sanctions; comprehensive training and education for the entire UC community; communications and public awareness; a confidential advocacy and advocate for each survivor; a systemwide website for information; standard data collection and increased accountability and reporting; and then appropriate support services for survivors based on their circumstances—these are the eight key pillars of what we are doing.

Four have already been completely enacted. The remaining four will be implemented no later than January 2016.

The most important is that we have established the independent confidential advocate on every campus of the University of California. We have funded it. We have supported it. We have trained it. We've also set up systemwide education. Every person, every freshman reporting this fall will receive the same training throughout the system, and that training will then include all other students, faculty, and staff. When you add all those numbers together, that's over 400,000 people who will be receiving the training.

We have worked with the California attorney general on a model, a template, and a tool kit for the linkage between the campuses and district attorneys and law enforcement. The websites are up and running, and in my written testimony, I've given you the website if you have extra time, which you don't, but if you have, you could go on the website.

A couple of brief comments on the legislation. First of all, three principles. It has to be flexible enough to allow for institutional differences. There's a big difference between a big public university like a Berkeley or a UCLA and a very small college, and we need to take some of that into account.

Second, existing rules and regulations within the Department of Education need to be better allocated and coordinated. There's a lot of redundancy, duplication, and delay there. This is something I know the department is working on, but it is something that should be taken into account.

And, third, any new laws should not undo any research-based best practices already implemented at campuses across the country. In other words, campuses are moving even while the legislative process is underway. As I've mentioned, we are very close to voluntary compliance with the key elements of CASA.

One thing—last point. On the MOUs, the legislation should recognize that many large campuses have their own sworn police departments. How that works in the MOU world needs to be taken into account legislatively.

Again, the importance of this hearing and the importance of the support shown in the Senate for this legislation cannot be overstated. On behalf of the University of California, we're very grateful for your efforts.

[The prepared statement of Ms. Napolitano follows:]

PREPARED STATEMENT OF JANET NAPOLITANO

The central vehicle for the University of California's response to preventing, responding to, and reporting incidents of sexual violence and sexual assault on our campuses is UC's Task Force on Preventing and Responding to Sexual Violence and Sexual Assault.

Sexual violence and sexual assault are issues of national significance. The University of California has no tolerance for sexual violence and sexual assault and the University has taken steps to drive cultural change around these issues.

In June 2014, UC convened the Task Force, and charged it with identifying steps to improve UC's efforts on preventing and responding to sexual violence and sexual assault. Because the student perspective is vital to UC's ability to improve its efforts, students were actively involved in the process at both the undergraduate and graduate level. In a very short time, the Task Force developed its recommendations, and set timelines and a plan of action.

The Task Force identified eight recommendations, which constitute the UC model:

1. Establish a consistent "response team" model at all 10 campuses.

2. Adopt systemwide investigation and adjudication standards, including sanctions.
3. Develop a comprehensive training and education plan for the entire UC community.
4. Implement comprehensive communications and public awareness campaigns.
5. Establish a confidential advocacy office on each campus that is available 24/7.
6. Create a comprehensive systemwide website for information and resources.
7. Develop systemwide standard data collection to increase accountability and transparency.
8. Ensure that respondents receive appropriate support based on their circumstances.

The Task Force will continue to monitor progress, gather metrics, and review implementation of the recommendations. Task Force members will work with researchers to evaluate new policies and assess their effectiveness.

Regarding S. 590, the Campus Safety and Accountability Act, or CASA, UC supports Federal legislation to help address sexual violence and sexual assault on college campuses. UC also supports efforts to encourage better collaboration and broader accountability among other partners in this endeavor, such as prosecutors and the courts.

With respect to Federal legislation, UC's overarching principles include:

- Federal legislation must be flexible enough to allow for institutional differences, yet strong enough to ensure full accountability.
- Existing rules and regulations now in place through the Higher Education Act must be better coordinated.
- Any new law must not undo any research-based "best practices" institutions have already implemented.

UC strongly supports the requirement to designate a confidential advocate to whom survivors can report anonymously and directly, as well as the requirement that each employee who has responsibility for interviewing survivors of sexual violence must have training in victim-centered, trauma-informed techniques.

Mr. Chairman and members of the committee: Thank you for the opportunity to testify before the committee on the extremely important issue of sexual violence and sexual assault on college and university campuses. I am Janet Napolitano, President of the University of California. Recognized worldwide for its academic distinction, the University of California includes more than 238,000 students, 198,300 faculty and staff and 1.6 million living alumni. UC has 10 campuses at Berkeley, Davis, Irvine, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Cruz and Santa Barbara; five medical centers, which provide broad access to specialized care, support clinical teaching programs, and develop new therapies; the Division of Agriculture and Natural Resources (ANR), which administers research, education and outreach programs throughout California; and three national laboratories UC manages for the Department of Energy.

I have been asked to testify today on the efforts the University has undertaken to implement a consistent and transparent model for preventing, responding to, and reporting incidents of sexual violence and sexual assault on our campuses. First let me state that the UC system has no tolerance for sexual violence and sexual assault, and I see the issue of sexual violence and sexual assault on colleges and universities as a matter of national importance. In fact, looking at the totality of sexual violence, including stalking, dating violence, domestic violence, and sexual assault, this constitutes a serious public health issue in this country.

Recognizing this, in June 2014, I formed a systemwide Task Force to develop recommendations for implementing strategies to support excellence in prevention, response, and reporting of sexual violence and sexual assault, based on evidence-informed solutions and approaches, and to identify steps to improve UC's current processes in order to drive cultural change in sexual violence and sexual assault prevention. The University of California was taking steps to improve its prevention, response, and reporting efforts even prior to the creation of the Task Force.

For example, in February 2014 UC significantly broadened and clarified its policy against sexual violence and harassment to include domestic violence, stalking and date rape. With this policy revision, UC also adopted an affirmative consent standard that defines consent as unambiguous, voluntary, informed and revocable, before California enacted its "Yes Means Yes" law. This policy was revised to comply with the requirements outlined in the Campus SAVE Act, as part of the 2013 Reauthorization of the Violence Against Women Act (VAWA) and incorporates guidance from

the Department of Education's Office of Civil Rights April 4, 2011, Dear Colleague Letter.

The UC Task Force is led by Senior Vice President and Chief Compliance and Audit Officer, Sheryl Vacca, who reports directly to me and to the UC Board of Regents. To be successful in a system as diverse and large as the University of California, we knew that it required a range of expertise and participation. Task Force members were selected based on their subject matter function and expertise. They include representatives from the UC Regents, survivors, students (undergraduate and graduate), campus police chiefs, title IX officers, student conduct officers, advocates, faculty, legal, compliance, human resources, academic affairs, and student affairs. In addition, additional subject matter work groups, student groups, affinity groups, and faculty research expertise are incorporated into the overall approach of the Task Force.

I wanted to ensure that students are actively involved in the process at both the undergraduate and graduate level from multiple UC campuses. The student perspective is vital to help the University continuously review and improve its efforts.

I gave the Task Force a very firm—and short—timeline to make significant changes across the system, and I believe that over the course of the last year the Task Force has made outstanding progress in meeting that charge. To meet this demanding timeline, the Task Force and its work groups met regularly over the summer of 2014 to develop its initial recommendations and plan of action. The campuses were then directed to implement the first phase of recommendations on a set timeline with a report back to my office and the UC Regents in January 2015. The remaining recommendations will be implemented no later than January 2016.

In September 2014, the Task Force identified seven initial recommendations that form the foundation for the overarching UC model, which are to:

1. Establish a consistent "response team" model at all 10 UC campuses. This model utilizes two teams with different functions. The first is a case management team responsible for ensuring timely, objective, and fair institutional responses for survivors and respondents. The second is responsible for guiding the campus in preventing and responding to sexual violence at a campus level with respect to policies, community relations, prevention and intervention.
2. Adopt systemwide investigation and adjudication standards, including sanctions.
3. Develop a comprehensive training and education plan for the UC community including students, staff and faculty that focuses on prevention and intervention and is specifically tailored to each population and includes on-going education.
4. Implement a comprehensive communication strategy to educate the community and raise awareness about UC programs. The strategy leverages national, UC system, and campus communication efforts including the White House campaign, *It's on Us, and Yes Means Yes*.
5. Establish an independent, confidential advocacy office for sexual violence and sexual assault on each campus that is available to student survivors on all UC campuses.
6. Create a comprehensive systemwide website to provide general content, information and resources to all campus populations that can also be customized for each campus.
7. Develop a systemwide standard data collection system that leverages current information collected, which will allow the campuses and the University system to better track claims of sexual assault and foster accountability and transparency.

In January 2015, the Task Force provided further detail on implementation of the recommendations, which builds on current strengths of the campuses and focuses efforts on enhancing or overhauling, as appropriate, existing efforts throughout the system. At that time four of the recommendations had been implemented, including the CARE Advocate, consistent response team models, the communication strategy, and the systemwide website. Additionally, the Task Force identified an eighth recommendation: the importance of ensuring that respondents receive appropriate support based on their circumstances.

I would like to highlight the work of the Task Force and the campuses in implementing the recommendation to establish a "CARE: Advocate Office for Sexual and Gender-Based Violence and Sexual Misconduct" at every campus. These full-time CARE Advocates have received the training required to be confidential and privileged on-campus advocates for survivors of sexual violence and sexual assault. They utilize a trauma-centered approach to work with and meet students' needs and they are available to UC students on a 24/7 basis. This responds to what the Task Force specifically heard from students—that they wanted more on-campus resources. The implementation of this recommendation is also in line with legislation introduced

by Senator Barbara Boxer and Representative Susan Davis, the Survivor Outreach and Support Campus Act (SOS Campus Act), and could serve as a model for the Nation.

Last week, the UC Board of Regents received an update on the four remaining Task Force recommendations. These included updates on the adoption of investigation and student adjudication standards—including a consistent approach to sanctions—across the UC system. The Task Force also reported on the development of a common educational framework with standardized content goals, objectives, and definitions for mandatory annual education for faculty, staff, and students. This means that more than 400,000 faculty, staff, and students will receive education around preventing and reporting sexual violence and sexual assault. The update also outlined progress in providing support services for respondents—important to ensure that all parties receive appropriate support and information during the investigation and student adjudication process. These recommendations will be fully implemented by January 2016.

The work of the Task Force is not finite and the members will continue to monitor progress, gather metrics, and review implementation. They will focus on evaluating the new changes put into place and will work with researchers and other experts to assess the effectiveness of the changes made across the University of California. We want to make sure our efforts are making a positive difference—and indeed changing the culture across our campuses.

The University did not operate in a vacuum in developing and implementing these changes to our processes and approach to addressing sexual violence and sexual assault. Research and review of current practices across the country were of paramount importance to the work of the Task Force. There is a myriad of interconnected psychological, social, emotional, legal, and administrative issues involved in trying to understand how best to prevent and respond to sexual violence and sexual assault. The Task Force reviewed relevant core concepts, current UC processes, practices from other universities, and academic research. The Task Force consulted with constituents and experts both within and outside the University and evaluated and discussed specific issues that cross functionalities, processes, and responsibilities throughout the system. The Task Force focused on identifying practices which would reflect outcomes demonstrating effectiveness.

The Task Force and its work groups reviewed sexual violence and sexual assault prevention practices from 115 universities across the Nation. These universities received grants from the Centers for Disease Control and Prevention (CDC) or the U.S. Department of Justice (DOJ) Office of Violence Against Women (OVW) to address some portion of sexual violence and sexual assault.

Academic research linked to sources from the *White House Task Force on Sexual Assault and Violence Prevention*, as well as accepted "evidence-informed" research of best practices on policies, training and education, case management, and survivor support, was reviewed throughout the Task Force's work. The Task Force also called on various internal and external experts to advise on and review various parts of the recommendations. As new studies, reports, and campus agreements from the U.S. Department of Education's Office of Civil Rights (OCR) were unveiled, these too were reviewed and incorporated into the Task Force's efforts.

STATE LEGISLATIVE ACTIVITY

The Task Force continues to develop plans and strategies for implementing the remaining recommendations even while the legal landscape is changing based on legislation that has been enacted or proposed at both the Federal and State levels. California State law continues to evolve in this area. In January 2015, the State's "Yes Means Yes" bill became effective. The law now requires colleges and universities to adopt certain policies concerning sexual violence, domestic violence, dating violence, and stalking, such as an affirmative definition of consent and a preponderance of evidence standard. The bill also requires UC and other institutions to collaborate with campus and community organizations and implement comprehensive prevention and outreach programs. UC, having already adopted an affirmative consent policy in addition to many of the other requirements of the bill, supported the legislation.

The California legislature continues to contemplate legislation addressing campus sexual violence, including legislation introduced this year that seeks to require colleges and universities to carry out uniform processes for disciplinary proceedings and consistent standards of discipline for students found responsible for sexual assault. The California legislature is also considering a bill that would require a student's transcript to include a notation when that student has been suspended or expelled.

FEDERAL LEGISLATIVE ACTIVITY

The University of California is committed to fostering a healthy and inclusive environment where all members of the University community can work and learn together free from harassment, exploitation, intimidation, or physical harm. UC supports Federal proposals to help all institutions of higher education navigate the complex set of issues they face in preventing, responding to, and reporting incidents of sexual violence and sexual assault. UC also supports broader coordination and accountability among other partners in this endeavor, such as prosecutors and the courts.

Before outlining my views on S. 590, the Campus Safety and Accountability Act, or CASA, which is the subject of this hearing, I would like to note UC's underlying principles:

• Federal legislation must be flexible enough to allow for institutional differences, yet strong enough to ensure full accountability.

• Existing rules and regulations now in place through the Higher Education Act, including for example, the Clery Act and title IX, along with the Violence Against Women Act (VAWA) and Department of Education oversight through the Office of Civil Rights (OCR) must be better coordinated. The definitions, regulations, program guidance, timelines, and other programmatic components are not synched, resulting in overlapping investigations, confusing interpretations, and at times contradictory legal advice. The Department of Education could begin—even before Federal legislation is enacted—to streamline its internal procedures to better guide institutions toward full compliance with current laws and regulations.

• Any new laws or regulations must not "undo" or contravene programs and policies institutions have implemented that are based on sound research and represent best practices for action. With MOUs, as one example, there must be flexibility for compliance based on what is already in place, and assurances that if Federal guidance and standards are adhered to, they will stand up against challenges from the courts.

UC VIEWS ON CASA

Implementation of the Task Force recommendations I have outlined brings the University of California into voluntary compliance with many of the provisions of the Campus Accountability and Safety Act (CASA), which are aimed at enhancing campus resources and support services for student survivors.

The Task Force recommendations that will be implemented at UC over the next months, including developing a comprehensive education and training program on each campus and unified investigation and student adjudication standards, build on that progress. UC looks forward to working with Senator McCaskill, Senator Gillibrand and the other co-sponsors of CASA on the provisions of the bill.

Here are UC's comments on the legislation as it now stands.

Support for Survivors of Sexual Assault

UC strongly supports CASA's requirement for institutions of higher education to designate a confidential advocate that survivors can report to anonymously and directly. I am pleased that the legislation requires each employee of an institution of higher education who has responsibility for conducting an interview with an alleged victim of sexual violence to complete minimum training requirements in victim-centered, trauma-informed interview techniques. This is consistent with what we have implemented on our own campuses.

However, the University does have a few comments and concerns with other aspects of this provision:

• The level of "confidentiality" these advisors can maintain may be dependent on Federal and State law. Any legislation in this area must ensure that the "confidentiality" of services provided by these advisors is clearly defined by the institution and shared with students in plain language.

• UC does not believe that institutional size should be the determinant factor for the number of confidential advisors on a campus. CASA would direct the Department of Education to define, through a negotiated rulemaking process, an "adequate number" of confidential advisors that an institution must appoint based on the institution's size. While institution size is one of many factors, instead, as the UC Task Force recommended, the staffing level should be sufficient to provide support at any time of day for all survivors given the size and needs of the individual campus.

• The University is concerned that the legislation's requirement that the confidential advisors collect and report statistics about crimes as required by the Clery Act may diminish the perceived confidentiality of the advisor. I cannot stress enough the importance that these advisors must be confidential and independent.

While a confidential advisor is not obligated to report crimes to the institution under CASA, they would still have to report crime statistics as part of the Clery Act, which may make students feel the advocates are not confidential and independent.

Amnesty Policy

UC is pleased CASA's amnesty requirement is narrow enough in scope to preserve an institution's ability to protect the health and safety of its campus community. UC policy and California law already have existing amnesty provisions that ensure that a student who is a complainant or witness in an investigation of sexual violence is not subject to disciplinary sanctions for violations of student codes of conduct at or near the time of the incident. However, both California State law and UC policy allow the institution some flexibility for egregious violations such as an action that places the health or safety of any other person at risk. Federal law should not contradict or undo stronger provisions in State law.

Student Disciplinary Proceedings

As evidenced by the steps the UC Task Force is taking to develop consistent student adjudication and investigation standards, including disciplinary proceedings, I support CASA's provisions related to developing common, consistent practices and standards in response to sexual violence across campuses. Further, I am pleased that the current version of CASA has clarified that the provisions apply to student proceedings. As previously noted in my testimony, this is another area where State law and UC policy are already moving in this direction and so I caution against any action in Federal legislation that may undo those actions we have already taken.

Data Collection and Reporting

CASA would require institutions to report sexual violence and sexual assault statistics—such as the number of cases investigated by the institution, the number of cases referred for a disciplinary hearing, the number of cases referred to law enforcement, and a description of the final sanctions imposed on sex offenses—in their Annual Security Reports required by the Clery Act. The University believes that the collection of data is vital for ensuring accountability and transparency and for evaluating our institutional efforts to prevent and respond to incidents when they occur. In fact, proposed State law in California would require the collection of similar statistics and that the data be posted to the University's website.

UC is concerned, however, that data required for collection in the Clery Act can lead to false or inaccurate conclusions. For example, not all of the sex offenses reported as Clery Act crimes are subject to institutional disciplinary proceedings—for example, if the accused offender is not a UC student. New proposed statistics could result in the mistaken conclusion that an institution is not appropriately addressing all reported student sex offenses. Consequently, we must ensure that any additional requirement to collect statistics on Clery Act offenses be consistent and clear so that the data does not result in misleading comparisons of unrelated information. Further, should State legislation pass, we may be required to collect and report different, though somewhat similar, data points in different manners which could create confusion to those individuals reviewing such information.

Surveys

CASA requires that the Department of Education develop, design and administer a standardized, online, annual survey of students regarding their experiences with sexual violence and harassment every 2 years. Having just conducted the largest university system climate survey of its kind in the Nation, I have significant concerns about the usefulness of a single survey developed for all institutions given the broad diversity in higher education institutions across the Nation and the student populations they serve. UC surveyed not only students, but also faculty and staff about their experiences and perceptions of the campus or workplace climate. We now have a rich baseline of data that campuses are analyzing to identify key areas of focus. Institutions should be allowed to develop and use their own climate surveys, as long as they meet criteria and standards defined by the Department of Education and are developed in consultation with stakeholders. Further, I believe that it is inappropriate for the legislation to place the responsibility on the university for ensuring that an adequate, random, and representative sample size of students enrolled at the institution completes the survey. This requirement could compromise the perceived anonymity of the survey and would be especially challenging if the survey would be administered by the Department of Education and not the institutions.

Memoranda of Understanding with Law Enforcement

CASA would require institutions to enter into and review every 2 years memoranda of understanding (MOU) with "each law enforcement agency that has jurisdiction to report as a first responder to a campus of the institution" to clearly delineate responsibilities and share information about certain serious crimes that shall include, but not be limited to, sexual violence. As noted earlier in my testimony I strongly believe in the importance of MOUs between institutions of higher education and local law enforcement. However, the University is concerned that the specific provisions of CASA fail to recognize that many colleges and universities employ fully sworn peace officers.

The University of California, like many university police departments nationwide, employs fully sworn law enforcement officers with full arrest powers and primary jurisdiction for first-response and law enforcement on their campus. According to a survey by the Bureau of Justice Statistics, this is especially true for large public colleges and universities, and in the 2011–12 school year, 68 percent of the more than 900 U.S. 4-year universities and colleges with 2,500 or more students employed sworn law enforcement officers who had full arrest powers granted by a State or local government.

UC police officers are trained and certified consistent with the California Commission on Peace Officer Standards and Training requirements and they investigate incidents of sexual assault and other felony and misdemeanor crimes as both first responders and as trained and experienced criminal investigators. As with local law enforcement, University police follow response and investigative protocols established in the county of jurisdiction, including collaboration with the County District Attorney's office, adherence to county guidelines for sexual assault evidence collection and medical examination by specially trained medical personnel, and collaboration with other law enforcement agencies as appropriate to increase the likelihood of bringing offenders to justice.

CASA's requirements for an MOU that would allow local law enforcement agencies to dictate "training and requirements for the institution on issues related to sexual violence" is unnecessary and fails to recognize the campus police department's primary law enforcement responsibilities for the institution. At UC, our campus police departments are included in our sexual violence and sexual assault training. They receive investigation training, trauma-informed training, training from the California Commission on Peace Officer Standards and Training, and mandated training regarding sexual violence and sexual assault, which is much more than may be required through CASA and the training is more focused on the areas that need to be emphasized.

Campus Security Authorities and Responsible Employees

CASA would designate all responsible employees of institutions of higher education as campus security authorities (CSAs) as defined by Clery Act regulations, which encompasses a very large number of employees. The University is concerned that this broadening of the CSA definition would require significant changes in the way UC campuses train CSAs and could unnecessarily complicate the processing of Clery reports because all CSAs must report statistics for the Clery Act. Additionally, CASA gives the Secretary of Education, in coordination with the Attorney General, responsibility for determining the minimum training requirements for an institution's "responsible employees." In order to be most effective, I believe that these minimum training requirements should be developed in consultation with institutions and other affected stakeholders. This ensures that the training requirements are based on a clear understanding of institutional practices, challenges faced by "responsible employees," and the needs of the victims.

Grants to Improve Prevention and Response to Sexual Violence and Sexual Assault

UC welcomes the opportunity for outside funding to augment our current programmatic efforts via a new competitive grant program authorized in CASA. The program would allow institutions of higher education to apply for grants for the purposes of researching best practices for preventing and responding to sexual harassment, sexual assault, domestic violence and stalking on college campuses and disseminating such research with peer institutions.

Penalties

CASA would authorize new civil fines of not more than 1 percent of an institution's "operating budget," as defined by the Department of Education, for:

- violations of title IX related to sexual violence;
- failure to comply with CASA requirements for establishing MOUs with law enforcement; and

- failure to comply with CASA requirements related to confidential advisors.

I am pleased to see that CASA place the funds into the grant program created in the legislation.

Stakeholder Engagement

UC recommends that the bill require the Department of Education to consult with institutions and other affected stakeholders prior to implementing any new policies or regulations for CASA. This is the best way to ensure that any new institutional requirements are based on a clear understanding of institutional practices and challenges, as well as the needs of the victims and respondents.

ADDITIONAL RECOMMENDATIONS

The University of California is not unique in its desire to protect its community and improve its practices. UC has strived to implement a robust, comprehensive, consistent, and transparent model to address sexual violence and sexual assault across the University. Much of the work that has and continues to occur at UC can serve as a model for the Nation, though much more needs to be done by all universities.

For example, we need more engagement on the law enforcement and legal fronts. At UC, our activities to prevent and respond to sexual violence and sexual assault are well coordinated with our local law enforcement agencies, and this is a key component of our efforts. As I already explained, UC police officers are fully sworn and trained law enforcement personnel who respond to and investigate all crimes, including cases of sexual violence and sexual assault. They also work with other law enforcement agencies as needed. However, as effective as they are, they do not prosecute crimes.

In this spirit of partnership, back in May, California Attorney General Kamala Harris and I unveiled a new toolkit for California law enforcement agencies and higher education institutions to help them improve their coordination and collaboration in response to cases of campus sexual assault and other violent crimes. The template MOU is available but not required if a campus already has agreements in place with local law enforcement that address this type of collaboration and information sharing. It is designed so that it can be adapted to meet local needs, ensure consistency with existing agreements, or revisit existing agreements to reconcile changes in law or policy. In addition to covering various law enforcement entities, if needed, MOUs can be set with district attorneys, local medical facilities, or other community-based organizations. Using the model MOU will reflect a shared commitment among the parties to justice for survivors and accountability for perpetrators of sexual violence and build trust and ensure appropriate outcomes for criminal acts of sexual violence and sexual assault.

As I stated earlier, much more could be done to improve the clarity and coordination of existing laws and policies. Within the Department of Education, the Clery Act, title IX, VAWA, and OCR investigations use different definitions, coverage, and reporting requirements, and there is no coordination of investigations between the Federal Government and individual States. For example, this can create great confusion because reporting obligations under OCR guidance is driven by who is the victim or perpetrator and under Clery reporting is based on where an incident occurs. Individuals may have obligation to report under one or both. In addition to the fact that there is significant confusion at institutions about what is "recommended" or "preferred," there are legal and financial implications to this lack of regulatory coordination.

Congress must be aware that there is substantial interplay between Federal legislation and regulations and State laws, which adds another layer of complexity to higher education's efforts to address this important issue. Institutions, in following Federal guidance and rules and regulations, should not unintentionally run afoul of State legal and administrative requirements.

I am concerned that an entire cottage industry of consultants has grown to "help" schools manage sexual violence and sexual assault. Personally, I would rather invest the university's resources in education, training, and prevention programs rather than in untangling the web of overlapping State and Federal audits, investigations, and laws.

CONCLUSION

UC holds itself to the highest standards and will continue to work to ensure that all of our campuses, medical centers, and labs maintain a culture of respect and inclusion. We will continue to review and improve our efforts and practices to make sure UC is a place where all students, faculty, and staff are safe.

Thank you very much for your time and attention to my testimony.

Senator COLLINS. Thank you very much for your excellent testimony.

Ms. Bolger, welcome.

STATEMENT OF DANA BOLGER, CO-FOUNDER, KNOW YOUR IX, WASHINGTON, DC

Ms. BOLGER. Thank you, and good morning, Chairman Collins, Ranking Member Murray, and members of the committee. I'm very grateful to be here to testify at this committee's hearing on campus sexual assault.

During my time at Amherst College, from which I graduated in 2014, I benefited from decades of activism and legislation to promote gender equality on campus. I also inherited a history of administrative under-enforcement, in the shadow of which gender violence was rampant. Schools mistreated young survivors with impunity, and few students knew title IX was about anything more than women's sports.

On my campus alone, students who experienced sexual or dating violence were discouraged from reporting, denied counseling and academic accommodations, and pressured to take time off. When I reported my own abuse to my school, I was urged to drop out, go home, and return after my rapist had graduated.

Nearly every day, Know Your IX hears from students who have had similar experiences, and the hardest hit are often the most marginalized—students of color, LGBTQ students, low-income students, and students with disabilities. For many survivors, these inadequate school responses have not only frustrated their efforts to learn and graduate, but have also come with staggering financial burdens.

The costs of violence are very real. Between the expense of health services that colleges have refused to provide and tuition lost when victims feel they cannot safely remain on campus with their assailant without administrative support.

These costs impact survivors' educational opportunities while in school and continue long after graduation. Many survivors' grades plummet when they are forced to study in libraries with their abusers or when they suffer from depression and PTSD without administrative support, often leading to diminished wages long down the road. This intolerable status quo demands a strong Federal response.

Due in large part to the important recent guidance from the Department of Education's Office for Civil Rights, schools are finally beginning to take their responsibilities more seriously. Accommodations like housing changes and mental health services may seem trivial to the outside observer. To student survivors across the country, they are making the difference between staying in school and dropping out.

Title IX is a powerful tool to keep the one in five women who will suffer gender violence during college in school and learning. In reauthorizing the Higher Education Act, Congress should build on previous efforts in order to continue the fight to end violence and discrimination in higher education.

I outlined a number of solutions in my written testimony, but here I am going to focus on two: mandating campus transparency and promoting effective enforcement of title IX through finding authority and funding for the Office for Civil Rights.

First, transparency. There are strong perverse incentives for schools to sweep violence under the rug. A school that provides clear pathways for reporting may see an increase in the number of people disclosing assaults and, hence, a spike in its assault numbers under the Clery Act. This could make the school seem unsafe compared to a school that discourages reporting.

To counteract these potential negative reputational consequences, Congress should mandate that all schools conduct yearly campus climate surveys and publish the results. It matters how these surveys are instituted. Infrequent climate surveys or surveys where the results for each campus are not made public or released merely as aggregate data from numerous schools will hinder our efforts to create safer campuses.

Each school should also be required to publish aggregate statistics on how and how promptly investigations are being handled. Together, this information will help students and families assess how each school handles these cases in practice and will give policymakers the data they need to continue shaping legislative solutions.

Second, Congress should act to strengthen Federal enforcement efforts. The Office for Civil Rights currently relies upon the empty threat of revoking all financial support from a college or university to motivate schools to comply with the law. This is a nuclear option, too disastrous to ever be implemented.

Providing the Office for Civil Rights with the explicit authority to levy fines against schools that violate the law would give the agency the increased leverage necessary to hold schools accountable without devastating programming and aid for students in the process. Crucially, this authority must be made available for the department to enforce all relevant civil rights laws to ensure that students are free from all forms of discrimination, including those based on race and disability.

I also want to point out that serious efforts to combat violence on our campuses will require increased appropriations for the Office for Civil Rights. As more survivors come forward and the number of complaints grows dramatically, OCR remains grossly underfunded and understaffed. Increased funding would allow OCR to provide additional technical assistance to schools on how to comply with title IX, to better inform students about their rights, and to improve campus safety by ensuring timely investigations.

Over the last 5 years, we've seen a remarkable transformation. Conversations about gender violence once were confined to whispers in dorm rooms. Today, survivors and advocates like me have the opportunity to discuss these urgent issues before this committee.

Thank you for your time and for your commitment to building a future where students can learn and thrive free from violence.

[The prepared statement of Ms. Bolger follows:]

PREPARED STATEMENT OF DANA BOLGER

SUMMARY

One in five women will experience sexual assault during her time in college, as will many men and gender nonconforming students.[1] Queer and transgender students and students of color are particularly vulnerable to violence.[2] Unfortunately, in the wake of this harassment and abuse, many colleges and universities deny students the support they need—and to which they are legally entitled under title IX.

For many students, inadequate school responses have not only frustrated their efforts to learn and graduate but have also come with staggering financial burdens. The costs of violence are real and range from the expense of health services that colleges have refused to provide to the tuition and scholarships lost when victims feel they cannot safely remain on campus with their assailant without administrative support.[3]

This intolerable status quo—in which survivors of gender-based violence are *still* unable to access their right to education, over 40 years after Congress passed title IX—demands a strong Federal response. In reauthorizing the Higher Education Act, Congress should build on existing Federal protections for survivors of sexual and dating violence and address key remaining obstacles: lengthy Federal investigations that conclude with little more than a slap on the wrist; widespread opacity; and campus policies that discourage student survivors from reporting violence. Toward this end, Congress and the Administration should take several critical steps: increase funding for the Department of Education's Office for Civil Rights (OCR); empower the OCR to issue fines against schools for civil rights violations; increase campus transparency by mandating colleges and universities to conduct climate surveys and issue aggregate data on disciplinary outcomes; and require campus policies, such as disciplinary amnesty policies, that create an environment in which students feel safe and empowered to report violence without fear of discrimination or retaliation.

INTRODUCTION

My name is Dana Bolger and I am one of the founding co-directors of Know Your IX, a national student campaign against campus gender violence. I am grateful for the opportunity to testify at this committee's hearing on Reauthorizing the Higher Education Act: Combating Campus Sexual Assault.

I co-founded Know Your IX in 2013 to ensure that title IX's core commitment—that students be able to learn free from violence—was a right not only on paper but in reality. What began as just a few students at their computers working to spread the word about title IX to our classmates has grown into an organization supporting a national network of students working to build safer schools.

During my time at Amherst College, from which I graduated in 2014, I was a beneficiary of decades of mobilizing for gender equality and safety on campus. Title IX is a powerful law, and my generation has so many activists and policymakers to thank for its protections. As a student, I was also the inheritor of a history of administrative under-enforcement, in the shadow of which schools mistreated young survivors with impunity and few students knew title IX was about anything more than women's sports. On my campus alone, students who experienced sexual or dating violence were discouraged from reporting, denied counseling and academic accommodations, and pressured to take time off. When I reported abuse to my school, I was told I should drop out, go home and take care of myself, and return when my rapist graduated. All of us were denied our right to learn free from gender violence.

We as Amherst students were not alone. Know Your IX grew out of conversations with survivors across the country, from California to Maine, who had experienced similar gender violence and institutional mistreatment—all in violation of title IX. Research shows that one in five women will experience either sexual assault or attempted sexual assault during her time in college, as will many men and gender

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[1] The White House Council on Women and Girls. (2014). "Rape and Sexual Assault: A Renewed Call to Action." Accessed July 25, 2015. *https://www.whitehouse.gov/sites/default/files/docs/sexual_assault_report_121-14.pdf*.

[2] Ibid.

[3] Brodsky, Alexandra. (2014). "How Much Does Sexual Assault Cost College Students Every Year?" *The Washington Post*. Accessed July 25, 2015. *https://www.washingtonpost.com/posteverything/wp/2014/11/18/how-much-does-sexual-assault-cost-college-students-every-year/*.

nonconforming students.[4] We also know that LGBT students and students of color are particularly vulnerable to violence.[5] Yet so many students—and particularly the most marginalized—have been dismissed by the schools to which they have turned for support. Many colleges and universities have denied students the protections they need, like Amherst did to me. Many have placed uniquely onerous challenges, like higher evidentiary burdens, in the way of rape victims who pursue disciplinary charges against their assailants, to which victims of other student conduct code violations—like theft and non-sexual physical assault—are not subject.[6]

For many students, these inadequate school responses have not only frustrated their efforts to learn and graduate but have also come with staggering financial burdens. The costs of violence are very real, between the expense of health services that colleges have refused to provide and tuition lost when victims feel they cannot safely remain on campus with their assailant without administrative support.[7] Those costs impact survivors' educational opportunities while in school, and continue long after graduation: many survivors' grades plummet when they are forced to study in libraries with their abusers or when they suffer from depression and PTSD without administrative support—often leading to diminished wages down the road.[8]

This intolerable status quo—in which survivors of gender-based violence are *still* unable to access their right to education—demands a strong Federal response.

THE VITAL IMPORTANCE OF TITLE IX AND THE CAMPUS SAVE ACT

Schools are finally beginning to take seriously their responsibilities to survivors thanks to the efforts of students and the important work of the Department of Education's Office for Civil Rights (OCR).

OCR's recent clarifications of colleges and universities' responsibilities for supporting survivors have elucidated schools' obligations to provide accommodations, such as housing changes and mental health services. These accommodations may seem trivial to an outside observer but, to a survivor, they can make the difference between staying in school and dropping out. Other accommodations like an extension on a paper due the week after a student's rape, or tutoring to help a survivor catch up on classes missed to avoid sitting in class with an abusive partner, can ensure a young person is able to learn. The title IX framework is uniquely able to deliver these valuable services given its focus on access to education as a matter of equality.

Campus SaVE, which was passed as part of the 2013 reauthorization of the Violence Against Women Act, represents an invaluable Federal effort to provide protections for survivors. It increases transparency for students and their families by broadening the Clery Act reporting requirements to include incidents of domestic violence, dating violence, and stalking. It works to prevent future instances of violence by requiring colleges to provide primary prevention and awareness programs to new students and employees, as well as ongoing prevention and awareness campaigns.

In addition, Campus SaVE, as well as title IX, requires schools to investigate reports of gender violence in a manner that is fair to both parties, requiring prompt and equitable procedures and an equal commitment to both students. Campus SaVE provides explicit protections to complaining and accused parties to ensure that officials conducting disciplinary proceedings are well-trained; that each party can have an advisor of their choice; and that both parties receive the results of the disciplinary proceeding in writing and have the right to appeal the decision. Know Your IX strongly supports these requirements, which ensure proceedings are prompt and equitable for both parties.

NEXT STEPS TO PROMOTE ACCESS TO EDUCATION FREE FROM VIOLENCE

Even at this time of national scrutiny and campus reform, many survivors are still denied the right to learn free from violence and discrimination. In reauthorizing

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[4] The White House Council on Women and Girls. (2014). "Rape and Sexual Assault: A Renewed Call to Action." Accessed July 25, 2015. *https://www.whitehouse.gov/sites/default/files/docs/sexual_assault_report_1-21-14.pdf*.

[5] Ibid.

[6] Anderson, Michelle J. (2004). "The Legacy of the Prompt Complaint Requirement, Corroboration Requirement, and Cautionary Instructions on Campus Sexual Assault." 84 B.U. L. Rev. 945.

[7] Brodsky, Alexandra. (2014). "How Much Does Sexual Assault Cost College Students Every Year?" *The Washington Post*. Accessed July 25, 2015. *https://www.washingtonpost.com/posteverything/wp/2014/11/18/how-much-does-sexual-assault-cost-college-students-every-year/*.

[8] Simon, Cari. (2014). "On Top of Everything Else, Sexual Assault Hurts the Survivors' Grades." *The Washington Post*. Accessed July 25, 2015. *https://www.washingtonpost.com/posteverything/wp/2014/08/06/after-a-sexual-assault-survivors-gpas-plummet-this-is-a-bigger-problem-than-you-think/*.

the Higher Education Act, Congress should build on existing Federal protections for survivors of gender-based violence. Congress can help end gender violence in higher education by addressing several key remaining obstacles: lengthy Federal investigations that conclude with little more than a slap on the wrist; widespread opacity; and campus policies that discourage student survivors from reporting.

1. Increasing Funding for the Office for Civil Rights

Unfortunately, the Office for Civil Rights, which is primarily responsible for ensuring that schools are compliant with title IX and other civil rights laws, is grossly underfunded and understaffed.[9] Thanks to students' efforts, sustained media attention, and increased Federal enforcement, the number of complaints filed with OCR has increased exponentially in recent years. As of July 22, 2015, OCR is investigating 124 institutions, a number which has more than doubled since May 2014.[10] OCR's caseload is now more than triple what it received in 1980, but its current staff is only half the size.[11] As a result of the office's workload and the complexity of these cases, complainants face long delays: the average length of an investigation increased from 379 to 1,469 days between 2009 and 2014.[12] At the postsecondary level, five investigations (the University of Massachusetts-Amherst, University of Virginia, Michigan State University, Wittenberg University, and Arizona State University) have stretched on for longer than 3 years—nearly the length of a student survivor's time in college.[13]

Increased funding would allow OCR to provide additional technical assistance to schools on how to enter into compliance with title IX; better disseminate information to students about their rights and how to access them; and improve campuses safety by ensuring timely investigations, as well as continued monitoring, guidance, and support to schools in the months and years following the conclusions of their investigations.

2. Empowering the Department of Education to Issue Fines for Civil Rights Violations

The Department of Education's Office for Civil Rights believes it lacks the authority to levy fines against colleges and universities that violate civil rights laws like title IX. As a result, OCR relies upon the empty threat of revoking all financial support from a college or university (a "nuclear option" too disastrous to be implemented) to motivate schools to comply with the law. OCR has never once applied this punishment in a higher education sexual assault case, despite finding clear and serious violations of title IX on many campuses. Providing OCR with the explicit authority to levy fines would give the agency the increased leverage necessary to hold schools accountable, without devastating programming and aid for students in the process. Crucially, this authority must be available for the Department to enforce all relevant civil rights laws to ensure that students are free from all forms of discrimination, including those based on race and disability as well as sex.[14]

3. Increasing Campus Transparency

There are strong perverse incentives for schools to sweep violence under the rug. For example, a school that provides clear pathways to reporting and protections for survivors will see an increase in the number of people disclosing assaults, and hence a spike in its assault numbers under the Clery Act. To untrained observers, such schools tend to look more "unsafe" than others that actively deter individuals from disclosing and have low numbers of reports as a result. This means that schools that

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[9] Kingkade, Tyler. (2014). "Senators Push for More Staff at Agency to Investigate Sexual Abuse at Colleges." *The Huffington Post*. Accessed July 25, 2015. *http://www.huffingtonpost.com/2014/04/04/agency-sexual-assault-investigations-mccaskill-gillibrand__n__5092748.html*.

[10] Ibid.

[11] New, Jake. (2015). "Justice Delayed." *Inside Higher Ed*. Accessed July 24, 2015. *https://www.insidehighered.com/news/2015/05/06/ocr-letter-says-completed-title-ix-investigations–2014-lasted-more-4-years*.

[12] United States Department of Education. (2015). Letter to Senator Barbara Boxer. Accessed July 24, 2015. *http://www.boxer.senate.gov/press/related/150428EducationDepartmentResponsetoLetter.pdf*.

[13] Rocheleau, Matt. (2015). "Most Federal Sexual Cases Against Colleges Dropped." *The Boston Globe*. Accessed July 25, 2015. *https://www.bostonglobe.com/metro/2015/04/08/most-federal-sexual-violence-complaints-against-colleges-dismissed-without-penalties-reform/tl31LxcXORr2Riauxh8iTO/story.html*.

[14] *See, e.g.*, 42 U.S.C. § 2000d et seq. (prohibiting discrimination in educational institutions on the basis of race); 20 U.S.C. § 1681 *et seq*. (prohibiting discrimination in educational institutions on the basis of disability); 29 U.S.C. § 794 (same).

are more proactively addressing violence may suffer negative reputational costs as a result of following the law.

To counteract the potential negative reputational consequences of encouraging survivors to report, Congress should mandate that schools conduct campus climate surveys and publish their results publicly. This step would provide invaluable information to students and their families—including prospective students—and would increase incentives for schools to appropriately address violence. Schools should also be required to publish aggregate statistics on how investigations are being handled, which would provide greater insight into whether or not disciplinary proceedings are being handled promptly and equitably. This will help ensure that students, parents, and policymakers can evaluate and compare how each school responds to complaints of gender violence in practice, not just on paper.

4. Preserving Campus Options

I have much hope for the future of title IX and our ability to foster safe and equitable educational communities. Nonetheless, I do see one troubling pattern worth discussion here: Many State and Federal lawmakers, surely with the best of intentions, have suggested that schools should hand over all sexual assault cases to the police—even when the survivor has asked that they not do so. While intuitively appealing to many, these "mandatory referral" laws, as they are known, would actually decrease reporting rates and deprive survivors of the on-campus support they so desperately need.

In a survey that Know Your IX conducted with the National Alliance to End Sexual Violence, 88 percent of victims said they believed mandatory referral laws would lead to fewer survivors reporting to either schools or the police.[15] Some respondents explained that they sought accommodations and support from their schools but did not want to go through an arduous trial or did not yet feel prepared to speak to the police. Others stressed the importance of respecting victims' agency at a time when many feel powerless. One survivor wrote:

> "When I reported to campus officials, I was not ready to press charges and if I had been forced to report to the police I wouldn't have been able to do it. I wouldn't have told anyone because I would have felt like I had even less control of myself. Having the decision be my own and on my own time make it a lot safer and healthier."

If fewer survivors report to their schools, fewer will receive access to the accommodations and protections title IX so crucially provides. Schools will have fewer opportunities to hold perpetrators of violence responsible, leading to less—not more—accountability for assailants.

Ending sexual violence is a complicated task, and often the most intuitively appealing "solutions" are not really solutions at all. We must take the lead from survivors—9 out of 10 of whom tell us that mandatory referral laws will only promote silence and discourage victims from seeking the school support they need.[16]

5. Promoting Survivor Reporting through Smart Campus Policies

Every campus reporting process will be slightly different, reflecting the unique culture and structure of the school. Congress has an important role to play in ensuring that every college and university adopts key policies essential to ensuring survivors can turn to their school when in need of help.

A. Disciplinary Amnesty

Victims and bystanders are often under the influence of alcohol and other drugs at the time of an assault. Schools receiving Federal funding should be required to establish a campus policy that grants amnesty for any student who in good faith reports sexual violence witnessed or experienced while under the influence of alcohol or other drugs.

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[15] Know Your IX. (2015). "Survey Results: Ask Survivors." Accessed July 24, 2015. *http://knowyourix.org/ask-survivors/*.

[16] *See also* Ehrenfreund, Max. (2014). "Virginia Wants to Force Universities to Report Every Rape to the Police. That Won't Address U-Va.'s Real Problem." *The Washington Post*. Accessed July 25, 2015. *http://www.washingtonpost.com/blogs/wonkblog/wp/2014/12/03/virginia-wants-to-force-universities-to-report-every-rape-to-the-police-that-wont-address-uvas-real-problem*. Brodsky, Alexandra and Elizabeth Deutsch. (2014). "No, We Can't Just Leave College Sexual Assault to the Police." *Politico*. Accessed July 25, 2015. *http://www.politico.com/magazine/story/2014/12/uva-sexual-assault-campus-113294.html*.

B. Protections for Queer and Transgender Student Survivors

Queer and transgender students are disproportionately vulnerable to sexual and gender-based violence.[17] Yet many schools fail to recognize these students as victims or provide necessary support. Know Your IX has heard too many stories from students whose schools did not understand how a man could be raped or how a queer woman could abuse her girlfriend. We have heard too many stories from trans survivors whose administrations lacked the training and sensitivity to respond appropriately to their reports of violence. It is unsurprising, then, that many LGBT students decide not to report to their schools at all.[18]

We cannot abandon these students. Title IX's protections, which cover all students, mean nothing if they are only available *in practice* for cis, straight women. Congress and the Administration must ensure that schools' policies and practices explicitly apply to queer and transgender students and prohibit a full range of forms of sexual and gender-based violence, and that administrators tasked with supporting students have been adequately trained to assist all students, regardless of sexual orientation and gender identity.

CONCLUSION

Over the last 5 years, we have seen a remarkable transformation. Conversations about campus gender violence once were confined to whispers in corners of campus; today survivors and advocates like me have the opportunity to discuss these urgent issues before this committee. We must continue to meet these serious conversations with serious action. Thank you for your time and your commitment to building a future where students can learn and thrive free from violence.

Senator COLLINS. Thank you so much, Ms. Bolger, for your testimony. It's so important that we put a human face on this problem, as I told you before the hearing, and that is what you have done today. I so admire that you turned your horrendous experience into advocacy so that others don't go through what you did. Thank you for being here today. It is appreciated.

Ms. Stafford.

STATEMENT OF DOLORES A. STAFFORD, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF CLERY COMPLIANCE OFFICERS AND PROFESSIONALS; PRESIDENT AND CEO, D. STAFFORD AND ASSOCIATES, REHOBOTH BEACH, DE

Ms. STAFFORD. Good morning, Chairman Collins, Ranking Member Murray, and members of the committee. I appreciate the opportunity to join you to briefly discuss the requirements of the Clery Act, including the newest requirements added by VAWA amendments in addition to what institutions are doing to make campuses safer.

I have a unique perspective on all of this as I had the opportunity at the George Washington University to serve as the chief of police, where I founded and supervised a sexual assault response team for almost 20 years, and it is not a common model for a chief of police to also supervise a sexual assault advocacy group. This model worked at GW because of my passion for wanting to ensure survivors of sexual assault were not re-victimized by our response, processes, or actions in dealing with what I consider to be one of the most personal violations a human being can suffer.

We dealt with over 250 cases during my tenure at GW. That said, I know firsthand that campuses expend significant effort and resources in bolstering campus safety, ranging from implementing

[17] Kingkade, Tyler. (2015). "LGBT Students Face More Sexual Harassment and Assault and More Trouble Reporting It." *The Huffington Post.* Accessed July 25, 2015. *http://www.huffingtonpost.com/entry/lgbt-students-sexual-assault_55a332dfe4b0ecec71bc5e6a.*

[18] Ibid.

physical security systems to developing operational policies and procedures to plan for emergencies and crisis scenarios and providing a myriad of educational programs to enhance knowledge and awareness regarding crimes on campus.

Campuses form committees, teams, task forces, and town-gown organizations to resolve pressing issues related to campus safety, and they consider best practices and research in formulating effective prevention and response strategies.

A cornerstone of campus safety efforts involves compliance with the Clery Act. The Clery Act requires all eligible institutions to comply with a constellation of annual, ongoing, and immediate requirements. Some of these requirements include identifying all campus security authorities, or what I like to call mandatory reporters of crime, and developing a system to gather crime statistics from all of those people on campus identified as CSAs.

This is a significant task. For example, a small residential college would typically have between 300 and 500 CSAs who have to be trained in their responsibilities as mandatory reporters of the crimes that they become aware of.

Publishing and distributing an annual security report. These reports must currently include 111 separate policy statement disclosures and 3 years worth of crime statistics for the 15 Clery reportable crimes.

Campuses have to quickly alert the campus community via a timely warning notice of reported Clery crimes that may pose a serious or continuing threat to the community, and they have to immediately alert the campus community via an emergency notification of any reported or potential incidents that pose an immediate threat to the health and safety of the community. They have to create and maintain and make available a written daily crime log, just to name a few of the requirements.

The Department of Education has published a 300-page handbook as a resource for institutions to comply with this incredibly complex law. The handbook contains many rules and many exceptions to those rules. To Clery compliance officers, the handbook feels as clear as the U.S. tax code.

In 2013, VAWA amendments to the Clery Act added 47 new policy statement disclosures to the law—there were previously 64 disclosures—effectively doubling its requirements. The new policy statements largely require institutions to develop, implement, and disclose very specific procedures the institution will follow upon receipt of a report of any VAWA offense.

VAWA also includes the new requirement to report crime statistics for domestic violence, dating violence, and stalking incidents and includes two new categories of hate crime reporting. Information concerning a victim's rights and options must also be provided in writing to students and employees reporting VAWA crimes.

A new addition per VAWA and, in my opinion, the most important one is the mandate for institutions to provide education efforts around prevention and awareness of sexual assault, domestic violence, dating violence, and stalking. These programs for current and new students and employees must address a significant amount of required content, i.e., the educational programs are now prescriptive, which I elaborate on in my written testimony.

Title IX's indelible influence can be seen throughout VAWA amendments. Many of the requirements under Clery have been adapted, often wholesale, from the pre-existing title IX sub-regulatory guidance and elevated to VAWA's implementing regulations, such that they carry the force of law under the Clery Act. Specific examples of overlap between the laws may also be found in my written testimony. Campuses earnestly want to comply with the Clery Act, and many see it as a basement, not a ceiling, of campus safety efforts.

Many of the new requirements proposed by CASA are laudable and have potential to enhance existing safety on campus. Each of these proposals will require a thoughtful consideration of implications, intended or otherwise, of adoption, especially from a practitioner's perspective.

As a professional association representing Clery compliance officers and professionals, NACCOP welcomes the opportunity to be involved in any efforts to help consider the practical implications of the proposed new legislation and any of the Department of Education's efforts to provide much-needed guidance and resources to institutions as they endeavor to comply with this law.

I sincerely appreciate the opportunity to address the committee today, and I welcome any questions you may have of me.

[The prepared statement of Ms. Stafford follows:]

PREPARED STATEMENT OF DOLORES A. STAFFORD

SUMMARY

A cornerstone of efforts to promote campus safety involves compliance with the Federal Clery Act, which requires all postsecondary institutions that participate in Federal student aid programs to comply with a constellation of annual, ongoing, and immediate requirements. The 2013 VAWA Amendments to the Clery Act added 47 new policy statement disclosures to the law, effectively doubling its requirements. Major additions of VAWA include: new reporting requirements for crimes of Domestic Violence, Dating Violence and Stalking, as well as unfounded reports; mandatory education programs for students and employees pertaining to Domestic Violence, Dating Violence, Sexual Assault and Stalking (DVDVSAS); and required disclosures and implementation of specific response and disciplinary procedures the institution will follow when a report of DVDVSAS is made to the institution. Many of the new requirements under Clery have been adapted, often wholesale, from pre-existing title IX sub-regulatory guidance and elevated to VAWA's implementing regulations such that they carry the force of law under the Clery Act.

The new and existing requirements of the Clery Act are multifaceted and extremely nuanced. While there are a plethora of unresolved questions that stem from the Clery Act's final implementing regulations as it pertains to the new VAWA requirements, there are lingering challenges that continue to hamper efforts to stay in compliance with the Clery Act. For example, the Department's revelation in the 2011 handbook that the Hierarchy Rule does not apply to the Daily Crime Log, or the 2012 email sent by the Help Desk regarding what "frequently used by students" means, are examples of latent attempts to "clarify" long-standing expectations for which campuses have never before been apprised until 13 years after these requirements went into effect. Campuses are also grappling with contradictions between the Clery Compliance Division's program review results and guidance being provided by the Department through its *Handbook for Campus Safety and Security Reporting* and individualized responses to Help Desk inquiries.

Given VAWA's prescriptive stance regarding the policies, procedures and practices campuses must employ in response to issues of DVDVSAS, campuses are going to need significantly more guidance and resources than what has been provided in the past. Guidance and resources should be clear, timely and afford institutions the flexibility to meet compliance requirements within a framework that accounts for the diversity of institutions, as they differ in size, mission, organization, governance, residential status, resources, and police/public safety capacities.

Campuses earnestly want to comply with the Clery Act, and many see it as a basement—not a ceiling—of campus safety efforts. Many of the new requirements proposed by the Campus Accountability and Safety Act are laudable and have great potential to enhance existing safety on campus. Each of these proposals will require thoughtful consideration of the implications, intended and otherwise, of adoption, especially from a practitioner's perspective. As a professional association representing Clery compliance officer and professionals, the National Association of Clery Compliance Officers and Professionals (NACCOP) welcomes the opportunity to be involved in any efforts that help consider the practical implications of proposed or new legislation and any of the Department of Education's efforts to provide much-needed guidance and resources to institutions as they endeavor to comply with the law.

Good morning Chairman Alexander, Ranking Member Murray, and members of the committee. I appreciate the opportunity to join you to discuss the requirements of the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* (a.k.a. the "Clery Act"), including the newest requirements added by section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA Amendments) and the final implementing regulations published by the Department of Education on October 20, 2014. I also appreciate the chance to highlight some of the existing challenges faced by postsecondary institutions as they endeavor to get into and maintain compliance with the ever-evolving Clery Act.

My remarks today are informed by my 26-year career in the law enforcement and security industries, of which the last 18 years were spent as Chief of Police at The George Washington University until my retirement in 2010. Immediately prior to my service at GW, I served as the assistant chief of police at Butler University. At both Butler and GW, I created, coordinated and supervised the Sexual Assault Response Team, which provided advocacy and support services for victims of sexual violence. In these capacities, I oversaw approximately 250 cases of sexual misconduct, from both an investigatory perspective as well as serving as an advocate and overseeing advocates who assisted victims. Providing comprehensive, intentional, effective and empowering response to sexual assault victims on college and university campuses has been a pillar of my campus law enforcement career. Since my retirement in 2010, I have continued to develop a professional consulting firm (through which I have provided Clery Act consulting services since 1997). Additionally, I serve as the founding executive director of the National Association of Clery Compliance Officers and Professionals (NACCOP). NACCOP is a professional association with 564 active institutional and general members that was launched in 2013 to help officials charged with Clery compliance efforts collaborate with each other, share resources and best practices, and participate in professional development opportunities pertaining to Clery Act compliance. I have taught more than 300 classes related to the Clery Act and I have assisted more than 250 client institutions in enhancing their overall Clery Act compliance programs through reviews of Annual Security and Fire Safety Reports and by conducting independent audits.

Campuses expend significant effort and resources in bolstering campus safety. These efforts range from implementation of physical safety apparatuses (such as access control systems, intrusion detection systems, video surveillance cameras, and fire safety alarm systems) to other technological solutions such as social media, incident reporting platforms, public safety information systems, computerized automated dispatch systems, etc. Institutions consider principles of Crime Prevention Through Environmental Design (CPTED) during campus construction and renovation projects, and they develop operational policies, procedures and contingencies to plan for effective emergency and crisis scenarios. They train essential response personnel and members of the larger college or university community on applicable procedures and protocols for emergency situations. Institutions invest significant fiscal resources into hiring personnel across the institution to improve campus safety—from campus law enforcement/public safety personnel, to other individuals charged with providing education, advocacy and support for a wide range of safety-related issues (such as alcohol and drug abuse prevention, sexual assault prevention, etc.). Many campuses have robust student conduct and employee discipline programs with professionals charged with overseeing these functions in order to provide swift, effective and fair institutional responses to misconduct that may undermine the safety or security of the campus. Institutions may conduct pre-employment or pre-enrollment screenings as part of the application processes for prospective students and employees in order to determine whether there is a criminal history of which the institution should be aware. Threat assessment and management teams as well as other behavioral intervention groups for students, faculty and staff have become an industry standard for responding to concerning behavior. Campuses form commit-

tees, teams, task forces, and town-gown organizations to resolve pressing issues related to campus safety and they consider best practices and research in formulating effective prevention and response strategies. Campus police and public safety units also engage in a variety of strategic and tactical approaches to preventing and solving campus crime by incorporating community-oriented policing strategies, leveraging crime analytics and working collaboratively with other law enforcement agencies in the jurisdiction to address important public safety issues.

A cornerstone of contemporary safety and security efforts involves compliance with the Federal Clery Act. At its core, the Clery Act is a consumer right-to-know law first passed by Congress in 1990. Since its inception, the law has been amended six times, most recently by the VAWA Amendments. Three months prior to publication of the VAWA Amendment's implementing regulations, and 11 months prior to those regulations going into effect, a seventh amendment was proposed in the Senate and was reintroduced during the 114th Congress in February.

As you know, the purpose of the law is to provide prospective students and employees, as well as current members of the campus community, with timely, accurate and complete information about crime and the safety and security of the campus so that these populations can make informed decisions to keep themselves safe. To fulfill these goals, the Clery Act requires all postsecondary institutions that participate in title IV student financial assistance programs under the Higher Education Act of 1965, as amended (HEA), to comply with a constellation of annual, ongoing, and immediate requirements. Specifically, institutions must:

• **Assess and categorize the buildings and properties associated with an institution's campus (or campuses) as well as the public property within or immediately adjacent to the campus in order to determine how these locations correspond to Clery Act-specific geographic categories.** The Clery Act requires institutions to disclose statistics for select crimes that occur: on campus, on public property within or immediately adjacent to the campus, and in or on non-campus buildings or property that the institution (or an officially recognized student organization) owns or controls.

• **Annually identify, notify, train, and collect crime reports from Campus Security Authorities (CSAs).** CSAs are individuals or organizations associated with the institution that are considered by the Clery Act to be a person or entity likely to receive crime reports. According to ED, Campus Security Authorities include: all members of the campus police/security department of an institution; other individuals with responsibility for campus security (such as access monitors); officials of the institution with significant responsibility for student and campus activities (such as a Dean of Students, residential life personnel, athletic coaches/administrators, or a title IX coordinator), and; any other individual or office an institution identifies in its Annual Security Report as a reporting entity of the institution.

• **Record, collect, classify, count and disclose all reports of Clery Act crimes occurring on or within the institution's Clery Geography which are made to Campus Security Authorities or local law enforcement agencies.** Campuses are required to annually request reports of alleged criminal incidents from all CSAs. Crime statistics must also be requested from all local law enforcement agencies that have jurisdiction on or within any of the institution's Clery Geography, including both domestic and foreign locations owned or controlled by the institution. Crimes must be disclosed for all of the following 15 Clery Act crimes:

- Murder and Nonnegligent Manslaughter;
- Negligent Manslaughter;
- Sex Offenses (Rape and Fondling);
- Non-forcible Sex Offenses (Incest & Statutory Rape);
- Robbery;
- Aggravated Assault;
- Burglary;
- Motor Vehicle Theft;
- Arson;
- Arrests for liquor, drug and weapons law violations;
- Referrals for disciplinary action for liquor, drug and weapons law violations;
- Dating Violence;
- Domestic Violence;
- Stalking; and
- Hate Crimes.

The most recent 3 calendar years' worth of crime statistics must disclosed annually to the Department of Education (ED) via the online Campus Safety and Security Survey and to the campus community in the Annual Security Report.

• **Publish and distribute an Annual Security Report.** The Annual Security Report (ASR) must contain 111 separate policy statement disclosures (including 3 years' worth of crime statistics separated by crime type, year, and location). If a campus does not have any on-campus student housing facilities, only 92 disclosures are required. It is noteworthy that the VAWA Amendments to the Clery Act added an additional 47 policy statement disclosures to the ASR, nearly doubling the amount of required disclosures. All of this content must be contained within the report's front and back covers. Institutions must make the report available to all currently enrolled students and all employees by October 1 each year in addition to the ongoing requirement of providing a notice of the report's availability to all current and prospective students and employees.

• **Alert the campus community of recent, current or impending incidents that may adversely impact the well-being of students and employees.** Specifically, institutions are required to assess crime reports and issue a Timely Warning Notification for any Clery Act crime occurring on or within the institution's Clery Geography that is considered by the institution to represent a serious or continuing threat to students and employees. Additionally, institutions must issue an emergency (immediate) notification upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus. Institutions must describe their policies and procedures for issuing these alerts in the Annual Security Report and must follow these policies whenever circumstances warrant.

• **Create, maintain and make available a written Daily Crime Log** (if the institution has a campus police or security department). The most recent 60 days of the log must be immediately available to anyone requesting access, and the last 7 years of the log must be made available to the consumer within 2 business days of the complete log's request. The log is intended to be a more comprehensive, specific and timely disclosure of *all* criminal incidents reported to the campus police or security department that occur on or within the institution's Clery Geography. The log is not limited to the 15 Clery Act crimes for which the institution must also disclose crime statistics, and the log includes all crimes that are reported to the campus police or security department which occurred on or within the institution's Clery Geography, which includes the campus agency's expanded patrol jurisdiction, if one exists. An entry must be made to the log within 2 business days of receiving the information, and institutions are also required to update, within 2 business days, any dispositions of log entries recorded during the prior 60 days.

• **Develop, disclose, and annually test the institution's emergency response and evacuation procedures.** A test is defined as regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities. In conjunction with the annual test, the institution must provide the campus community with a summary of the drill and exercise that comprised the test as well as a summary of the institution's emergency response and evacuation procedures.

• **Provide security awareness programs to students and employees.** These programs must address security procedures and practices and encourage the campus community to look out for the safety of themselves and each other, and must be described by type and frequency in the Annual Security Report. Campuses are also required to describe (in the Annual Security Report) any crime prevention programs offered to students and employees.

Additionally, campuses with on-campus student housing facilities are also required to:

• **Collect and disclose statistics of reported fires occurring in on-campus student housing facilities.** Statistics for each on-campus student housing facility must be published for the most recent 3 calendar years. Statistics must include the number of fires in each facility, the cause of each fire, the number of persons with fire-related injuries, the number of fire-related deaths, and the value of any property damage caused by each fire.

• **Publish and distribute an Annual Fire Safety Report.** The report must include the institution's current policies, procedures, practices and rules pertaining to fire safety in residential facilities, as well as the required fire statistics.

• **Create, maintain and make available a written Fire Log.** The most recent 60 days of the log must be immediately available to anyone requesting access, and the last 7 years of the log must be made available to the consumer within 2 business days of the complete log's request. The Fire Log records, by the date the fire was reported to an official, all fires in student housing facilities. The log must be immediately available to the consumer and must include the nature, date and time the fire occurred; the date reported and general location of each fire; and must be

made available during normal business hours. An entry must be made to the log (or an addition to a prior entry) within 2 business days of receiving the information.

• **Develop, publicize and initiate required notification procedures pertaining to reports of missing students who reside in on-campus student housing facilities.** To meet these requirements, institutions must issue a policy statement in the Annual Security Report that addresses missing student notification for residential students and includes procedures the institution will follow if residential students are determined to be missing for 24 hours. At its core, the missing student procedures mandate that if a residential student is determined (by the campus police/public safety or local law enforcement) to have been missing for 24 hours, the campus police/security department has only 24 hours after receiving the report in which to initiate specific notification procedures, including notification of the local law enforcement agency that has jurisdiction. In order to facilitate this process, institutions must provide each residential student the opportunity to identify one or more confidential missing person contact(s) on an annual basis.

The 2013 VAWA Amendments to the Clery Act added the following requirements for all institutions:

• **New crime reporting requirements for Domestic Violence, Dating Violence and Stalking and expanded hate crime reporting requirements.** Specifically, institutions are now required to collect and disclose the number of Domestic Violence, Dating Violence and Stalking incidents reported to CSAs or local law enforcement agencies in the annual crime statistics. Additionally, "gender identity" was added as a category of bias for which hate crimes must now be reported, and the existing category of "ethnicity/national origin" was split into its component parts of "ethnicity" and "national origin," bring the total number of bias categories from 6 to 8.

• **New reporting requirements regarding the number of Clery Act crime reports withheld from disclosure in the annual crime statistics.** All reported crimes made in good faith must be included, but on the rare occasion that sworn law enforcement determines a crime report to be unfounded (that is, false or baseless), institutions must now disclose the number of unfounded reports for all 15 Clery Act crime categories in the annual crime statistics.

• **Provide (and describe in the ASR) *primary prevention and awareness programs* made available to all incoming students and new employees which are designed to prevent incidents of Domestic Violence, Dating Violence, Sexual Assault and Stalking from occurring.** These programs must be: culturally relevant; inclusive of diverse communities and identities; sustainable; responsive to community needs; informed by research or assessed for value, effectiveness, or outcome, and; consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels. Primary prevention and awareness programs must address a myriad of required content areas including: Federal and jurisdictional definitions of Domestic Violence, Dating Violence, Sexual Assault, Stalking and consent; a statement that Domestic Violence, Dating Violence, Sexual Assault and Stalking is prohibited by the institution; a description of safe and positive options for bystander intervention; information on risk reduction; and the procedures the institution will follow, including procedures for disciplinary action, when a crime of Domestic Violence, Dating Violence, Sexual Assault or Stalking is reported to the institution.

• **Provide (and describe in the ASR) *ongoing prevention and awareness campaigns* made available to all current students and employees which are designed to prevent incidents of Domestic Violence, Dating Violence, Sexual Assault and Stalking from occurring.** These programs must share the same characteristics and address the same content areas as those primary prevention and awareness programs provided to incoming students and new employees. However, these programs must be sustained over time and have a more specific focus of enabling audiences to understand topics related to these crimes and to provide skills for addressing them.

• **Develop, implement and describe in the ASR procedures the institution will follow upon receipt of a report of Domestic Violence, Dating Violence, Sexual Assault and Stalking.** These procedures must include: the procedures victims should follow when one of these crimes occurs (including information regarding evidence preservation, reporting options, and rights and responsibilities pertaining to civil or institutional protection, restraining or "no contact" orders issued by the institution or any lawful authority); information regarding how the institution will protect the confidentiality of victims and other necessary parties; a statement that the institution will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and

immigration assistance, student financial aid, and other services available for victims, both within the institution and in the community; a statement that the institution will provide written notification to victims about options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures (if requested by the victim and reasonably available, regardless of whether the victim reports the crime to law enforcement), and; an explanation of the procedures for institutional disciplinary action that may be used in cases of alleged Domestic Violence, Dating Violence, Sexual Assault or Stalking.

• **Provide students and employees reporting victimization related to Domestic Violence, Dating Violence, Sexual Assault and Stalking with a written notification of rights and options.** The information contained in this notification must include the same information required to be published in the ASR pertaining to the procedures the institution will follow upon receipt of a report of Domestic Violence, Dating Violence, Sexual Assault and Stalking.

• **Develop, implement and describe in the ASR procedures for institutional disciplinary action in cases of Domestic Violence, Dating Violence, Sexual Assault and Stalking.** Such procedures must include any procedures that could be used in student or employee disciplinary action in cases of Domestic Violence, Dating Violence, Sexual Assault or Stalking and must share common characteristics and features. Namely, these procedures must:

- provide for a prompt, fair and impartial process from the initial investigation to the final result;
- be conducted by officials who, at a minimum, receive annual training on the issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;
- be completed in a reasonably prompt timeframe as designated by the institution's policy;
- be conducted by officials who do not have a conflict of interest or bias for or against either party;
- be conducted in a manner consistent with the institution's policy and transparent to the accuser and the accused;
- include timely notice of meetings at which either party (or both) may be present; and
- provide timely and equal access to both parties and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings.

Furthermore, the Clery Act requires parity of treatment between the accuser and accused in disciplinary proceedings such that the institution must:

- provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice (without limiting the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding); and
- require simultaneous notification, in writing, to both the accuser and the accused, of the result of any institutional disciplinary proceeding, the institution's procedures for either party to appeal the result of the institutional disciplinary proceeding, if such procedures are available, any change to the result; and when such results become final.

Institutions must, in the Annual Security Report, describe each type of disciplinary proceeding used by the institution, including:

- the steps, anticipated timelines, and decisionmaking process for each type of disciplinary proceeding;
- how to file a disciplinary complaint; and
- how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking.

Institutions must also describe the standard of evidence that will be used during any institutional disciplinary proceeding arising from an allegation of dating violence, domestic violence, sexual assault, or stalking, lists all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceeding for one of these offenses, and; describe the range of protective measures that the institution may offer to the victim following an allegation of dating violence, domestic violence, sexual assault, or stalking.

With the passage of the VAWA Amendments, the Clery Act and title IX are forever linked. Many of the VAWA Amendments reflect the spirit, and in some cases the letter, of sub-regulatory guidance provided by the Department of Education's Office of Civil Rights (OCR) as it pertains to compliance with Title IX of the Education Amendments of 1972 ("Title IX"). For example, title IX prohibits sex-based discrimination, including sexual harassment. Sexual harassment includes sexual violence, which has been defined by OCR as, "physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol." The Clery Act requires institutions to adopt certain procedures in response to reports of sexual assault which, in this context, is effectively synonymous with sexual violence. Many of the procedures enumerated in OCR guidance documents are now the law of the land via the VAWA Amendments to the Clery Act. The VAWA Amendments also require institutions to prohibit, report statistics, and implement appropriate response procedures for the additional crimes of Domestic Violence, Dating Violence and Stalking which are most often perpetrated on the basis of a victim's sex, therefore bringing the requirements of title IX to a vast majority of these cases.

Both laws also require institutions to inform victims of their option to report the incident to law enforcement and be assured certain rights and protections independent of whether the victim chooses to report the crime to police. Furthermore, the Clery Act and title IX each identify categories of personnel that have mandatory disclosure requirements when they learn of prohibited conduct (CSAs for the Clery Act and Responsible Employees for title IX). When responsible employees are notified of sex-based misconduct, they have a duty to report that information to the title IX coordinator who, consequently, is a campus security authority for Clery Act purposes and must, in turn, report the crime to the reporting structure established by the institution for potential inclusion in the annual crime statistics as well as an assessment of the need to issue a timely warning notification on the basis of the crime report. The title IX coordinator must also take appropriate interim measures, including the provision of accommodations pertaining to the victim's academic, residential, transportation or working situations and other appropriate protective measures, which the Clery Act also compels be provided if requested by the victim and such accommodations and protective measures are reasonably available. Victims must also be apprised of their rights, options, and available support services under both laws when reporting victimization to the institution regardless of whether the victim chooses to report the crime to law enforcement.

Although ED is careful to note when discussing the VAWA Amendments that, "Nothing in the Clery Act, as amended by VAWA, alters or changes an institution's obligations or duties under title IX as interpreted by OCR," title IX's indelible influence can be seen throughout the VAWA Amendments. Many of the new requirements under Clery have been adapted, often wholesale, from pre-existing title IX sub-regulatory guidance and elevated to VAWA's implementing regulations such that they carry the force of law under the Clery Act. This is perhaps most apparent when considering the new procedures institutions must implement as it relates to managing allegations of Domestic Violence, Dating Violence, Sexual Assault and Stalking. For example, personnel involved in the investigation or resolution of sexual assault/sexual violence complaints are expected to have sufficient training to perform these functions, and decisionmakers may not have a conflict of interest that would undermine their impartiality. Both laws compel institutions to adopt equitable resolution procedures that, among other things, establish reasonably prompt timeframes for the major steps of the procedures and that provide each party with an equal opportunity to:

- participate in the proceedings;
- have timely access to information that will be used during the proceedings;
- have the same opportunities to be accompanied by an advisor;
- receive contemporaneous written notification of the outcome of the proceedings;
- have the same opportunity to appeal the results of the proceedings, if any appeal option exists; and
- be apprised of the final results of any appeal.

These examples are not exhaustive but rather a sampling of how inextricably linked title IX and the Clery Act have become with the passage of the VAWA Amendments.

CONTEMPORARY COMPLIANCE CHALLENGES

As you can see, each of the existing requirements of the Clery Act are multifaceted and extremely nuanced. The *Handbook for Campus Safety and Security Reporting*, most recently published in 2011, provides more than 300 pages of guidance

to institutions as they attempt to comply with the state of the law prior to the enactment of the VAWA Amendments. While the guidance is necessary, and welcome, it is far from sufficient. The handbook cannot be read as a "how-to" manual and instead serves as a reference guide for practitioners that seek to understand basic requirements and nuances of the law as interpreted by ED. Campuses have few other opportunities to enhance knowledge related to the Clery Act, as the Department does not provide sub-regulatory guidance (such as Dear Colleague Letters or "Questions and Answers") with the frequency or specificity as it provides for other laws under its jurisdiction, such as title IX.

Although the Department has sub-contracted with Westat to operate its Campus Safety & Security Help Desk, guidance provided by this entity is non-binding and, at times, appears to be inconsistent with the findings of the Department of Education's Clery Act Compliance Division when that division conducts Clery Act program reviews. For example, an institution recently wrote the Help Desk to inquire whether or not to disclose a Clery Act crime that was reported to a CSA but for which the precise location of the crime was unknown, as the handbook is silent on this point. The Help Desk advised the campus not to report the crime in the annual crime statistics, but when a similar circumstance arose at The Ohio State University in 2006, OSU was found to be in noncompliance and instructed by the auditors to "treat the incident as an on-campus incident" and disclose it accordingly in the annual crime statistics. These kinds of conflicts create compliance quandaries where campuses making earnest efforts to comply must decide whether to rely on Help Desk guidance, potentially to their detriment.

There are a plethora of unresolved questions that stem from the Clery Act's final implementing regulations as it pertains to the new VAWA requirements related to classification and counting new crimes (especially Dating Violence); presentation of crime statistics (including "unfounded" statistics) in the Annual Security Report, required content and length of the written notification of rights and options for victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking; what constitutes "simultaneous, written notification" of results to the accuser and accused in disciplinary proceedings, etc. The forthcoming handbook, which will be published after the effective date of the regulations, will surely address some of these foreseeable issues whereas others will present themselves after the handbook's publication and will require additional guidance from ED.

Yet there are lingering challenges that continue to hamper efforts to stay in compliance with the Clery Act. For example, the Help Desk clarified in a 2012 email to campuses that institutions must disclose statistics for buildings or properties that are not reasonably contiguous to the main campus which are owned or controlled by the institution, frequently used by students, and used in support of the institution's educational purposes. This definition is well-established in the statute, reiterated in the regulations, and discussed in the Department's handbook using primarily domestic examples of noncampus locations. However, the Department's first attempt at operationalizing the definition of "frequently used by students" did not occur in meaningful form until the 2012 email when it articulated that a location is considered "frequently used by students" when repeated use of the same location is made or when the duration of the use is sufficient to trigger the "frequently used by students" criterion. In the Help Desk email, it offered no guidance for whether gaps in time between usage would continue to meet the "repeated use" threshold. The Department's example includes annual usage, but institutions are not afforded any guidance regarding whether used every other year, every 10 years, or at other sporadic intervals would also meet the "repeated use" standard.[1] Furthermore, the Help Desk's email clarified that a "trip of longer duration" would satisfy the "frequently used by students" criterion, and offered an example of a 3-week trip. However, in the email to campuses, the Help Desk conceded "there is no 'magic number' of days that must be met to be considered 'frequently used by students'." The "trip of a longer duration" language was offered in contrast to an example of a short-stay, overnight trip. Most practitioners would not regard a 2- or 3-night stay as being associated with "frequent use," but the lack of clear standards from ED leaves institutions little choice but to do so. Therefore, in an abundance of caution, and absent additional specific guidance from ED, institutions must now track locations—often in the hundreds—being used for more than one night and treat these locations as noncampus buildings or properties to ensure they are above reproach in an ED audit. ED could greatly diminish the confusion around this issue if they were to ar-

[1] Since institutions are only required to maintain Clery Act records for a period of 7 years, it would seem reasonable for ED to adopt a standard equal to or less than usage of the same location 7 years apart.

ticulate a bright-line standard with which campuses would be expected to comply in order to meet this requirement.

To complicate matters further, the requirement to disclose statistics for noncampus locations of U.S. campuses had not been previously interpreted by institutions as applying to education abroad activities. Following the Help Desk email, campuses that have made an attempt to comply with this requirement were left with little choice but to develop elaborate systems to track all locations where the institution sends students as part of education abroad activities and write each local law enforcement agency at those locations to request crime statistics. In some instances, this results in campuses sending hundreds of letters to foreign law enforcement officials which frequently are ignored and divert important human and fiscal resources that could otherwise be invested in promoting *campus* safety. Even when campuses do receive responses from law enforcement agencies, these statistics are combined into a single statistic which provides the consumer with virtually no useful information about where in the world the crime occurred. It is hard to imagine this was the intent of Congress when the law and its amendments were passed.

While the issue of noncampus locations provides an example of latent "clarification" provided by ED, it is not the only occasion in which the Department has articulated expectations about which campuses were previously uninformed. In 2011, the Department indicated in the *Handbook for Campus Safety and Security Reporting* that the Daily Crime Log requires all crimes occurring in a single incident to be disclosed on the Daily Crime Log. This practice runs contrary to how crime statistics are compiled and reported annually for which the "Hierarchy Rule" commands that only the most serious crime reported in the incident be disclosed when multiple crimes are reported (with some notable exceptions, such as Arsons and Hate Crimes).

The original Daily Crime Log requirement was the result of the 1998 Amendment to the Clery Act and was addressed in the Department's initial *Handbook for Campus Crime Reporting*, published in 2005. However, it was not until 2011 in the revised handbook that the Department stated—for the first time—that all crimes occurring in a single incident are to be recorded in the log and therefore the Hierarchy Rule does not apply to the log. By that point, many campuses had made significant financial investments in electronic records management systems that were designed to implement the Hierarchy Rule when producing the Daily Crime Log, unknowingly in contravention to the Department's previously unspoken expectations. Neither the statute, the implementing regulations nor prior sub-regulatory guidance had ever alerted campuses to this distinction, but the Department took it upon itself to create this rule when it published the revised handbook 13 years after the requirement went into effect.

Another example of contemporary challenges to compliance is how the Clery Compliance Division interprets uniform crime reporting definitions and applies these to specific fact patterns for purposes of classifying and counting crimes for Clery Act purposes. In a recent final program review determination involving the University of Missouri—Kansas City, the Department found the institution in noncompliance for failure to properly classify and disclose crime statistics. Specifically, in one case, the Department noted that some of a student's belongings were missing after employees of a contract cleaning service packaged the student's property for storage. The Department indicated this offense should have been reported as a Burglary. It further opined that the offense,

> "is a Constructive Burglary based on the facts in the report. While the cleaning service had legal access to the room, the subsequent illegal act converts the larceny to a crime against the habitation."

There is no such language in the UCR program that speaks to "Constructive Burglary" nor are there any conditions enumerated in the UCR handbooks that would "convert" a theft from a structure committed by someone with lawful access from a larceny to a burglary. Additionally, this conclusion stands in stark contrast to guidance in ED's own handbook which states that for an incident to be classified as a burglary, "There must be evidence of unlawful entry (trespass). This means that the person did not have the right to be in the structure at the time the incident occurred." The Department offers an example in its handbook whereby a maintenance worker with a work order used his keys to enter an on-campus office to fix an air conditioner, and while he was there he decided to steal a laptop. The Department's guidance in this instance was to classify this incident as a Larceny because the maintenance worker had a right to be in the office at the time of the theft. The Clery Compliance Division's re-interpretation of UCR standards in the University of Missouri-Kansas City case is a clear deviation from established burglary classification guidance provided by the Department and by the FBI's UCR Program,

which the Department purports to use for burglary offenses. These audit reports are among the few opportunities that campuses have at their disposal glean insights about compliance beyond the handbook or institution-specific question posed to the Help Desk. As a result, ED needs to be painstakingly thorough and clear in describing the specific facts or circumstances giving rise to noncompliance findings, with detailed rationales as to how campuses fell short of requirements, so that all campuses can learn from these errors and correct any potentially problematic practices.

NEED FOR ENHANCED CLERY ACT GUIDANCE

For a majority of the disclosure requirements in the Clery Act, campuses are not required to adopt specific policies or procedures, they are simply required to identify whether or not they have certain policies, procedures or practices and, if so, describe them adequately to the consumer. VAWA introduced a series of very specific mandates related to policies, procedures and practices campuses must not only describe in their compliance documents, but implement in their day-to-day operations. As a result, campuses are going to need significantly more guidance and resources than what has been provided in the past, and they yearn for such guidance and resources. Campuses want to do right by all parties affected by these issues while remaining above reproach with regard to compliance. In order to do that effectively, campuses will need more clear and frequent guidance with regard to how the Department expects campuses to operate in response to sexual violence and related issues. The guidance should not, however, be overly prescriptive. The diversity of institutions—in size, mission, organization, governance, residential status, resources, and police/public safety capacities—commands the need for regulations, and the sub-regulatory guidance that follows, to allow for appropriate latitude so that institutions can remain nimble and respond to mandates within the context of their unique attributes.

Overly prescriptive mandates and "guidance" has the potential to do more harm than good. This is one concern NACCOP has regarding the Campus Accountability and Safety Act (CASA). For example, CASA would compel institutions to develop their programs to prevent Domestic Violence, Dating Violence, Sexual Assault and Stalking in consultation with specific external groups. Not only does the list of required consultees overlook important constituent groups that would bring about critical expertise (such as higher education professional associations), but it diminishes any local expertise that may exist within the institution's faculty or staff and privileges the voices of external groups who may not have the ability or willingness to collaborate. The presumption embedded in this requirement—as with many other requirements of CASA—is that institutions cannot be trusted to competently perform essential functions without external support and accountability. While institutions must be held accountable for meeting statutory and regulatory requirements consistent with the requirements of their Program Participation Agreements, they should be given the flexibility to meet these requirements within a framework of clear parameters and guidelines where discretion is carefully guided, not outsourced.

Campuses earnestly want to comply with the Clery Act, and many see it as a basement—not a ceiling—of campus safety efforts. Many of the new requirements proposed by the Campus Accountability and Safety Act are laudable and have great potential to enhance existing safety on campus. Each of these proposals will require thoughtful consideration of the implications, intended and otherwise, of adoption. As a professional association representing Clery compliance officer and professionals, NACCOP welcomes the opportunity to be involved in any efforts that help consider the practical implications of proposed or new legislation and any of the Department of Education's efforts to provide much-needed guidance to institutions as they endeavor to comply with the law.

I sincerely appreciate the opportunity to address the committee today and I welcome any questions you may have of me.

Senator COLLINS. Thank you very much.

Ms. Flounlacker.

STATEMENT OF MOLLIE BENZ-FLOUNLACKER, ASSOCIATE VICE PRESIDENT FOR FEDERAL RELATIONS, ASSOCIATION OF AMERICAN UNIVERSITIES, WASHINGTON, DC

Ms. FLOUNLACKER. Good morning, Chairman Collins, Ranking Member Murray, and members of the committee. Thank you for inviting me to testify today.

I am Mollie Flounlacker, as mentioned, associate vice president for Federal Relations at the Association of American Universities. I am also the project manager for the AAU sexual assault climate survey. I have also been a college student and am now a mother. I care deeply, both professionally and personally, about this issue, and I'm proud to be a part of this effort to confront it.

In my remarks, I am going to outline six points for you on this very important subject. No. 1, presidents and chancellors of AAU member universities have long identified sexual assault on their campuses as an extremely important issue that they need to face head on. It is the issue that is keeping them awake at night. I have spent more time talking with our members about this issue than any other issue over the last 18 months.

University presidents make it very clear that one sexual assault on their college campus is too many. One of the most important goals of our universities is to make their campuses a safe place for students to learn and succeed.

No. 2, individual sexual assault cases can be complex. Schools take very seriously their responsibility to educate students about awareness and prevention, to encourage students to report sexual assaults, to respond compassionately and seriously to the needs of survivors, and to ensure that all students have access to fair, prompt, and impartial campus disciplinary processes.

No. 3, in keeping with its mission as an association of research universities, AAU decided to take a research-based approach to help its members understand both the attitudes and experiences of their students with respect to sexual assault. Accordingly, AAU created and implemented a sexual assault and misconduct climate survey in consultation with a leading outside social science research firm, Westat.

The survey was developed by Westat and a multidisciplinary team made up of recognized experts across the country. Nearly half of the AAU membership has administered the survey this spring. AAU will publicly release the results this fall in hopes it proves, first and foremost, helpful to schools, but also to policymakers in the legislative arena. The data will also be made available later to the research community, which we expect will be a significant resource to better understanding this issue.

Having spent the last 15 months on this project, I can say it is an extremely complicated process. Moving forward, we want our experts to be a resource for Congress as they work through this issue in the Campus Accountability and Safety Act, in particular. We want to get this right, because we strongly support the use of climate surveys on college campuses.

No. 4, the legislative and regulatory landscape around campus sexual assault is incredibly messy because of the number of different Federal laws and now State laws, regulations, and guidance, as Chief Stafford articulated. Overall, we believe that schools need a framework of clear and consistent standards with flexibility when appropriate so that they have the necessary tools to better protect students and support survivors.

No. 5, AAU strongly supports the goal of the CASA bill to better inform and protect students, including core elements of promoting the use of the campus confidential advisor and campus sexual as-

sault climate survey, for example. We support and appreciate many of the changes that have been incorporated into the current version of CASA. There are still some areas where we have remaining concerns, primarily because of unanticipated effects on students, as outlined in my written testimony.

For example, we strongly support giving survivors of sexual assault access to a trained confidential advisor whose sole responsibility is to counsel the survivor. This is in the best interest of the survivor. Any requirement that the advisor ask in an investigatory role or reporting role could compromise confidentiality both under State law and FERPA and increase the likelihood of the advisor being subpoenaed and subsequent legal proceedings.

Absent clarity in the statute, it's inevitable that new duties will be assigned to the individual by the Department of Education as they implement the law. We are also concerned about potential conflict with the advisor's responsibilities in CASA and schools' current title IX reporting requirements. Again, the sole responsibility of the advisor should be to counsel the survivor.

Last, sexual assault is a societal problem. As important as it is for colleges to confront it directly, it does not exist in isolation on college campuses. We believe there is a role for the entire education community to play in producing cultural changes that reduce the incidence of sexual assault.

AAU and the higher education community look forward to continuing to work with Congress and the administration to make students safer.

Thank you again for the opportunity to testify, and I'm happy to answer questions.

[The prepared statement of Ms. Flounlacker follows:]

PREPARED STATEMENT OF MOLLIE BENZ-FLOUNLACKER

SUMMARY

With other higher education associations in Washington, AAU has been deeply involved in efforts to combat sexual assault. This testimony describes the national climate survey that AAU has undertaken as well as AAU's views on the Campus Accountability and Safety Act (CASA).

While there is recognition that sexual assault is a broad societal problem, the focus today is on what colleges can do to provide safer settings for their students. Schools take seriously their responsibility to educate students about awareness and prevention, to encourage students to report sexual assaults, to support the survivors of sexual assaults and to ensure that all students involved have access to fair and equitable processes. One sexual assault on campus is too many. Those represented by AAU and by the higher education associations with which we work closely are deeply committed to working with Congress to better protect students.

As an association of research universities, AAU decided that the best way to help its members address this issue was to develop and implement a sexual assault climate survey for its members that would enable them to better understand the attitudes and experiences of their students with respect to sexual assault. We believe that the survey data will help inform campus policies for preventing and responding to sexual assault on campus. AAU will publicly release the aggregate results this fall. We have encouraged our campuses to release their institutional results, and we anticipate that many of the 27 universities (26 AAU members plus one non-AAU institution) that implemented the survey will do so.

In addition to the survey's value to participating universities and their students, we hope the aggregate data and analysis will provide useful information to policymakers as they work on possible legislative and administrative initiatives. Researchers will also benefit from the contribution this survey will make to the body of research on this complex issue.

In addition to our work on the climate survey, AAU has actively engaged with the Senate sponsors of the Campus Accountability and Safety Act (CASA) legislation. AAU has joined the broader higher education community in submitting two sets of comments on the legislation, *including the most recent on the version of the bill introduced* earlier this year. AAU supports the goals of CASA, including most of the core requirements. Our goal is to help ensure that any new requirements in CASA complement existing requirements to better protect students and help schools understand their responsibilities. Clarity regarding the establishment of new roles and responsibilities for colleges regarding sexual assault is particularly important given the number of other Federal laws, regulations, and guidance implicated when dealing with this issue. We support and appreciate many of the changes incorporated into the current version of the legislation. There are still some areas where we have some remaining concerns and potential solutions, and we believe the bill will continue to improve as the legislative process goes forward.

Chairman Alexander, Ranking Member Murray, and members of the committee, thank you for this opportunity to testify on the important issue of combating campus sexual assault.

I am Benz-Flounlacker, associate vice president for Federal relations at the Association of American Universities. AAU is a nonprofit 501(c)(3) organization of 62 leading public and private research universities, 60 of which are in the United States and two of which are in Canada. Founded in 1900 to advance the international standing of U.S. research universities, AAU today focuses on issues that are important to research-intensive universities, such as funding for research, research policy issues, and graduate and undergraduate education. AAU member universities are on the leading edge of innovation, scholarship, and solutions that contribute to the Nation's economy, security, and well-being.

Along with other higher education associations in Washington, AAU has been deeply involved in efforts to combat sexual assault. Today, as requested by the committee, I will describe the national climate survey that AAU has undertaken, and I will provide AAU's views on the Campus Accountability and Safety Act (CASA).

The past year has brought intense scrutiny to the problem of campus sexual assault and how colleges handle sexual assault cases. While there is recognition that sexual assault is a broad societal problem, the focus today is on what colleges can do to provide safer settings for their students. Schools take seriously their responsibility to educate students about awareness and prevention, to encourage students to report sexual assaults, to support the survivors of sexual assaults and to ensure that all students involved have access to fair and equitable processes. One sexual assault on campus is too many. Those represented by AAU and by the higher education associations with which we work closely are deeply committed to working with Congress to better protect students.

Campuses need clarity, consistency, and flexibility when appropriate with respect to Federal expectations, requirements, and enforcement. Congress can be most helpful to colleges' efforts by providing clear standards and guidance to help schools understand their responsibilities and affording them institutional flexibility to improve policies to better protect students.

AAU member university presidents and chancellors have long identified sexual assault on their campuses as an extremely important issue that they need to address head-on; some describe it as the No. 1 issue keeping them awake at night. Over the past 2 years at least, AAU has spent more time with its membership addressing this issue than almost any other issue.

As an association of research universities, AAU decided that the best way to help its members address this issue was to conduct research that would enable them to better understand the attitudes and experiences of their students with respect to sexual assault. To do this, AAU developed and implemented a sexual assault climate survey for its members using a leading social science research firm, Westat. The survey was developed by Westat and a multi-disciplinary design team created by AAU and composed of recognized experts on survey design and methodology, as well as campus leaders directly responsible for dealing with sexual assault and issues of gender, health, and student affairs. Dr. Bonnie Fisher, a nationally recognized expert on sexual assault, was hired by Westat to work closely with the AAU-Westat team to develop the content and analysis of the survey. The AAU team was led by Dr. Sandra Martin, Professor and Associate Chair for Research, Department of Maternal and Child Health, and Associate Dean for Research, Gillings School of Public Health, at the University of North Carolina at Chapel Hill. The starting point for the survey design team was the survey instrument developed by the White House Task Force to Protect Students from Sexual Assault, which was included in

the *notalone.gov* April 2014 report. The survey instrument was designed to address the following core research questions:

- What is the campus climate around sexual assault and sexual misconduct?
- What do students know about and think of resources related to sexual assault and sexual misconduct?
- What are the frequency and nature of misconduct because of coercion and lack of consent due to incapacitation?
- What are the frequency and nature of sexual harassment, intimate partner violence, and stalking?

We believe that the survey data will help inform campus policies on how to better prevent and respond to sexual assault on campus. AAU will publicly release the aggregate results this fall. We have encouraged our campuses to release their institutional results, and we anticipate that many, if not all, will do so. Twenty-seven universities (26 AAU members plus one non-AAU institution) implemented the survey.

In addition to the survey's value to participating universities and their students, we hope the aggregate data and analysis will provide useful information to policymakers as they work on possible legislative and administrative initiatives. Researchers will also benefit from the important contribution this survey will make to the body of research on this important and complex issue.

In addition to our work on the climate survey, AAU has actively engaged with the Senate sponsors of the Campus Accountability and Safety Act (CASA) legislation introduced by Senator Claire McCaskill, and subsequently with Senate Health, Education, Labor, and Pensions Committee staff. AAU has joined the broader higher education community in submitting two sets of comments on the legislation, *including the most recent on the version of the bill introduced* earlier this year. AAU supports the goals of CASA, including most of the core requirements. Our goal is to help ensure that any new requirements in CASA complement existing requirements to better protect students and help schools understand their responsibilities. Clarity regarding the establishment of new roles and responsibilities for colleges regarding sexual assault is particularly important given the number of other Federal laws, regulations, and guidance implicated when dealing with this issue. We support and appreciate many of the changes incorporated into the current version of the legislation. There are still some areas where we have some remaining concerns and potential solutions, and we believe the bill will continue to improve as the legislative process goes forward. We offer the following examples of some of the most pressing issues we would like to see addressed in the legislation. Again, previous comment letters have been submitted with a full list of concerns.

CONFIDENTIAL ADVISOR

We strongly support giving survivors of sexual assault access to a confidential advisor whose *sole* responsibility is to counsel and support the victim. In fact, many colleges already provide such services. Colleges need to ensure that members of the campus community are aware of these confidential counseling services and that they know how to contact a counselor in the event of an assault. It is essential that confidentiality and support be the core responsibilities of a confidential advisor. The advisor should be positioned to provide students, regardless of geography of the incident, information on college reporting processes, on how to file an official police report, and on available on- and off-campus resources. We believe that the confidential advisor should not have responsibilities for fact-finding. Moreover, the confidential advisor should not have investigatory powers (including giving the victim the option to have a recorded interview) or reporting requirements. Any requirements that the advisor ask in an investigatory role rather than a mental health or trauma counseling role would compromise confidentiality under both State laws as well as FERPA. We believe it is necessary that these advisors have proper training to handle their responsibilities. Colleges should be responsible for having a reasonable number of advisors based on an assessment of institutional needs. There is no precedent for the Department of Education to specify how many employees colleges must have for a particular job category. To repeat, we are fully supportive of the role of a confidential advisor in helping counsel and support a survivor in dealing with events.

MEMORANDA OF UNDERSTANDING WITH LOCAL LAW ENFORCEMENT

Colleges want State and local law enforcement agencies to be involved in dealing with crimes on campus, incidents of sexual violence. Memoranda of Understanding (MOUs) can be very useful tools for improving coordination and establishing procedures for responding to and handling reports of sexual assault. Many colleges already have, or are in the process of developing, MOUs. Some State laws also require

colleges to develop MOUs. Under the proposed legislation, institutions must enter into MOUs with any law enforcement agencies with "first responder" responsibilities for the campus.

Unfortunately, for a large university in particular, this can mean any number of agencies; combined with the bill's lack of a clear definition of "campus," this would require colleges to negotiate multiple MOUs with first-responder agencies for multiple locations. In some cases, the first responder is in fact the campus police. We believe that the most important MOU is with the local law enforcement that may be reasonably expected to respond to reports of sexual assault from students regardless of whether the incident takes place on or off campus. We believe the content requirements specified in CASA could be made more flexible and less prescriptive, while still ensuring better coordination and clarification of roles and responsibilities between the college and local law enforcement. Additionally, the current waiver to the MOU requirement gives the Secretary of Education a wide degree of discretion in determining whether to grant a waiver. The language needs to be clarified to make it clear that the MOU needs to be mutually acceptable to both parties, and that a waiver should be granted if the college has acted in good faith.

CLIMATE SURVEY

AAU can offer unique feedback on the survey section of the legislation. We strongly support the use of campus climate surveys and believe that if based on sound research protocols, they can help campuses better understand the attitudes and experiences of their students with respect to sexual assault so campuses can make policy changes to better prevent and respond to sexual assault on campus. Many colleges are currently in the process of developing and implementing such surveys.

We have concerns about the requirement for the Secretary of Education to develop a *single* survey instrument, without the input of higher education experts, for use at *all* institutions. We also have concerns about the survey completion standard, because colleges have no legal authority to compel student participation in any survey. The legislation also leaves important operational questions about the survey unanswered, including who administers the survey and how information gained from the survey will be made available, in what form, and at what level of specificity, and by whom. We believe that a campus-controlled (either directly or contractually administered) survey would help colleges, to the extent possible, maximize their student participation rates. It is important that schools have control over survey administration, including incentive options, among other issues, in order to ensure that the survey meets the unique and local circumstances of the college and thus helps administrators better understand students' experiences.

In order to allow for national reporting, the Department of Education, in consultation with higher education survey and content experts, could develop a set of core questions based on a clear set of measurable objectives around the incidence and prevalence of sexual assault and students' use of institutional policies and procedures. If colleges are to report survey results to the Department of Education, then they should strive to report them in a contextualized manner that provides the most accurate information for students and protects any personally identifiable information. We recommend that the frequency of the survey be reduced to once every 4 years, so as not to burden the student body, particularly survivors, and allow schools time to address and improve policies, practices, and outreach in between survey administration. Again, we support the core concept of a climate survey as an important tool for better understanding students' experiences and available institutional resources, as well as helping institutions improve their policies and protections for students.

CAMPUS DISCIPLINARY PROCESSES

Colleges take very seriously their responsibilities to survivors of sexual assault. The legislation creates new 24-hour requirements for institutions to notify both the accuser and accused of campus disciplinary decisions and outcomes in proceedings for sexual violence. While we believe that colleges should make every effort to inform both parties promptly, this short timeframe may be unrealistic in certain circumstances and is likely to lead to unintended and negative consequences for students. A temporary delay also may be necessary to protect a student in fragile circumstances following a traumatic event. In most cases, these notices would require legal review, thereby requiring additional time. We believe that colleges should be given greater flexibility, perhaps a 3-day period with flexibility given for extenuating circumstances.

CLERY ACT EXPANSION

The legislation would expand Clery Act reporting to include information about the handling of student disciplinary actions in situations involving sexual violence. The expansion conflicts with the purposes of the Clery Act, which is designed to disseminate crime information as defined by law and as reported to and by police. Decisions about whether to proceed with campus disciplinary action reflect an entirely different set of considerations. For example, certain conduct may be a violation of campus policies even if it would not constitute a crime under State law, while crimes reported under the Clery Act may involve individuals who are not subject to the campus disciplinary process. Combining Clery Act crime reporting with information on campus disciplinary proceedings, particularly without the appropriate context, would likely be confusing and misleading for students and families, as well as policymakers and the media. We recommend further consideration be given to appropriate ways to bring greater transparency to campus processes without confusing students.

HIGHER EDUCATION RESPONSIBLE EMPLOYEE

We greatly appreciate the legislative intent to clarify who on campus is a responsible employee for purposes of title IX. While we understand the authors' reluctance to amend title IX, we are concerned that the bill's current language would create two separate categories of responsible employees for CASA purposes and Office for Civil Rights (OCR) guidance, further complicating and confusing campus efforts.

FINES

The legislation authorizes the Secretary of Education to impose fines of up to 1 percent of an institution's operating budget per violation for failure to comply with any title IX requirements or with various CASA requirements. Unfortunately, the legislation does not establish clear standards to guide Federal officials in determining the appropriate level within this range and distinguish between technical and egregious violations. In testimony before this committee, the Department unambiguously stated that it does not need or want the authority to impose such fines—it believes it has the tools needed to ensure compliance with laws and guidance addressing sexual assault.

GRANT PROGRAM TO IMPROVE PREVENTION AND RESPONSE TO SEXUAL ASSAULT

It is critical to support further research to find the most effective policies and strategies for preventing and addressing sexual assault on campus. Today there is no definitive body of research on best practices for education and prevention, in particular, and we support the inclusion of a grant program for this purpose in the bill. We recommend that Congress provide a dedicated funding stream for these grants rather than rely on fines to fund these grants. We also recommend that grants be awarded on the basis of the strongest proposals with the most promising ideas rather than criteria such as endowment size or tuition rate.

OCR RESPONSIBILITIES

The Department of Education also has a role to play in supporting college efforts to better address college sexual assault. OCR should be required to resolve its investigations in a timely way. According to OCR internal guidelines, investigations are expected to be concluded in 180 days of the date filed, but this rarely happens. It is not uncommon for OCR to take 2 or more years to resolve cases. To ensure prompt resolution of civil rights violations and basic equity to institutions and their students, OCR should be required to resolve investigations within 24 months of their initiation, unless the institution being investigated has willfully obstructed or impeded the review. In addition, colleges and universities should be provided with appropriate notice to be able to respond effectively to complaints filed with OCR. This means sharing the specific allegations with the institution once an investigation is launched. It also means that a college or university should not be expected to sign a voluntary resolution agreement without first seeing the findings that OCR intends to issue publicly in the case. Transparency and openness would benefit all and provide for collaboration and partnership when resolving complaints.

Last, in recent years, OCR has issued significant guidance documents to institutions that it enforces without having subjected that guidance to the notice and comment provisions of the Administrative Procedure Act. This means that no affected party has the opportunity to raise questions or ask for clarifications.

For example, in April 2011, OCR issued what it termed "significant guidance" announcing campus obligations to address sexual assault under title IX, including the

imposition of the "preponderance of evidence" standard, without seeking public comment. Questions about this document quickly emerged, but it took OCR more than 3 years to issue further clarification. In the interim, campuses were forced to intuit what OCR wanted them to do. OCR has continued this trend. While the agency contends that the "guidance does not add requirements to applicable law," it is clear from recent resolution agreements with OCR that these guidance documents contain new policy positions which are being treated as compliance requirements under the law.

It is essential that all stakeholders, including colleges and stakeholder groups, be allowed to comment on and inform policies. Ultimately, such input makes policies stronger. Overall, colleges and the Department need to work collaboratively to make progress on this issue.

AAU and its members, along with the other associations with which we work on these issues, are committed to working with Congress, to better protect students. Thank you again for this opportunity to testify.

Senator COLLINS. Thank you very much for your testimony.

We have just been notified that votes have started. We're going to have two votes, and we'll have a recess while we vote. We will be able to continue for now and get through some questions before people have to leave to vote. We'll limit Senators to 5 minutes on this round.

I do also want to announce that Senator Alexander will be returning, and after the votes he will take over as chairman. It's been a great experience, and I would have liked to have continued, but I will turn over the gavel, albeit reluctantly, to the legitimate chairman of the committee.

Ms. Flounlacker, I want to pick up on a point that you commented on about the confidential advisor. I'm a strong supporter of the confidential advisor. I've been surprised when I've talked to the University of Maine and other colleges that it turns out that this is not as straightforward as I thought that it would be.

On the one hand, confidentiality really focuses on the victim, and that's what we should do, and it may encourage student victims to report violations and seek the help that they need. On the other hand, the requirements of Title IX and the Clery Act require various forms of reporting when crimes occur on campus. Indeed, the Department of Education's 2014 guidance says that, "There are situations in which a school must override a student's request for confidentiality in order to meet its title IX obligations."

It seems to me we're putting schools between a rock and a hard place unless we give some clarity here. How can colleges and universities provide the confidential services and advising that many of us think are vital to students while balancing and meeting the requirements of both Federal and, in some cases, State law and the desire to respond effectively?

Ms. FLOUNLACKER. Senator, you've identified a very important issue, and we want to get the confidential advisor right. It's an essential service offered to students. As you articulated, as I mentioned in my opening comments, we have concerns that as it's currently drafted, the advisor would be tasked with responsibilities that really go outside of what we think should be the core responsibility of counseling a student.

As you mentioned, in addition to our issues with any fact-finding or investigatory powers or reporting requirements, potential conflict with title IX is a real concern and one that we'll have to address in the legislation in order to get this right.

Part of the issue in the legislation—and if I'm getting too technical, please stop me, Senator. Part of the issue is that in the legislation, the advisor may liaise with an institution to make accommodation, so this would be changes in a dorm room or a change in classroom, for example. It says explicitly it shall not trigger an investigation by the school, and, clearly, schools are committed to providing accommodations and to maintaining confidentiality.

The problem is many schools typically believe that if they're making accommodations for a student, it's sufficient to warrant an investigation by an institution. Moreover, as the Senator articulated, institutions are required under title IX to track and report accommodations provided in response to sexual assault. So there is a clear conflict here.

There are some solutions, and we'd very much like to be a part of that conversation. For example, it would be better for the advisor to let the survivor know where to go and who to talk to about making accommodations rather than that advisor actually carrying through the process themselves.

There are solutions here, and, again, we just have to keep focusing on the core responsibility of the advisor, which is to counsel, and make sure the guidance is very clear so schools know what they're doing, and survivors understand what the advisor can do to help them.

Senator COLLINS. Thank you.

I'm going to ask the rest of you to respond for the record to that issue, because there is a clear conflict between the rules and the regulations.

I want to get quickly to a second topic in my remaining time.

Ms. Bolger, we have climate surveys that our military academies do, and they have a very high response rate because the students know that they are expected to fill out those climate surveys. That is not necessarily the case for private colleges and public universities.

What suggestions would you have to encourage students to participate in the climate surveys so that they're meaningful?

Ms. BOLGER. Thank you for that question, and it's a very good one. In thinking through climate surveys, we have to remember that this is just one piece of a larger effort to change the culture around sexual violence on campus. That means doing education work and outreach and training to students that raises the profile of this issue and helps them understand how incredibly important it is.

We have, to be honest, seen a lot of change on campuses over just the last couple of years as students' peers who are survivors are coming forward and telling their stories publicly. I suppose I'm a bit more optimistic that students will want to be part of the process to complete these surveys.

I do think that we should certainly build on existing structures on campuses, existing structures of students. We have fraternities, we have sports teams, and we have sororities. These are groups of people who already come together around shared values, and if we can create buy-in among people in those communities, we will see much higher response rates to these surveys.

Senator COLLINS. Thank you.

Senator Murray.

Senator MURRAY. Thank you very much.

Ms. Bolger, I want to just start by saying how much I admire you for your courage and how much I appreciate the work you've done to empower other students and survivors, and creating the Know Your IX organization is just really valuable. Thank you for that.

I did want to ask you—given the fact that sexual assault is such an underreported crime to law enforcement, what do you think is the most important step for universities to create to get a survivor-focused approach?

Ms. BOLGER. Thank you for that question and for your very kind words. First off that survivors need to know what they can expect to receive out of a reporting process. Schools need to ensure that the existence of accommodations and how to access them is clear, well-publicized, and well-understood on campus, and then, of course, they need to followup and actually issue those accommodations and protections to students who request them.

I know a number of survivors on my campus simply didn't report because they didn't understand that the school could be useful in helping them change a dorm that they shared with a perpetrator or switch out of a class section that they shared with their abuser.

The second point I would make is transparency. We've spoken a little bit about climate surveys. It's also incredibly important that schools release aggregate data about the results of disciplinary hearings, how quickly they're proceeding. Of course, this shouldn't be identifying information, just in aggregate. That will help survivors build confidence in the system and trust that schools are there for them and they want to help them.

Senator MURRAY. Great. Sexual violence is a significant health problem in our country. According to the CDC, nearly one in five women is sexually assaulted in college, and it's oftentimes by someone that's known to the victim. It's a former partner or friend or acquaintance or someone they knew in a class.

I know that you see students and faculty and their presidents taking the issue—addressing this head on. They've formed a system-wide task force to improve the community and make campuses safer.

President Napolitano, I wanted to ask you: How has the UC focused its efforts on making sure the focus is not only on improving universities' practices in response to sexual assault and violence, but also on working toward a culture of prevention?

Ms. NAPOLITANO. Thank you. It begins with raising the issue. As I mentioned, from the first day a student shows up to start, they will be given specific training on this. They will also be made aware of what resources are available to them if something were to occur—where to go, who are the independent advocates, what they can do.

We see the independent advocates as really acting as gatekeepers, not as reporters, per se, but really as gatekeepers for the student in terms of do you go to the campus police, should you go to your department chair, et cetera, and then to be there to do appropriate followup working with the student. It begins with creating that culture from the day they begin on campus, and then consistency and persistency throughout the college experience.

Senator MURRAY. Real quickly, because I know we have a vote—in the fall of 2014, I know that California became the first State in the country to enact a "yes means yes" law defining sexual consent. Can you talk with us about how this affirmative consent law is empowering students and faculty?

Ms. NAPOLITANO. Yes, because we had actually changed our policy before the law changed, so we've had a year's worth of experience with it. It really, in a way, shifts the burden so that the survivor isn't the one always trying to explain what happened. It means the consent has to be knowing and intentional, and if it's not, it's not valid anymore. That gets incorporated into all of the training materials.

Senator MURRAY. Ms. Bolger, can you share your thoughts with us on how a standard like "yes means yes" could help on campus sexual assault?

Ms. BOLGER. Of course. Affirmative consent is a strong important policy that reflects students' values already around how they want to engage in relationships with people in their community. I do think that affirmative consent will only be successful if there is education for students about what the expectations are, how to obtain consent.

Students enter college with a wide array of understandings of what consent is, and that orientation programming and continuing ongoing training for students, as well as for the people who will be hearing these cases and investigating these cases, is absolutely necessary to make sure that this becomes common and expected on campus.

Senator MURRAY. Thank you.

Senator COLLINS. Senator Cassidy.

STATEMENT OF SENATOR CASSIDY

Senator CASSIDY. Ms. Flounlacker, Senator Gillibrand circulated some statistics suggesting that 41 percent of campuses—I can't verify this, but she circulated this—41 percent of colleges and universities recently surveyed have not conducted a single investigation of sexual violence on their campus in the last 5 years. Wow. That seems like there's a problem with the universities communicating to their students that this is reportable. Do you follow what I'm saying? I can't independently verify that.

But I've got a daughter at a campus. That seems like a problem with the universities. Is that a fair statement?

Ms. FLOUNLACKER. Well, thank you for the question, Senator, and I can't speak to the individual statistics. I'm not an expert in that arena. I will say that our schools are taking this very seriously, both to explain the process, to explain how students can report, and explain what happens in a disciplinary——

Senator CASSIDY. No offense, but if that statistic is correct—and I don't know if it is—if 41 percent have not investigated a single incidence, but it is as prevalent as Senator Murray suggested, that tells me they're not taking it seriously, because that which is measured is addressed. It tells me they're not measuring it, or if they are, they choose not to address it. Do you follow?

Ms. FLOUNLACKER. Right.

Senator CASSIDY. You can't speak for all 41 percent, but it still seems like we've met the enemy and he is us.

Ms. FLOUNLACKER. Clearly, in all candor, is the system perfect? No. Are mistakes made? Yes. Every system can be improved. I don't think there's a president or a chancellor that would disagree with that statement. I'm not justifying, again, the statistics. There may be truth to it. There may not be.

I know that there are a lot of reasons why cases don't go forward. Sometimes the context is really important. There are cases where survivors don't necessarily want to go forward. There's not enough facts for the case to go forward.

I can't speak to the specific statistic. I do know, just speaking—if I can just say, speaking from the association, presidents recognize, most importantly, the need for better data, which is where our climate survey comes in. It's really important that we understand how students——

Senator CASSIDY. Can I stop you, because I'm almost out of time, and as you can tell, everybody has left me.

[Laughter.]

Ms. Napolitano, you've got so many titles, I don't know which to refer to you as. You mentioned there should be a difference between the UC system, a big State university, and the small liberal arts college. Could you elaborate on that difference in approach?

Ms. NAPOLITANO. Right. The principles are the same, but, for example, big systems, like mine—we have our own police departments. They're sworn officers. Small colleges may not have any sworn officers on their staff. Should we be required to have separate MOUs, or do we start with our own police departments? These are the kinds of things that are different between campuses.

Senator CASSIDY. Let me ask you something different. There's been some high-profile stuff recently about the accused—those who felt as if they were wrongly accused and did not receive due process from the university. Again, I can't attest to that. In our democracy, you're innocent until proven guilty. That's one thing.

Do you have thoughts, or do others How do we address those who might be wrongly accused? I actually know a woman who is now being accused, and she swears she's accused wrongly. Yet her entire career is in jeopardy because of this, and she feels as if she has not been accorded her rights. Any thoughts about how we address that issue?

Ms. NAPOLITANO. Right. We're actually looking into that right now. How do we make sure the system is fair to both sides? Actually, when I look at the litigation that's been filed against the University of California, about half of the cases have been filed by survivors and half by respondents who say they weren't treated fairly. There's a lot of controversy in this area.

One of the issues we're looking at is do we provide—or what kind of support do we provide to a respondent in addition to a complainant. Right now, we provide the support to the complainant. Do we provide the exact same thing to a respondent? If not, what do we provide for a respondent?

Senator CASSIDY. Some of the stuff I've read suggests that it should actually leave the university system and go to a civil court, because that's the only way you ensure that you get fair treatment

for both parties. Again, I'm looking at 41 percent. If that statistic is true, it tells me that for a sizable minority of the universities, there's inadequacy of approach, whether it is for either party. Any thoughts about that?

Ms. NAPOLITANO. Well, if you made it mandatory that these cases go into either civil or criminal court, that would be a deterrent to complainants coming forward at all. I would be very cautious about any kind of mandatory referral process.

Senator CASSIDY. I understand. My time is out.

I am to announce that the committee stands in recess for Senators to vote, and we'll resume shortly after votes have ended.

Thank you each for your testimony. I just can't thank you enough.

[Whereupon, at 10:22 a.m., the committee recessed, to reconvene at 10:46 a.m., the same day.]

Senator COLLINS [resuming the chair]. The committee will come back to order. Contrary to my expectations, although the Chairman has returned, he has very graciously agreed to allow me to continue wielding the gavel—and so I'm feeling extremely powerful—until such time as I have to leave. Then he will resume his rightful place as Chairman of the committee. I thank Senator Alexander for his courtesy on an issue that matters a great deal to me.

Senator Bennet, we left off with you being next.

STATEMENT OF SENATOR BENNET

Senator BENNET. Thank you, Madam Chair.

Thank you, Mr. Chairman, for allowing the Senator from Maine to continue her able chairing of his hearing.

And thank you to the witnesses for being here.

Ms. Bolger, in particular, thank you so much for your testimony. I wonder whether you mind touching on something you touched in your written testimony, but not in your oral testimony, and that is your views on mandatory referral laws and how we should think about that and how policymakers at the State level should think about it.

Ms. BOLGER. Yes, absolutely. Thank you for the question. Are you speaking about mandatory referral laws to the police?

Senator BENNET. Yes.

Ms. BOLGER. That's a wonderful question and one that many people have. I get asked all the time why campuses are dealing with this in the first place and why don't we send reports to the police, and that's a really intuitive question. The reality on the ground is that survivors tell us again and again that were their reports to schools that were forced to go to the police that they would report to no one at all.

In fact, 9 in 10 survivors told us that if their reports were turned over to the police without their consent, they expect fewer victims would report. If we are serious about reducing violence on our campuses, perhaps counterintuitively the best thing to do is to empower survivors with the right to decide who receives their reports.

Senator BENNET. Does anybody else want to touch on that?

[No verbal response.]

Let's stick with you, then, Ms. Bolger. You used such a great phrase, the reality on the ground. Are there other things that we

should be thinking about that either might be counterintuitive or not, but in terms of the reality on the ground as we act in a well-intentioned way, but in a way that could be counterproductive?

Ms. BOLGER. That's also a wonderful question. The first thing that comes to mind is that we are hearing a lot on college campuses about sexual assault and how schools need to take sexual assault seriously, and that's true. That is starting to happen.

There is a real gap, though, between responding to sexual assault and responding to other forms of gender-based violence. I'm talking about dating violence, intimate partner violence, stalking.

The new components of the Clery Act will require schools to report incidents of dating violence, domestic violence, and stalking, but it's critically important that schools address these issues in their policies. Policies for dating violence survivors can look really different than for sexual assault survivors—things like providing free transportation to a local court to obtain a restraining order, not penalizing survivors for missing class in order to obtain a restraining order, things like that.

Senator BENNET. Are you aware, or is anybody else on the panel aware of—is there a designation somewhere of universities that have set the gold standard for dealing with sexual assault and sexual violence on campuses, or some standard that students have established or community groups? I'm just trying to think about where we would find the best practices if we were to look—probably at the University of California, I'm sure. But where else?

Ms. NAPOLITANO. We aspire to be the gold standard, but we know we have more work to do. I think every campus in the United States recognizes that. We certainly have taken this on as a major issue for our students and for our campus community.

Senator BENNET. Ms. Flounlacker.

Ms. FLOUNLACKER. If I could add, Senator, you raise a really important question, and it speaks to the section of the CASA legislation for a grant program, which we think is really, really important, particularly focused on more research on better awareness and prevention, which our schools are very engaged in on the research front. We need more of it so we can identify better and best practices. I think everyone can agree with that point.

In an ideal world, with a grant program in the legislation, we would want a dedicated funding stream for this kind of research, rather than using funding from the fines to go into the grant program. We would prefer a dedicated funding stream just for this kind of important research.

Ms. BOLGER. At least from where I sit as a recent graduate and a survivor and an advocate, I don't think that we know that any school is getting it right, perfectly. There are certainly schools with strong policies. Until we have more information and more data, like what we could obtain from standardized climate surveys, I don't think that we're going to have a good sense of what policies are necessarily working best until students tell us.

Senator BENNET. Governor, you get the last word.

Ms. NAPOLITANO. I'm sorry. It goes to the point of flexibility in legislation, because evidence-based, data-driven best practices will change over time. What the law wants is for us to use data-driven

best practices and to be able to demonstrate that that's what we're doing.

Senator BENNET. Thank you.

Thank you, Madam Chair.

Senator COLLINS. Senator Warren.

STATEMENT OF SENATOR WARREN

Senator WARREN. Thank you, Madam Chair.

Thank you, Mr. Chairman, for holding this hearing today. It's a very important hearing, and I really appreciate both of you for doing this.

We've talked about the numbers. According to the CDC, an estimated 19 percent of women will experience a sexual assault while in college. One in five women means something is very, very wrong. Students, all students, should be safe on campus.

Ms. Bolger highlights the importance of climate surveys and, particularly, the importance of making the data that comes from those surveys public, and I strongly support this effort. Good data can be an important foundation for change, and, as you've said, if no one knows what's going on, then there won't be any change.

We've also talked about how colleges respond to reported incidents of sexual assault, and that's very important. A school's response should be timely, should be appropriate, should be respectful. I want to ask about work to prevent sexual assaults in the first place and how the Federal Government can help.

Chief Stafford, in your nearly 30 years serving in campus law enforcement, what did you or GW's administration do that proved effective in preventing sexual assaults on campus?

Ms. STAFFORD. The education efforts have to start with—we often focus the education efforts on women, because we assume that, generally, women are more frequently the victim of a sexual assault than men. We have to focus our education efforts on men, and we need to do that, quite frankly, when they're in high school.

We should be sending men to campuses who understand respecting a woman, understand what consent is. I have huge concerns about the level of understanding, and I have friends with teenage boys, and I talk to them about their level of understanding of consent, and they don't understand consent.

The education efforts really need to be focused not only on women and not becoming the victim of a sexual offense, but on men and not victimizing women. It needs to go both ways.

Senator WARREN. Ms. Bolger, would you like to weigh in on this, focusing it just a bit more on the prevention part of this?

Ms. BOLGER. The most important thing about prevention education is that it starts early and it just keeps going. We need consent education and healthy relationship education in middle and high school and college. It needs to start the week that first-years get to campus, and it needs to continue.

I know that I had no recollection of any sort of orientation or education programming I received around this, because as a first-year, in your first week, you're getting bombarded with so many messages and so much information. It needs to be ongoing.

I see a lot of schools trying to slide by doing online prevention education. Online prevention education is not education. It needs

to be in person, and it needs to be looking at the issue both from a skills and information-based level, telling students about their rights, telling students what consent is, and it also needs to be looking at it from a cultural norms values-based level, talking about sexism and violence more broadly.

Senator WARREN. President Napolitano, can you tell us a little bit more about what you've done in the UC system, what you've found effective, or not, in terms of prevention?

Ms. NAPOLITANO. Again, it's an evolving area. In person education, online, supplements, complements—those things can happen together—experimenting with peer-to-peer education programs, bystander education so that the overall campus community is more aware of what it should do if they are a witness to an event. Those are the kinds of things that improve the overall climate.

Senator WARREN. I'm getting low on time here. Let me just ask this question because of where we are today. Where is it that the Federal Government can be helpful in this part of making campuses safer? What is it that we should be talking about and thinking about here at the Federal level? I open this to anyone who would like to respond. Don't all jump in at once.

Ms. STAFFORD. I'd like to talk for a second about the issue of the MOUs that's in CASA, because the reason sexual assault survivors have been unwilling to report sex offenses to local police and campus police is because they're uncertain of what they're going to face and what they're going to deal with when they make the report. Are they going to be believed? Are they going to be challenged? Are they going to be made to feel irrelevant?

Having or not having an MOU isn't going to change whether a survivor reports the incident to police or not. Most campus public safety leaders I know have requested MOUs of their local police, and the local police—if they have one—it's because the local police were willing, and if they don't have one, it's because the local police weren't willing. There's nothing behind—there's no teeth behind it that forces them to engage in getting into an MOU with the campus police departments.

I would like to see something that actually forces the hand of local and State police agencies to actually engage with the campus police agencies. Because I know in Washington, DC, every time there was a new chief of police, I went to them and asked for an MOU. Every time, I was refused.

Senator WARREN. That's a very helpful point. Did anyone else want to say something quickly, because I'm out of time now.

Ms. BOLGER. I would just say very briefly that the two most important things, from my perspective as a former student and a survivor, is mandated transparency from schools—do we know what's actually going on—so prospective students and their families know what to expect, and enforcement from the Department of Education. Students have really felt alone on their campuses in trying to deal with this, and if the Office for Civil Rights can continue to step up, I'm confident things would change.

Senator WARREN. Thank you. Since I'm out of time, I'll just add this as questions for the record.

But thank you all very much. We've got to do everything we can to keep everyone safe on campus, and I really appreciate you being here today. It's our job to do what we can to help. Thank you.

Thank you, Madam Chair.

Senator COLLINS. Thank you.

Senator Baldwin.

STATEMENT OF SENATOR BALDWIN

Senator BALDWIN. Thank you very much, and I very much appreciate the scheduling of this hearing. I really want to thank our witnesses today, both for your time and your testimony, but also for your life's work and energy devoted to advocating for others and improving the climate on our campuses across the United States.

I wanted to start with a question about the climate survey. We just had a question before our break about bolstering participation rates. In addition to that, I guess I wanted to, first of all, recognize that the Association of American Universities has been active in developing and beginning to implement a sexual assault campus climate survey. I'm proud that one of the campuses in Wisconsin, the University of Wisconsin Madison, is a part of this effort.

As I understand it, the results of this survey are due in the fall. I would hope that you could perhaps share some of the lessons that AAU has learned in its implementation. Especially if we are to look at including a climate survey as we reauthorize the Higher Education Act, we want to garner the best and latest information.

After Ms. Flounlacker speaks, I want to ask President Napoli tano—I think the first point you made in your testimony was the flexibility, recognizing differences in campuses and how that might inform the content of a climate survey. I wonder if you can be more specific about how you would alter the climate survey from campus to campus or what we should be thinking about.

Let me start with you, Ms. Flounlacker.

Ms. FLOUNLACKER. Thank you, Senator, for a very important question. This is a top priority. Our presidents and chancellors asked for better data on this issue, and we are delivering through the surveys. As mentioned, we will produce the aggregate results in the fall. We've encouraged all schools, and I am confident that all will produce their own results as well.

I'd like to offer some specific comments. The first has to do with response rates. It's an issue that you raised and, actually, Senator Collins raised as well, and it's a really important issue. Colleges with any survey want to ensure as high a response rate as possible, particularly with a survey of this nature.

Unfortunately, schools have no legal authority to force, to compel students to participate. Having said that—and I have seen this now firsthand through our survey—there are a number of strategies that schools can employ if the survey is locally administered, so if the school itself administers the survey, versus the CASA legislation, the Department of Education would administer the survey. That's one of our concerns.

If the school administers it, then they have control over a whole host of issues: who promotes it, how it's promoted, when, how long, whether incentives are used or not. There is a solid research-based group of evidence that talks about strategies that really can bolster

response rates. That's an area that we know a lot more about now, and AAU can be a great resource moving forward.

If I have another minute——

Senator BALDWIN. Wait, because I do want to——

Ms. FLOUNLACKER. OK. I'll stop there, and if there's more time, I can comment more.

Ms. NAPOLITANO. Well, her answer illustrates the point I was making about flexibility. You know, a survey administered from a Federal department is a lot different than one administered on your own campus. How a campus administers it and the incentives it uses and what it does to increase the response rate can be very specific as to a campus.

The same thing could be said to content as well, as long as certain subject matter areas are covered. The third thing is that you can get campus climate through a variety of measurement mechanisms. We were talking during the break about focus groups to supplement surveys, giving students a greater opportunity to discuss.

We know this from politics. Where a poll just tells you X, and it's a snapshot, a focus group gives you an opportunity for a longer discussion. The result is for national policymakers to know what's happening, parents to know what's happening, students to know what's happening, but also campus leadership to know what's happening on their campus so they can take immediate action.

Senator BALDWIN. Thank you. I notice that I'm about to run out of time. I would ask that you do, indeed, followup to make your additional points. If either Ms. Bolger or Chief Stafford have additional comments on that question, I would appreciate it.

Just let me note that the other question I intended to ask but won't have time relates to the fact that we are looking at flat funding by the Office of Civil Rights in the Department of Education, which is tragic to me in terms of how important you have articulated in your testimony that adequate resources are there. I would love to hear from all of you on what impact it will have on institutions as well as students.

Senator COLLINS. Thank you.

Senator Casey, you missed me lauding you in my opening statement, so know that it occurred.

STATEMENT OF SENATOR CASEY

Senator CASEY. Senator Collins, thank you, and I appreciate that, and I appreciate what you have said and what you've done on this issue—and Senator Murray as well—the commendation, but also the work and leading us in this hearing today. I appreciate all of our witnesses who have labored in the vineyard a long time, if I can use a line from the Scriptures about this issue.

It's an issue that, I guess, for far too long, we haven't been willing to confront as a country, even though it's one of the most profound betrayals you can imagine. It's a betrayal when you send a daughter to a college—and I've sent two, and I have two more—but when you send a daughter to a college, and you tell them to study hard and that they're going to have a wonderful experience, one of the best experiences of their life in most cases, and then the

system betrays them. The school lets them down. The government lets them down.

When I say betrayal, we all—not everyone in this room, but a lot of us share in that. We have to be very—not just determined, but we have to be very insistent on following rules and demanding a lot more of our schools than we've demanded up until now.

It's a matter of basic justice. In the Bible, they talk about people hungering and thirsting for justice. Well, in this case, they have not been satisfied. Victims have not been satisfied, families, and communities.

We have a long, long way to go, and I'm very proud of the work that I did and others did to get the recent changes through VAWA, get them through the regulatory process and have them not just as law, but as law that's being implemented by way of regulation. I know there's some discord about the result of that. We'll get to that in a moment.

This has to be a priority for men. Men have been on the sidelines too long. Too many young college students standing at parties, knowing something's going to happen or having a sense that it might happen, having a sense of what their friends could do, and just walking away or not doing anything. In some ways, as much as the system has betrayed women on campuses, a lot of guys have betrayed them as well—sometimes their best friends.

Ms. Bolger, when you testified, we're grateful that you did that. I can't even begin to imagine how difficult it is to have lived through what you've lived through and then to come before a public audience like this. It may not be the first time, but it's of great value and benefit. We need to learn—not just learn from you, but be inspired and try to move this issue forward in a way that commensurate with the spirit that you've brought to it.

I wanted to ask you first a question about, in your experience, working with survivors. One of the challenges here is reporting. If you could, walk us through, in your experience, why victims sometimes have the great difficulty of reporting.

Ms. BOLGER. Thank you for that question and for all your work on this issue. It means so much to survivors and to students. There are a whole host of reasons why it is challenging for survivors to report. The person who assaulted them is likely someone they know, a friend, a partner. It's incredibly difficult to take a person you love and trust, have this happen to you, and then report them.

Many survivors fear reporting to the police for any number of reasons. They may be undocumented. They may come from already over-criminalized communities. For some survivors, reporting to the criminal justice system won't do anything for them because their States don't even recognize what happened to them as violence.

It's incredibly important at the campus level that schools are open and transparent about the kinds of protections students can expect to receive by reporting. It's hard to report if you don't know what could come of it and how that could help you continue your education and feel safe on campus.

Senator CASEY. We appreciate that, because one of the things we tried to do in the campus SaVE changes is to take that into consideration, and I appreciate the input.

Secretary Napolitano, we're grateful that you're here today and grateful, again, for your continuing service now in the field of education as you did for the country and for your home State. I guess one question I have for you is what are some of the lessons learned, that you—as the leader of a major institution—have been confronting this and trying to deal with both the reality of the problem, but also the complexity of trying to make the changes that you hope to make and that you have made?

Ms. NAPOLITANO. One lesson is how do you take a large system such as a university system, like the University of California, and a major issue that is—as I mentioned, it's cultural, it's health, it's criminal—and organize it in such a fashion that you can take implementable steps on each one and work your way through a program and evaluate it as you go along as to whether you are really doing what survivors need and what justice commands.

One point I wanted to add with respect to what students have told me on the reluctance to report is the issue of confidentiality—is the confidential advocate truly confidential—and the law needing to be clear about when we have somebody we brand as the confidential independent advocate—well, does that person also have reporting responsibilities? If they do, that undercuts the nature of confidentiality. There's a lot of confusion in that area in the law right now.

Senator CASEY. I'm out of time. I'll have some more questions for the record.

Senator Collins, Senator Murray, thank you very much, and Senator Alexander.

SENATOR ALEXANDER

The CHAIRMAN [presiding]. I know Senator Collins has to leave. I had expected to be in Nashville at a funeral today and was told a vote might be close on the highway bill. That's the way the Senate works. So I came back.

I thank Senator Collins for, in a short period of time, preparing herself and using her usual diligence to chair the hearing. She has a background in—we're all experts on education, but she actually worked at a university, Husson University.

I thank you very much, Susan, for taking time to do this. I know that you have to leave, and we'll wrap up the hearing now as you go. We look forward to your advice as we continue with this issue.

As you can tell from the comments of the Senators, there's a good deal of concern and a surprising amount of humility here, in the sense that we're not sure we know what we can do to help you, and we certainly don't want to interfere with your efforts. Senator Warren's question was a very good one. She simply asked, "Well, what can we do to help?"

We'll be finishing our—Senator Murray and I will be working with our working groups on the reauthorization of the Higher Education Act this fall. We hope to complete that before Thanksgiving in the committee.

I'll have more to say about asking for your advice. Thank you, Senator Collins.

Senator COLLINS. Thank you very much, Mr. Chairman. It was an honor to substitute for you today. Thank you.

The CHAIRMAN. Senator Murray, do you have additional questions and comments?

Senator MURRAY. Mr. Chairman, I just would like to ask unanimous consent to include in the record a statement from the Women's Legal Defense and Education Fund. I will submit any other questions I have.

I want to thank all of our panelists today for their really expert testimony. This is an extremely important topic, and every parent who is sending a daughter or a son off to college wants to know that we are doing everything we can to make sure they are protected, and you all have given us great insight on how to do this correctly.

Mr. Chairman, I look forward to working with you on this as we look at reauthorizing the Higher Education Act.

The CHAIRMAN. Thank you, Senator Murray. I should add that this has been a priority of Senator Murray's from the day we started working together, and she's going to continue to focus on campus safety. We're thinking about a hearing coming up soon on that.

I have three questions I'd like to ask the panel, and the answers can come later. If you have something you'd like to say about it now, I'd welcome it.

Question No. 1 goes back to what I said a little earlier. Government has a way of expressing its concern in laws, rules, and regulations that aren't as efficient as the concern is real. In other words, we sometimes duplicate, and we sometimes cause campuses to spend more time filling out forms than working with students to, for example, have a session informing incoming freshmen about what their responsibilities are.

Let me ask this. Would each of you be willing to give us specific suggestions about how you see title IX and its rules and regulations, the Clery Act and the new regulations—how they could be improved, where they conflict, how they could be made clearer so that campuses would have the flexibility that you talked about, President Napolitano? I didn't know quite what title to give you, but I'll call you President Napolitano.

Would you be willing to do that and to give it to us in as specific form as you could? If you have any comment you'd like to make about that, I'd be glad to have that.

Ms. NAPOLITANO. I welcome the opportunity to do that.

The CHAIRMAN. The University of California—I know that through your system, you're so large and such a good system that, you're bound to have plenty of people who are wading through all the Federal rules and regulations.

Just tell us, "We don't know what this means, and this duplicates this." You've been in so many different positions, as Governor and here—you know exactly what I'm talking about, particularly, on behalf of all the colleges and universities. We need that by around September in order to be able to include it in the reauthorization act if there's something that we need to do.

Ms. FLOUNLACKER. Mr. Chairman.

The CHAIRMAN. Yes.

Ms. FLOUNLACKER. If I could just add, we would absolutely, as President Napolitano said, welcome the opportunity. If I could go one step further, we should also pay close attention to the Depart-

ment of Education and make sure as the reauthorization process goes forward that they do not issue any additional guidance without the comment, which is very standard rulemaking process, to allow stakeholders, survivor groups, higher education, other experts, the time to ask questions, to clarify as well as provide important expertise to ultimately shape the outcome we all want.

The CHAIRMAN. That's a reasonable request. Several of us on the committee asked a distinguished group headed by the chancellors of Maryland and Vanderbilt to look at, generally, simplifying our education rules and regulations and making them more effective.

One of their findings was that every one of our 6,000 colleges and universities gets, on average, every work day, one new guidance or rule. I will ask the department not to do that, especially while we're in the midst of the reauthorization of the Higher Education Act.

The other observation to make as a part of that is that only 15 percent of the colleges are private universities. We often think about those. There's a difference between Nashville Auto Diesel College and UCLA in terms of what we might be thinking about doing. We need to keep that diversity in mind.

A second question I would ask you—one college president, a very accomplished one—she's been president of three different colleges—when I asked her what we should do about this, she said,

> "You should focus on helping campuses better coordinate with law enforcement agencies, but do not turn colleges into law enforcement agencies."

Do you have any comment on that?

Ms. Stafford, I would think you might.

Ms. STAFFORD. I absolutely agree. There's a reason for a campus process, and campuses certainly have a place in the process. I don't want to see them become law enforcement agencies. Students have the right to choose whether or not they want to move forward with pressing charges, and if they do, law enforcement is there for that.

The campuses provide an alternative for students, as far as the disciplinary process, and I think VAWA has actually continued to strengthen that process. I fully support not making campuses try to take the place of law enforcement. Law enforcement has a specific place, and they will do their job if called upon to do it.

Ms. NAPOLITANO. I would concur and just say that the goal of the student disciplinary process is different than the criminal process. However, there can be greater linkage between campuses and law enforcement in appropriate cases, and there are ways to do that.

The CHAIRMAN. The last question I would have is this. What can we do or not do to make sure that colleges establish procedures dealing with sexual assault that are fair and protect the due process rights of both the accused and the accuser? What should we keep in mind as we work on that issue?

Ms. NAPOLITANO. Senator, that's something that we're looking into right now—what should be the rights of the accused. It does illustrate the difference between a student disciplinary proceeding and a criminal proceeding, the confrontation rights, for example. They should be different between those two things. We're working our way through that right now. It's a difficult issue, as you might imagine.

The CHAIRMAN. Right.

Ms. Bolger.

Ms. BOLGER. The only point I would add is that title IX as well as campus SaVE already requires schools to be fair and equitable in their processes. Know Your IX sent a letter to university presidents asking for fairness and that they follow the law. It's critically important that that is the case, and at the end of the day, we're all really on the same piece here.

There's a way in which we like to pit people who care about survivors against people who care about accused students. At the end of the day, this is about access to education, and that title IX very clearly demands that all parties be treated fairly and equitably.

The CHAIRMAN. Thank you.

Yes, ma'am?

Ms. FLOUNLACKER. I was going to make the same point Ms. Bolger made and just might add that in the CASA legislation through the reauthorization process, we need to make sure that any new training requirements for the confidential advisor, for example, doesn't contradict what's currently in law and with respect to a fair and impartial process. Training requirements is an area we need to pay particular attention to.

The CHAIRMAN. Thank you.

Senator Whitehouse has slipped in under the wire. I'll call on him, and then we'll conclude the hearing.

Senator Whitehouse.

STATEMENT OF SENATOR WHITEHOUSE

Senator WHITEHOUSE. Thank you, Chairman. Thank you for this hearing and thank you very much to all of the witnesses who have been wonderful.

Given the late stage in the hearing, what I might do is offer a few thoughts and ask each of you if you would respond to them for the record rather than extend this and perhaps run over my time.

My first thought is that there is not good enough coordination between the Clery Title IX process and the ordinary and proper course of a law enforcement investigation, and that we need to find a way to disentangle those two processes so that they're not working at cross purposes with us. Too often, we've heard about cases in which evidence is unnecessarily lost because law enforcement wasn't brought in at a suitable time.

We've heard about instances in which the university process creates opportunities that are prejudicial to the victim in a later criminal justice process by opening avenues of cross examination, for instance. Are there any thoughts you may have on how we can better accommodate the law enforcement process in this. Given that—to quote Senator Gillibrand, "given the violent felony that this actually is," we need to bring law enforcement in at an earlier time, which brings me to my second point.

In my view, the sooner we get law enforcement engaged in the process, the better. Now, the counter argument to that is that in the past, there have been times and circumstances when law enforcement has done a lousy job of participating in these investigations. The fact that law enforcement has done a lousy job on occa-

sion is not a reason to keep law enforcement out. It's a reason to improve law enforcement in this area.

We have a model with domestic violence. It wasn't too long ago when law enforcement was not helpful in domestic violence cases—drive the guy around until he sobers up, ask the woman victim what she did to provoke him. We've learned a lot, and the domestic violence community has something to teach us about the integration of victims, advisors, and law enforcement early in the process.

The third point that I'd ask you to respond to is that the primary concern that I hear on behalf of victims is that if law enforcement gets involved right off the bat, there's the risk that the victim will lose control over the proceedings. At a time when victims are already feeling that they've lost a lot of control and are feeling very vulnerable, that can be a very considerable threat.

I believe that victims are often very poorly informed about the reality of a law enforcement intervention. Secretary Napolitano and I were both U.S. attorneys and attorneys general together, and you really don't have much of a case if you don't have a cooperating victim. The likelihood of a criminal case being a vehicle for kind of running away with an unwilling victim is very small and can probably be addressed.

The concept—and I'll close with this. The concept that I am mulling is that at a very early stage in the report of an alleged assault, law enforcement would be involved. The police department would be involved. At a time before, unless there was some kind of immediate public safety emergency—there are times when you need to react, and, obviously, you shouldn't prevent that from happening.

But absent that, there could be a conversation in what, for want of a better term, you might call a sort of law enforcement vestibule, where the law enforcement officer comes out from his pure law enforcement role into the vestibule, sits with the confidential advisor, sits with whoever is handling the Clery piece, sits with the victim, and, together, they can walk the victim through what his or her real prospects are and what the real likelihood is of being run away with by a law enforcement investigation gone berserk and what the real risks are of not reporting to law enforcement timely in terms of cross examination vulnerability, and what the real risks are of losing both electronic and biological evidence if time goes by, and figure out a way to make that happen.

I worry that we're going to be in a situation in which the fears that have been justly provoked by clumsy, untrained, not trauma-informed, inexperienced law enforcement interventions in these cases are becoming an obstacle for a process where we could create experienced, trauma-informed, sensitive, effective law enforcement intervention at a very early stage.

I've run out my time. I hope those are useful thoughts, and I hope that they're useful enough to provoke a response from you under our questions for the record rule in the committee.

President Napolitano, you're probably too busy to do this yourself, so I'd be delighted to receive a QFR response from whoever in the vast University of California system you delegate to handle this stuff.

Ms. NAPOLITANO. I'll write it myself.

Senator WHITEHOUSE. Mr. Chairman, thank you very much.

You've known me too long to try to get away with that. Thank you. Good to see you here.

The CHAIRMAN. Thank you, Senator Whitehouse.

I'd like to ask consent to insert statements in the record from individuals and organizations interested in due process rights. We've received a number of comments on that, including from Judge Nancy Gertner at Harvard Law School; Janet Halley, Harvard Law School professor; and others.

[The information referred to may be found in Additional Material.]

The CHAIRMAN. The hearing record will remain open for 10 days. Members may submit additional information for the record within that time if they would like.

The committee plans to hold the next hearing related to the reauthorization of the Higher Education Act on Wednesday, August 5, to discuss the status of student success at American colleges and universities and how to improve it.

Thank you to the witnesses for coming. We appreciate it very much. Some of you have come a long way, and we know that you have other things to do, and this has been a big help to us.

I thank my colleagues. The committee will stand adjourned.

Senator WHITEHOUSE. Mr. Chairman, may I just make one final remark for the record?

The CHAIRMAN. Sure.

Senator WHITEHOUSE. My attorney general at home, Peter Kilmartin, has convened a group of folks from domestic violence victims' organizations, and Rhode Island has a really rich and robust higher ed community that is all participating in a very, very good way. I just want to, on the record, commend Attorney General Kilmartin and the higher ed and victims' community in Rhode Island for the really terrific local work that they are doing which is helping to inform what I'm doing here.

Thank you for the courtesy.

The CHAIRMAN. Thank you. The committee is adjourned.

[Additional Material follows.]

ADDITIONAL MATERIAL

PREPARED STATEMENT OF SENATOR DEAN HELLER, A U.S. SENATOR FROM THE STATE OF NEVADA

Chairman Collins, Ranking Member Murray, thank you for the opportunity to testify today on the Campus Accountability and Safety Act. I am grateful for the committee's attention to the important issue of combating sexual assault on our Nation's college and university campuses.

I am proud to have worked alongside Senators McCaskill, Gillibrand, Ayotte, Grassley, Blumenthal, Rubio, and Warner to introduce our legislation that will address the shortcomings of current law and ensure all students working toward a college degree are able to focus on their studies instead of worrying about the threat of being sexually assaulted.

When we first started working on this legislation, it was important for me to sit down with stakeholders in Nevada to build a workable proposal. This is why last June, I held a roundtable in Las Vegas to receive input from title IX coordinators, police officers, and victim's advocacy groups on ways to prevent sexual assault and assist student survivors. I brought their ideas back to Washington and much of their feedback helped us craft our first bill. This is only one example of our outreach.

Since the first introduction of our bill, our bipartisan working group continued to meet with stakeholders across the Nation, including survivor groups, students, colleges and universities, law enforcement, and others who helped strengthen and improve our new bill that we introduced earlier this year.

From the beginning, we have also worked diligently with your committee to ensure our final bill incorporated comments from experts on our Nation's education system. Our working group strongly believes we have put together a comprehensive product that will provide our schools with the tools they need to make our campuses safer.

I know for me, and for many parents, watching your children go off to college is one of the proudest moments in your life. Parents want to be confident that their sons and daughters will be safe and have access to the resources they need from their schools. Unfortunately, this is not always the case.

Today, there are over 100 colleges and universities under investigation for violations of title IX in their handling of campus sexual violence. While we have all seen news story after news story about these tragic events, the reality is there are many more survivor stories that have not been heard.

Sexual assault is a crime that more often than not goes unreported, which is one of the reasons why data provided by our Nation's institutions simply do not reflect the prevalence of this crime. In fact, there are many colleges and universities that have reported zero incidences of sexual offenses to the Federal Government.

I strongly believe one of the most important provisions of our bill is the campus climate survey. This survey will improve access to accurate, campus-level data by allowing students to anonymously share their experiences related to sexual assault.

Under our bill, schools will give their students an anonymous, online survey to gauge the scope of sexual assault on campus and the effectiveness of current institutional policies on this issue. The Department of Education will be responsible for developing this survey, as well as picking up its cost. Schools just need to ensure an adequate, random, and representative sample of students take the survey.

The survey results will be reported to Congress and published on the Department of Education's website. Because this survey will be standardized, the American public will be able to compare the campus climate of all schools.

As a father of four children, I wish I had access to this kind of information when my kids were preparing to attend college. Now as a grandfather of two, my hope is that when they grow up and go off to school, our Nation's campuses will be safer than ever before.

The campus climate survey will be a useful, educational tool for both students and parents, as well as an invaluable resource for institutions to help create or enhance efforts to prevent sexual assault, assist survivors of this crime, and improve campus safety overall.

This provision is just one example of how Congress can act today and make ending this crime a priority. While Congress cannot legislate away sexual assault, and no bill is perfect, I believe the Campus Accountability and Safety Act is a step in the right direction toward combating this heinous crime and guaranteeing survivors have access to the resources they need and deserve.

Thank you again for the opportunity to testify today. I look forward to continuing our work together to address the issue of campus sexual assault as part of reauthorization of the Higher Education Act.

PREPARED STATEMENT OF PAIGE DANNE, MOTHER OF ACCUSED SON

Thank you for this opportunity to tell you our story. Our son was falsely accused and expelled in 2013. We settled our civil suit with the University and the accuser in 2014. We lived a nightmare last year, of injustice and a surreal kangaroo court on campus.

Our son had just turned 18 years old, had never been in any trouble, never even been to the principal's office before, and within 2 weeks of starting his college career, was defending himself against a rape accusation.

He was taken to the security office late at night, without any advocate or support. He was asked vague and misleading questions. He was told that there was no need to call his parents, that if he told the truth, he would be back in his dorm room later that week. He was immediately moved to an isolated room on campus. Our son didn't call us right away, because he was raised to trust adults and authority figures, and because he was telling the truth.

We met with the title IX coordinator on the day he was officially charged. I inquired about his rights and more about the process. We were told to Google "The Dear Colleague Letter 2011" and would find his rights information listed there.

We were told by the Dean of Students and the title IX coordinator that they could not tell us what he was being accused of doing, but that it was "sexual misconduct" and that could mean,

> "penetration by something, anything, into any part of another person without their consent—it could be a finger into a nose, a tongue into a mouth, or a penis into a vagina".

They told us they had a team of "specially trained individuals" who only wanted the truth, and that they would follow every bread crumb to find that truth. We trusted the administration to be fair and unbiased. We trusted that they would actually talk to both students' witnesses, to write in the investigation report truthfully

what was said, and to be open and caring to both students during the process. We were so wrong.

He was given a choice of an advocate: either the men's or women's soccer coach (our student did not play soccer). He was told he could not have anyone else involved in the process and that he could not speak to anyone else about this proceeding or he would be immediately expelled. Our son met with the Dean of Students to discuss the investigations findings. He was found "responsible" of sexual misconduct. When he walked out of the building, he vomited and fell to the ground in a crumble—what he told us shocked us all.

They had not spoken to any of his witnesses.

We inquired to the title IX coordinator about this and were told it would be taken "under advisement". This happened many times. Any type of question or inquiry into the procedures, any question about the equitableness of what was occurring was taken "under advisement" without ever answering questions or giving information that professionals trained to adjudicate felony charges under title IX should know.

The investigation report was full of contradictions and one-sided accounts. Our son was not given a written copy of the investigation report—he could only read it and then tell us verbally what it said. His advocate was outraged, but his hands were tied. How could he challenge the university administration? He risked his career and would put his own family's well-being in jeopardy if he pushed too hard. Our son's advocate was contacted by the school administration about the case many times without our son's prior knowledge or permission. It was clear that the administration were manipulating evidence and witnesses to achieve their predetermined outcome.

It is important that you understand how devastating this process was on our son. He was an innocent young student—new to campus and college life, first time living on his own—accused of a heinous crime. There was an immediate hostile environment for him at school. He was treated by some of the investigative team with contempt. He had no one to talk to, no one to help him. Because the school had published the incident on the school website, he was branded a rapist from the beginning. He was alone and under great duress without any support. He lost 25 lbs. in 2 months, became chronically ill from the stress, could not sleep, could not focus, and could not eat. He was expected to go to class, keep up with school without any accommodations. He was not allowed to confide in anyone or speak about what was going on or he would be immediately expelled. The accuser was spreading rumors all over campus. At one point, our son was studying in a common area with a friend, when someone walked up to him and asked if he was "The Rapist". The accuser seemed to seek out our son, and actually went up to him (breaking the no contact order) and asked him "for a hug". We immediately went to security and the title IX office about these occurrences, but were told there wasn't anything they could do.

Preparing for the hearing alone proved difficult. His advisor wasn't able to help him prepare for the hearing, but only to guide him through the process. Our son had 1 week to prepare for the hearing, and to make matters worse, the Dean of Students only allowed our son limited "viewing times" in the Dean's office to see the investigative report. These times were often during his scheduled classes, so he had to miss classroom time without being able to give any explanation as to why he was absent. He ended up dropping a class, and his grades fell from A's to C's and D's. His health became so poor from the stress he had to take a medical leave of absence.

After we hired an attorney, the "investigative team" went back and spoke to our son's witnesses prior to his hearing. None of the witness statements made the final investigative report. There was one witness, who could without a doubt prove that our son was innocent. Our son listed him and others on the witness list for the "hearing". None of his witnesses were asked to appear.

During the hearing one panel member actually put her hand up in our son's face to stop him from speaking or asking a question—because the hearing was audio taped and not videotaped, she stopped him from speaking any way she could. Our son attended his hearing alone, a young 18-year-old defending himself against a rape accusation. He faced three adult university employees, the Dean of Students, and one fellow student sitting across a small table. The accuser was across campus, on the phone which was muted by her at any time and her advocate/advisor giving her advice along the way. The "hearing", if you can call it that, was a complete mockery of truth and justice. Our son sat there, across the small table from the panel, with no way to prove his innocence. Any piece of evidence or witness statements he tried to bring into the hearing that could prove his innocence were shut down immediately. At times the audio recording was stopped, so the panel could tell him not to question the proceedings and to ensure he would sit quietly while the

hearing ensued. We were told that the hearing was to dispute any facts in the final investigative report regarding the incident. He tried to question the 13 instances of false information/inconsistencies with statements and within the report—none of his questions were allowed. When he questioned why his witness statements or evidence did not make the final report, the investigative team could not provide an answer. The blame shifted from one investigator to another, saying this person was in charge—no, wait—this other person was in charge, etc. The panel decided that they didn't need to see or hear his witness statements, that it was "more likely than not" that he was "responsible".

The adjudication process on campus is biased and unfair. The campus tribunal controls what evidence is allowed, what questions are asked, and what witnesses will speak—***ALL BEHIND CLOSED DOORS***. This not only hurts innocent students, but hurts true victims as well.

When we found out what had happened during the hearing and investigation we were outraged. How could something as serious as a rape accusation be handled in such a biased, unfair way? How could professionals we had entrusted to care for our son treat him with such disdain, ignore facts, and not call witnesses? How could anyone expect a young 18-year-old, who had never lived away from home before, defend himself against a rape accusation?

Our son committed Zero Crime—Yet Suffered 100 percent of the Consequences.

I write today to ask you for some balance on this issue. As a survivor myself, as a women, as a mother to a daughter, I strongly advocate for a clear easy reporting path, for interim measures, for accommodations for survivors, for prevention and education, and for support for anyone reporting. I also urge you to consider what is missing for accused students. Students should not have to give up their constitutional right of Due Process when they cross the college gates. They should not be deemed guilty until proven innocent. They should not face double jeopardy, have their 5th amendment rights violated, be refused appropriate cross examination. Students should be able to have full representation of their choice, have their witnesses, evidence and testimony allowed. They should have ample time to review and prepare for the hearing, and be given written copies of the investigative report. They should have academic accommodations and be safe from a hostile environment.

The procedural protections given in civil cases using a *preponderance of the evidence* standard as mandated by the Department of Education are missing in college campus tribunals. Campus adjudication process is not an "educational process". These are serious charges with serious consequences. A devastating, life changing trial that destroys a young person's will to live. Innocent students are being marked as a sexual predator for life, by inept educators acting as investigator, judge, jury, and executioner.

Our son is still recovering. He suffers from PTSD, depression, anxiety. His hopes and dreams, all he had worked for, were taken from him by an unfounded accusation coupled with a biased process. Our entire family lived the nightmare with him and we will never be the same. Watching your child crumble before your eyes, bearing witness to the wrongs and not being able to stop them is soul crushing.

I write today to ask you to help give these students a voice. They have been wronged by their school administration, an administration they also trusted, and have been victimized by their university. We need strong elected officials to speak on their behalf. Please bring back a sense of balance and justice, so that in the quest to right a wrong, we are not creating a new group of victims.

PREPARED STATEMENT OF NANCY GERTNER, HARVARD LAW SCHOOL PROFESSOR*

SEX, LIES AND JUSTICE—CAN WE RECONCILE THE BELATED ATTENTION TO RAPE ON CAMPUS WITH DUE PROCESS?

Campus sexual assaults are horrifying, made all the worse because the settings are bucolic and presumed safe—leafy campuses, ivy-walled universities. Assaults are reported in dormitories, off-campus apartments, and fraternity houses, in elite and non-elite institutions, from one end of the country to the other. Title IX (of the Education Amendments of 1972) was supposed to promote equal opportunity in any educational program receiving Federal money. Until recently, title IX was dormant and largely ignored. The enforcer, the Federal Government, had been a paper tiger. Universities were not reporting, much less dealing with, either sexual harassment or explicit sexual violence. Sexual misconduct impairs a woman's ability to function

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as an equal in an academic environment—and by extension menaces all women. Unless a woman is safe, all the other guarantees of equal treatment are irrelevant.

President Barack Obama, in a January 25, 2014, speech, assured his listeners that "anyone out there who has ever been assaulted: You are not alone. We have your back. I've got your back."

In 2011, the government's approach changed dramatically: A "Dear Colleague" letter on sexual violence was sent to colleges and universities from the Department of Education's Office for Civil Rights (OCR), pointedly reminding them of their obligations under title IX and presaging aggressive enforcement. By August 2013, the public face of the department's enforcement efforts was Catherine Lhamon, assistant secretary at the Office for Civil Rights, a zealous advocate, formerly head of impact litigation at Public Counsel, a public interest law firm; before that, she was assistant legal director of the ACLU of southern California. At a July 2014 meeting of college administrators, Lhamon made the threat of disciplinary action unmistakable: While no school accused of violating title IX had ever lost its Federal funding, "do not think it's an empty threat," she warned them. A department **website** announced the campaign against sexual violence on campus, **Not Alone.** President Barack Obama, in a January 25, 2014, speech, assured his listeners that "anyone out there who has ever been assaulted: You are not alone. We have your back. I've got your back." Even the department's language changed, no longer referring antiseptically to a complainant and an accused but rather to victims or survivors, and perpetrators.

To feminists—I among them—it was about time that pressure was brought to bear on educational institutions. Too often colleges and universities had excused or turned a blind eye to the crimes of serial sexual predators. The media, after often dismissing the claims of rape victims, was finally more sympathetic, covering accounts of sexual violence from the University of Virginia to Yale and Harvard. This kind of sustained attention was precisely what was needed to come to grips with the problem. Nothing less would have done the trick. Indeed, nothing had worked before. It was as if women, especially young women, had to speak especially loudly and especially often to finally be heard—a not unfamiliar concept.

The problem was that the issues surrounding campus sexual assault were more complicated than the public debate reflected. How were universities and colleges to deal with the range of campus sexual encounters—a continuum from violent rape, to sex fueled by alcohol impairing all involved, to the expectations about women and men in the so-called "hookup culture," to consensual sex followed by second thoughts. (At least one feminist scholar, Catharine MacKinnon, has expressed skepticism that a woman could ever voluntarily have sex, given the disparate power relations between men and women in society.) There are plenty of bright lines such as forcible rape—but also blurry ones. Genuine ambivalence and ambiguous signals seem almost inherent in courtship and sexuality, especially in first encounters. Where should the title IX violation line be? What was a reasonable adjudication process? What was the role of the criminal justice system in cases in which university conduct codes overlapped with possible prosecutions?

Further, how were colleges and universities to balance the interests of the complainant with those of the accused? Just as the complainants must be treated with dignity and their rights to a fair resolution of their charges be respected, so too must those accused of sexual misconduct. You don't have to believe that there are large numbers of false accusation of sexual assault—I do not—to insist that the process of investigating and adjudicating these claims be fair. In fact, feminists should be especially concerned, not just about creating enforcement proceedings, but about their fairness. If there is a widespread perception that the balance has tilted from no rights for victims to no due process for the accused, we risk a backlash. Benighted attitudes about rape and skepticism about women victims die hard. It takes only a few celebrated false accusations of rape to turn the clock back.

Rape, I insisted, is a crime to which women—including me—feel uniquely vulnerable, no matter who they are, no matter what their class, their race, their status.

I come to this issue—campus sexual assault—from all sides. This is not because I was a Federal judge for 17 years, where "considering all sides" was part of the job definition. I left the bench in 2011 to teach at Harvard Law School, among other things. I am an unrepentant feminist, a longtime litigator on behalf of women's rights, as my memoir, *In Defense of Women*, reflects. Rape, I insisted, is a crime to which women—including me—feel uniquely vulnerable, no matter who they are, no matter what their class, their race, their status. No one should have been surprised that I supported stronger enforcement of title IX, more training for investigators, more services for complainants, systematic assessments of the State of enforcement on college campuses, and other tough remedies. What surprised many, however, was

that I was one of 28 Harvard professors who signed a letter opposing Harvard University's new sexual harassment and sexual assault policies, policies introduced ostensibly in response to pressures from the Department of Education.

When I was a lawyer, I understood how inadequate the law was in addressing sexual violence at all. I worked for changes to the retrograde definition of rape in statutes around the country and their disrespectful treatment of rape victims, laws that were a throwback to medieval conceptions about women. I lobbied for rape shield laws that limited the defense counsel's cross-examination of a woman about her prior sexual experiences. Little did the law trust a woman's account of rape that some States required that a woman's accusations be corroborated by independent evidence, a requirement to which no other crime victim was subject. The definition of the crime focused on the woman's conduct, whether she had resisted "to the utmost;" a simple "no" did not suffice. To the extent that the man's conduct was considered at all, the statutes required that he use force before his acts amounted to rape; drugging a woman, or having sex with one wholly incapacitated by alcohol, was not enough. Date rape was never prosecuted no matter what the circumstances.

But I was also a criminal defense lawyer. I understood more than many how unfair the criminal process could be, how critical the enforcement of a defendant's rights were to the integrity and, even more, to the reliability of the criminal justice system. I understood what it meant to have a defendant's liberty hanging in the balance, how long terms of imprisonment could wreak havoc on the lives of defendants and their families. I appreciated the stigma of the very accusation, which persists—especially today on the Internet—even if the accused is exonerated. I understood the racial implications of rape accusations, the complex intersection of bias, stereotyping, and sex in the prosecution of this crime.

I reconciled the pressures pushing me in opposite directions by choosing not to represent men accused of rape, while bringing civil lawsuits for women against the universities or the building owners that failed to provide them with adequate security, or against psychiatrists and psychologists who sexually abused them. I steered clear of prosecutions for rape—except for one case.

A young man, a freshman at a local college at the time the incident happened and a friend of a former roommate of mine, was referred to me. (In my memoir, I call him "Paul.") He'd had sex with a classmate, his very first sexual encounter; he believed his classmate had consented. While we can never know what went on between them, the facts—her actions, her words, the testimony of others—made her charges wholly unconvincing. A few examples: She went out of her way to invite him to her parents' home a short time after the sex to stay for the weekend. Nine months after their sexual encounter, she claimed to have been raped and mentioned his name following the breakup of a different relationship and her hospitalization for depression. She accused Paul during a conversation with her father, but accused another male student while speaking to a classmate. Witnesses reported nothing out of the ordinary that evening, no evidence of drinking, no impairment, not even anxiety about what had occurred. Her account itself was improbable, internally inconsistent, and contradicted by the evidence and the testimony of her own classmates. While from decades of work on rape and my women's rights advocacy, I understood that this young woman could be telling the truth—that her behavior in the days and weeks after the sex, and even her multiple accounts of what went on, could be explained by post-traumatic stress disorder, or simply embarrassment—her account seemed unlikely.

The Phi Kappa Psi fraternity house at the University of Virginia has been the scene of numerous protests since the report of an alleged gang rape at one of its parties. This demonstration on Saturday night, November 22, 2014, was in response to the university's reaction to a controversial *Rolling Stone* article on the allegations.

By the late 1980s, when the accusations against Paul were brought, the women's movement had succeeded in making some of the changes for which I and others had fought. The popular media finally reported on the horror of date rape and its consequences. District attorneys and police belatedly began to prosecute the offense. The definition of rape changed in States across the country, although progress was far from uniform. Gone was the mandatory corroboration requirement and limitless attacks on a woman's "chastity," whatever that meant in the late 20th century. Still, we were a long way from adequately dealing with these issues. There were many jurisdictions where change came slowly or not at all, where prosecutors and even courts not so subtly sided with perpetrators and blamed victims.

While I believed that Paul had been wrongly accused, and would be exonerated, true to my practice I declined to represent him. I asked one of my law partners to step in, and then watched with horror as the prosecution unfolded.

The atmosphere surrounding date rape had changed more dramatically than I had appreciated, at least in Massachusetts. The district attorney, though he fully understood the weaknesses of the case, felt compelled to bring the charges lest he face political repercussions, for being yet another politician ignoring a woman's pain. Even the grand jury ignored their serious doubts about the case and indicted Paul. As I later learned from one of its members, they felt comfortable indicting Paul because I was rumored to be representing him and they assumed he would be acquitted. The judge—with life tenure—likewise felt the pressure. The judge was critical; my partner decided to waive the jury when a program on date rape was aired on the eve of the trial. While the judge expressed his skepticism throughout the trial—every single comment of his pointed to reasonable doubt about Paul's guilt—his verdict was "guilty." He did not say so explicitly, but the message seemed clear. If he acquitted Paul, he would be pilloried in the press. "Judge acquits rapist," the headlines would scream. If he convicted Paul, no one would notice.

Just because the legal system has moved away from the view that all rape accusations are contrived does not mean it must move to the view that none are.

I took over the appeal. The brief my firm filed was what I described as a feminist brief: Just because the legal system has moved away from the view that all rape accusations are contrived does not mean it must move to the view that none are. This conviction was not just technically imperfect, I argued, it was a true injustice. I was successful. The Massachusetts Supreme Judicial Court reversed Paul's conviction on a procedural error, the trial court's evidentiary rulings. The prosecutor could have retried the case, but, thankfully, chose not to do so.

After decades of feminist advocacy (the case establishing the right to choose abortion in Massachusetts, the first introduction of Battered Woman Syndrome in a defense to a murder charge, and on and on), I was picketed by a women's rights group when I spoke on a panel following the reversal of Paul's case; I was a "so-called women's rights attorney," one sign announced, simply because I had represented a man accused of rape. When I explained why, including the fact that I believed he was innocent, a demonstrator yelled, "That is irrelevant!" The experience was chilling; to the picketers, a wrongful conviction and imprisonment simply did not matter. Paul would have been incarcerated, but for my firm's advocacy and the appellate court's independent review. Still, advocacy and appellate review could only go so far: Though the charges against Paul were dropped, he was expelled from the college he had been attending; he struggled to reapply years later and finally get his degree. Worse yet, he continues to suffer from the stigma of the accusation to this day, many, many decades later.

As a Federal judge, I did not have much occasion to address the issues with which I had been so concerned as a lawyer. Rape is principally a State, not Federal, crime. I did deal with accusations of sexual harassment in the workplace, fully appreciating the extent to which sexual harassment obstructs equal opportunity and discriminates against women. I wrote articles decrying the state of civil rights enforcement in the Federal courts. On the criminal side, while I did everything I could to mitigate the harsh effects of onerous drug sentencing, I had no problem sentencing sex traffickers as harshly as the law allowed.

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Still, I could not forget Paul's case. It shaped the context in which I saw the university sexual assault controversy. As in the 1980s, women mobilized against institutions that had woefully failed to deal with sexual violence and sexual harassment. While the movement had successfully raised public awareness about violence and harassment in homes, on the streets, and in workplaces, many police, prosecutors, and courts were stuck in an earlier era of victim-blaming. Progress seemed to have stalled at the doors of the academy, where at least some institutions still dissuaded women from bringing complaints while they shielded alleged perpetrators.

In the summer of 2014, Harvard issued its new *Sexual Harassment Policy and Procedures*. It contained both new procedures for when students are accused of title IX violations and new definitions of the covered conduct. While ostensibly in response to the Office for Civil Rights' pressures, they were released without OCR's approval. In some respects, they go beyond what the 2011 "Dear Colleague" letter spelled out.

OCR has clearly mandated that universities and colleges evaluate accusations of rape under a preponderance of the evidence standard. A preponderance of the evidence is in fact the lowest standard of proof that the legal system has to offer. In effect, if the evidence leans in favor of the victim to any degree, say 50.01 percent,

that is sufficient. OCR's rationale was that this was the standard for suits alleging civil rights violations, like sexual harassment. True enough, except for the fact that civil trials at which this standard is implemented follow months if not years of discovery—where each side finds out about the other's case, knows the evidence and the accusations, and has lawyers to ask the right questions. Not so with the new Harvard regime, which has no lawyers, no meaningful sharing of information, no hearings. It is the worst of both worlds, the lowest standard of proof, coupled with the least protective procedures.

The new standard of proof, coupled with the media pressure, effectively creates a presumption in favor of the woman complainant. If you find against her, you will see yourself on *60 Minutes* or in an OCR investigation where your funding is at risk. If you find for her, no one is likely to complain.

But Harvard's new policy goes further than OCR's mandated preponderance standard. Harvard establishes a fact-finding process that takes place entirely within the four corners of a single office, the title IX compliance office. The title IX officer has virtually unreviewable power from the beginning of the proceeding to its end. The officer deals directly with the complaining witness, advises her, determines if the case should be investigated, proceeds to an informal or to a formal resolution. If there is a formal investigation, the title IX officer appoints and trains the "Investigative Team," which consists of one investigator, who is also an employee of the title IX office, and a designee of the school with which the accused is affiliated. The investigative team notifies the accused of the written charges, giving him 1 week to respond. While he has a short deadline, there is no time limit for the complainant's accusations, no period of time within which she must complain—what the law calls a statute of limitations.

Thereafter, the team interviews the parties and, if it deems appropriate, witnesses identified by the parties as well as any others it decides to consult. The team issues a final report on a preponderance standard and working jointly with the title IX officer—who was in fact involved in the investigation throughout—may provide recommendations concerning the appropriate sanctions to the individual schools. There is an appeal, but it is to that same title IX officer and only on narrow grounds. While the final sanction is determined by the individual school, the fact-findings on which that sanction is based—this critical administrative report—cannot be questioned.

As the letter of the 28 faculty members noted, this procedure does not remotely resemble any fair decisionmaking process with which any of us were familiar: All of the functions of the sexual assault disciplinary proceeding—investigation, prosecution, fact-finding, and appellate review—are in one office, we wrote, and that office is a title IX compliance office, hardly an impartial entity. This is, after all, the office whose job it is to see to it that Harvard's funding is not jeopardized on account of title IX violations, an office which has every incentive to see the complaint entirely through the eyes of the complainant.

Nothing in the new procedure requires anything like a hearing at which both sides offer testimony, size up the respective witnesses, or much less cross-examine them. Nothing in the new procedure enables accuser and accused to confront each other in any setting, whether directly (which surely may be difficult for the accuser) or at the very least through their representatives. Nor is there any meaningful opportunity for discovery of the facts charged and the evidence on which it is based; the respondent gets a copy of the accusations and a preliminary copy of the team's fact findings, to which he or she can object—again within 7 days, a very short time—but not all of the information gathered is necessarily included. Everything is filtered through the investigative team, which decides the scope of the investigation, the credibility of witnesses, and whom to interview and when.

Nothing in the OCR's 2011 "Dear Colleague" letter called for a proceeding remotely like this. Indeed, the letter underscored the need for an "adequate, reliable and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence," and to have access to any information that would be used at the "hearing." While the 2014 White House "Not Alone" report mentioned that some schools had a "single, trained investigator" doing "the lion's share of fact finding," as in Harvard's policy, it did not—and I would argue, should not—require such an approach.

Nor is there any meaningful role for lawyers in the Harvard policy. The parties may use a "personal adviser" who can be a lawyer, but that adviser may not speak for their advisees at the only relevant stage in this policy, the interview with the investigative team, "although they may ask to suspend the interviews briefly if they feel their advisees would benefit from a short break." (Indeed, this description sounds like a grand jury proceeding, which is notoriously one-sided, controlled entirely by the prosecutor with no role for the defendant's lawyer, within the hearing

room.) Harvard makes no provision for representation of the accused, particularly for students unable to afford counsel, as the letter of the 28 professors notes. Richer students will have lawyers; poorer students will not. Nothing should prevent a university with Harvard's resources from providing lawyers for those who cannot afford them, as, for example, Columbia University does. In contrast, the complainant has advisers and advocates from the title IX office at the outset of the proceeding, advocates especially provided for under the policy. The respondents are left to their own resources.

As the 28 law school faculty members' letter noted, even the definition of the misconduct is skewed. The new Harvard standards governing sexual conduct between students when both are impaired or incapacitated are "starkly one sided" and "inadequate to address the complex issues involved in these unfortunate situations involving extreme use and abuse of alcohol and drugs by our students." "Impairment" and "incapacitation" are not the same, under the law. Sex with an individual who is incapacitated or unconscious, who does not understand what is happening, is plainly egregious, and is rape by any modern definition. "Impairment" because of alcohol is surely a different matter. Worse yet, the policy is not equally applied: The accused's "impairment" based on drugs or alcohol is not at all relevant; it is not an argument for his "diminished capacity" as it might be under the criminal law of some jurisdictions. Instead, the policy treats him as if he were fully sober, fully responsible for his acts. The complainant's "impairment" is another matter. If both parties are drunk, but not unconscious, not incapacitated, and only impaired by their drinking, and they have sex, only he is responsible under Harvard's policy.

In fact, there is no reason to believe that the students themselves define what Professor Janet Halley of Harvard Law School calls "drunk/drunk" cases as rape at all. While 10 percent of female MIT undergraduates in a recent study identified themselves as having "been sexually assaulted," 44 percent reported having sex while being incapacitated by drugs or alcohol. Plainly, some of the students did not regard sex under those circumstances as sexual assault. The unfairness of this policy is nowhere clearer when the misconduct allegations are also the subject of a criminal investigation. The policy requires that the respondent be advised to get a lawyer—again on his own dime—before he provides any statement, but the investigation may well proceed at the discretion of the title IX office. Should that investigation continue—given his silence—he stands a good chance of losing the disciplinary proceeding and being subject to academic sanctions. At the same time, should a legal prosecution end with dismissed charges or an acquittal, there is no provision for a reconsideration of the academic sanctions.

Sexual assault advocates will argue that this is as it should be. It will be traumatic for the complainant to confront her accuser, even if only through her representatives rather than directly. It will be traumatic for the complainant to be asked to repeat her story over again. A speedy resolution is critical to her recovery, they would suggest. These arguments, however, assume the outcome—that the complainant's account is true—without giving the accused an opportunity to meaningfully test it. However flawed, the way we test narratives of misconduct—on whichever side—is by questioning the witness, by holding hearings, by sharing the evidence that has been gathered, by giving everyone access to lawyers, by assuring a neutral fact-finder. While we know from the Innocence Project that even these "tests" can produce wrongful convictions, they are at least more likely to produce reliable results than the opposite—a one-sided, administrative proceeding, with a single investigator, judge, jury, and appeals court.

Indeed, the Office for Civil Rights has agreed to investigate a claim of a wrongful accusation of sexual assault at Brandeis University. A male student was found guilty of assaulting his ex-lover, also a man. He claims that the school's investigation was skewed, that he was not permitted to respond fully to the accusations, that his accuser had counsel while he did not, and that his counter allegations were not sufficiently credited in Brandeis's investigation. In effect, the complainant is arguing that a flawed, unfair process undermines his title IX rights to equal participation in university life. While all of the details of the Brandeis complaint are not clear at this time, to the extent that Harvard's new procedures mirror those of Brandeis, Harvard may also be vulnerable to wrongful-accusation charges.

Some will say that all of this shows that a university has no business at all dealing with sexual misconduct accusations, which amount to a crime. The police should be called; the sanction should not simply be suspension or expulsion but prison. In a criminal trial, there is no question about due process; the accused has the benefit of all the rights guaranteed in the Constitution. Indeed, Yale Law Professor Jed Rubenfeld argues that recourse to university remedies rather than a criminal prosecution for rape trivializes the offense, and may even enable serial predators to get away with their crimes.

Yet women are right to be skeptical about the criminal justice system—about full-blown criminal trials and appeals and the toll they take on witnesses and accusers, about the higher standard of criminal proof, beyond a reasonable doubt, which, though justified by the risk of imprisonment, can leave many claims un-redressed. To be sure, there is overlap between the two—when a student accused of misconduct under title IX is also vulnerable to a criminal prosecution—but they cannot be mutually exclusive. In any event, title IX's definition of sexual misconduct and sexual harassment is appropriately broader, more nuanced than even the recent statutory definitions of rape. While the colleges and universities abandoned their role as *parens patriae* (*de facto* parents) decades ago, in a sense, title IX has invited them back in, policing sexual activities and misconduct—although, according to some commentators, not paying enough attention to the conditions that make that misconduct possible, like alcohol and drugs. Still, just because prison is not a risk hardly means that title IX disciplinary proceedings are without serious consequences for those accused, and surely does not justify a process as one-sided as is Harvard's.

At Oberlin College, administrators worked with students to arrive at a policy for adjudicating campus sexual assault cases that has stronger due-process protections than Harvard's.

There are plainly other options, other ways of protecting the rights of both students who bring complaints and of those they accuse. The policy adopted by Oberlin College offers an instructive counter-example. This is all the more interesting, since Oberlin has a reputation as a left-wing and politically correct college. Indeed, the college was widely ridiculed last year when a professor proposed a conduct code requiring teachers to give "trigger warnings" when a class included material that might upset some students. (Oberlin quickly shelved that proposal.) Yet Oberlin's procedure on sexual misconduct may be a model for other schools.

Oberlin has devised a symmetrical due process proceeding. In language suggested by the students, the parties to the case are termed "reporting party" and "responding party" rather than victim and perpetrator. After a preliminary assessment, designed both to provide support to the complainant and to determine whether there is reasonable cause to move to a fact-finding panel, a disciplinary proceeding may be called. Both parties may present information, call witnesses, and, in lieu of a cross-examination, may forward questions that they want the panel to ask the other party. The three panelists are trained administrators, none of whom is part of the title IX office. "That would be a conflict of interest," says Meredith Raimondo, Oberlin's title IX director. In the event that punishment is meted out, the responding party has the right of appeal to the dean of students, who is also not affiliated with the title IX office. If the complainant feels the outcome is unfair, she may also appeal. This policy was created by a task force that included students, faculty, and administrators meeting over the course of 18 months. "We feel there can be great harm when the process is seen as biased against reporting parties," says Raimondo, "and there can be great harm when it is perceived to be biased against responding parties."

We put our work at risk when the media can dredge up the shibboleths about false accusations of rape, a collective "We told you so " tapping into old attitudes.

Feminists should be concerned about fair process, even in private institutions where the law does not require it, because we should be concerned about reliable findings of responsibility. We put our decades-long efforts to stop sexual violence at risk when men come forward and credibly claim they were wrongly accused. We put our work at risk when the media can dredge up the shibboleths about false accusations of rape, a collective "We told you so" tapping into old attitudes. The recent feeding frenzy around *Rolling Stone's* account of a gang rape at the University of Virginia campus shows just how much damage can be done by the claim that a rape report was flawed—damage to the women making the accusations, to the men who are accused, and to the cause of combating sexual violence.

There is no question that we have to confront sexual misconduct on campus and elsewhere as aggressively and comprehensively as we can. There is no question that we have to lift the protection offered the star athlete, confront the administrators more concerned with the man's future than with a woman's trauma, challenge the atmosphere of impunity at fraternity houses and social clubs. We can do so without turning every disciplinary proceeding into a full-blown trial, without imposing the maximum due process protections, on the one hand, or an administrative Star Chamber, on the other. It isn't necessary to jettison every modicum of a fair process to redress decades-long inattention to these issues. It never is. As I argued in Paul's case, we should not substitute a regime in which women are treated without dignity for one in which those they are accusing are similarly demeaned. Indeed, feminists

should be concerned about fair process, not just because it makes fact-findings more reliable and more credible, but for its own sake.

PREPARED STATEMENT OF JANET HALLEY, ROYALL PROFESSOR OF LAW, HARVARD LAW SCHOOL[1]

Thank you for inviting me to address the important issue of campus safety, sexual misconduct on campus, and due process in our institutional responses. My experience leads me to stress one principle: only a robust and balanced response that guarantees due process for both the complainant and the accused can ensure a healthy academic environment for all of our students. Only then can we be confident all of our youth in college will be safe, protected from sexual misconduct and free of institutional over-reaching and simple incompetence.

The days when institutions of higher education could use slipshod procedures to address complaints of campus sexual misconduct are, thankfully, over. The window of opportunity to install just and effective processes in their place remains open. Colleges and universities nationwide are now installing new disciplinary procedures. A few years' experience with their operation provides important information on reform work still to do.

I have assisted both complainants and accused students at Stanford University and Harvard University, have written scholarly articles and books on the legal regulation of sexual conduct, and have participated in the administration of student discipline and sexual harassment complaints at Stanford. My experience and study tell me that some recent reforms have brought new problems of fairness and due process for both complainants and those accused which threaten the effectiveness and legitimacy of the important progress we have made.

Incorrectly believing that they are required to do so by the Department of Education Office for Civil Rights, institutions of higher education are making all employees, with extremely narrow exceptions, into mandatory reporters—people who must convey to the title IX office information about alleged sexual misconduct whether or not the potential complainant wishes them to do so. This deprives students who may be victims of misconduct of their autonomy and exposes them to serious harm at the hands of University administrators. It also deters students from seeking adult help and advice when they are experiencing doubts and distress, and interferes with the faculty's and staff's ability to mentor, counsel and care for our students in an atmosphere of trust, particularly when they may need us most.

The parties are given narrow opportunities to resolve cases through mediation, and no such opportunities where the allegations involve sexual assault. It is crucial to remember that the definition of "sexual assault" goes well beyond the inexcusable cases involving violence or rape where it is hard to imagine mediation being warranted. The bar on mediation also applies to unwanted bodily contact deemed to be sexual in nature, and these cases, in my experience, are sometimes best resolved by sensitive mediation. Without that pathway, the options for those who feel they have experienced sexual misconduct are narrow: criminal punishment, student discipline or silence. Complainants often express frustration with this narrow array of choices; they object to the lack of a non-punitive option. Congress should listen to this, just as we in higher education should. Student misconduct policies should model the arts of social mediation, negotiation and peacemaking as well as providing severe sanctions in the severe cases, where the complainant seeks that outcome.

Indeed, education is what educational institutions are most centrally about, and that mission is being forgotten in the rush to punish. For example, we must educate ourselves and our students about the differences between a "sexually hostile environment" and the lively exchange, debate, and exploration of ideas that campuses exist to foster. Sexual conduct can be verbal, and too many cases charge sexual harassment for speech, academic speech, open debate, and even first amendment free speech.

Title IX procedures are being cutoff from normal disciplinary processes and are being run by administrators focused exclusively on sexual misconduct and compliance with laws addressed solely to that very severe problem. While this specialization has some benefits, it also runs serious risks. It attenuates awareness of and vigilance against *race* discrimination, including unconscious bias, which is just as much a problem in student sexual interactions as it is anywhere else in our society. In my experience, the rate of complaints and sanctions against male (including transitioning to male) students of color is unreasonably high. The process does not pause to make sure that accused students with disabilities are offered accommoda-

[1] Affiliation provided for identification purposes only.

tions they need to defend charges against them. Students who lack family money to pay for lawyers are at a drastic disadvantage in the process, and, given the considerable resources institutions must invest in providing support for complainants, this problem cuts strongly against the accused. Providing scant due process for these particularly vulnerable groups of accused students runs the very real risk that innocent students are being held responsible, sanctioned, and given tainted records that will haunt them for years.

Procedures that put accused students at a disadvantage may also harm complainants, should they find themselves in a "he said/she said" of reciprocal complaints. College and university procedures often tilt the process unfairly in the following ways:

• The accused has no right to see the complaint. This is fundamental to due process no matter how narrowly conceived.

• The accused has no opportunity to argue that, even if true, the complaint should be promptly dismissed for failure to allege disciplinable misconduct, and administrators are under the incorrect impression that they cannot dismiss bad cases without incurring the ire of DOE. As a result, those accused are often made to defend cases that should have been dismissed early. The resulting process can take months and exact severe costs in distress, behavioral restrictions, educational impacts, and expenditure. None of this should happen when a conclusion of no responsibility is foreordained.

• The entire disciplinary process is administered by title IX officers, who advise complainants how to file their complaints, receive the complaints, conduct the investigation, hold the hearing if any, decide on responsibility, and hear any appeals. A decisionmaker designed this way lacks neutrality and independence and is inherently biased. Many rightly perceive this process to be unfair: far from vindicating our values, this squanders the legitimacy of a vital enterprise. Minimal due process requires truly independent and neutral decisionmakers, separated by function to provide accountability.

• Many campus processes lack a hearing. The investigator interviews the complainant, then separately speaks with the accused person and any witnesses, without providing basic information to the parties about what he or she is being told. Both parties are completely in the dark until the decisionmaker drafts a report tentatively finding the facts, at which time their input is limited to objections to a *fait accompli*. This is a terrifying process for both parties and disables them from putting their best information forward. It is essentially a Star Chamber. Given the seriousness of the stakes for both parties and for the vindication of institutional values, it is a shocking deprivation of fair process.

• Even when there is a hearing, proper concern for the well-being of complainants has led to unfair restraints on the right of the accused to probe evidence and ask questions. We call this a "right to confrontation" in criminal procedure, which makes it sound harsh and acrimonious—but it need not be. Procedural fixes allowing for a full defense without exposing complainants to harassment and unfair questioning are ready at hand and are fundamental to a fair process.

We have come a long way, but have some further reforms to make before we can say that this wave of reform has been a success. Thank you for your concern about campus safety and campus sexual misconduct, and about the installation of fair and effective procedures to address them.

PREPARED STATEMENT OF JOSHUA C. STRANGE

On May 30, 2011 at a party at a friend's house, I was introduced to the person who would later become my accuser. We both were students at Auburn University. She asked me to spend the night at her condo the very first night. Our relationship developed quickly and she and her dog began living at my apartment by mid-June. I liked her so much that I asked my parents to come to Auburn for a weekend to meet her.

On the evening of June 29, she and I went to a bar together to celebrate a mutual friend's acceptance into law school. By the time we left the bar and went back to my apartment, we were both intoxicated. I had a female friend/witness that would later offer testimony that when my accuser and I got to my apartment, my accuser kept telling my witness that she just wanted to have sex with me. After my witness had left my apartment that evening, and my accuser and I slept for a while—I really have no idea exactly how long—we both woke up and ***she*** initiated sex. However, during the sex, she suddenly became upset so I ***immediately*** got up out of bed and asked her what was wrong. I had no idea what was wrong but I did not want her to be scared or upset, so I told her that I wanted her to have control of the situation. My bedroom door in the apartment had a single-key deadbolt on it so that it could

be locked from the inside and only opened from the outside with a key. I told her that I was going to leave the room, lock the door with my key and then slide the key (the only key) under the door so that she knew that no one could come in unless she allowed it (a fact that she confirmed under oath in court).

After I had left the room and unbeknownst to me, she called an off-duty police officer friend who then in turn circumvented the 911 system and called the police for her. I was standing in the kitchen of my apartment when the police arrived and barged into my apartment unannounced. They approached me, instructed me to get on the floor (which, obviously, I complied) and handcuffed me. I had no idea what was going on but I cooperated. One or two of the officers went back to my bedroom and she unlocked and opened the door. They talked to her. They talked to me. I was put in the back of a squad car and taken down to the Municipal Building. I was asked questions and I gave a statement. I was terrified. They took my picture. They took my accuser to the hospital for a rape kit. After what seemed like forever the officers got a call from the hospital, they took me back to my apartment, they said that her statement and my statement of events matched each other and that I was free to go, and they left me. I sat down on my couch in absolute disbelief at what had happened. I was terrified. I did not know what to do so I just sat there in the dark.

The police came back to my apartment with my accuser around 4:30 a.m. and asked me to step outside while she gathered her things and her dog. They then took her to her apartment and left her there. A short time later (around 5:15 in the morning) my phone began to ring and it was my accuser calling me. She wanted to come over to talk and I sure wanted to know what happened, so I agreed. She asked if the police were still there. I walked outside and saw that they were still in the parking lot outside my apartment so she said was going to park in another parking lot so that "the officer doesn't see me going up there again." She and her dog came back to my apartment and we talked. She and I both apologized for what had occurred and she told me that she saw it as nothing more than a misunderstanding between the two of us. I agreed—although I still was not sure what had happened—and she went back to my bedroom, got in my bed and went to sleep. She asked me to join her because she said I "looked exhausted". I said that I did not want to go to bed so I sat on my couch. I still needed to wrap my head around the events of the evening.

In early August, we decided to take a break from dating. She was getting ready to go through sorority rush. This, coupled with her continued close relationship with an ex-boyfriend, led us to break up for the time being. We kept in regular contact and it seemed like we would probably get back together. The night before classes started (August 17, 2011) I awoke to a phone call around 1:30 a.m. It was she. She wanted to come over. I had an 8 a.m. class, but I agreed. She came over and we had sex. The next morning we parted ways but continued to speak through texting. It was not until August 28 that we decided to talk about the potential for us rekindling the dating relationship. She wanted to "get back together" but I had a stipulation. I was not comfortable with her extremely close relationship with her ex-boyfriend. When I voiced my concern, she became extremely angry. I told her, "Since you will not back away from the relationship you have with him, you and I are done." This was not what she wanted to hear and she stormed away.

After our conversation, I deleted her phone number from my phone and she and I were no longer friends on Facebook. It appeared to me that we were done. We had no contact at all from August 28 until September 4, 2011. That evening of September 4 (the Sunday of Labor Day weekend) I was walking to the bar with a couple of friends and my phone began to ring. I looked at the number and although it was no longer saved in my phone, I recognized it immediately. It was my accuser. I answered to her frantic voice asking where I was. I told her where I was and she said, "So, you're not at your apartment?" I told her no and asked if something was wrong. She said everything was fine and that she wanted me to meet her to talk about the possibility of "us". I could tell something was up but I told her that I was not going to meet her that evening. Just before I hung up I told her I would call or text the next day—Labor Day—if she wanted to talk. I did send her a text that Monday but she never responded to it.

The day after I sent that text to her (Tuesday, September 6, 2011), I went to Wal-Mart with a female friend/neighbor of mine because I needed groceries. While in the check out line, my phone began to ring. It was one of my roommates telling me that police officers were at my apartment and wanted to speak with me. I had no idea what they wanted but I checked out quickly and rushed home. When I pulled up to my building the police were waiting for me at my parking spot.

At that point I was arrested, booked and photographed but no one would tell me the charge. My best friend, Tim (the one who had introduced me to my accuser)

called my parents to tell them I had been arrested. They arranged for my bail. They told me to deactivate my Facebook page and my Twitter account, to stay off my phone and not to talk to anyone, including my roommates, about what had happened until they got to Auburn the next morning.

It was not until 2 days later, on September 8, that I finally learned the charge. She claimed it was assault and battery—CDV III. She said that I had approached her in a parking lot and hit her in the face on September 4, the night that I was walking with friends when she called on my phone. There is no way I had done this. I had not seen her in days and I was nowhere near where she had claimed the battery occurred. I could prove it.

My parents and I met with a lawyer on September 8, 2011. I told my parents and my lawyer everything from June 29 all the way to the events of that day—not a conversation you EVER want to have, especially with your parents.

My world was crumbling and I had no way to control it. Within a short period, I found out that she had filed a charge against me with the University for beating her up and using that claim, the school allowed her to go outside of the 15-day complaint period to file a rape charge against me, too. Then I was told that I was going to be presented to a Grand Jury on the sex assault charge and that there was a hearing set in criminal court for the battery charge, and the university began to pursue disciplinary charges against me for crimes that I had not committed. Many of my friends ceased to speak with me. My fraternity kicked me out. My accuser had gone to several different groups on campus claiming that I had raped her, beaten her up . . . she even told some people that I had raped other students and that I had tried to poison her dog while she was living with me over the summer. I have statements from some of these individuals affirming that she made these defamatory statements. I could not talk to anyone in order to defend myself. I had to try to make sure that I was not going to prison for something I did not do and that, according to my attorney, meant silence.

On September 27, there was hearing on a Protection from Abuse complaint that my accuser had filed on September 9 and during the hearing, she testified that I had hit her so hard, I had done permanent damage. She showed up being escorted by Susan McAllister, the Assistant Director of Public Safety for Auburn University. (Funny, no one from the school offered to be there to support me.) My parents, my sister and my brother-in-law were there for me. Her family was nowhere to be seen which the judge found odd and even asked her about it. When she took the stand, it was clear that the bruise was on the wrong side of her face for my right-hand dominance. She had no medical records to show that she had sought any medical treatment. She had waited 2 days to even go to the police to file a complaint about the purported battery. She had attended the AU/Miss State football game on September 10, 2011 with another guy and had posted pictures on Facebook of her at the game—no bruising on her face to be seen. She said that there were witnesses to the battery but she did not want to give up their names. The judge issued the PFA—they are easy to get—but it was a mutual PFA.

On October 17, 2011, I got an email from Kelley Taylor, the Auburn University then-and-current title IX coordinator, wanting to schedule a meeting with me. She refused, however, to "deal" with my attorney so my attorney advised me not to meet with her since anything that I said to her could be subpoenaed for criminal court.

The university scheduled Student Disciplinary Hearings on both of the charges but only one of them came to fruition. The first hearing was set for November 8 and was to be on the sex assault, even though she had filed that complaint second to the battery complaint. The school said that it had to hear the sex assault complaint first because it was more serious, but I question that since there was merely 1 week between to two scheduled hearing dates. The second hearing on the battery was set for November 15, 2011.

In mid-October, about 3 weeks before the first hearing, the school informed me they were lowering the standard of evidence in the sex assault to preponderance.

Prior to that time, everything they had given me about the hearing had indicated that it would be clear and convincing. My mother is a paralegal and she immediately knew that this was not going to go well. How could a battery be "clear and convincing" and a rape be "preponderance"?

In the meantime, walking around campus had taken a terrible turn. It is hard to put the feeling into words. As stated earlier, my accuser had gone to anyone who would listen on campus and spread the lies about me. People were staring at me while I walked to and from class and I could hear them talking about me in the line at Chik-fil-A in the student center and on the campus bus transits. I could hear comments like "That is Josh Strange. He raped and then beat a girl up." I heard people whisper and call me a "monster". It was the worst feeling in the world. I wanted to say something, but I knew I could not. There was nothing I could do and

it only exacerbated my despair. I was all alone. Yes, I had my family and my closest friends who stuck by my side, but I was really all alone. What was worse, my school did not attempt to reach out to me at all. . . . I had no one.

I submitted all of my witness information and evidence, as I was supposed to do, the Friday before the Tuesday, November 8 sex assault hearing. We were supposed to do that so that each of us could view the other's information before the hearing. She did not submit hers because she claimed she had to be out-of-town due to her brother's injury in a very serious accident. (We have information that in fact her brother rode in a rodeo that very next weekend so he could not have been seriously injured in an accident the weekend before the hearing.) Regardless, I did not get to review her "evidence".

The morning of November 8, 2011, I entered the "hearing" room and saw a black sheet hung across the middle of the room so that my accuser and I could not see each other. The minute I entered, a feeling of doom came over me. I somehow knew at that moment that my time at Auburn was over. For the hearing, I was allowed to have one person in the room with me but that person could not speak. She could have a "silent" advisor, too. We could present witnesses and evidence but we could not ask each other direct questions nor could we question the witnesses directly. My attorney had asked that her "other" boyfriend be compelled to attend the hearing as we felt that he had pertinent information about the night of June 29 since he was also at the bar and was, we believe, buying her drinks. However, Dr. Brandon Frye, Dean of Students at the time, said that he was not able to compel students to attend a hearing.

My accuser's advisor, much to my dismay, was the prosecutor for the city of Auburn that was going to try me in criminal court. As soon as my attorney saw him, I was told not to testify in my own defense since my attorney could not actively assist me during the hearing. Again, anything said in that room could be subpoenaed and held against me in criminal court, I would have been testifying in front of the criminal court prosecutor, and because my attorney could not speak or object to anything said during the hearing, he did not want me to say anything at all.

The hearing began. She presented her case and her "witnesses"—the title IX coordinator and the assistant director of Public Safety for the school—neither of who had witnessed anything and even admitted that they had not asked her any details about the "rape" incident. She testified that she had to be tutored/home schooled because I was such a threat—I have downloaded her FaceBook information that shows her at sorority rush, at fraternity parties, at football games, hanging out with her other boyfriend, and at various places on campus during this time, which directly contradicts her allegations that I was a threat to her and she was afraid of me.

I then presented my witnesses: Tim, who told about our obvious ongoing relationship post-June 29; my sister and her husband who each testified about the relationship during the weekend that they spent with us in mid-July; and my female friend that had helped us on June 29 when my accuser had repeated several times that she wanted to have sex with me that night.

After the deliberations, the university hearing panel found me "guilty" and recommended expulsion. Although I could not see her on the other side of the black curtain, I heard a slight laugh come from her direction. It felt like being punched in the gut. I walked out of the room to see my parents. I had to tell them but the words would not come out. My knees buckled. I heard my lawyer tell my mom. She looked as though she was going to be ill. I will never forget seeing how much this had hurt my parents.

After she got the result she wanted in the sex assault matter, my accuser dropped the battery complaint with Auburn so we never had the student hearing set for November 15. The school did not inform us that she had withdrawn the complaint until the evening before the hearing so my parents had already driven all the way back to Auburn for the second time in a week when we found out she had withdrawn it. No matter to the school or to her since her parents—her parents had not attended anything except football tailgate parties so far that semester. They certainly never showed up for the school or for the court hearings.

The wait for the decision by the VP of Student Affairs then began. It was an agonizing 3 weeks before Dr. Ainsley Carry rubber-stamped the expulsion. Again, another kick in the gut. I thought surely he would listen to the hearing recording and know that her testimony was false—the school should know that she wasn't being home-schooled, right? Or perhaps ask me or my witnesses questions—something, anything. He didn't. To this day, I don't think he ever even knew exactly who I was.

From the date of Dr. Carry's decision, we had 5 calendar days to enter an appeal of the expulsion to the president of Auburn University, which we did within the time limit given by the university. We filed it at the beginning of December. She,

in turn, was to have 5 days to respond to my appeal. She finally sent her response in on January 18, 2012, more than a month later. I assumed that Dr. Jay Gouge would not accept her response. Wrong again.

Keep in mind that while all of this was going on, I was still facing criminal charges from the city of Auburn (battery) and potential Grand Jury presentation in the State of Alabama (rape). I was in a constant feeling of despair and fear, depression. I was always looking over my shoulder and putting my head down, hoping that people wouldn't notice me and say something. It was a terrible feeling. Even more crushing was that I knew my parents were feeling the same way. They would call to make sure I was all right, sometimes multiple times a day. I knew they were worried for me and about me. It was defeating.

Finally, after all of this waiting—this pain and anguish that I had been experiencing—a small ray of sunshine broke through the clouds. I was "no-billed" by a Grand Jury on the sexual assault charge stemming from the June 29 incident. Surely, if the Grand Jury found not even probable cause then the president of Auburn should see that there was no preponderance of evidence, since that is a higher standard. I was happy that I had finally been cleared and that others realized I had not committed a crime.

That happiness and relief was short-lived. Five days after the Grand Jury "no-billed" my case, I was called into the Office of Student Conduct. The president of the University had finally made a decision on my case: it was February 8, 2012. I sat down across from the Dean of Student Affairs, Dr. Brandon Frye, and he began to explain. His almost smug demeanor and his words will live with me forever:

> "Some days my job is very good because I get to tell students that their troubles are over and they get to stay in school. Some days my job is one of the worst because I have to tell students that they have been expelled from school and cannot return. Unfortunately, this is one of those days. I am sorry to say you have been officially expelled from Auburn University on the grounds of violating the Code of Student Conduct."

That was it. I was officially expelled. I was never allowed to return to university grounds unless I wished to face charges of criminal trespassing. I texted my mom, "I am gone. Expelled. It is over." I knew she would be devastated, too. I was at the bottom of the pit.

I had previously thought that I couldn't possibly feel any worse than I did the day they recommended expulsion. Oh, how I was wrong. I spiraled into a deep depression. I was rejected and shamed. I had spent so much time and money with the university and I had absolutely nothing to show for it except failure. I felt more alone than ever. I remember going home and just sitting on the couch alone and thinking "What in the hell do I do now? What just happened? Why is this happening to me?" I could barely breathe. It hurt so much I could not even cry. I guess it was shock.

We asked for a refund of my tuition for Spring 2012, since it was just the beginning of the semester. They refused. I had to remain in Auburn from February 8 until the assault hearing 3½ months later because I had to report to a bail bondsman once a week—something I had been required to do every single Tuesday at noon for 8 long months. The refunded tuition money would have helped me support myself. To add insult to injury, when grades came out for Spring 2012, they had not withdrawn me and had instead let me fail. They even sent a letter saying that according to my professors, I had "stopped attending classes" and as such, they had returned my student loan money to the Federal student loan program and they were going to invoice me for the money that I now owed them. I still have that letter.

Time dragged until it was time for the hearing on May 24, 2012. My parents yet again drove the 4 hours to Auburn and paid for a hotel room and paid attorney fees for the hearing. My accuser did not show up—purportedly because, as she told the court, she had to work at her waitressing job. We subpoenaed copies of her work records for that day—she had the day off. Her failure to show up for the hearing resulted in a dismissal of the case against me. I was glad it was over but I was very disappointed that not only did I not get to prove in court that she had lied about the entire incident but I had also asked my witnesses to drive in from out-of-town for the hearing which turned out to be a waste of their time.

I left Auburn and moved home to South Carolina shortly after May 24, 2011, still in a relatively deep depression. I constantly felt doomed. I began drinking a lot. I spent weeks in my room with the drapes drawn. I still had no FaceBook page, no social media at all, no social life at all. My parents finally convinced me that I needed to try to get into another school—to get a life and find a future. The Dean of Students at Auburn had told me that my transcript would be stamped "Expelled"

so I was terrified to try to apply anywhere else. I did not want to have to explain it, to have to talk about it. I just wanted to hide.

My mother finally convinced me that I needed to find a way out of the despair. She talked me into applying to The University of South Carolina-UpState. I was accepted, much to our shock and surprise. My transcript from Auburn actually showed me as a "Student in Good Standing.". Auburn had also changed my "Fs" to "W" since we contacted their outside counsel and pointed out the error of their ways in not withdrawing me.

Unfortunately, because I have spoken to the media, and although her name has never appeared in print, Auburn University dragged their feet in letting me see my records that I had requested under FERPA because they claim that I have divulged her identity to the media. She ran all over campus telling anyone she could find all of her claims about me, never attempting to hide her identity but I am not allowed to talk about my story, according to Auburn University. I was finally allowed to view my records this past February—we were required to drive 5½ hours to Montgomery, AL to see them—but Auburn has still refused to allow me to have a copy of them. In reviewing them, however, I now know that all of these false police reports, the lie about the battery charge, it is all in there. We have asked Auburn's counsel what we can do to get my side of the story into my file, since the hearing on the battery never took place and therefore my information has been left out. They have refused to let us submit anything in my defense. According to them, the case is "closed" and nothing can be added or removed. Any grad school, any security clearance that I may need to further my professional career can be derailed by what is in that file. It is a never ending story.

My life will never be the same. My dreams have changed. My hopes have changed. Friendships have been lost. To this day, I am afraid to date. My parents have had to struggle to pay legal bills. My mom still cries at times. It does not have to be this way. It should not be this way.

AMERICAN FEDERATION OF TEACHERS (AFT),
WASHINGTON, DC 20001,
July 29, 2015.

Hon. LAMAR ALEXANDER, *Chairman,*
Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the more than 1.6 million members of the American Federation of Teachers, I would like to thank you for holding today's hearing on combating campus sexual assault as part of the Higher Education Act reauthorization. It is an important step in the effort to end rape and sexual assault on our college campuses.

The incidence of these crimes is both numbing and staggering. According to the U.S. Department of Education, more than 5,000 forcible sex offenses were reported on college campuses in 2013. Additional data tells us that 90 percent of campus rapes are committed by repeat offenders and that 73 percent of lesbian, gay, bisexual and transgender students reported experiencing sexual harassment. A recent study explains that the actual number of offenses on campus is estimated to be at least six times higher than the reported number. Sadly, only a tiny fraction of the victims will file a report, in part because our culture tells them that they are to blame—the same culture that kept me from speaking out about my own sexual assault for nearly 30 years.

We all have our own stories to share, and we all must be part of the solution. Here's my part: I represent hundreds of thousands of workers at colleges and universities who can help effect change on campus. I can do something; our union members can do something—and we are. So can Congress.

Senators Claire McCaskill and Kirsten Gillibrand have introduced legislation—S. 590, the Campus Accountability and Safety Act—to protect students and hold institutions accountable. They are joined by a bipartisan group of 31 Senators who also support this bill. The bill would:

- Provide new support services for student survivors on campus;
- Allow students, parents and the community to have an accurate account of sexual assaults on campus by mandating new transparency requirements;
- Require colleges and universities to provide information on how they are addressing sexual assaults on campus as well as to train their staff to reduce the incidence of these assaults; and

• Require that a uniform student disciplinary process be put in place with the coordination of law enforcement.

Ending the plague of sexual assault on campus is going to take many partners—students, administrators, faculty, staff, unions, advocacy groups and law enforcement. It will take putting sound policies in place on campus and implementing these policies faithfully. Legislation like the bill proposed by Senators McCaskill and Gillibrand will ensure that colleges and universities are held accountable in these areas. Accordingly, the AFT urges you to include the Campus Accountability and Safety Act into the HEA reauthorization bill.

I look forward to working with you to move our country ahead on this issue and on the overall HEA reauthorization.

Thank you,

RANDI WEINGARTEN,
President.

FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION (FIRE),
PHILADELPHIA, PA 19106,
July 28, 2015.

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

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions
428 Dirksen Senate Office Building,
Washington, DC 20510.

Re: Sexual Assault on College Campuses

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: As you know, the Foundation for Individual Rights in Education (FIRE; thefire.org) is a nonpartisan, nonprofit organization dedicated to defending student and faculty rights on America's college and university campuses. These rights include freedom of speech, freedom of assembly, legal equality, due process, religious liberty, and sanctity of conscience—the essential qualities of individual liberty and dignity.

Last summer we wrote to you to provide our input regarding the adjudication of allegations of sexual assault on university campuses. *See* Exhibit A, attached. Today, we write to provide our analysis of S. 590, the Campus Accountability and Safety Act (CASA).

As a general matter, FIRE has serious misgivings about the ability of colleges and universities to adjudicate allegations of serious felonies like campus sexual assaults.

Campus disciplinary boards lack the ability to collect, hold, and interpret forensic evidence. They lack the ability to subpoena witnesses or put those that appear voluntarily under oath. The parties typically lack the representation of experienced, qualified legal counsel, and they do not have the right to discovery. These proceedings are not governed by rules of evidence and often disregard the right to confront adverse witnesses. Ultimately, the fact-finder—often a single investigator—decides whether there was a sexual assault under the low "preponderance of the evidence" standard, which merely asks the fact-finder to decide if one side was even the tiniest bit more persuasive than the other. Expecting these tribunals to reach consistently reliable findings under these limitations is unrealistic.

The current approach is unacceptable. In addition to the incompetence that permeates this field, college administrators often have real or perceived interests in the outcomes of these cases, further undermining the reliability of the process. It should go without saying that sweeping accusations under the rug is illegal and immoral, but so is punishing accused students when there is insufficient evidence—and there is overwhelming evidence that both situations are occurring with alarming frequency. Legislation may not be able to bridge the vast competency gap between the adjudicatory capabilities of educational institutions and actual courts coordinating with law enforcement, but it can help reduce bias, provide ample resources for education and prevention efforts, and provide all the affected parties with meaningful procedural rights that will help them protect their own interests.

Under CASA, college communities would continue to rely on campus judiciaries to reach factual determinations and punish those deemed responsible for committing these heinous crimes. While the bill will not alleviate the risk of unjust findings caused by assigning amateurs the responsibility of adjudicating these important cases, it does offer some improvements over the status quo. It contains provisions FIRE supports; specifically, the requirement that institutions enter into agreements with local law enforcement agencies, and the important provision that prohibits in-

stitutions from adjudicating cases against student athletes in special proceedings. Other provisions, however, require amendment.

NEUTRAL LANGUAGE

First, CASA treats the problem of addressing sexual assault on campus like a one-sided issue of supporting victims, instead of attempting to protect the rights of both complainants and the accused. Indeed, the bill presumes the guilt of all accused students, referring to accusers as "victims" throughout the legislation, even when referring to them in the pre-adjudication context. **Failure to use neutral language that refers to accusers as "complainants" prior to adjudications signals to institutions that Congress does not truly value impartiality in these proceedings.**

UNEQUAL ASSIGNMENT OF UNIVERSITY RESOURCES

The bill also injects inequality into sexual assault proceedings by providing substantial resources—for example, a "confidential advisor"—to complainants without providing similar resources to the accused. This imbalance is potentially at odds with regulations implementing the reauthorization of the Violence Against Women Act (VAWA), which require colleges to provide "the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice." Additionally, the Department of Education's Office for Civil Rights (OCR) has interpreted title IX's implementing regulations to require that colleges allowing advisors to participate "at any stage of the proceedings . . . must do so equally for both parties." As OCR observes, "[a] balanced and fair process that provides the same opportunities to both parties will lead to sound and supportable decisions." **FIRE supports CASA's determination to provide resources to help complainants navigate the system, but we urge Congress to provide similar resources to the accused.**

TRAUMA-INFORMED TRAINING FOR FACT-FINDERS

Adding to the imbalance, the bill mandates that university employees responsible for "resolving complaints of reported sex offenses or sexual misconduct policy violations" must receive training on "the effects of trauma, including the neurobiology of trauma." Trauma-informed training asserts that inconsistencies in a witnesses' testimony is likely the result of trauma as opposed to being inaccurate. While trauma-informed training may be appropriate for first responders and those conducting initial interviews, providing that training to campus adjudicators potentially undermines the impartiality of the process. Certainly inaccuracies in a witness's testimony do not increase the reliability of his or her account. **The bill should be amended to make clear that such training is not to be provided to fact-finders, who are supposed to be impartial.**

PENALTY PROVISION

Another problematic aspect of the bill is its penalty provision, which allows colleges to be fined 1 percent of their operating budgets per violation. While we presume this provision was intended to provide a more realistically enforceable penalty than the current penalty structure under title IX—which subjects institutions to a loss of all Federal funding—this provision potentially increases penalties. Federal dollars are only one source of funding for institutions. For example, if the Department of Education finds more than 15 violations at an institution that receives 15 percent of its operating budget via Federal funds, the potential penalty will be greater than it is under the current system. Indeed, OCR claimed to have found over 40 unique violations at the University of Montana in 2013. **The penalty provision must be capped, otherwise the status quo, in which institutions are too terrified to ever contest OCR's rulings for fear of incurring a devastating penalty, will be exacerbated.**

MANDATORY REPORTING TO LAW ENFORCEMENT

Despite growing consensus across the country that cutting law enforcement out of the loop is dangerous for all involved, including future victims, CASA states that the "victim's wishes" will determine whether an institution must cooperate with local law enforcement "with respect to any alleged criminal offenses involving students or employees." Students who have committed violence or pose a serious threat of committing violence should immediately be reported to law enforcement. With limited exceptions, college administrators who witness or receive credible allegations

of sexual assault or other violent criminal activity should be required to report such allegations to law enforcement.

Mandatory reporting by college officials would ensure that law enforcement is never left in the dark about a potentially dangerous situation. Even with mandatory reporting, victims would still decide whether they wished to cooperate with a potential police investigation. Even if mandatory reporting deters some victims from reporting, Congress should not forget that universities cannot take dangerous perpetrators off the streets—only law enforcement can do that. A provision requiring administrators to promptly report known allegations of sexual assault ensures more timely law enforcement responses, and it greatly increases the chances perpetrators will be held appropriately accountable. **A mandatory reporting provision should be added to CASA.**

PROPOSED ADDITIONS TO CASA

As remarkable as CASA is for what it includes, it is also worth noting what it lacks. The bill mentions due process only in passing, and it fails to provide meaningful procedural protections beyond those already codified in existing legislation. While it provides both students with notice of the charges and sufficient time to "meaningfully exercise the due process rights afforded to them under institutional policy," this language provides no relief whatsoever to the students on campuses where institutional policies are inadequate or even biased on their face.

This deficiency can easily be cured by including provisions that offer students tangible procedural protections. For example, Congress should insert a provision into CASA that grants both complainants and accused students the right to hire lawyers who could actively participate in the hearings on their behalf. It should also be amended to require institutions to notify students of their rights at the onset of an investigation and provide students the right to remain silent, without allowing the fact-finder to draw an adverse inference.

Institutions should be required to allow the parties to appropriately confront adverse witnesses, including the complainant. Congress should also require campus investigators to turn exculpatory evidence it discovers over to the accused. **Adding these protections is the minimum that must be done to ensure that accused students are given fair hearings.**

FIRE is pleased that the Senate Committee on Health, Education, Labor, and Pensions is considering legislation on campus sexual assault. Before legislation is advanced, FIRE hopes the committee will insist that it takes a balanced approach that meets the needs of all affected parties. We hope that the committee will consider making the changes to CASA that FIRE recommends, so that we can support its passage. Thank you for the opportunity to provide our input. We look forward to assisting the committee as it proceeds with this important task. Please do not hesitate to call on us if we can be of any assistance.

Respectfully submitted,

JOSEPH COHN,
Legislative and Policy Director.

ATTACHMENT—EXHIBIT A

FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION (FIRE),
PHILADELPHIA, PA 19106,
June 26, 2014.

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

Hon. LAMAR ALEXANDER, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions
428 Dirksen Senate Office Building,
Washington, DC 20510.

Re: Sexual Assault on College Campuses

DEAR CHAIRMAN HARKIN AND RANKING MEMBER ALEXANDER: The Foundation for Individual Rights in Education (FIRE; thefire.org) is a nonpartisan, nonprofit organization dedicated to defending student and faculty rights on America's college and university campuses. These rights include freedom of speech, freedom of assembly, legal equality, due process, religious liberty, and sanctity of conscience—the essential qualities of individual liberty and dignity. Every day, FIRE receives requests

for assistance from students and professors who have found themselves victims of administrative censorship or unjust punishments.

We write you to provide our input regarding the adjudication of allegations of sexual assault on university campuses. We thank you for dedicating the time to address this critical issue.

As we explained in our Comment to the White House Task Force to Protect Students From Sexual Assault ("Task Force"), due process rights are one of FIRE's core concerns. While there is no doubt that institutions of higher education are both legally and morally obligated to effectively respond to known instances of sexual assault, public institutions are also required by the Constitution to provide meaningful due process to the accused. *Goss* v. *Lopez*, 419 U.S. 565, 584 (1975); *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961). FIRE has long maintained that these two responsibilities need not be in tension.

As I am sure each of the members of the Senate HELP Committee would agree, access to higher education is critical—especially in today's economy, where a college degree is so often a requirement for career advancement. Given the high stakes for both the accusers and the accused in campus sexual assault disciplinary hearings, it should be beyond question that neither student's educational opportunities should be cut short unjustly. Just as it is morally wrong and unlawful for a college to sweep allegations of sexual assault under the carpet, it is also inexcusable both ethically and legally to expel an accused student after a hearing that provides inadequate procedural safeguards. As recent news reports have demonstrated all too well, both of these regrettable outcomes occur at campuses across the country with alarming frequency. To date, however, the political focus on addressing sexual assault on campus has been disappointingly one-sided, focusing almost exclusively on the rights of complainants while paying insufficient attention to the rights of the accused.

This lopsided focus has already had negative consequences for the rights of accused students in sexual assault adjudications conducted in recent years. As the partners of the National Center for Higher Education Risk Management (NCHERM) recently stated in an open letter:

> "We hate even more that in a lot of these cases, the campus is holding the male accountable in spite of the evidence—or the lack thereof—because they think they are supposed to, and that doing so is what [the Department of Education's Office for Civil Rights] wants."

NCHERM's statement was remarkable not only because of the organization's extensive client list—it currently provides legal services to over 50 colleges and universities—but also because Brett Sokolow, NCHERM's founder, president, and chief executive officer, has been an outspoken proponent of Federal involvement in campus sexual assault adjudication, describing himself as an "activist" for victims' rights. In other words, OCR's mandates have had such a negative effect on campus justice that even outspoken proponents of those mandates are voicing serious concern. While tackling the obvious failings of the current system is useful and necessary, exchanging an institutional disregard for accusers for an institutional disregard for the accused is not an acceptable outcome and does not advance justice. FIRE is hopeful that the Senate HELP Committee will tackle this important issue from a more balanced perspective that addresses the needs of all students.

Thus far, a great deal of the discussion about how to best address sexual assaults on college campuses has accepted the premise that university administrators are qualified to serve as fact-finders and adjudicators. If there is one thing that all sides of this issue agree on, it is this: Few if any schools have demonstrated the competence necessary to capably respond to the problem of sexual assault on campus. Too many campus administrators inject their biases into the process, while the rest, despite often trying their best, simply lack the necessary expertise. This is the reality of the current system, and it is very difficult to imagine legislative remedies to the basic problems presented by entrusting the adjudication of allegations of serious criminal misconduct to a campus judicial system that often has a conflict of interest and, perhaps more importantly, was not intended to handle such serious responsibility. The current arrangement benefits no one, and it's readily apparent failures should lead us all to question the wisdom of doubling down on this broken system.

FIRE is not alone in our assessment that campus judiciaries are ill-equipped to adjudicate sexual assault cases. Carol Tracy, the executive director of the Women's Law Project, has echoed FIRE's concerns, stating, "My grave concern is the capacity, the competence, and the appropriateness of colleges dealing with rape outside the criminal justice system."

This concern was expressed yet more forcefully by the Rape, Abuse and Incest National Network (RAINN) in its comment submitted to the White House Task Force:

> It would never occur to anyone to leave the adjudication of a murder in the hands of a school's internal judicial process. Why, then, is it not only common, but expected, for them to do so when it comes to sexual assault? We need to get to a point where it seems just as inappropriate to treat rape so lightly.
>
> While we respect the seriousness with which many schools treat such internal processes, and the good intentions and good faith of many who devote their time to participating in such processes, the simple fact is that these internal boards were designed to adjudicate charges like plagiarism, not violent felonies. The crime of rape just does not fit the capabilities of such boards. They often offer the worst of both worlds: they lack protections for the accused while often tormenting victims.

Training requirements for the campus administrators (and sometimes even students and faculty) handling these cases are unlikely to sufficiently fix the core disjunction between the competencies of institutions of higher education and the grave responsibilities inherent in the adjudication of sexual assault allegations. As the NCHERM partners observed:

> "[T]he public and the media need to understand that campus [sexual assault] complaints are not as clear-cut as the survivors at [victims' advocacy group] Know Your IX would have everyone believe."

Sexual assault allegations are often nuanced and complex, which is one of the reasons why they present challenges to even the trained professionals employed by our criminal justice system. Instead of creating a parallel justice system staffed by inexperienced, partial, and unqualified campus administrators to adjudicate campus sexual assault, policymakers should instead take this opportunity to improve and expand the effectiveness and efficiency of our criminal justice system to ensure that it provides an appropriately thorough, prompt, and fair response to allegations of campus sexual assault. Professional law enforcement and courts have the benefit of years of expertise, forensics, and legal tools like subpoenas and sworn testimony that aren't available to campus adjudicators. These resources should be brought to bear on campus.

While ill-suited to determine guilt or innocence in sexual assault cases, colleges still have both a moral and legal obligation to ensure that campuses are free from discriminatory harassment and sexual assault. To that end, they may still meet this responsibility by providing a vast range of intermediary remedies and responses to student complainants. Colleges should be advising students about where to turn to ensure that evidence is preserved. They should help complainants report accusations properly to law enforcement. They can provide training to first responders to make sure that the initial interviews don't chill future complainants from coming forward, and to ensure that information gathered during these crucial interviews are helpful to fact-finders down the road. Colleges can provide counseling services. They can separate students by changing course schedules and dorm assignments. As FIRE told the White House Task Force,

> "All of these options, and many more, help ensure that the campus remains a safe place for all students to learn without leaving ultimate decisions of guilt or innocence to campus tribunals, which have proven to be inadequate, ill-prepared forums for adjudicating these cases."

FIRE's misgivings aside, if institutions are to continue adjudicating guilt or innocence in sexual assault cases, they must do so in a fair and impartial manner that is reasonably calculated to reach the truth. This should be self-evident. Indeed, in the Department of Education's Office for Civil Rights' (OCR) April 4, 2011, "Dear Colleague" letter, the agency acknowledged that "a school's investigation and hearing processes cannot be equitable unless they are impartial."

Disappointingly, however, OCR's rhetoric and actions have been decidedly one-sided, emphasizing the rights of the complainant while paying insufficient attention to the rights of the accused. For example, OCR has mandated that institutions utilize our judiciary's lowest burden of proof, the "preponderance of the evidence" standard, despite the absence of any of the fundamental procedural safeguards found in the civil courts of law from which that standard comes. Without the basic procedural protections that courts use (like rules of evidence, discovery, legally trained advocates, the right to cross-examine witnesses, and so forth), campus tribunals are making life-altering findings using a low evidentiary threshold that amounts to little more than a hunch. This mandate is not just unfair to the accused—it reduces the accuracy and reliability of the findings and compromises the integrity of the system as a whole.

The hurried rush to find the accused guilty described by NCHERM in its open letter is sadly inevitable in an environment where the Federal Government has mandated low evidentiary standards, called into doubt accused students' right to cross examine their accusers, interchangeably used the terms "victims" and "complainants" in pre-hearing contexts, and actually instructed institutions that in some instances they may take "disciplinary action against the harasser" even "prior to the completion of the title IX and title IV investigation/resolution." See U.S. Departments of Justice and Education Joint Findings Letter to the University of Montana, May 9, 2013. The inescapable perception of a top-down Federal bias against the accused is solidified by the fact that OCR has yet to take a single action against an institution for breaching its duty of impartiality because it was biased against the accused or to intervene on an accused student's behalf in any of the civil rights lawsuits they have filed, despite numerous examples of colleges punishing accused students with little if any evidence and after using embarrassingly minimal procedural safeguards.

Again, the perception of bias on the part of OCR is having a real effect on the reliability of campus adjudication across the country. After all, when deciding a case under the preponderance of the evidence standard, even a light thumb on the scales of justice can affect the outcome. One disturbing example comes from Occidental College, where the institution expelled a male student after finding that the female student was incapacitated despite a 24-minute text message conversation showing the complainant taking deliberate steps to sneak away from her friends and into the young man's dorm room for the express purpose of having sex. In one text she asks him, "do you have a condom," and then she messaged a friend, "I'm going to have sex now" [sic]. It is perhaps unsurprising that this result arrived on the heels of OCR opening up a title IX investigation into Occidental's handling of sexual assault claims, demonstrating the real harm caused when institutions feel pressured to reach guilty findings.

FIRE has also seen repeated instances in which colleges expel students despite the fact that juries have found those students not guilty in real criminal trials covering the same accusations. While OCR's interpretation of title IX allows institutions to take action independent from or even concurrent with any criminal justice proceedings, it remains problematic that students exonerated under the heavy scrutiny of the criminal process are being so harshly punished in campus proceedings. FIRE has seen cases where the evidence not only was insufficient to support guilty verdicts under criminal law evidentiary standards, but also dispositively proved the innocence of the accused. Caleb Warner's case from the University of North Dakota is illustrative. We highlight the Occidental College and Caleb Warner cases not to argue that false accusations are the norm, but rather to emphasize that justice requires that individualized determinations be made based upon the known facts of each case, not upon statistical assumptions.

Removing a college's responsibility for determining guilt or innocence has another benefit: It removes a potential source of bias from the process and in doing so protects institutions from the liability exposure created by serving as a fact-finder in a situation where the institution has a real or perceived vested interest in the outcome. United Educators, an insurance company that serves colleges, universities, and other educational institutions across the country, released a Risk Research Bulletin in December 2011 regarding claims paid on behalf of universities as a result of their handling of sexual misconduct cases. The bulletin explains that the circumstances surrounding campus sexual assault allegations create a "perfect storm" resulting in scores of claims and millions of dollars paid out as a result of institutions mistreating accusers, accused students, or both. According to the bulletin:

> From 2006–2010, United Educators (UE) received 262 claims of student-perpetrated sexual assault, which generated more than $36 million in losses for UE and our members. The claims data show that students accused of perpetrating a sexual assault are just as likely to sue the institution as accusing students.

The bulletin is a few years old, and was released just as institutions nationwide began to recalibrate their procedures in response to the mandates contained in OCR's April 4, 2011, "Dear Colleague" letter. The liability risk for institutions has only increased since then, as both accused and accusing students nationwide file complaints against their institutions, alleging mishandling of their case.

Leaving the guilt or innocence determinations up to law enforcement professionals and actual courts will not only save institutions money; most importantly, it is the right thing to do. Adjudicators with real or perceived interests in the outcomes undermine the reliability of the process. This too should be self-evident, as it was one the central arguments presented by Senators Gillibrand and McCaskill in their efforts to remove sexual assault hearings from the jurisdiction of military tribunals

(which boast far more elaborate procedures and protections than campus tribunals) and to the jurisdiction of civilian courts.

The final reason why adjudicating these cases should not be left to colleges and universities is because it is an inadequate forum for addressing these serious felonies. Diverting these cases from the criminal justice system to campus courts is dangerous. The harshest sanction a university can impose on a rapist is expulsion. Currently available data suggests that many rapes are committed by serial offenders. If this is true, expulsion simply leaves the perpetrator free to prey on more victims—including more students.

The bottom line is that when the alleged conduct in question is heinous and reprehensible, as it is in sexual assault cases, campus courts are unequipped to provide either the necessary process due the accused or the punishment justice demands for the victim and society if the accused is found guilty. We must stop pretending that campus tribunals are adequate alternatives to criminal justice and start referring each and every complaint to law enforcement professionals, so we have a chance at removing dangerous criminals from our communities. If complainants are reluctant to go to law enforcement, that problem must be addressed directly by working with law enforcement—skirting it by providing alternative "justice" systems is not a viable solution.

If Congress determines that campus tribunals must continue adjudicating these cases, there are steps that can be taken to improve their effectiveness and fairness. First and foremost, the government should drop its insistence that institutions use the preponderance of the evidence standard. The legal argument that the preponderance standard is the only acceptable standard under title IX is incorrect, as FIRE has catalogued in our prior correspondences with the Office for Civil Rights. More importantly, the use of this low standard, when decoupled from meaningful due process protections, is unjust. Instead, the government should be encouraging institutions to use the "clear and convincing" standard of evidence, which requires more than just a "50 percent-plus-a-feather" level of confidence that the evidence supports one side over the other, but less certainty than the criminal courts' "beyond a reasonable doubt" standard. This standard was recently endorsed by *Slate* senior editor Emily Bazelon. The government should also insist that institutions that continue to use the preponderance of the evidence standard add additional due process protections—for example, some mechanism that allows an accused student or an advisor to pose questions to his or her accuser, perhaps via an intermediary.

Another step that Congress can take to improve the reliability and fairness of campus disciplinary hearings is to require schools to allow student complainants and accused students to have legal representation actively participate in those proceedings. Typically, the university represents the complainant's interests by bringing and prosecuting the charges against the accused party. Universities are free to employ lawyers to conduct this function, but this right is typically not extended to student respondents. Notably, the recent passage of the Violence Against Women Reauthorization Act of 2013 included a provision that,

> "The accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice."

The Department of Education has (correctly) interpreted this to include the right to have a lawyer present. For this measure to truly make a difference, Congress must make clear that the advisor may actively participate in the process. Allowing students to have their own counsel actively participate in the process will serve as an important check to ensure that a college proceeds in a just manner, rather than giving into the temptation to act in a manner that protects its own interests.

Congress should also note that statements made by students during on-campus proceedings or in meetings with campus officials are admissible against them in criminal court. By participating without a lawyer, accused students have essentially waived their Fifth Amendment rights. The accused students lucky enough to recognize this problem are forced to choose between defending themselves on campus or defending themselves in criminal courts. An example of this dilemma is the case of Ben Casper, a former student at The College of William & Mary, who on the advice of his criminal defense lawyer did not participate in his campus disciplinary proceeding, instead defending himself in his criminal trial. Ben was found not guilty of all the charges against him at trial, but has been refused the opportunity to return to William & Mary. Requiring institutions to allow legal advocacy in the campus tribunal will go a long way toward fixing this problem. Participation of legal counsel will also help the process itself; the example of criminal and civil courts amply demonstrates that hearings proceed much more smoothly when both sides

are represented by counsel than when *pro se* litigants are forced to navigate a process with which they are unfamiliar. As the authors of the Sixth Amendment recognized, hearings with the assistance of legal professionals are far more likely to lead to just results than those without.

Another step Congress can take to make sure campus tribunals are more effective and fair is to require institutions to include sexual contact with an incapacitated person in their definitions of sexual assault and rape, and to provide an appropriately precise definition of incapacitation.

"Incapacitation" is qualitatively different from mere 'intoxication." This is a distinction with a real difference. If one is "incapacitated," one has moved far beyond mere intoxication; indeed, one can no longer effectively function and thus cannot consent. Courts have recognized that simple intoxication does not necessarily equal incapacitation, and therefore does not necessarily foreclose consent. College policies must recognize this distinction as well, perhaps by mirroring State definitions of incapacitation.

Unfortunately, some advocates are insisting not only that definitions of sexual assault be amended to include incapacitation, but also that they be changed to require the accused to prove that they obtained the "affirmative consent" of the complainant. The affirmative consent standard is not only confusing but is also a legally unworkable standard for consent to sexual activity. Under an affirmative consent standard, sexual activity is sexual assault unless the non-initiating party's consent is "expressed either by words or clear, unambiguous actions." If proving "affirmative consent" becomes law, there will be no practical, fair, or consistent way for colleges to implement these newly mandated prerequisites for sexual activity. It is impracticable for the government to require students to obtain affirmative consent at each stage of a physical encounter, especially if they are put in a situation in which they must later prove that attainment in a campus hearing. Under an affirmative consent standard, a student could be found guilty of sexual assault and deemed a rapist simply by being unable to convince a tribunal that she or he obtained explicit consent to every sexual activity throughout a sexual encounter. The affirmative consent standard is unfair, and at public institutions, likely a violation of students' due process rights because it effectively imposes a duty on the accused to prove his or her innocence. In reality, requiring students to obtain affirmative consent will render a great deal of legal sexual activity "sexual assault."

Sexual assault is one of the most heinous crimes a person can commit. Those found guilty of it should be punished to the fullest extent allowed by law. Precisely because sexual assault is such a serious crime, ensuring that each case is referred to law enforcement and providing those accused with due process is absolutely vital. As FIRE president Greg Lukianoff recently observed:

> "Due process is more than a system for protecting the rights of the accused; it's a set of procedures intended to ensure that findings of guilt or innocence are accurate, fair, and reliable."

FIRE is under no illusion that there is a simple solution to the problem of sexual assault on campus. By lowering the bar for finding guilt, eliminating precious due process protections, and entrusting unqualified campus employees and sometimes even fellow students to safeguard the interests of all involved, we are creating a system that is impossible for colleges to fairly administer, and one that will be even less fair, reliable, and accurate than before.

Thank you very much for addressing this important issue and for considering FIRE's input. We are deeply appreciative of this opportunity to share our perspective and offer our assistance to you as you move forward. Please do not hesitate to contact us if we can be of further assistance.

Respectfully submitted,

JOSEPH COHN,
Legislative and Policy Director.

LEGAL MOMENTUM,
WASHINGTON. DC 20005,
July 29, 2015.

Hon. LAMAR ALEXANDER, *Chair,*
Hon. PATTY MURRAY, *Ranking Member,*
Senate Committee on Health, Education, Labor, and Pensions,
428 Senate Dirksen Office Bldg.,
Washington, DC 20510.

Dear Chairman Alexander and Ranking Member Murray: I write to commend you for laying the groundwork for the coming reauthorization of the Higher Education Act by holding the hearing, "Combating Sexual Assault." 0n behalf of Legal Momen-

tum, the Nation's oldest organization advocating for the personal and economic safety of women and girls, I wish to offer some threshold recommendations based on our advocacy on behalf of campus survivors.

• **Enhance responses for survivors**—more funding is needed to provide a variety of supports for survivors of sexual assault and dating violence, including legal services, rape crisis intervention and counseling. It's crucial that survivors have access to services that are confidential- and trauma-informed, whether those are provided on campus or by local rape crisis centers. Additionally, title IX coordinators, campus health services. RA's, and campus law enforcement should be trained in the provision of trauma-informed care, and should coordinate with local rape crisis service providers .

• **Full funding for the Office of Civil Rights (OCR)**—we must ensure that campuses are fulfilling their obligations under title IX, and that survivors are receiving needed accommodations and timely resolutions of both OCR initiated investigations and of campus disciplinary proceedings. Over the last several years, OCR's complaints volume has steadily risen (to nearly 10,000 annually) while its staffing levels have declined to their lowest rates in decades (a time period when caseloads were much lower). In order for students to pursue their educations, and not be hampered by sexual bias, harassment or violence, OCR must be able to offer a timely response.

• **Climate surveys are key**—one of the most effective ways for institutions of higher education to receive timely feedback and respond effectively is by conducting climate surveys. Congress should consider requiring all institutions of higher education to collect and publish data to enhance transparency and to enable students and their parents to obtain accurate information about campus safety and institutional responses—both to survivor needs, and in terms of holding accused students responsible.

We look forward to continuing to work with you and your staffs throughout the reauthorization process.

Sincerely,

LISALYN R. JACOBS,
Vice President for Government Relations.

LOUISIANA LEGISLATURE,
STATE OF LOUISIANA.

Hon. LAMAR ALEXANDER, *Chairman,*
U.S. Senate,
Committee on Health, Education, Labor, and Pensions.

Hon. PATTY MURRAY, *Ranking Member.*
U.S. Senate,
Committee on Health, Education, Labor, and Pensions.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY, I would like to express my strong support for S. 590, the Campus Accountability and Safety Act, which will greatly improve the processes surrounding sexual assault on college campuses.

Passage of this piece of legislation is not only critical, it is doable—and Louisiana has just demonstrated so. As the father of two school-age children, the first thought that ran through my head when I read Senator McCaskill's study was "I'm going to have to homeschool my daughter for college." This knee-jerk reaction led me to take a closer look at what was going on in my own State, and what we found was not pretty. Soon thereafter I convened a Working Group of Louisiana experts on sexual assault, including law enforcement composed of the Louisiana Sheriffs' Association and Chiefs of Police Association, advocates, prosecutors, campus legal and administrative experts, administrative officers of private health care facilities, Sexual Assault Nurse Examiners (SANE), various NGO's, and student representatives. Using Senator McCaskill's survey results and CASA as a map, our working group drafted and successfully passed our own Campus Accountability and Safety Act of 2015, SB 255/Act 172, copy attached, which provides for:

(1) Anonymous sexual assault climate surveys: We understand the data produced from these surveys, which will include standardized plus optional parts to accommodate our diverse campuses, will greatly assist in understanding the scope of the problem first so that we can efficiently and effectively direct resources and attention to where they are needed the most;

(2) Amnesty policy to ensure that students reporting incidents of sexual assault are granted immunity for certain campus policy violations, such as drug and alcohol use; and

(3) Memoranda of understanding (MOU) between each higher education institution and each law enforcement agency located in that institution's respective locality. Each MOU is required to clearly delineate responsibilities, define protocols for investigations, including standards for notification, communication, and evidence preservation, and share information. In addition, the Sexual Assault Working Group drafted and passed SB 37/Act 152 to require each full-time campus police officer to complete a sexual assault awareness training program no later than January l, 2016.

Sexual assault on college campuses affects everyone regardless of party affiliation, age, sex, race, or religion. I join other legislators, students, and advocates who have worked tirelessly on this pressing issue in Louisiana in thanking you for your attention to this important matter.

Sincerely,

J P MORRELL,
State Senator, District 3.

HELENA MORENO,
State Representative, District 93.

CARRIE WOOTEN,
Louisiana Progress,
Sexual Assault Working Group.

NICHOLAS SMITH,
Louisiana Tech University Student,
Sexual Assault Working Group.

2015 Regular Session **ACT No. 172** ENROLLED

SENATE BILL NO. 255

BY SENATORS MORRELL, ALARIO, AMEDEE, APPEL, BROOME, BROWN, BUFFINGTON, CORTEZ, CROWE, DONAHUE, DORSEY-COLOMB, ERDEY, GALLOT, GUILLORY, JOHNS, KOSTELKA, LAFLEUR, LONG, MILLS, MURRAY, NEVERS, PETERSON, RISER, GARY SMITH, JOHN SMITH, TARVER, THOMPSON AND WHITE AND REPRESENTATIVES ADAMS, BADON, WESLEY BISHOP, EDWARDS, GISCLAIR, JAMES, LEGER, MIGUEZ, MORENO, SMITH, THIERRY, PATRICK WILLIAMS AND WOODRUFF

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

AN ACT

To enact R.S. 17:3351(H) and Part XII of Chapter 26 of Title 17 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 17:3399.11 through 3399.15, relative to sexual assault on campuses of public postsecondary education institutions; to provide for the general powers, duties, and functions of public postsecondary education management boards; to require annual anonymous sexual assault climate surveys to be conducted; to provide for procedures; to provide for reporting; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 17:3351(H) and Part XII of Chapter 26 of Title 17 of the Louisiana Revised Statutes of 1950, comprised of R.S. 17:3399.11 through 3399.15, are hereby enacted to read as follows:

§3351. General powers, duties, and functions of college and university boards

* * *

H.(1)(a) When funding is made available, each public postsecondary education institution shall administer an annual, anonymous sexual assault climate survey to its students.

(b) Participation in the sexual assault climate survey shall be voluntary. No student shall be required or coerced to participate in the survey nor shall any student face retribution or negative consequence of any kind for declining to participate.

(c) The Board of Regents, in consultation with the public postsecondary education management boards, shall develop the survey and establish

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procedures for the administration of the survey and shall use the survey developed by the Center on Violence Against Women and Children at the Rutgers University School of Social Work as a model.

(2) Each public postsecondary education institution shall:

(a) Administer the survey to students who choose to participate.

(b) Report school-specific results of the survey to the Board of Regents.

(3) The Board of Regents shall:

(a) Submit a written report not later than September first of each year regarding the survey results of each public postsecondary education institution and the state as a whole to the governor and the Senate and House of Representatives committees on education for the previous academic year.

(b) Publish the survey results on the board's website and in any other location or venue the board deems necessary or appropriate.

(4) The provisions of this Subsection shall be implemented as expeditiously and to the maximum extent possible utilizing any and all available funding sources, including funding provided by the legislature.

* * *

PART XII. CAMPUS ACCOUNTABILITY AND SAFETY

§3399.11. Short Title

This Part may be referred to as the "Campus Accountability and Safety Act".

§3399.12. Scope

Each public postsecondary education institution that receives any Title IV funding from the United States Department of Education shall be subject to all the provisions of this Part.

§3399.13. Definitions

For the purposes of this Part, the following terms shall have the following meanings unless the context clearly indicates otherwise:

(1) "Institution" means a public postsecondary education institution as defined in R.S. 17:3399.12.

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(2) "President" means the president of the system of the respective institution.

(3) "Sexually-oriented criminal offense" includes any sexual assault offense as defined in R.S. 44:51 and any sexual abuse offense as defined in R.S. 14:403.

(4) "Title IX coordinator" means the individual designated as a responsible employee in Section 106.8(a) of Title 34, Code of Federal Regulations, as such section is in effect on the date of enactment of this Part.

§3399.14. Coordination with local law enforcement

A. Each institution and law enforcement and criminal justice agency located within the parish of the campus of the institution shall enter into a memorandum of understanding to clearly delineate responsibilities and share information in accordance with applicable federal and state confidentiality laws, including but not limited to trends about sexually-oriented criminal offenses occurring against students of the institution.

B. The Board of Regents' Uniform Policy on Sexual Assault shall require that the memorandum of understanding, as described in Subsection A of this Section, be updated every two years.

C. Each memorandum of understanding entered into pursuant to this Part shall include:

(1) Delineation and sharing protocols of investigative responsibilities.

(2) Protocols for investigations, including standards for notification and communication and measures to promote evidence preservation.

(3) Agreed-upon training and requirements for the parties to the memorandum of understanding on issues related to sexually-oriented criminal offenses for the purpose of sharing information and coordinating training to the extent possible.

(4) A method of sharing general information about sexually-oriented criminal offenses occurring within the jurisdiction of the parties to the memorandum of understanding in order to improve campus safety.

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D. The local law enforcement agency shall include information on its police report regarding the status of the alleged victim as a student at an institution as defined in this Part.

E. The institution shall not be held liable if the local law enforcement agency refuses to enter into a memorandum of understanding as required by this Section.

§3399.15. Campus security policy

The Board of Regents shall establish uniform policies and best practices to implement measures to address the reporting of sexually-oriented criminal offenses on institution campuses, the prevention of such crimes, and the medical and mental health care needed for these alleged victims that includes the following:

A.(1) Confidential advisors. The institution shall designate individuals who shall serve as confidential advisors, such as health care staff, clergy, staff of a women's center, or other such categories. Such designation shall not preclude the institution from partnering with national, state, or local victim services organizations to serve as confidential advisors or to serve in other confidential roles.

(2) The confidential advisor shall complete the training requirements as provided in this Part.

(3) Not later than January 1, 2016, the attorney general in collaboration with the Board of Regents, shall develop online training materials, in addition to the training required under this Part, for the training of confidential advisors.

(4) The confidential advisor shall inform the alleged victim of the following:

(a) The rights of the alleged victim under federal and state law and the policies of the institution.

(b) The alleged victim's reporting options, including the option to notify the institution, the option to notify local law enforcement, and any other

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reporting options.

(c) If reasonably known, the potential consequences of the reporting options provided in this Part.

(d) The process of investigation and disciplinary proceedings of the institution.

(e) The process of investigation and adjudication of the criminal justice system.

(f) The limited jurisdiction, scope, and available sanctions of the institutional student disciplinary proceeding, and that it should not be considered a substitute for the criminal justice process.

(g) Potential reasonable accommodations that the institution may provide to an alleged victim.

(h) The name and location of the nearest medical facility where an alleged victim may have a rape kit administered by an individual trained in sexual assault forensic medical examination and evidence collection, and information on transportation options and available reimbursement for a visit to such facility.

(5) The confidential advisor may, as appropriate, serve as a liaison between an alleged victim and the institution or local law enforcement, when directed to do so in writing by an alleged victim who has been fully and accurately informed about what procedures shall occur if information is shared, and assist an alleged victim in contacting and reporting to a responsible employee or local law enforcement.

(6) The confidential advisor shall be **authorized by** the institution to liaise with appropriate staff at the institution to arrange reasonable accommodations **through the institution to allow the alleged victim to change living arrangements** or class schedules, obtain accessibility services, or arrange other accommodations.

(7) The confidential advisor shall be authorized to accompany the alleged victim, when requested to do so by the alleged victim, to interviews and other

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proceedings of a campus investigation and institutional disciplinary proceedings.

(8) The confidential advisor shall advise the alleged victim of, and provide written information regarding, both the alleged victim's rights and the institution's responsibilities regarding orders of protection, no-contact orders, restraining orders, or similar lawful orders issued by a court of competent jurisdiction or by the institution.

(9) The confidential advisor shall not be obligated to report crimes to the institution or law enforcement in a way that identifies an alleged victim or an accused individual, unless otherwise required to do so by law. The confidential advisor shall, to the extent authorized under law, provide confidential services to students. Any requests for accommodations, as provided in Paragraph (6) of this Subsection, made by a confidential advisor shall not trigger an investigation by the institution.

(10) No later than the beginning of the 2016-2017 academic year, the institution shall appoint an adequate number of confidential advisors. The Board of Regents shall determine the adequate number of confidential advisors for an institution, based upon its size, no later than January 1, 2016.

(11) Each institution that enrolls fewer than five thousand students may partner with another institution in their system or region to provide the services described in this Subsection. However, this Paragraph shall not absolve the institution of its obligations under this Part.

(12) Each institution may offer the same accommodations to the accused that are hereby required to be offered to the alleged victim.

B. Website. The institution shall list on its website:

(1) The contact information for obtaining a confidential advisor.

(2) Reporting options for alleged victims of a sexually-oriented criminal offense.

(3) The process of investigation and disciplinary proceedings of the institution.

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(4) The process of investigation and adjudication of the criminal justice system.

(5) Potential reasonable accommodations that the institution may provide to an alleged victim.

(6) The telephone number and website address for a local, state, or national hotline providing information to sexual violence victims, which shall be updated on a timely basis.

(7) The name and location of the nearest medical facility where an individual may have a rape kit administered by an individual trained in sexual assault forensic medical examination and evidence collection, and information on transportation options and available reimbursement for a visit to such facility.

C. Online reporting. The institution may provide an online reporting system to collect anonymous disclosures of crimes and track patterns of crime on campus. An individual may submit a confidential report about a specific crime to the institution using the online reporting system. If the institution uses an online reporting system, the online system shall also include information regarding how to report a crime to a responsible employee and law enforcement and how to contact a confidential advisor.

D. Amnesty policy. The institution shall provide an amnesty policy for any student who reports, in good faith, sexual violence to the institution. Such student shall not be sanctioned by the institution for a nonviolent student conduct violation, such as underage drinking, that is revealed in the course of such a report.

E. Training. Not later than January 1, 2016, the Board of Regents, in coordination with the attorney general and in consultation with state or local victim services organizations, shall develop a program for training for each individual who is involved in implementing an institution's student grievance procedures, including each individual who is responsible for resolving complaints of reported sex offenses or sexual misconduct policy violations, and

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each employee of an institution who has responsibility for conducting an interview with an alleged victim of a sexually-oriented criminal offense. Each institution shall ensure that the individuals and employees receive the training described in this Subsection no later than the beginning of the 2016-2017 academic year.

F. Inter-campus transfer policy.

(1) The Board of Regents' Uniform Policy on Sexual Assault shall require that institutions communicate with each other regarding transfer of students against whom disciplinary action has been taken as a result of a code of conduct violation relating to sexually-oriented criminal offenses.

(2) The Board of Regents' Uniform Policy on Sexual Assault shall require that institutions withhold transcripts of students seeking a transfer with pending disciplinary action relative to sexually-oriented criminal offenses, until such investigation and adjudication is complete.

Section 2. All required provisions for implementation of this Act shall be achieved with existing staff and resources unless a specific appropriation is provided for these purposes.

Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

_____
PRESIDENT OF THE SENATE

_____
SPEAKER OF THE HOUSE OF REPRESENTATIVES

_____
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

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NATIONAL COALITION FOR MEN (NCFM),
SAN DIEGO, CA 92101,
July 28, 2015.

Hon. LAMAR ALEXANDER,
Hon. PATTY MURRAY,
Committee on Health, Education, Labor, and Pensions,
428 Senate Dirksen Office Building,
Washington, DC 20510.

DEAR SENATORS ALEXANDER AND MURRAY: Thank you for this hearing on campus sexual assault.

Speaking as a father of two college students and as a board member of the National Coalition For Men (NCFM), the oldest and largest men's human rights organization in the country, I ask this committee to please oppose S. 590 in its current form. This bill will do little to make campuses safer. Instead, it will create an army of taxpayer-funded administrators to bolster the illusion that S. 590 will cure campus sexual assault.

Sexual assault is a serious matter, yet the treatment provided by this legislation is worse than the disease because it will vitiate the presumption of innocence, nullify equal treatment as provided by the 14th Amendment, and deny due process to the accused.

NCFM deplores rape and sexual assault, but we cannot close our eyes to the horror stories of young men caught up in a Kafkaesque disciplinary system in which the accused are presumed guilty and have no effective means to defend themselves. Have we forgotten the painful lessons learned at the expense of so many college men falsely accused of rape? Remember Duke University and the University of Virginia incidences of false accusations and the lives they destroyed?

There are many other cases of college men who have been falsely accused, removed from campus, denied due process, and ultimately harmed by the lack of due process. Caleb Warner (Univ. of North Dakota), Ethan Peloe (Univ. of Cincinnati), Jordan Lynch (Univ. of Montana), Joshua Strange (Auburn Univ.), Dez Wells (Xavier), Lewis McLeod (Duke Univ.), and the list continues to grow. These false accusations have costs these universities and governmental agencies millions of dollars in damages and legal fees.

Universities are not the proper institution to prosecute a rape case and if they were, they would need to rely on a proof beyond a reasonable doubt or by clear and convincing evidence standard, as opposed to the lenient "preponderance of the evidence" standard. In that regard, I would remind this institution of the testimony provided to this committee last year by Molly Corbett Broad, president of the American Council on Education, who stated:

> "Conducting education and providing information is an area where college officials have vast experience. We must redouble our education efforts on sexual assault, and as I noted earlier, institutions are moving aggressively to do this. Performing investigations and adjudicating cases is a far more difficult challenge. We lack the authority to subpoena witnesses, control evidence and impose legal standards. Our disciplinary and grievance procedures were designed to provide appropriate resolution of institutional standards for student conduct, especially with respect to academic matters. They were never meant for misdemeanors, let alone felonies. ***While we take our obligations to the victims/survivors of sexual assault very seriously and are fully aware of our responsibilities with respect to sexual assaults, our on-campus disciplinary processes are not proxies for the criminal justice system, nor should they be.***"

Upon review of the CASA legislation, NCFM offers the following reasons to oppose this bill:

1. The bill purports to be a safety act, yet fails to identify high-risk safety areas. It lacks provisions for enhancing campus security, such as increasing law enforcement or incorporating bystander prevention programs.

2. The bill wrongly predisposes guilt of the accused by repeatedly referring to the complainant as "victim" or "survivor." The word "complainant" should replace the word "victim" and "survivor."

3. We need to get serious about holding sexual offenders accountable without destroying the lives of the wrongly accused, but one-size-does-not-fit-all. We need more discussion about how to process offenses like inappropriate touching versus rape. There may be instances in which school disciplinary procedures may be more appropriate than involving law enforcement, but not if the disciplinary procedures lack safeguards to protect the rights of the accused as well as the complainant.

4. In the absence of clear and well-balanced policies to determine which offenses are most appropriate for school discipline versus law enforcement, the bill should go beyond requiring universities to sign memorandums of understanding with local law enforcement. It should require that sexual assault allegations be referred to local law enforcement and schools defer any investigation or adjudication until after law enforcement has completed its investigation.

5. CASA is remarkably silent on due process and the rights of the accused. If colleges are going to adjudicate sexual assault allegations, then schools must allow accused students to (1) have counsel present during the entire process hearing, (2) effectively cross-examine their accuser, witnesses, and other relevant persons, (3) have timely and complete access to complaints, charges, and evidence, and (4) have complete freedom to talk with all involved parties and gather evidence.

6. CASA must require hearing panels be composed of thoroughly trained *objective* finders of fact.

7. The bill should compel universities to provide fair and equal resources to both accuser and accused during the disciplinary hearing processes. Lacking from this bill is language that ensures a presumption of innocence for the accused and provisions for equal resources to both the accuser and the accused.

8. The bill provides confidential advisors to assist the reporting party (who is again referred to as the victim) yet offers no resources to the accused party, who may be falsely accused and in need of the same kind of supportive assistance and health resources. Rights need to be equally conferred to accuser and the accused.

9. The bill is wasteful to taxpayers, redundant to existing State and Federal laws and policies instituted by the Department of Education, and confusing in its directives. The bill mandates that a small army of "confidential advisors", "title IX coordinators" and higher education employees be provided to advise victims of sexual assault even though universities already have in place numerous resources specifically designated to help sexual assault victims. The bill goes on to state that "*The confidential advisor shall not be obligated to report crimes to the institution or law enforcement*". If advisors mandated by this legislation to provide assistance to rape victims, are not required to report rape, who is? How does the non-reporting of a rape improve campus security?

NCFM would be happy to appear before this committee. We echo the sentiments of the National Association of Scholars (NAS), who in a letter to Senator Alexander regarding the HELP committee hearings on sexual assault held last year wrote:

> In that letter we expressed our concern with the heavily one-sided approach to the issue that has completely dominated the many other panels and examinations that have taken up the issue of sexual misconduct this year.
>
> In one instance after another, the only testimony solicited seems to come from alleged victims of sexual assault, advocacy groups, or ideologically committed individuals . . . Although the recent HELP committee hearings included some probing exchanges between witnesses and panelists, no testimony was heard from competent witnesses who might have challenged accepted statistics about the prevalence of sexual assaults on campus, or especially from the increasing number of male students subject to egregious miscarriages of justice at the hands of incompetent or ideologically prejudiced campus tribunals charged with hearing complaints. The high-profile Duke Lacrosse team case of 2006 was not an isolated exception. Other cases have not made the front page of the *New York Times*, but they are increasingly frequent.

We have several families willing to provide this committee with their testimony regarding a deeply flawed and biased university hearing process that has caused unfathomable pain and suffering to their sons and daughters. Please do not dismiss the voices of the falsely accused and those advocating for an equitable solution to such a complex issue.

NCFM appreciates the work of this committee and for holding a hearing examining how to move forward in dealing with this important topic. It is crucial that all sides, including hearing from families who have had a son harmed by the current disciplinary process, be heard.

Ultimately, universities should have policies that enable victims of sexual assault to feel safe and secure in their reporting while being fair in the treatment to both accuser and accused. We must restore a presumption of innocence in the handling of such deeply intrusive and complex matters. Advocates of due process need to be an essential voice heard by the HELP committee prior to any deliberations on S. 590.

NCFM urges you to oppose S. 590 in its current form, and to hear from all sides on this matter.

Respectfully,

GREGORY J. JOSEFCHUK,
Board Member—National Coalition For Men (NCFM),
Chapter President—NCFM Carolinas,
Parent of college students.

August 10, 2014.

Hon. LAMAR ALEXANDER, *Chairman,*
Senate Committee on Health, Education, Labor, and Pensions,
828 Hart Senate Office Building,
Washington , DC 20510.

DEAR CHAIRMAN ALEXANDER: I would like to request inclusion of the enclosed letter from the National Domestic Violence Hotline in the record for the July 29, 2015 hearing entitled "Reauthorizing the Higher Education Act: Combating Campus Sexual Assault." I appreciate your consideration of this request.

Sincerely,

PATTY MURRAY,
U.S. Senator.

THE NATIONAL DOMESTIC VIOLENCE HOTLINE,
August 6, 2015.

Hon. LAMAR ALEXANDER, *Chairman,*
Senate Committee on Health, Education, Labor, and Pensions,
828 Hart Senate Office Building,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Senate Committee on Health, Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: Thank you for the opportunity to comment on congressional efforts to address sexual assault and related forms of violence on college campuses. We appreciate the committee's work on these issues and the thoughtful approach you are taking in gathering information.

The National Domestic Violence Hotline is the only national organization providing around-the-clock support for survivors of domestic and dating violence, their families, and friends. Last year we received nearly 400,000 contacts through phone, text, and chat. This year, we have already received 52,000 more contacts than at the same time in 2014. "Loveisrespect" is our program for teens and young adults, and through our web portal and digital services, we are reaching young people early in abusive relationships. We are also working on college campuses in Washington, DC to link student activist groups together to share best practices and strategies for combating dating violence. These initial recommendations to the committee are informed by our direct connections with students and survivors.

FOCUS ON DATING VIOLENCE

While much of the conversation about campus violence has focused on sexual assault, other forms of interpersonal violence are significant problems on college campuses. In one survey, one in three college women said they had been in an abusive dating relationship.[1] Overall, more than 50 percent of sexual assaults occur by current or former intimate partners.[2] Dating violence also includes verbal abuse, physical assaults, cyber abuse, and obsessive jealousy that can lead to violence.

The effects of dating violence on young women are significant: those who have experienced dating abuse have higher rates of substance abuse, risky sexual behavior, eating disorders, and other negative outcomes.[3]

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[1] See *2011 College Dating and Abuse Poll*, 11. Knowledge Networks Inc., (2011).

[2] See *2010 National Intimate Partner and Sexual Violence Survey*, 21. Center for Disease Control, (2010).

[3] See *Dating Violence Against Adolescent Girls and Associated Substance Use, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality*. Journal of the American Medical Association, (2001).

STRENGTHEN EDUCATION AND TRAINING

Officials at Institutions of Higher Education (IHEs) must build their capacity to understand dating violence, its risk factors, indicators, and effects on student well-being and educational outcomes. Those adjudicating student disciplinary hearings should be trained to understand the steps victims take to protect themselves in dating relationships and the challenges involved in separating from an abusive partner. The training should also include information about perpetration and the appropriate methods of intervention. Without this background, adjudicators and other school officials will not understand the steps they should take to hold perpetrators accountable and ensure victim safety. To improve their capacity, IHEs should partner with local domestic violence centers and community-based programs to assist with training for school officials and ensure that students have access to services and support.

The Violence Against Women Act (VAWA) 2013 amendments to the Clery Act and the subsequent implementing regulations require robust educational programs for students and employees about dating violence, domestic violence, sexual assault, and stalking.[4] While promising practices on college campuses have emerged in recent years, these efforts are not scaled up and many, if not most, schools will need additional resources and technical assistance to implement the new requirements. Federal agencies could be helpful, but only if collaboration is required between the Department of Education, the Department of Justice, and the Centers for Disease Control and Prevention. Each of these agencies has expertise and must work together to provide greater support to IHEs.

CONFIDENTIAL ADVISORS AND PEER SUPPORT

Confidential support is critical to encouraging students who are experiencing dating violence to come forward and get the help they need. Survivors may be reluctant to report abusive partners to school officials or law enforcement and may need additional time and support to consider their options. We have heard from many students in dating relationships indicating that they are confused about what to do and that they don't have access to any services on campus.

Confidential advisors should provide students with emotional support, information about their options for reporting, and referrals for more in-depth counseling services. Any student communications with the confidential advisors should *not* be made available to university staff or officials without the students' consent.

We also recommend that peer advocates be included among those who can serve as confidential advisors, as allowable by State laws governing the confidentiality of communications with volunteer counselors. Through our direct work with young adults, we have learned that they often respond best to their peers. Young people may fear being judged by adults and may not disclose the full extent of what has happened. Peers are able to build trust and relate more immediately to students. We also know that peer advocates must receive significant training and supervision by staff confidential advisors. We recommend that the committee consider the possibility of including peer advocates in any provisions creating confidential advisors. We offer our expertise in peer advocacy and confidentiality if this would be helpful in considering these provisions.

At the National Domestic Violence Hotline, we hear every day from college students who are experiencing violence and abuse. We appreciate the committee's attention to this problem and offer our assistance as legislative efforts move forward.

If you need any additional information, please contact Lynn Rosenthal at 202-823-7464 or Rob Valente at 240-354-4842.

Sincerely,

ROB VALENTE,
Vice President of Public Policy.

LYNN ROSENTHAL,
Vice President of Strategic Partnerships,

[4] See *79 F.R 62751, 34 C.F.R 668.*

NATIONAL PARENTHOOD CONFERENCE,
JULY 28, 2015.

Hon. LAMAR ALEXANDER, *Chairman,*
Senate Health, Education, Labor, and Pensions Committee,
428 Senate Dirksen Office Building,
Washington DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Senate Health, Education, Labor, and Pensions Committee,
835 Senate Hart Office Building,
Washington DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: As a caring community of fraternity brothers and sorority sisters, we thank you and the other members of the Senate HELP Committee for convening an important hearing to review how Congress can combat campus sexual violence as part of the Higher Education Reauthorization process. We consider this a critical issue that impacts all students and institutions of higher education today. With the pending reauthorization of the Nation's higher education laws, now is the time to act. We hope Congress develops a comprehensive set of solutions that measurably improves campus safety, more effectively engages law enforcement to bring perpetrators of campus sexual violence to justice, clarifies the expectations of schools, protects the rights of all students and student organizations, and strengthens the long-term success of title IX.

The North-American Interfraternity Conference (NIC) and the National Panhellenic Conference (NPC) collectively represent 110 fraternities and sororities with 725,000 undergraduate members on over 800 campuses in the United States and Canada, as well as close to 10 million living alumni. As such, our organizations and members represent one of the largest voices in the higher education community. We believe that we have a responsibility and obligation to confront issues facing our members and step forward to advocate for those students who may not have a unified voice.

Sororities and fraternities are very engaged on the front lines of the fight against campus sexual violence. Our organizations provide our 725,000 students with ongoing training and education on bystander intervention, survivor support, risk management and other strategies that make a meaningful difference in improving campus safety. Every day of the school year, tens of thousands of alumni volunteers work with our student members and those efforts include education, prevention activities, and a support system for students affected by sexual violence. At the local and national level, fraternities and sororities collectively raise millions of dollars and provide innumerable volunteer hours serving charitable organizations that offer a range of programs and services to address sexual violence on campus and in society. In short, the collective experiences of our students and alumni allow the NIC and NPC to contribute to the policy debate surrounding campus sexual violence.

We write today to provide our organizations' perspective on how Congress can reduce and better respond to campus sexual violence through the Higher Education Act reauthorization process.

While we take no position on the Campus Accountability and Safety Act (CASA), we offer a series of ideas that in many respects complement CASA and will complete the policy puzzle as Congress considers this critically important issue. We acknowledge there are meaningful elements of the puzzle that won't be addressed by this week's hearing or our letter to you today. Overall, the entire puzzle needs to be solved by Congress in order to have a comprehensive fix for the current system. We encourage your committee to provide equal attention to all pieces of the puzzle before finalizing solutions during the reauthorization process.

We start from the perspective that the current response system for handling campus sexual violence cases must be improved. All groups—students, organizations, host institutions and local communities—can be better served when new approaches are viewed as possible solutions. As leaders on campuses in communities, we want to advance ideas to improve the status quo.

We make the following broad observations:

• **We see too many alleged victims without justice.** There are too many instances where alleged perpetrators of sexual violence are not being held accountable for their actions via the criminal justice system, compounding the harm to survivors.

• **We see too many students uneducated about their role in preventing sexual violence.** There is an ongoing need for schools to work with all available entities to educate and engage students.

• **We see too many students—accusers and accused—subjected to a campus disciplinary system that is unfair and opaque even as the stakes in**

these cases carry life-altering consequences for all parties. We want a system with stronger due process protections for all students to build confidence that the result reached in the campus disciplinary process is the correct one.

• **We see unprecedented punitive actions against student organizations, taken without meaningful due process protections, creating a chilling effect that undermines broader goals in fighting campus sexual violence.** There is a need to provide student organizations with the same due process rights of individual students.

STUDENT DUE PROCESS

The lack of due process rights for students in the adjudication of campus sexual assault claims is a major problem. It undermines public confidence in the process and exposes schools to litigation by any losing party who feels the process was tilted against them from the start. We note that, this past April, a number of prominent victims' rights groups wrote an open letter to university presidents talking about how the lack of due process protections ultimately harmed the interests of victims as much as it does the accused students.

While the list of potential due process improvements we identify below is long, and we recognize other organizations may have a much broader array of due process rights they want Congress to consider, we start with simple rights that should be enshrined in the law. Congress should ensure that:

• The same suite of due process rights is given to both parties in these campus adjudications.

• A comprehensive overview of the involved charges, the process for handling those charges, and the potential penalties involved are available to involved students at the start of the disciplinary process.

• Students have access to all evidence collected in the case far enough in advance to use that information during the disciplinary process.

• Students are able to hire an attorney or advocate, at their own expense, that is fully empowered to represent a student throughout the proceeding. It is unfair to expect students to navigate the complex disciplinary process, particularly when a concurrent law enforcement investigation may be underway, without meaningful access to legal counsel in campus proceedings where the potential sanction imposes a life-changing sentence on the involved parties.

• Students involved in these cases may meaningfully and respectfully cross-examine witnesses.

• No university official is allowed to play multiple roles in the disciplinary process. Separate individuals should play the roles of investigator, prosecutor, judge, jury, and appellate authority.

• The school selects the burden of proof it deems most appropriate for sexual violence cases rather than having that standard mandated by a Department of Education Dear Colleague letter that did not go through the appropriate rulemaking process.

ORGANIZATIONAL DUE PROCESS

Student rights on campus cannot be compromised just because a student is active in a campus organization. The intense public scrutiny of the campus sexual violence problem has led to organizations being disciplined without cause. Allegations of crime or misconduct against an individual are being used to suspend activities for organizations to which the accused student belongs, even if the organization is not suspected of contributing to the crime or misconduct. More alarmingly, in some cases, schools have actually imposed a blanket suspension on thousands of men and women in dozens of organizations who have no involvement in the incident under investigation.

These actions are often arbitrary and capricious in nature. In just this past year, numerous fraternities and sororities were suspended across the country for allegations involving students and events where they had no direct relationship. Conversely, major sports teams in college football and basketball suffered not so much as a missed practice on the road to playoffs and March Madness even as members of those same teams were under active investigation for crimes of sexual violence.

The baseless suspensions of our organizations are antithetical to the concepts of due process, and we are particularly concerned that the suspensions will actively discourage future reports of campus sexual violence. Schools have been responding to a woman's allegation that a crime has been committed by actually suspending the largest women's leadership organizations on campus, none of which are involved in the allegations. In these cases, schools are ultimately telling women they will be penalized for coming forward and the result will be a reduction in future reporting.

Consequently, Congress should ensure that student organizations receive the same due process protections that individual students receive during a campus sexual violence disciplinary proceeding.

ROLE OF LAW ENFORCEMENT

A number of prominent higher education associations have written the HELP Committee in the past 18 months asking you to address the fundamental flaws inherent in the current process that requires concurrent investigations by the school and local law enforcement. We echo those requests.

There is a vast difference in the resources, expertise and time needed to handle sexual misconduct, where an educational sanction is the best remedy, and crimes of campus sexual violence, where law enforcement is best equipped to deliver justice to the victim. Current Department of Education guidance pressures schools to investigate and adjudicate sexual violence allegations in as little as 60 days, even if a parallel law enforcement investigation is underway. Thus, current law creates a situation where not all crimes of sexual violence are being reported to local law enforcement to allow for investigation and prosecution.

The best way to reduce the rate of sexual violence on campus is to ensure those who commit an act of sexual violence are punished in a manner that befits the crime. Congress should therefore encourage students to come forward and report more such campus crimes to law enforcement and allow the best trained, best equipped professionals the time to investigate before a campus handles the sexual misconduct case. For that reason, we support allowing law enforcement a 30-day period of temporary exclusive jurisdiction to investigate campus sexual violence allegations before a campus investigation and adjudication begins. We would also propose that Congress change the law and allow the 60-day campus adjudication clock required by the Department of Education to be tolled during the time local law enforcement has exclusive investigation authority.

We do not, however, believe that institutions should sit idly by as the law enforcement process plays out. To the contrary, we believe that Congress should authorize institutions to take powerful interim measures to safeguard students during law enforcement's temporary period of exclusive jurisdiction. We believe those measures should include more than the traditional changes in class schedules, residential assignments and no-contact orders. We support giving schools the statutory right to temporarily suspend a student under criminal investigation if there is a finding that the student poses an ongoing risk to the safety of other students. We also believe that suspension decisions should be revisited regularly to protect students' due process rights, with the school required to demonstrate the student under criminal investigation poses an ongoing threat to campus safety. Finally, we also believe that Congress should allow schools to suspend any student indicted for a crime of sexual violence, for the duration of the criminal proceeding, as they pose an ongoing threat to the safety of other students.

PRESERVING TITLE IX

Title IX is at the heart of the campus sexual violence process, as ultimately the landmark law requires an educational experience that does not tolerate gender-based discrimination. Fraternities and sororities played a key role in supporting the passage of title IX and making sure it included language that allowed single-sex organizations like ours to continue to operate. Since the passage of title IX, our organizations have flourished and we currently enjoy record levels of student membership. The demand for single-sex leadership, fellowship, scholarship, service and friendship through our organizations has only increased in today's tech-obsessed society.

We are concerned that the fight over campus sexual violence has been used as a weapon to undermine the single-sex status our organizations enjoy under the law. Some schools cite sexual misconduct or other misconduct on campus as justification to require our groups, or their campus governing bodies, to adopt co-educational membership policies despite the clear language and intent of the single-sex exemption our groups have under title IX.

In the past, Congress has used the higher education reauthorization process to remind the public that title IX is working and that the single-sex organization exemption has been very successful. We ask Congress to do so again in the upcoming reauthorization and to add language preventing schools from forcing single-sex organizations to adopt co-educational policies as a solution to a campus sexual violence problem.

VOLUNTEER LIABILITY

Many student organizations are heavily reliant on alumni volunteers to provide training, support, guidance and institutional knowledge. This is especially true of fraternities and sororities where there is some level of expectation that alumni will help students find success in their chapter experience. Our alumni volunteers are trained to manage risk, report crimes of violence to the authorities, and help support students.

In the evolution of campus security laws, we are concerned that schools may adopt requirements that alumni volunteers for student organizations become recognized campus security personnel, with distinct obligations to the university for training, reporting and other duties. We are concerned that student organizations will be penalized or even lose their campus recognition if they can't recruit alumni volunteers willing to be campus security personnel. Alumni may be hesitant to volunteer in instances where they have new potential liability.

We encourage Congress to clarify the laws to make it clear that alumni volunteers who are not already employed by the host institution cannot be designated as campus security personnel in order to volunteer. We also support language to make it clear a school may not punish a student organization or withdraw its recognition if the alumni serving the group as volunteers do not serve as designated campus security personnel.

EDUCATION AND PREVENTION

We recognize that much has already been done via the Clery Act and the recent Violence Against Women Act amendments from 2013 to provide a framework for schools to educate students about all aspects of the campus sexual violence process. We support any legislative efforts to continue to refine the education, training, prevention and survivor support programs offered at institutions. In particular, we encourage Congress to consider focusing more attention on educating students in their first few months on campus, when they are most vulnerable in their new environment.

EXISTING LEGISLATION

Many of these ideas are reflected in two new pieces of legislation, the Safe Campus Act and the Fair Campus Act, introduced by your colleagues in the House of Representatives this week. The NIC and NPC have endorsed both of these bills for that very reason and we encourage the HELP Committee to rely upon those bills during the HEA reauthorization process. Safe Campus and Fair Campus do not generally address the subjects that are being addressed in CASA. Rather, we see each of these bills as another piece of a comprehensive solution to the campus sexual violence problem and commend them to your attention.

Thank you for your consideration of our perspectives. We admire your leadership in tackling these difficult policy discussions at such a key moment. The NIC and NPC stand ready to meet with your offices at any time to talk about our experiences, our expertise and our commitment to student safety and success.

Sincerely Yours,

PETE SMITHHISLER,
President & CEO,
North-American Interfraternity Conference.

JEAN MRASEK,
Chairman,
National Panhellenic Conference.

RAPE, ABUSE & INCEST NATIONAL NETWORK (RAINN),
WASHINGTON, DC 20005,
July 29, 2015.

Hon. LAMAR ALEXANDER, *Chairman,*
Hon. PATTY MURRAY, *Ranking Member,*
Senate Health, Education, Labor, and Pensions Committee,
428 Dirksen Senate Office Building,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER, RANKING MEMBER MURRAY, AND MEMBERS OF THE COMMITTEE: Thank you for dedicating attention to the issue of sexual violence on college campuses. On behalf of RAINN, the Nation's largest anti-sexual violence organization, I write to express our support for S. 590, the *Campus Accountability and*

Safety Act, and for efforts to ensure that victims are protected and sexual predators are held accountable.

RAINN operates the National Sexual Assault Hotline (800.656.HOPE and online.rainn.org), which has helped more than two million people since its creation in 1994. RAINN also operates the DoD Safe Helpline on behalf of the Department of Defense. Additionally, RAINN carries out programs to prevent sexual assault, help victims, and ensure that rapists are brought to justice.

For two decades, RAINN has led efforts to support survivors, and to prevent and better respond to on-campus crimes of sexual assault. We have worked with Congress on related legislation, including the *Campus SaVE Act*, and have worked hand-in-hand with survivors, college students and college and university leaders to educate students, improve prevention and response programs, and provide help to survivors.

The recent heightened national focus on the issue of campus sexual violence is welcome and necessary. The risk of sexual assault is heightened for women of college age. According to the Department of Justice, women 18–24 who are enrolled at an academic institution in the United States are three times more likely to be sexually assaulted than the rest of the female population. This high rate of sexual violence combines with a lower rate of reporting—80 percent of sex crimes committed against female students go unreported, compared to 68 percent for the country as a whole. The Justice Department has also reported that for males 18–24, the risk of sexual assault is higher among college students than for males of that age who are not in college. This is a problem that necessitates our attention, action, and congressional leadership.

While we know sexual violence is both prevalent on college campuses and woefully underreported, we also know that crafting policy responses that blend and respond to the equally complex and important needs and interests of students, victims, academic institutions, law enforcement, the accused, and other stakeholders is incredibly complicated. We believe that CASA represents a strong step forward in the effort to protect America's students, affording them resources for healing and paths to justice, and preventing sexual violence on college campuses.

We are grateful to Senators Gillibrand, McCaskill, Heller, Blumenthal, and Grassley, as well as many others, for their leadership on this topic. RAINN has worked closely with these Senators and many other stakeholders as we work together to address sexual violence at academic institutions. We would like to highlight several provisions of CASA that we believe will help combat sexual violence.

CAMPUS SURVEYS

When it comes to preventing and responding to sexual violence, knowledge is power. One of the biggest barriers to fixing this problem is the dearth of reliable data. While we can piece together anecdotal information, too little is concretely understood about, when and where they seek and receive services, how and when survivors report, or even the total number of assaults from year-to-year. This is an area where the Federal Government can play a productive role by applying its research expertise to develop and require regular campus surveys, as required under CASA.

Specifically, CASA requires the Departments of Education and Justice to create a standardized survey to be administered on a regular basis to the student body of each academic institution. While institutions and the populations they serve vary broadly, there is incredible value to a tool that will provide much-needed, uniform and constructive data about the incidence and prevalence of these crimes.

Without understanding the true extent and nature of campus sexual assault, we cannot fully understand how to expedite its elimination. The data we have varies widely depending on the methodology of the survey, the jurisdiction, the year a survey was administered, and countless other factors, which make it impossible to compare one school to the next, or one graduating class to the next. As a result, we cannot, with certainty, say if we have made progress in reducing the number of sexual assaults, or where our resources and attention are most needed. To comply with existing law, colleges and universities are expending vast sums to devise and implement prevention programs—without a means to measure whether or not they actually help achieve the goal of preventing sexual assaults. Campus surveys are a fiscally responsible solution, as they will provide data necessary to evaluate prevention programs' effectiveness.

A national survey, developed by Federal data collection experts and administered across the country, will enable schools to better plan, prevent and respond to these crimes.

Additionally, it will, over time, produce reliable data that will inform parents and prospective students alike. The data will support policymakers and advocates, in-

cluding the more than 1,000 sexual assault service providers with whom we partner to deliver support through the National Sexual Assault Hotline, working to direct and focus resources to areas where they are most needed, and to effectively measure our progress in not just responding to crimes once they've occurred, but to shifting the tide and preventing more on-campus sexual assaults.

MEMORANDUMS OF UNDERSTANDING

A piece of paper itself will not solve the problem of campus sexual violence. By requiring schools that have not already done so to enter into memorandums of understanding with local law enforcement as to sexual assault response and prevention protocol, CASA acknowledges something key: without formal and meaningful partnership between institutions and law enforcement, we will not successfully move the needle toward a system where more victims feel comfortable coming forward to report these crimes and support prosecution of their assailants.

These memorandums are essential in that they require that the two entities most responsible for responding to sexual violence when it occurs on a college campus to engage with one another, and hammer out the types of details—jurisdiction, roles and responsibilities, etc.—that, once a crime occurs, it's too late to sort out.

The good news is that for a majority of jurisdictions across this country, these MOUs are already in place. According to the Justice Department, 70 percent of the approximately 7,000 academic institutions nationwide have MOUs with its local law enforcement agency. CASA would strengthen this landscape by specifying the information that must be discussed and included in these MOUs, and by requiring that they are living documents, not simply drawer liners: MOUs must be regularly reviewed and updated. CASA leaves jurisdictions the flexibility to coordinate with one another in a manner that best serves and makes sense in their communities, but the collaboration is no longer optional.

The bottom line is this: far, far too few victims are reporting these crimes to law enforcement. This means we have to do a better job of supporting each step of their healing process, and help them feel supported if and when they decide to report to law enforcement. It is time to take the guesswork out of the process and clearly delineate, through MOUs and the conversations that necessarily surround them, the roles, responsibilities, and opportunities for collaboration and partnership to achieve shared goals.

CONCLUSION

In addition to the provisions already discussed, we have also worked closely with the bill's sponsors to support their efforts to ensure that students have confidential support and assistance available. We have worked closely with committee staff to share our understanding of States' confidentiality standards and provided extensive feedback to support the goal of students having safe, confidential support available to them on college campuses.

Additionally, we strongly support measures to increase accountability and compliance: specifically, meaningful sanctions for violations of laws designed to combat these crimes.

We thank the committee and other congressional leaders for the opportunity to provide insight and feedback on these critically important efforts, and for your diligence in addressing this problem.

Sincerely,

SCOTT BERKOWITZ,
President and Founder.

THE STATE UNIVERSITY OF NEW YORK (SUNY),
ALBANY, NY 12246,
July 28, 2015.

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

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

Re: Reauthorizing the Higher Education Act: Combating Campus Sexual Assault

DEAR CHAIRMAN ALEXANDER, RANKING MEMBER MURRAY, and members of the committee: On behalf of The State University of New York (SUNY), we thank the

committee for convening this important hearing on campus sexual assault and efforts to ensure student safety as part of reauthorization of the Higher Education Act.

SUNY is the Nation's largest comprehensive public university system, with nearly half a million students at 64 institutions including community colleges, technology colleges, comprehensive colleges, and doctoral degree granting institutions. Indeed, SUNY is a microcosm of the national higher education sector. As such, our testimony is developed from extensive experience with the opportunities and challenges inherent in creating policies that both fit the needs of diverse institutions and support important systemwide objectives. SUNY has a long and unwavering commitment to ensuring student safety and we strongly support Senator Kirsten Gillibrand and your colleagues' efforts to make this issue a national priority just as we have done in New York State. We were proud to stand up as the first university system in support of the *Campus Accountability and Safety Act*, which takes a bold step toward improving the prevention of and response to sexual and interpersonal violence at all institutions of higher education.

SUNY'S LEADERSHIP IN SEXUAL VIOLENCE PREVENTION AND RESPONSE

In October 2014, the SUNY Board of Trustees passed a resolution[1] at Governor Andrew M. Cuomo's urging to:

> "establish a comprehensive, systemwide, uniform set of sexual assault prevention and response practices at SUNY campuses, which can be a model for colleges and universities across the State and the Nation."

We convened a working group comprised of campus presidents, counsels, student life leadership, title IX coordinators, University police and public safety representatives, students, faculty, and nationally recognized external experts.

As of January 2015, we are proud to share that SUNY indeed has a set of comprehensive, systemwide policies to prevent and respond to sexual violence on our campuses. SUNY's Sexual Violence Prevention Workgroup built on the best practices of campuses both across the SUNY system and the Nation to create policies that are adaptable to each unique institution while ensuring consistent standards. Starting this fall, all students, faculty, and staff will be trained on these cutting-edge policies. Our hard work received the ultimate acknowledgement when Governor Cuomo and the New York State legislature passed a law[2] making SUNY's work the backbone of statewide policies that will apply to all public and private colleges in the State.

SUNY is committed to training our campus professionals on the most up-to-date standards and requirements of the Violence Against Women Act (VAWA) amendments to the Clery Act. Over the years, the work of our Office of General Counsel and campus professionals have gained us a reputation as a national leader in developing guidance on compliance. Some recent examples of the impact of SUNY's work in this area include:

- In July 2014, we shared guidance[3] in reaction to Department of Education regulations regarding the VAWA which has been downloaded more than 25,000 times by institutions across the country.
- In October 2014, SUNY's international education professionals unanimously passed a uniform procedure on Clery Act and title IX compliance on study abroad,[4] which has since been adopted by other institutions.
- VAWA regulations require colleges to provide victims with, among other things, "visa and immigration assistance." While many who study or conduct research in the United States understand English well, during a time of trauma and stress, they will benefit from a document that is both available in their native language and customized to the resources available on campus and in the community. In response, SUNY Counsel worked with immigration attorneys to develop a 2-page, plain-language explanation of visa and immigration resources for students, translated into their native languages.[5]

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[1] *http://www.suny.edu/media/suny/content-assets/documents/boardoftrustees/memos/Sexual-Assault-Response-Prevention-REVISED.pdf.*

[2] *http://open.nysenate.gov/legislation/api/1.0/pdf/bill/S5965-2015.*

[3] *http://system.suny.edu/media/suny/content-assets/documents/generalcounsel/SUNY-VAWA-Guidance-2014.pdf.*

[4] *http://system.suny.edu/media/suny/content-assets/documents/compliance/international/SUNY-Clery-Policy-for-Council-on-International-Programs-FINAL.pdf.*

[5] *http://www.suny.edu/violence-response/Visa-and-Immigration-Resource/.*

SUNY is not only committed to compliance with State and Federal requirements, but we also have implemented policies that go beyond what is included in statute to better serve our students and ensure safe communities:

• SUNY campuses use a transcript notation for suspension, expulsion, or withdrawal with charges pending to students found responsible for violence after a standard disciplinary process. Thanks to SUNY's advocacy, a provision for transcript notations was included in New York's recent legislation and will be applied at all institutions of higher education in the State.

• We know that one of the most important factors in reducing instances of sexual violence is a change in culture. That is why our uniform policies address extensive prevention and education efforts on our campuses, rather than simply guidelines for responding to violations when they occur. Pursuant to VAWA, colleges are required to conduct a campaign throughout the course of the year to educate students about sexual violence. In addition, under SUNY policy and now New York law, all student-athletes and student leaders must complete mandatory training *prior* to competing in intercollegiate athletics or having their organization recognized. We believe that educating student leaders will empower them to model positive behavior for their organizations and the many students they reach as an important step toward changing campus culture.

We encourage the committee to consider amendments that would add measures addressing transcript notations, year-round awareness campaigns, and targeted student leader and athlete training to the *Campus Accountability and Safety Act*.

SUNY'S RESPONSE TO TOP PROVISIONS OF THE CAMPUS ACCOUNTABILITY AND SAFETY ACT (CASA)

1. *Victim-centered approach:* We strongly support CASA's inclusion of language consistent with VAWA, that gives the victim/survivor control to decide whether to go to law enforcement, and, if the victim/survivor wishes, the institution will assist in reporting. SUNY's uniform policies reflect a victim-centered approach to the prevention and response of sexual violence, part of which is a response policy with information and resources easy accessible on the web.

2. *Uniform enforcement of campus disciplinary proceedings:* We know from experience that separate disciplinary processes are inherently unequal. SUNY campuses apply the same student code of conduct, including the campus disciplinary procedures, to all students. We strongly support the uniform application of standards across all institutions.

3. *Amnesty policy:* SUNY's uniform policy for bystanders and victims/survivors reporting sexual violence to receive amnesty from drug and alcohol use penalties[6] served as the model for New York's legislation governing all colleges and can serve as a national model for plain language amnesty. We support the inclusion of amnesty policies in CASA.

4. *Campus Climate Surveys:* As required by our systemwide policy and State law, SUNY will administer a uniform climate survey to nearly half a million students in the 2016–17 academic year, the largest university survey to date. CASA's requirement that the Department of Education create and administer a survey will ease a significant administrative and cost burden on institutions and allow for uniform application and comparability of results.

5. *Title IX Coordinator (TIXC) as a designated Campus Security Authority (CSA):* SUNY has consistently advised that the TIXC is a CSA in that they have significant responsibility for student and campus activities and we believe this should be consistent at all colleges. In CASA, the definition of "responsible employee" (RE) conflicts with Office of Civil Rights guidance, which indicates that a RE is anyone whom a student *reasonably believes* has the authority to redress complaints. We are concerned that the use of the terms CSA and RE will lead to confusion and under-reporting among victims/survivors. We recommend replacing these terms with the commonly understood "mandated reporter," which clearly covers individuals employed by the institution with appropriate exclusions for counselors and advocates.

RECOMMENDATIONS FOR CLARIFICATION IN CASA

1. *Reporting student disciplinary proceedings closed without resolution:* This section of CASA represents a departure from Clery Act crime reporting, as it is not aligned with Clery reporting geography. We support transparency and are proud of

[6] *See* Section 6442, *http://open.nysenate.gov/legislation/api/1.0/pdf/bill/S5965-2015*.

SUNY's record in this area. We recommend that the committee consider New York State's legislation[7] for a similar but clearer reporting regime.

2. *Changing the statute of limitations to 180 days after graduation or separation:* Many students take 6 or more years to graduate, enroll in successive degree programs at a single institution, or are in doctoral programs for a significant length of time. Put simply, students may be affiliated with an institution for more than a decade. We support the motivation to give victims/survivors more time to come forward, but an open-ended timeframe could lead to documents destroyed pursuant to records management schedules, witnesses who graduate, retire, or pass away, and less reliable memories. Our recommendation would be to cap the time allotted to 180 days after the date of graduation or disaffiliation with the institution and no more than 3 years after the date of the last incident.

CONCLUSION

SUNY hears—and actively embraces—the national call for providing the best tools, resources, and services to protect students from sexual violence and support them in the event that an incident occurs. We must, in short, get down to the business of making our campuses safer while ensuring more accountability and transparency.

SUNY has been privileged to work with Senator Gillibrand, her colleagues in the Senate, and members of the New York Delegation as well as our partners in State government on this issue, and we look forward to continuing to be a part of this important dialog. We would encourage the committee to reach out to us directly if we may be of assistance or can provide additional details based on our experience.

Respectfully,

NANCY L. ZIMPHER,
Chancellor,
The State University of New York.

H. CARL MCCALL,
Chairman,
SUNY Board of Trustees.

ZEN MEN, LLC,
JULY 28, 2015.

Hon. LAMAR ALEXANDER, *Chairman,*
Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
428 Senate Dirksen Office Building,
Washington, DC 20510.

Re: Senate HELP Committee Hearing on "Reauthorizing the Higher Education Act: Combating Campus Sexual Assault"

DEAR SENATOR ALEXANDER AND SENATOR MURRAY: In any sustainable system, every expansion of control must correspond with an expansion of accountability. The Campus Accountability and Safety Act (CASA; S. 590), is an example of legislation that grants to universities some powers comparable to that of criminal courts, but without the responsibilities one expects from a functional judicial system. These powers execute on receipt of an allegation of sexual assault, sans proof beyond a reasonable doubt that such an assault occurred.

Any gender- or sex-neutral language in S. 590, while appreciated, is currently not enforceable because of the perceptual imbalances our culture has between male and female students, which justifies further checks and balances consistent with constitutional amendments IV through VIII. Failure to extend proportional protections to accused parties in criminal allegations—partially processed by University faculty and staff—has resulted in the unwarranted expulsion, suspension, slander, or libel of young male students. At the time of this writing, A Voice for Male Students documents 75 cases showing due process violations enabled by Universities acting as flexible proxies to a frighteningly punitive criminal court system, and that number is growing.

As a male student who is still struggling to shake off the effects of allegations long declared unfounded by Kennesaw State University, I feel deeply frightened and unsafe under CASA. In response to its proposition, Zen Men, LLC will educate male students on how to assert their rights and therefore resist the biases behind the legislation.

[7] *See* Section 6449, *http://open.nysenate.gov/legislation/api/1.0/pdf/bill/S5965-2015.*

It is my hope that any HELP committee representative reading this testimony places themselves in the shoes of one accused of sexual assault without a shred of evidence to support such a devastating charge. Picture, as a falsely accused student, your attempt to function while attending a University that is ready to brand you as a rapist and issue punitive discipline regardless of the evidence.

Speaking as one of your sons trying to build a future, I ask that you oppose CASA and reflect on providing fair treatment and respect for both the accuser and the accused. I thank you and all involved Senators for hearing this side of the issue.

Sincerely,

SAGE GERARD,
Founder, Zen Men LLC.

RESPONSE BY JANET NAPOLITANO TO QUESTIONS OF SENATOR ALEXANDER, SENATOR MURKOWSKI AND SENATOR WHITEHOUSE

SENATOR ALEXANDER

Question 1. Do you have specific suggestions about how Title IX and the Clery Act, including their implementing regulations and guidance, can be improved and/or clarified to provide institutions of higher education the flexibility they need?

Are there areas where these laws, regulations, or guidance conflict?

Are there areas where they are duplicative?

Answer 1. Existing rules and regulations—including those in place through the Higher Education Act (Clery Act and Title IX), the Violence Against Women Act and the Department of Education's Office of Civil Rights—must be better coordinated and streamlined. The definitions, regulations, program guidance, timelines, and other programmatic components are not aligned and result in duplicative efforts around investigations, confusing interpretations, and contradictory guidance.

Here are a few examples where there is overlap that can create confusion, conflict, or duplication:

• Both title IX's OCR guidance and Clery cover the issue of sexual violence. Under OCR guidance, institutions have an obligation to respond to sexual violence involving students wherever it occurs. While there is not really any dispute that sexual violence occurring in the context of a school's education programs and activities must be addressed, OCR guidance also says that off-campus violence has to be addressed and the effects on campus or in the school's educational program or activity must be considered. Clery only covers sexual violence that occurs on "Clery geography" (e.g., on campus, on non-campus buildings or property, or immediately adjacent public property).

• Because OCR treats sexual violence as a severe form of sexual harassment, there is a broad range of conduct that triggers title IX requirements and expectations. Clery, on the other hand, has a more narrow definition of sexual assault using Federal definitions of rape and other sexual assaults.

• There are reporting obligations under both Title IX and Clery. Title IX says any responsible employee must report to the school any sexual violence incident that they become aware of, and must provide all identifying information and details about the incident. Clery says that campus security authorities (CSAs) must report Clery-countable crimes but, unless they are police or security officers, need not provide personally identifiable information. The implications of these different coverages of the laws/guidance, definitions and scope of the acts covered, and the reporting expectations and requirements means that every case of reported sexual assault can create significant challenges for the person who learns of the issue in determining what is their reporting obligation and to whom (and if they are a responsible employee and a CSA, or just a responsible employee but not a CSA, or not a responsible employee but just a CSA leads to different answers/outcomes)

• Additionally, in VAWA/Campus SaVE, institutions have to use State law definitions of domestic violence, dating violence and stalking but when reporting crime statistics for Clery they must use Federal definitions for counting domestic violence, dating violence and stalking reports.

• According to OCR guidance, institutions are expected to take all steps to investigate all reports of sexual violence. At the same time, institutions are expected to do their very best to honor complainants' desire not to have something investigated and to keep it confidential. Institutions are told where a complainant wants to maintain confidentiality that they should investigate to the best of their ability while honoring the complainant's request.

• An institution might be under OCR investigation for title IX with a concurrent Clery inquiry by a different branch of the Department of Education, meaning dif-

ferent people at the same institution are duplicating data collection and response efforts rather than coordinating similar information.

While these are not issues addressed in the CASA legislation, the Department of Education could begin—even before Federal legislation is enacted—to streamline its internal procedures to better guide institutions toward compliance with current laws and regulations. The Department should engage other relevant Federal agencies to seek input on the development and implementation of guidance to ensure that the agencies are in sync and work toward common interpretations of guidance in order to prevent contradictions. It would be useful if agencies established program guidance, with key criteria and risk areas that institutions could use that would be accepted by all applicable agencies. For example, the Department of Health and Human Services Office of Inspector General provides Compliance Program Guidance for the health care industry that provides health care-related entities key elements for compliance.

Clearer guidance as to what should be taken as a suggestion of "best practice" versus a "required" action should also be provided. Current "Dear Colleague Letters, (DCL)" for example, are unclear upon review and can be interpreted in multiple ways. In fact, in some States, State auditors are interpreting DCLs, which are sometimes unclear, as prevailing law rather than guidance.

Reporting requirements within the different Federal laws should also be better coordinated to ensure that the common definitions and mandated processes are not duplicative or contradictory. This is a very difficult area for practical application in policies and procedures. Confusion exists because reporting obligations under OCR guidance is driven by the identity of the victim or perpetrator, while Clery reporting is based on where an incident occurs. Individuals may have obligations to report under one or both. Additionally, when title IX inquiries and reviews are necessary and executed by OCR, there should be a timeframe for the reports to be completed and disseminated back to the respective institutions. It is not useful to receive a report several years later after the review was conducted when the institution may already be implementing changes and improvements to their processes. UC is still undergoing reviews that were started several years ago. Similar sentiment is shared related to the Clery Act audits and reviews executed by the Department of Education which again, should be required to be reported timely with outcomes.

Question 2. Do you have suggestions about how institutions of higher education can best coordinate with law enforcement without turning the institutions into *de facto* law enforcement agencies?

Answer 2. While universities have a key role to play in governing student conduct, it is important to note that university student conduct proceedings are not the same as legal proceedings. Universities do not have the same scope of authority to investigate (for instance, there is no subpoena power) and there are limits on what discipline can be imposed (i.e., a university cannot impose civil or criminal sanctions). Given the interplay between student conduct and criminal proceedings, however, institutions of higher education and local law enforcement must improve communication and coordination on cases in their jurisdiction. Lack of clear communication, adequate training and designated areas of responsibility can result in disjointed efforts between campus officials and police. Enhancing communication and coordination between campus officials and local law enforcement is needed to better support those reporting sexual assaults.

To that end, I worked with California Attorney General Kamala Harris to develop a new toolkit for California law enforcement agencies and higher education institutions to improve collaboration and transparency on campus sexual assault prevention and response. This was driven, in part, by my belief that these incidents are often criminal matters and that all parties involved—universities, police, district attorneys, and others—should be coordinated and committed to robustly and sensitively addressing these cases. The toolkit includes a model memorandum of understanding (MOU) that can be adapted and used by California institutions of higher education and local law enforcement agencies that have jurisdiction over those institutions. It also includes a resource guide explaining the provisions of the MOU and relevant laws and policies related to those provisions. This approach is one that likely would be useful in other jurisdictions.

In addition, this type of MOU would help local law enforcement leverage the specific knowledge and training that many campus police departments have in responding to sexual violence. The University of California, like many public university police departments nationwide, employs fully sworn law enforcement officers with full arrest powers and primary jurisdiction for first-response and law enforcement on their campus. UC police officers are trained and certified consistent with the California Commission on Peace Officer Standards and Training requirements and they

investigate incidents of sexual assault and other felony and misdemeanor crimes as both first responders and as trained and experienced criminal investigators. At UC, our campus police departments are also included in our sexual violence and sexual assault training and have played an active role in the Task Force's efforts. They receive investigation training; trauma-informed training, training from the California Commission on Peace Officer Standards and Training, and mandated training regarding sexual violence and sexual assault. UC is also developing a mandatory 2-hour training for all law enforcement which will include emphasis on trauma-informed practices related to investigations, memory impairment of victims, etc., that could serve as a model for other jurisdictions.

Question 3. Do you have suggestions about what we can do, or not do, to make sure colleges establish procedures dealing with allegations of sexual assault that are fair and protect the due process rights of the accuser and the accused?

Answer 3. Universities around the country, including UC, are grappling with improving and reforming their adjudication, investigation, and sanction processes to ensure equitable treatment and a trauma-informed approach for complainants and respondents. The UC Task Force on Preventing and Responding to Sexual Violence and Sexual Assault (Task Force) is creating a model that establishes strong, consistent practices for investigation, adjudication, and sanctions—one that is scalable and applicable to our own culture. This model provides flexibility to accommodate campuses' unique characteristics, while still providing an equitable process for both complainants and respondents.

The University will provide resources for the complainant and respondent through the CARE Advocacy Office and Respondent Services Coordinators. Complainants will receive support from the CARE Advocacy Office and respondents, if they choose, can receive services from the respondent services coordinator. Each UC campus has also established a Case Management Team for Sexual and Gender-Based Violence and Misconduct (CMT) comprised of student conduct, title IX, campus police, advocacy and other subject matter experts as needed. The CMT reviews all current sexual misconduct cases to ensure that the campus' institutional response is trauma-informed; timely communication response occurs and adheres to all Federal, State, and policy guidelines; and is coordinated among all points of contact for both complainants and respondents.

SENATOR MURKOWSKI

Question 1. The Campus Accountability and Safety Act (CASA) would require an institution to provide a confidential advisor to an assault victim. This is intended to provide support and resources to the victim in a way that will provide the victim with a sense of safety and control, which is laudatory. I am concerned, however, about provisions in CASA that specifically state a confidential advisor is not obligated to report crimes to the institution and that any requests for accommodation the Advisor makes on behalf of a student "shall not trigger an investigation by the institution." These provisions seem to conflict with institutions' moral and legal obligation under title IX to ensure that a campus is safe for all students. Keeping information about a crime secret and prohibiting an investigation could lead to an increased risk for other students as well as lead to liability for the institution should the perpetrator harm additional students. What changes do you recommend, to CASA, title IX, or both, to reconcile this conflict?

Answer 1. UC strongly supports CASA's requirement for institutions of higher education to designate a confidential advocate that survivors can report to anonymously and directly. Confidential resources exist in order to provide a safe space for individuals to discuss their options, learn about resources, and discuss any concerns before deciding to take next steps. Unless there is risk of serious harm to others, a confidential advocate cannot share information without the express consent of the individual.

The UC Task Force on Preventing and Responding to Sexual Violence and Sexual Assault heard directly from students that having access to a confidential, privileged and independent advocate on campus was a top priority. This student-driven effort led to the establishment of CARE: Advocacy Offices for Sexual and Gender-Based Violence and Misconduct on UC campuses. CARE advocates serve as a confidential resource and can explain the various reporting options, including law enforcement, student conduct, title IX, anonymous reporting, or no reporting. The students were also clear that they wanted a "safe" resource on campus that was easily accessible and would know the available campus resources and the potential interim measures on campus that could be taken to support the complainant. If the resource were only allowed off campus or was forced to be a third party either on or off campus, the knowledge of campus operations and access to the resource would potentially be lim-

ited. The campus culture would also not be as well-known, which may not serve the student's best interests.

While it is ultimately the student's decision whether to report and take further action, it is our hope that the assurance of confidentiality will encourage more students to come forward and ultimately report incidents of sexual misconduct to law enforcement. In my view, we actually create a less safe campus environment if students do not have the choice to discuss their situation confidentially on campus and, consequently choose not to come forward. By providing a confidential, independent, and safe space for individuals to seek support, we will hopefully increase reporting, which is a key part of our effort to address sexual violence and sexual assault on campus and increase campus safety.

I cannot stress enough the importance that these advisors must be confidential, privileged and independent. Any legislation must ensure that the "confidentiality" of services provided by these advisors is clearly defined by the institution and shared with students in plain language.

Question 2. Experts consulted by the University of Alaska have consistently stated that the best way to get absolutely accurate results on a campus survey about sexual assault is to assure absolute confidentiality and to prohibit publishing the results. This promotes higher response rates and allows the institution to respond to gaps, concerns, and problems in campus safety issues. CASA advocates suggest that a homogenous survey, the results of which are published, will assist the consumer in making educated choices. Data suggests that few prospective students, their families, or enrolled students review campus crime statistics. Do you agree that the campus surveys should be used for institutional improvement of policies and practices rather than as a consumer tool? Why or why not? Do you recommend that if institutions are required to use a survey developed by the Department that individual institutions should be able to delete questions that are locally or culturally inappropriate? Should there be two surveys—one developed by the Department of Education and used as a consumer tool and one developed by an institution and used only to improve internal practices and policies?

Answer 2. *The University of California just conducted the largest university system climate survey of its kind in the Nation.* From the fall of 2012 through the spring of 2013, UC took the unprecedented step of surveying its faculty and other academic appointees, students, staff, trainees, and post-doctoral scholars about their experiences and perceptions of campus or workplace climate. More than 386,000 individuals were invited from the 10 UC campuses, the Lawrence Berkeley National Laboratory, the University's Division of Agriculture and Natural Resources, and the UC Office of the President to participate in this study. We now have a rich baseline of data that campuses are analyzing to identify key areas of focus.

Climate surveys can serve a valuable purpose in providing useful data for university administrators to effect change in practice, culture, and policies. At UC, in our recent systemwide survey, we wanted the data gathered to be an honest reflection and critique of our campus cultures. The survey's goal was for internal improvement, not consumer marketing. Our staff worked to provide campus-specific information that reflected the perceptions of survey respondents yet protected their anonymity; this would be difficult if the main purpose of the data is for general consumer consumption. UC Berkeley, for example, has a committee that meets to discuss the specific results of our recent climate survey and how to use the data to affect cultural change. I would urge that any climate survey designed or required be guided by a goal of quality improvement in campus culture rather than a public ranking of campus climates.

Again, while campus climate surveys can be an effective tool and good overall indicator, they cannot be the only tool. Climate surveys can be quite an undertaking and very expensive to administer, so I do not believe that having two separate surveys would be practical or a prudent use of resources. Additionally, if required to be done too frequently, surveys may distract from the work being done to directly address campus climate issues as well as efforts to measure and track outcomes. To be effective, the timing of the surveys must allow for thorough analysis of the results and time for institutions to develop and implement changes.

I also have significant concerns about the usefulness of a single survey developed for all institutions given the broad diversity in higher education institutions across the Nation and the student populations they serve. Institutions should be allowed to develop and use their own climate surveys, as long as they meet criteria and standards defined by the Department of Education, are developed in consultation with stakeholders, required periodically and are scalable.

Question 3. CASA requires that institutions develop Memoranda of Understanding with each law enforcement agency that has jurisdiction. Many institutions, including public and private institutions, have developed significant e-learning opportunities for their students who may never attend classes on campus. This CASA requirement is viewed by those institutions, therefore, as fatally vague and unworkable. Do you agree, if so, do you have suggestions for addressing this concern?

Answer 3. This is not a significant concern for UC, but the question raises just one of the many complications for non-traditional educational institutions. Title IX and VAWA cover all educational institutions, and even on-line entities that have brick and mortar locations have Clery reporting responsibilities, so this type of requirement could be unmanageable due to jurisdictional boundaries. MOUs with law enforcement agencies would be difficult if there is no "campus" (and no campus police) and there numerous potential local law enforcement agencies.

To the extent that new laws or regulations lead "campuses" to improve services to complainants, or that existing laws are streamlined to reduce confusion and eliminate duplication, there is potential benefit for all institutions, including on-line providers, in navigating the complex set of issues they face in preventing, responding to, and reporting incidents of sexual violence and sexual assault.

Question 4. Several witnesses spoke to the complexity of compliance with Clery and Title IX. Adoption of the CASA provisions would add additional requirements and complexity. Looking at the issue of campus safety as a whole, would you recommend that the committee completely re-write institutional responsibilities across Clery, Title IX, VAWA, and CASA in order to reduce complexity, increase crime reporting and transparency, and provide for the rights of all students to a safe campus on which to gain an education? If so, what specific suggestions do you have for the committee?

Answer 4. Much more needs to be done to clarify, streamline and improve the coordination of existing laws and policies. Within the Department of Education, the Clery Act, Title IX, VAWA, and OCR investigations use different definitions, coverage, and reporting requirements, and there is no coordination of investigations between the Federal Government and individual States. In addition to the fact there is also significant confusion about what is "recommended" or "preferred", there are legal and financial implications to the lack of regulatory coordination.

Question 5. I have received concerns from students who have been accused of sexual assault on campus and their parents. They tell me their rights to a fair hearing were not respected. Complaints included that as the accused, they were not informed of their rights under the institution's hearing policies, that the victim was provided more robust counsel by the university, and that they were denied the right to question their accuser and witnesses. CASA requires institutions to provide certain information about process to both the victim and the accused but leaves to the institution to follow their own policies for conducting investigations and hearings. Can this section be improved? Should the committee mandate that institutions follow basic policies and procedures? If so, please provide specific suggestions.

Universities around the country, including UC, are grappling with improving and reforming their adjudication, investigation, and sanction processes to ensure equitable treatment and a trauma-informed approach for both complainants and respondents. The UC Task Force on Preventing and Responding to Sexual Violence and Sexual Assault (Task Force) is creating a model that is scalable and applicable to our own culture. This model provides flexibility to accommodate a campus's unique characteristics, while still providing an equitable process for both complainants and respondents. The University will provide equitable resources for the complainant and respondent through the CARE Advocacy Office and Respondent Services Coordinators. Complainants will receive support from the CARE Advocacy Office and respondents, if they choose, can receive services from the Respondent Services Coordinator.

While UC supports Federal proposals to help all institutions of higher education navigate the complex set of issues they face in preventing, responding to, and reporting incidents of sexual violence and sexual assault, a one-size-fits-all approach will not be effective in addressing the problems we face. Federal legislation must be flexible enough to allow for institutional differences, yet strong enough to ensure full accountability. Additionally, any new laws or regulations must not "undo" or contravene programs and policies institutions have implemented that are based on evidence informed research and represent best practices for action.

The impact on available resources should also be considered in every decision with a focus on transparency, accountability, campus safety, and efficiency, avoiding du-

plication and redundancy. UC also supports broader coordination and accountability among other partners in this endeavor, such as prosecutors and the courts.

SENATOR WHITEHOUSE

Question 1. In the context of campus sexual assault, campus investigations and law enforcement investigations can sometimes work at cross purposes. How can we disentangle the campus and law enforcement investigations so that one does not impede the other?

Answer 1. Lack of clear communication, adequate training and designated areas of responsibility can result in disjointed efforts between campus officials and police. It is important to clarify the roles for campus police and their local law enforcement counterparts to ensure the effective investigation and prosecution of criminal behavior and avoid jurisdictional confusion or miscommunication—particularly when there is concurrent jurisdiction. Enhancing communication and coordination between campus officials and local law enforcement is certainly needed to better support those reporting sexual assaults.

To that end, I worked with California Attorney General Kamala Harris to develop a toolkit for California law enforcement agencies and higher education institutions to improve collaboration and transparency on campus sexual assault prevention and response. The toolkit includes a model memorandum of understanding (MOU) that can be adapted and used by California institutions of higher education and local law enforcement agencies that have jurisdiction over those institutions. It also includes a resource guide explaining the provisions of the MOU and relevant laws and policies related to those provisions. This approach is one that likely would be useful in other jurisdictions.

Each UC campus is established a Case Management Team for Sexual and Gender-Based Violence and Misconduct (CMT) comprised of student conduct, title IX, campus police, advocacy and other subject matter experts as needed. The CMT reviews all current sexual misconduct cases to ensure that the campus' institutional response is trauma-informed; timely communication response occurs and adheres to all Federal, State, and policy guidelines; and is coordinated among all points of contact for both complainants and respondents. This could similarly serve as a model for other institutions.

Question 2. In the context of domestic violence, law enforcement officers have become better qualified to address the needs of victims by drawing on the expertise of advocacy groups and experts. How can we best support the law enforcement community so that officers are similarly well-trained to assist survivors of campus sexual assault?

Answer 2. It will be critical to improve communication between campus police and local law enforcement and leverage the specific knowledge and training that the campus police have in responding to sexual violence. The University of California, like many university police departments nationwide, employs fully sworn law enforcement officers with full arrest powers and primary jurisdiction for first-response and law enforcement on their campus. UC police officers are trained and certified consistent with the California Commission on Peace Officer Standards and Training requirements and they investigate incidents of sexual assault and other felony and misdemeanor crimes as both first responders and as trained and experienced criminal investigators. At UC, our campus police departments are also included in our sexual violence and sexual assault training and have played an active role in the Task Force's efforts. They receive investigation training, trauma-informed training, training from the California Commission on Peace Officer Standards and Training, and mandated training regarding sexual violence and sexual assault. UC is also developing a mandatory 2-hour training for all law enforcement which will include emphasis on trauma-informed practices related to investigations, memory impairment of victims, etc., that could serve as a model for other jurisdictions.

Question 3. Many survivors fear that they may lose control over campus sexual assault proceedings if law enforcement gets involved early. What can we do to inform students about the course of a law enforcement investigation, so they can make an informed choice about how to proceed?

Answer 3. The UC Task Force on Preventing and Responding to Sexual Violence and Sexual Assault heard directly from students that having access to a confidential, privileged and independent advocate on campus was as top priority. This led to the establishment of CARE: Advocacy Offices for Sexual and Gender-Based Violence and Misconduct on UC campuses, which could serve as a model for other institutions. These CARE advocates serve as a confidential resource and provide a safe space for individuals to discuss their options, learn about resources, and discuss any

concerns before deciding to take next steps. The Advocate may explain the various reporting options, including law enforcement, student conduct, title IX, anonymous reporting, or no reporting. Increasing communication and setting expectations are key to helping individuals make an informed choice about how they wish to proceed.

Question 4. Absent the concern of loss of control (perceived or otherwise) by the survivor, are there reasons that experienced, trauma-informed, sensitive, effective law enforcement should not be involved at early stages of an investigation?

Answer 4. Incidents of sexual violence and sexual assault are criminal matters that should involve law enforcement, but OCR guidance emphasizes that it is ultimately the student's decision whether to report an incident to police, title IX, or both. UC provides access to a confidential, privileged and independent CARE advocate on campus that serves as a resource to help the student make an informed choice about how they wish to proceed. Our hope is that the assurance of confidentiality will encourage more students to come forward, seek support, and ultimately report incidents of sexual misconduct to law enforcement. One area of focus should be building more trust and confidence in the law enforcement system to increase reporting.

RESPONSE BY DANA BOLGER TO QUESTIONS OF SENATOR ALEXANDER, SENATOR HATCH, SENATOR MURKOWSKI, SENATOR WHITEHOUSE AND SENATOR CASEY

SENATOR ALEXANDER

Question 1. Do you have specific suggestions about how Title IX and the Clery Act, including their implementing regulations and guidance, can be improved and/or clarified to provide institutions of higher education the flexibility they need?

Answer 1. First, Title IX, the Clery Act, and Federal guidance already provide sufficient flexibility for schools to adapt policies, programming, and procedures to the unique needs of their campus communities. For example, in its 2014 "Questions and Answers on Title IX and Sexual Violence" document, the Department of Education's Office for Civil Rights (OCR) explains, "A school's procedures and practices will vary in detail, specificity, and components, reflecting differences in the age of its students, school size and administrative structure, State or local legal requirements (e.g., mandatory reporting requirements for schools working with minors), and what it has learned from past experiences."[1] Moreover, the Federal Government has compiled a library of model policies on its NotAlone.gov website for schools to adopt and adapt to their needs. These resources carefully avoid prescribing a one-size-fits-all framework for schools in the interest of preserving appropriate flexibility in institutional responses.

Second, it is absolutely critical that Congress recognize that what students need—in the face of widespread institutional mistreatment and civil rights violations—is *more* support from the Federal Government in holding these institutions to a higher standard, rather than an approach that grants schools even more latitude than they have already enjoyed. Indeed, OCR, the Federal agency tasked with enforcing title IX, has never once levied a sanction against a college for sexual violence-related title IX violations, despite numerous findings of non-compliance. Because OCR believes it lacks the authority to levy fines against noncompliant schools, the agency relies upon the empty threat of revoking all Federal funding to motivate schools to follow the law. Congress should provide OCR with more meaningful tools to hold schools accountable. Authorizing OCR to levy fines would provide the agency with the increased leverage necessary to hold schools accountable—thereby supporting student survivors—without devastating critical student programming, aid, and research funding in the process. In order to support schools in implementing regulations and guidance, and to bolster OCR's enforcement tools, Congress should increase appropriations to the OCR and the Department of Justice's Office on Violence Against Women. Increased funding will expand the technical assistance and training that these Federal offices can provide to schools to implement guidelines correctly and to ensure that their recommendations are adhered to.

Finally, Federal law and guidance require the bare minimum that schools must do in order to keep campuses safe and ensure educational equity—but the very best colleges and universities exceed these requirements, providing many more protections, programming, and services than those explicitly required by law. In this way, colleges and universities enjoy significant flexibility to develop services uniquely tailored to the needs of their student populations. All schools can and should be en-

[1] Department of Education Office for Civil Rights. (2014). *Questions and Answers on Title IX and Sexual Violence.* Retrieved from *http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf.*

couraged to exceed these bare minimum legal requirements, drawing on all the creativity, talent, and research capacity that they, as educational institutions, have uniquely at their disposal.

Question 2. Do you have suggestions about how institutions of higher education can best coordinate with law enforcement without turning the institutions into *de facto* law enforcement agencies?

Answer 2. It is essential to recognize, as Senator Alexander does, the critical differences between school disciplinary processes and criminal justice proceedings: namely, schools are responsible for protecting students' civil rights to education, while the criminal justice system is tasked with responding to crimes. In order to ensure the realization of these distinct aims, colleges should take several steps.

First, in order to encourage survivors to come forward, schools should ensure that any information about specific misconduct cases is shared with law enforcement *only* with the full, informed consent of the survivor involved in the case. Schools should create procedures for administrators to obtain consent from survivors and should train these officials in trauma-informed methods.

Second, institutions of higher education and local law enforcement should coordinate so that, if a victim chooses to contact the police, a dedicated SVU unit or trained, trauma-sensitive officer is available to respond, rather than a regular patrol officer.

Third, schools should provide an option for a victim's initial statement to be shared at initial report or at anytime after—per the victim's consent—with local law enforcement, so that survivors are not asked to retell their traumatizing experience over and over again.

Fourth, schools should pay for transportation to hospitals with a SANE nurse on staff, in order to increase survivors' access to forensic evidence collection authorities. Evidence preservation helps maintain survivors' options to press charges at a later date if they so choose.

Finally, schools should ensure survivors do not incur academic or other penalties for classes missed while securing a civil protection order, cooperating in a criminal investigation, or obtaining necessary medical or legal services.

In contrast to the above solutions, proposed congressional legislation like the Safe Campus Act and other similar mandatory police referral bills would imperil our shared goals of campus safety and educational equity. These bills would prevent colleges from investigating sexual misconduct unless the victim proceeds through a criminal process, creating a needless and dangerous barrier to reporting. They would ultimately make campuses less safe then they currently are.

Survivors choose to report to campus officials but not to law enforcement for a number of reasons. The conviction rate in cases of sexual assault is extremely low,[2] many States maintain antiquated and dangerous use-of-force requirements in statutory definitions of rape and sexual assault, and law enforcement officials are too often untrained, insensitive, and quick to place blame on survivors themselves for their assaults. Survivors are often hesitant to participate in a protracted, public process when they have little reason to believe they will see justice served. Further, male victims often do not report to police because their States do not recognize them as victims of rape at all, or do not recognize women as perpetrators; meanwhile, schools are required to address gender-based violence against students of any gender identity. Undocumented student survivors often do not report to police because they fear deportation; meanwhile, they can secure support from their schools without such a threat. Many students of color, who experience police violence at disproportionate rates, do not report to police because they fear criminalization or other violence from law enforcement. In sum, victims overwhelmingly say that, were they required to disclose their rapes to police in order to secure justice on campus, they would tell no one—including college officials—at all.[3]

Barring colleges from investigating sexual assaults, as the Safe Campus Act does, would create a disturbing double standard in which a school can expel a student for plagiarism or physical assault, but not for rape. By prescribing how a college can and cannot determine membership in its campus community, the Safe Campus Act would both infringe on universities' autonomy and create a chilling effect on survivors who might otherwise come forward—thereby interfering with a school's right (and responsibility) to create and maintain a safe campus.

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[2] Lonsway, K. A., & Archaumbault, J. (2012). The "Justice Gap" for Sexual Assault Cases. *Violence Against Women, 18*(2), 145–68.

[3] Know Your IX & National Alliance to End Sexual Violence. (2015). Ask Survivors Survey Results. Retrieved from *http://knowyourix.org/ask-survivors/*.

Question 3. Do you have suggestions about what we can do, or not do, to make sure colleges establish procedures dealing with allegations of sexual assault that are fair and protect the due process rights of the accuser and the accused?

Answer 3. Know Your IX approaches this issue out of concern for all student victims who have been betrayed and overlooked by their universities, and deprived of the chance to learn and thrive by administrative inaction in the face of assault, harassment, and abuse. We recognize that—now that schools have finally turned their attention to violence on campus—we are collectively tasked with answering the hard questions about how disciplinary procedures should work, given the particular challenges and opportunities of the campus context. We know firsthand that the success of these procedures will depend on their fairness to all parties involved.

As students whose educational opportunities have been imperiled and limited by violence, we understand too well the harm of unjust deprivations of the right to learn. We have called on college and university presidents to ensure procedural rights for both parties, the accused and the victim.[4] These rights are already permitted or required by the Department of Education's guidance, and we affirm the Department's responsibility to ensure their protection in practice. Procedural rights should include:

- The right to timely and clear notice in writing of the allegations, parties' rights and responsibilities (under both school policy and law), procedural updates, and the final determination;
- The right to review all materials used in the investigation and hearing with adequate time to consider and respond;
- The right to guidance from a trained advocate during the investigation and hearing process;
- The right to submit evidence and recommend witnesses and questions for the other party to decisionmakers, and the right to notification and explanation if these recommendations are declined;
- The right to be heard by neutral decisionmakers with professional expertise;
- The right to a safe and sensitive investigation and hearing;
- The right not to self-incriminate if criminal charges are possible or pending;
- The right to an explanation in writing for the final decision;
- The right to fair and proportionate sanctions; and
- The right to internal administrative appeal heard by a panel.

These rights and protections ensure our mutual goals of student safety and educational equity for all students.

SENATOR HATCH

Question 1. We have heard from several community colleges in Utah regarding the "confidential advisor" aspect of the CASA bill. They are concerned about the undue burden that might arise by tying the number of advisors to the number of students. On average, non-residential campuses, like community colleges, have fewer incidents of sexual assault cases reported than residential campuses. Because the numbers of incidents vary based on the type of institution, should we tie the number of advisers for a campus based on the number of incidents reported, rather than student body?

Answer 1. Know Your IX believes that tying the number of advisers to the number of incidents reported, rather than the size of the student body, is a harmful approach. Sexual assault is an extremely underreported crime: research indicates that only 12 percent of student survivors report their assault to law enforcement, and reporting to campus officials is similarly low.[5] A central purpose of the confidential advisor role is to provide information and support to the vast majority of survivors who need time to decide whether or not to come forward, or who may not want to file a complaint at all. Tying the number of confidential advisors to the number of reported incidents would grossly underestimate the scope of student need.

Moreover, the number of reported incidents does not reliably indicate the actual safety of a school or the need for survivor advocates. When schools implement new educational programs or improve their campus policies, they often see an uptick in the number of reports, because more students understand how to report and feel confident in the process. Tying the number of advisors to the number of incidents

[4] Know Your IX. (2015). Letter to University Presidents on Fair Process. Retrieved from *http://knowyourix.org/fair-process/*.

[5] Kilpatrick, D. G., Resnick, H. S., Ruggiero, K. J., Conoscenti, L. M., & McCauley, J. (2007). Drug facilitated, incapacitated, and forcible rape: A national study (NCJ 219181). Charleston, SC: Medical University of South Carolina, National Crime Victims Research & Treatment Center.

reported would consequently result in a dangerous cycle: the schools where survivors feel the least comfortable reporting would also have the fewest number of advisors, making it even more difficult for schools to properly handle cases and further deterring reporting.

To provide sufficient resources to the many students who experience violence on campuses, including those who do not report, the number of confidential advisors should remain proportional to the student population; the financial impact is an essential cost of protecting students, much like the salaries of campus safety officers. An alternative suggestion for mitigating the costs associated with these positions would be to increase the authorization levels of the Campus Grant program within the Violence Against Women Act, which could be used to fund additional staff support positions. Additionally, schools should partner with a local rape crisis center to supplement services, especially on weekends and late nights when campus resources may be closed. As rape crisis centers are already underfunded, Congress should act to fully fund the Family Violence Prevention and Services Act (FVPSA) to ensure that rape crisis centers can handle an increased number of clients; schools should similarly provide financial support to rape crisis centers if their students use their services.

Question 2. There is a clear conflict of interest inherent in the confidential advisor role, since that person is employed by an institution of higher education and has certain reporting responsibilities under the Clery Act, as Senator Collins has pointed out. I would be interested in learning if there were other, non-affiliated resources available to students that may more appropriately play a confidential and/or counseling role, and if this would be a suitable use for funds generated by the fines.

Answer 2. As survivors, Know Your IX strongly supports victims' ability to disclose violence and access accommodations confidentially. Ensuring confidentiality is crucial to encourage students to come forward, seek support services, and explore their legal options. We also believe that the confidential advisor should be required to report non-identifying aggregate data under the Clery Act and that such a reporting obligation will *not* compromise victims' confidentiality or discourage victims from approaching the advisor. In order to further protect survivors' disclosures, Congress should ensure that confidential advisors cannot be subpoenaed. (Please see page 8 of this document for continued discussion of the confidential advisor role and conflict of interest concerns in our response to Senator Murkowski's Question #1.)

Local rape crisis centers (RCCs) can play a vital role in providing support to student survivors while minimizing conflicts of interest: RCCs can offer 24/7 counseling services, referrals to service providers, urgent information about preserving evidence and making criminal reports, and long-term guidance on legal options. Forming a partnership or drafting a memorandum of understanding (MOU) with a local RCC is one way schools can ensure students have access to immediate, confidential, and free support after an assault.

However, there are drawbacks to relying on rape crisis centers. RCCs are severely underfunded, and may be located far from particular campuses, such that students may be unable or uncomfortable leaving campus to obtain services. While RCCs can provide valuable counseling services and help survivors navigate the criminal justice system, they often lack the expertise to advise students on campus-specific options, which can vary widely between schools and require specific knowledge of title IX, civil standards of evidence, and internal policies and procedures of specific campus offices.

Therefore, if schools choose to rely on RCCs for confidential advocate services, they should help sustain them financially, provide RCCs detailed information about their campus disciplinary procedures and process, and house the RCC advocate, at least part time, on campus.

Moreover, Congress should consider using funds generated by title IX fines to expand the Legal Assistance for Victims program within the Violence Against Women Act by adding and funding a specific purpose area for campus sexual assault. Academic research has demonstrated that rape survivors struggle to access civil legal assistance; in the campus context, survivors are asked to serve as their own advocates at the same time as they are trying to access their education. For survivors with disabilities in particular, this state of affairs can be unsustainable. In this vein, the Department of Justice's Office of Violence Against Women has solicited proposals to provide legal assistance to campus survivors, but these efforts are undermined by the heavy demand for legal services and lack of funding. Providing legal support to survivors would mitigate the potential conflict of interest in the role of the confidential advisor, decrease the ability of schools to commit abuses with impunity (consequently decreasing the need for OCR intervention), and promote survivors' access to the accommodations they need to stay in school.

Question 3. Some non-residential and online institutions in Utah have expressed a concern about the practicality of the 24 hours notice, as stated in the CASA bill. I am interested to know how feasible this timeline is, and if there is a more practicable timeline?

Answer 3. Know Your IX believes the 24-hour notice timeline is reasonable, given the timely nature of cases of gender-based violence and the availability of digital notification tools.

SENATOR MURKOWSKI

Question 1. The Campus Accountability and Safety Act (CASA) would require an institution to provide a confidential advisor to an assault victim. This is intended to provide support and resources to the victim in a way that will provide the victim with a sense of safety and control, which is laudatory. I am concerned, however, about provisions in CASA that specifically state a confidential advisor is not obligated to report crimes to the institution and that any requests for accommodation the Advisor makes on behalf of a student "shall not trigger an investigation by the institution". These provisions seem to conflict with the institutions' moral and legal obligation under title IX to ensure that a campus is safe for all students. Keeping information about a crime secret and prohibiting an investigation could lead to an increased risk for other students as well as lead to liability for the institution should the perpetrator harm additional students. What changes do you recommend, to CASA, title IX, or both, to reconcile this conflict?

Answer 1. Title IX already grants a number of university personnel (such as clergy) confidentiality in order to ensure that students can access vital services and support. In order to reconcile the potential conflict identified here, the confidential advisors should be explicitly included in the protected class of school employees. However, it is *essential* that staff and service providers in these protected roles still be required to report anonymized aggregate data for the purposes of the annual Clery report.[6] Since most survivors only report to confidential resources, accurate Clery data helps schools and students understand the scope of the problem and whether survivors are accessing essential resources.

Moreover, it is extremely difficult to investigate a report if a survivor is unwilling to fully participate in an investigation. Campus safety and accountability for serial perpetrators requires survivors to come forward, report violence, and actively participate in an investigation—which is best facilitated by an environment in which survivors feel in control of their report, are provided with necessary medical and mental health resources, and can freely choose to move forward with a disciplinary proceeding. A system that forces survivors into investigations against their will will only make survivors hesitant to reach out to confidential resources for counseling, for medical care, or with questions about their rights under a disciplinary process. Therefore, eliminating confidential reporting will make campuses *less* safe by preventing students from confidentially discussing their reporting options with advisors and seeking potentially life-saving medical care like HIV Post-exposure Prophylaxis (HIV PEP). Overall, OCR's guidance in its 2014 Questions and Answers on Title IX and Sexual Violence document strikes the appropriate balance on this matter.

Question 2. Experts consulted by the University of Alaska have consistently stated that the best way to get absolutely accurate results on a campus survey about sexual assault is to assure absolute confidentiality and to prohibit publishing the results. This promotes higher response rates and allows the institution to respond to gaps, concerns, and problems in campus safety issues. CASA advocates suggest that a homogenous survey, the results of which are published, will assist the consumer in making educated choices. Data suggests that few prospective students, their families, or enrolled students review campus crime statistics. Do you agree that the campus surveys should be used for institutional improvement of policies and practices rather than as a consumer tool? Why or why not? Do you recommend that if institutions are required to use a survey developed by the Department that individual institutions should be able to delete questions that are locally or culturally inappropriate? Should there be two surveys' one developed by the Department of Education and used as a consumer tool and one developed by an institution and used only to improve internal practices and policies?

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[6] For a model policy, *see https://www.notalone.gov/assets/reporting-confidentiality-policy.pdf* ("Other employees may talk to a victim in confidence, and generally only report to the college that an incident occurred without revealing any personally identifying information. Disclosures to these employees will not trigger a college investigation into an incident against the victim's wishes").

Answer 2. Know Your IX believes it is imperative that schools be required to publish the results of campus climate surveys, in order to boost campus transparency.

For too long, colleges have been allowed to operate behind a curtain of impunity. We receive questions from prospective students and their families all the time, who want to learn how to recognize that a school is safe, or where they can find information about a specific school they are considering. Many people do not consult campus crime logs because it is widely known that sexual assault is a severely under-reported crime, and the number of reported assaults reveals little about actual student safety issues. Further, campus crime logs indicate only the number of instances reported to campus officials; they do not include any information about how the school handled those reports, whether the perpetrator was a student, whether the survivor was able to access resources, how it affected their campus experience, and other important information.

The purpose of campus climate surveys is twofold: first, to allow administrators and off-campus policymakers to assess the particular experiences of students at each institution to inform policy change, and second, to give students, families, advocates, and policymakers access to information about the campus climate, which can inform decisions about where to attend school and enable stakeholders to hold school administrations accountable. In order for campus climate surveys to be effective in increasing transparency and giving community members the necessary information to hold schools accountable, it is essential that the results of climate surveys be published.

Know Your IX recommends either a department-designed survey that allows schools to add additional questions, or a baseline set of required questions and topics areas that schools can customize for various populations. The survey models should be designed with substantial input from expert research, student activists and advocates, and representatives from schools and service providers. This will ensure both the flexibility necessary to explore specific local concerns and the consistency necessary to produce useful results. The climate surveys should help students, families, policymakers, and service providers compare and contrast individual schools and to understand the scope and dynamics of sexual assault issues on a national level.

From the research perspective, we need to ensure there is consistency between the questions asked on each campus to make these kinds of comparisons and generalizations possible. The results should be released by each school, with careful precautions taken not to reveal any student's identifying information. Schools should be required to advertise the survey aggressively and meet a certain level of student participation in order to ensure sufficient information is collected.

In addition to campus climate surveys, the mandated release of aggregate, anonymized data regarding how reports of gender-based violence and harassment are handled on campus would greatly improve transparency. Moreover, while schools are now required to implement prevention programs and adopt more comprehensive response policies, there are few, if any, legislative mandates requiring schools to evaluate or release information about the effectiveness of their prevention programs or how they actually handle reports of sexual violence in practice. Without clear and enforceable requirements for transparency and accountability, these changes are doomed to be little more than cosmetic. To protect all students, we need legislation that includes clear, comprehensive, and public requirements for more transparent campus processes.

The data should include several pieces:

1. A requirement that schools evaluate the effectiveness of their prevention programs and release that information to the public;
2. A requirement that schools conduct annual campus climate surveys and publish the cumulative data on the effectiveness of their methods in both reducing incidences and increasing reporting; and
3. A requirement that schools annually release aggregate, anonymized data on the adjudication process for reports of gender-based violence. This data should include the number of reports filed, the number of investigations opened, the policy violation(s) alleged, the determination made, the sanctions imposed, any changes made to the determinations or sanctions as a result of an appeal, and the length of each case. This will help ensure that students, parents, and policymakers understand what the adjudication process in a given school actually looks like in practice and evaluate whether the school officials' actions are consistent with their own written policies, existing laws and guidance from governmental bodies, and the ethical standards of individual stakeholders like parents of students or faculty members.

Mandating increased transparency is a feasible project: In July 2015, New York State passed a law that will require every college and university in the State to re-

lease to the State Education Department data about reports of domestic violence, dating violence, stalking, or sexual assault.[7] This will include the total number of reports received, open and closed investigations, outcomes of such investigations, and penalties imposed on perpetrators.

Without robust and carefully constructed requirements for transparency and accountability, schools will be free to continue violating the law and their own policies with impunity, harming both survivors of violence and accused students. It is essential that policymakers advance legislative solutions requiring increased transparency from schools immediately; the safety of all students is at stake.

Question 3. CASA requires that institutions develop Memorandums of Understanding with each law enforcement agency that has jurisdiction. Many institutions, including public and private institutions, have developed significant e-learning opportunities for their students who may never attend classes on campus. This CASA requirement is viewed by those institutions, therefore, as fatally vague and unworkable. Do you agree, if so, do you have suggestions for addressing this concern?

Answer 3. Know Your IX shares this concern. To resolve it, we suggest that the requirement be modified to have schools develop MOUs with the law enforcement agencies that are reasonably likely to have jurisdiction over cases based on where large numbers of students live. We do not believe schools should be held to a standard where they must negotiate hundreds of MOUs to cover e-learning opportunities.

Question 4. Several witnesses spoke to the complexity of compliance with Clery and Title IX. Adoption of the CASA provisions would add additional requirements and complexity. Looking at the issue of campus safety as a whole, would you recommend that the committee completely re-write institutional responsibilities across Clery, Title IX, VAWA, and CASA in order to reduce complexity, increase crime reporting and transparency, and provide for the rights of all students to a safe campus on which to gain an education? If so, what specific suggestions do you have for the committee?

Answer 4. Know Your IX strongly discourages the committee from completely rewriting institutional responsibilities under the Clery Act, Title IX, the Violence Against Women Act (VAWA), and CASA. As Campus SaVE was only recently passed in 2013, the Department of Education has just issued new regulations around the legislation. Completely revising existing law would lead to widespread confusion and further delays for survivors, as schools have already taken significant steps to implement procedures to comply with current regulations. On the whole, we believe that current laws and regulations need stronger Federal enforcement, not revision. Congress can provide more support to students by:

- Increasing funding for the Department of Education's Office for Civil Rights (OCR). OCR, which is the Federal agency primarily responsible for ensuring that schools are compliant with title IX and other civil rights laws, is grossly underfunded and understaffed. Increased funding would allow OCR to provide additional technical assistance to schools on how to enter into compliance with the Clery Act, Title IX, and VAWA; better disseminate information to students about their rights and how to access them; and improve campus safety by ensuring timely investigations, as well as continued monitoring, guidance, and support to schools in the months and years ahead.
- Empowering OCR to issue fines for civil rights violations. Providing OCR with the explicit authority to levy fines would give the agency the increased leverage necessary to hold schools accountable, without devastating programming and aid for students in the process. Crucially, this authority must be available for the Department to enforce *all* relevant civil rights laws to ensure that students are free from all forms of discrimination, including those based on race and disability as well as sex.
- Increasing campus transparency. There are strong perverse incentives for schools to sweep violence under the rug, as discussed above. To counteract the potential negative reputational consequences that schools that encourage survivors to report may face, Congress should mandate that schools conduct campus climate surveys and publish their results publicly. This step would provide valuable information to students and their families, and would increase incentives for schools to appropriately address violence. Schools should also be required to publish aggregate, non-identifying statistics on the sanctions assigned in disciplinary cases and further information (listed in detail on page 18), which would provide greater insight into whether or not disciplinary proceedings are being handled promptly and equitably.

[7] *NYA08244/2015–2016/General Assembly.* (2015, June 17). *LegiScan.* Retrieved August 30, 2015, from *https://legiscan.com/NY/bill/A08244/2015.*

This step will help ensure that students, parents, and policymakers can evaluate and compare how each school responds to complaints of gender-based violence in practice, not just on paper.

Question 5. I have received concerns from students who have been accused of sexual assault on campus and their parents. They tell me their rights to a fair hearing were not respected. Complaints included that as the accused, they were not informed of their rights under the institution's hearing policies, that the victim was provided more robust counsel by the university, and that they were denied the right to question their accuser and witnesses. CASA requires institutions to provide certain information about process to both the victim and the accused but leaves to the institution to follow their own policies for conducting investigations and hearings. Can this section be improved? Should the committee mandate that institutions follow basic policies and procedures? If so, please provide specific suggestions.

Answer 5. Survivors and accused students alike report feeling that they did not receive a fair hearing. Know Your IX recognizes that the success of campus disciplinary procedures depends on their fairness to all parties involved.

Know Your IX has called on college and university presidents to ensure procedural rights for both parties, the accused and the victim.[8] These rights are already permitted or required by existing law and guidance, and we affirm OCR's responsibility to ensure their protection in practice. Procedural rights should include:

- The right to timely and clear notice in writing of the allegations, parties' rights and responsibilities (under both school policy and law), procedural updates, and the final determination;
- The right to review all materials used in the investigation and hearing with adequate time to consider and respond;
- The right to guidance from a trained advocate during the investigation and hearing process;
- The right to submit evidence and recommend witnesses and questions for the other party to decisionmakers, and the right to notification and explanation if these recommendations are declined;
- The right to be heard by neutral decisionmakers with professional expertise;
- The right to a safe and sensitive investigation and hearing;
- The right not to self-incriminate if criminal charges are possible or pending;
- The right to an explanation in writing for the final decision;
- The right to fair and proportionate sanctions; and
- The right to internal administrative appeal heard by a panel.

SENATOR WHITEHOUSE

Question 1. In the context of campus sexual assault, campus investigations and law enforcement investigations can sometimes work at cross purposes. How can we disentangle the campus and law enforcement investigations so that one does not impede the other?

Answer 1. It is important to remember that the title IX process and the criminal process seek to address different aspects of the impact of violence: the criminal process aims to respond to rape as a crime, while the title IX process aims to address rape as a civil rights violation and a potential barrier to education. Accordingly, administrators and police have different roles and responsibilities. Training for campus administrators, campus police, local law enforcement, and advocates on the distinctions between these two processes will ensure a better experience for everyone, especially the victim.

Question 2. In the context of domestic violence, law enforcement officers have become better qualified to address the needs of victims by drawing on the expertise of advocacy groups and experts. How can we best support the law enforcement community so that officers are similarly well-trained to assist survivors of campus sexual assault?

Answer 2. Officers should be trained in trauma-informed investigatory methods, should be familiar with the campus offices that assist survivors in accessing the accommodations they need to stay in school, and should undergo implicit bias training to ensure they do not discriminate against survivors on the basis of gender identity, race/ethnicity, disability, and sexual orientation.

That said, the United States has poured millions of dollars into law enforcement and prosecutor training over the past two decades, and the system is *still* failing

[8] Know Your IX. (2015). Letter to University Presidents on Fair Process. Retrieved from *http://knowyourix.org/fair-process/*.

survivors. Increased training and support for law enforcement officers is not sufficient to eliminate bias in policing. Many victims continue to fear re-victimization or misconduct on the part of law enforcement, as officers routinely refuse to investigate reported cases[9] and neglect to pass rape kits on to crime laboratories for testing.[10] There are currently few mechanisms in place to address these concerns. Congress should authorize increased appropriations to the Department of Justice for the purpose of investigating local law enforcement practices that may violate civil rights statutes like title IX. Individual departments should regularly provide data on their handling of rape and sexual assault cases to the Department of Justice (currently, compliance is optional) and establish clear procedures to sanction officers who discriminate against survivors.

Question 3. Many survivors fear that they may lose control over campus sexual assault proceedings if law enforcement gets involved early. What can we do to inform students about the course of a law enforcement investigation, so they can make an informed choice about how to proceed?

Answer 3. Campuses must make clear that no information about specific cases will be shared with law enforcement without the full, informed consent of the survivor who comes forward. Without such a policy clearly in place, many survivors simply will not report at all.

All students who report, whether formally or to service providers like counselors and clergy, should be referred to a confidential advisor either employed by the school or connected via an MOU with a local rape crisis center or community organization that specializes in supporting survivors of sexual and domestic violence. Survivor advocates should be confidential resources,[11] responsible for informing survivors of their rights and obligations within both the campus disciplinary and the criminal justice system, and obligated not to unduly pressure survivors to choose a particular reporting option. Students should be informed, in writing, that they have the opportunity to report to law enforcement at any time and schools should create clear, uniform procedures by which a survivor can indicate that they consent to sharing information with law enforcement.

If a survivor wishes to move forward with a law enforcement investigation, campus administrators or survivor advocates should offer to arrange a meeting with a dedicated SVU unit or an officer who is otherwise specifically trained to respond to sexual and domestic violence, rather than a patrol officer without specialized experience in gender-based violence. This initial statement could be shared—only per the victim's consent—with local law enforcement, so that survivors are not asked to retell their traumatizing experience over and over again.

Question 4. Absent the concern of loss of control (perceived or otherwise) by the survivor, are there reasons that experienced, trauma-informed, sensitive, effective law enforcement should not be involved at early stages of an investigation?

Answer 4. Respecting victims' fear of loss of control over an investigative process is just one reason of many to preclude law enforcement involvement if a victim does not consent to it. Survivors tell Know Your IX again and again that, were their campus to turn reports over to law enforcement without their consent, they would have reported to no one at all.[12] Many queer and transgender survivors, survivors of color, and survivors from other heavily policed communities say they would be particularly unlikely to report, due to fear of additional interaction with and violence from the criminal justice system. Similarly, undocumented student survivors report fearing initiation of deportation proceedings as a result of coming forward. For survivors who were assaulted by a police officer or a family member of a police officer, turning to law enforcement simply is not a safe option.

If survivors do not report to campus officials due to fear of law enforcement involvement, they will lose many of the title IX-mandated services and accommodations to which they are entitled, such as free counseling services, academic tutoring, housing changes, no-penalty course withdrawals, and access to disciplinary proceedings. Without these supports, many survivors will see their grades plummet, lose scholarships, or be forced to drop out of school altogether. To put it simply: Sur-

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[9] Police Executive Research Forum. (2012). *Improving the Police Response to Sexual Assault.* Retrieved from *http://www.policeforum.org/assets/docs/Critical_Issues_Series/improving%20the%20police%20response%20to%20 sexual%20assault%202012.pdf.*

[10] End the Backlog. (n.d.). Why the Backlog Exists. Retrieved from *http://www.endthebacklog.org/backlog/why_backlog-exists.*

[11] However, these confidential advocates should still be required to disclose non-identifying information as part of a college's annual Clery reporting.

[12] Know Your IX, & National Alliance to End Sexual Violence. (2015). Ask Survivors Survey Results. Retrieved from *http://knowyourix.org/ask-survivors/.*

vivors need title IX's protections—and to feel safe accessing them—in order to stay in school, and this requires that campus disciplinary processes remain separate and independent from the law enforcement system.

SENATOR CASEY

Question 1. Like many of the witnesses, you have discussed your desire to see campus climate surveys conducted so that we can gain a better picture of what's happening on individual college campuses and nationally. What do you think are the most important questions to ask in a campus climate survey?

Answer 1. Campus climate surveys are an essential tool for evaluating the prevalence and particular dynamics of gender-based violence on college campuses and assessing an individual school's specific needs and challenges. An effective, comprehensive climate survey will include questions that do the following:[13]

- Assess whether the participant understands the definitions of behaviors considered gender-based violence and related terms (sexual assault, rape, consent, harassment, coercion, stalking, dating violence, domestic violence, etc.);
- Assess whether the participant knows the school's policies on gender-based violence and harassment;
- Assess whether the participant knows how and where to report incidents of gender-based violence on campus;
- Evaluate the participant's perception of the reporting and adjudication process (i.e., "Do you have confidence that your school handles reports of sexual assault fairly? Swiftly");
- Determine whether the participant received effective prevention education, and otherwise evaluate how and where students are receiving information about sexual assault;
- Assess the participant's perception of how often sexual assault, dating violence, stalking, and other related behaviors occur on campus;
- Assess whether the participant has suffered or committed any actions that violate sexual misconduct policies. (It is critical to ask about the behaviors through literal description rather than by labeling them "rape" or "abuse", as research indicates that perpetrators of violence frequently fail to label their own actions as "rape" or "abuse" even when their actions fall within the definitions. For example, a question might ask, "Have you ever touched someone sexually while they were asleep or passed out?" rather than "Have you ever sexually assaulted someone?");
- Assess whether the participant reported violence they experienced to the school;
  - If YES, evaluate their experience with the disciplinary process;
  - If NO, determine why not;
- Determine whether perpetrators are peers, faculty members, staff members, strangers, or unknown to the victim;
- Evaluate the participant's understanding of consent and incapacitation due to drugs and alcohol;
- Assess whether the participant knows where and how to access resources for survivors of gender-based violence, such as a campus rape crisis center, medical provider, or counselor;
- Assess whether the participant knows where and how to access accommodations and interim measures following an experience of gender-based violence;
- Assess whether the participant knows which of the available resources can be accessed confidentially and without filing a report;
- Evaluate the participant's perception of and trust in available crisis resources;
- Assess whether the participant has used available campus resources; and
- Assess the participants' involvement in various campus community organizations including athletics and Greek life.

It is essential that schools be required to publish the results of campus climate surveys. Allowing schools to keep such information private deprives policymakers and service providers of vital information necessary to address the issue, and students and their families of information they need to make key decisions about student safety.

In order to further increase transparency, schools should be required to release aggregate, anonymized data on how reports of gender-based violence and harassment are handled on campus. While schools are now required to implement prevention programs and adopt more comprehensive response policies, there are few, if any, legislative mandates requiring schools to evaluate or release information about the effectiveness of their prevention programs or how they actually handle reports

[13] Many of these points will require multiple questions.

of sexual violence in practice. Without clear and enforceable requirements for transparency and accountability, these changes are doomed to be little more than cosmetic.

To protect all students, Congress should issue clear, comprehensive, and public requirements for more transparent campus processes, including:

1. A requirement that schools evaluate the effectiveness of their prevention programs and release that information to the public;
2. A requirement that schools conduct annual campus climate surveys and publish the cumulative data on the effectiveness of their methods in both reducing incidences and increasing reporting;
3. A requirement that schools annually release aggregate, anonymized data on the adjudication process for reports of gender-based violence. This data should include the number of reports filed, the number of investigations opened, the policy violation(s) alleged, the determination made, the sanctions imposed, any changes made to the determinations or sanctions as a result of an appeal, and the length of each case. This will help ensure that students, parents, and policymakers understand what the adjudication process in a given school actually looks like in practice and evaluate whether the school officials' actions are consistent with their own written policies, existing laws and guidance from governmental bodies, and the ethical standards of individual stakeholders like parents of students or faculty members.

Mandating increased transparency is entirely feasible: In July 2015, New York State passed a law that requires every college and university in the State to release to the State Education Department data about reports of domestic violence, dating violence, stalking, or sexual assault. This will include the total number of reports received, open and closed investigations, outcomes of such investigations, and penalties imposed on perpetrators.

Without robust and carefully constructed requirements for transparency and accountability, schools will be free to continue violating the law and their own policies with impunity, harming both survivors of violence and accused students. It is essential that policymakers advance legislative solutions requiring increased transparency from schools immediately; the safety of all students is at stake.

RESPONSE BY DOLORES A. STAFFORD TO QUESTIONS OF SENATOR ALEXANDER, SENATOR HATCH, SENATOR MURKOWSKI, SENATOR WHITEHOUSE, AND SENATOR CASEY

Thank you for the opportunity to provide additional information and clarify my written and oral testimony for the committee's record. I greatly appreciate the opportunity to continue my engagement with the HELP Committee and respond to your thoughtful and timely questions.

SENATOR ALEXANDER

Question 1. Do you have specific suggestions about how Title IX and the Clery Act, including their implementing regulations and guidance, can be improved and/or clarified to provide institutions of higher education the flexibility they need?

Are there areas where these laws, regulations, or guidance conflict?

Are there areas where they are duplicative?

Answer 1. As I mentioned in my testimony, title IX's indelible influence can be seen throughout the VAWA Amendments. Many of the new requirements under Clery have been adapted, often wholesale, from pre-existing title IX sub-regulatory guidance and elevated to VAWA's implementing regulations such that they carry the force of law under the Clery Act. This is perhaps most apparent when considering the new procedures institutions must implement as it relates to managing allegations of Domestic Violence, Dating Violence, Sexual Assault and Stalking. For example, personnel involved in the investigation or resolution of sexual assault/sexual violence complaints are expected to have sufficient training to perform these functions, and decisionmakers may not have a conflict of interest that would undermine their impartiality. Both laws compel institutions to adopt equitable resolution procedures that, among other things, establish reasonably prompt timeframes for the major steps of the procedures and that provide each party with an equal opportunity to:

- participate in the proceedings;
- have timely access to information that will be used during the proceedings;
- have the same opportunities to be accompanied by an advisor;
- receive contemporaneous written notification of the outcome of the proceedings;
- have the same opportunity to appeal the results of the proceedings, if any appeal option exists; and

• be apprised of the final results of any appeal.

These examples are not exhaustive but rather a sampling of how inextricably linked Title IX and the Clery Act have become with the passage of the VAWA Amendments.

That said, I would strongly urge the HELP Committee to initiate a task force, made up of higher education industry and association leaders, to examine areas of duplication and actual or perceived conflict between these laws. A comprehensive, top-to-bottom review of each law, their regulations, and associated sub-regulatory guidance would yield important insights about areas in which the laws could be improved, clarified or streamlined. Including a variety of experts from practitioner associations such as the National Association of Clery Compliance Officers and Professionals (NACCOP), the Association for Student Conduct Administration (ASCA) and the Association of Title IX Administrators (ATIXA) would be crucial to ensuring that the review of these laws benefits from boots-on-the ground practitioners and industry experts to ensure exhaustive treatment of these issues. From there, Congress can consider the task force's analysis and related recommendations for enhancing the law. NACCOP would welcome the opportunity to participate in and/or lead such a task force.

Question 2. Do you have suggestions about how institutions of higher education can best coordinate with law enforcement without turning the institutions into *de facto* law enforcement agencies?

Answer 2. How, when or if a campus law enforcement unit notifies a local municipal agency is impacted by a variety of factors, including the lawful source of authority from which campus police/public safety's personnel derive their police or public safety powers (typically, this is governed by State statute or regulation). However, most institutions, whether they have sworn police officers or non-sworn public safety officers, are already coordinating with local law enforcement agencies when serious crimes are reported to campus police/public safety agencies. Typically this coordination is triggered by a victim[1] expressing a desire to press criminal charges and the institution assisting the victim in pursuing that avenue.

Most campuses already have processes and procedures in place for coordinating with local law enforcement, whether memorialized or not in an official memorandum of understanding. I would suggest that institutions be given discretion to determine how best to coordinate with local law enforcement agencies based on applicable State-governed enforcement and jurisdiction, arrest and enforcement authority, and relationships with the local law enforcement agency. I would *not* recommend that institutions be compelled to contact local law enforcement as a matter of policy or law, especially in instances for which contact with the local law enforcement agency would be against the wishes of the victim. I have personally assisted hundreds of victims of sexual assault in my role as founder and supervisor of the Sexual Assault Response Team at the George Washington University and I can tell you first hand that forcing a victim to talk to or report an incident to law enforcement (campus or local) against their wishes only serves to re-victimize them.

Question 3. Do you have suggestions about what we can do, or not do, to make sure colleges establish procedures dealing with allegations of sexual assault that are fair and protect the due process rights of the accuser and the accused?

Answer 3. Campuses are already required to provide prompt, fair and impartial proceedings per the VAWA Amendments to the Clery Act. However, the foundation for any of the committee's future efforts should be to focus on equity. Namely, the procedural protections should be equitable for all parties, and should include:

• An accessible and easily understandable policy on sexual violence.

• An accessible summary of the rights/procedural protections for both the accuser and accused.

• The opportunity for the accuser, the accused, and their advisors to ask questions about the investigation & resolution processes during an initial meeting with any official involved in the investigation or resolution process prior to the accuser or accused sharing any information about the incident(s) in question.

• Interviews, hearings, and review of appeals should be conducted by persons trained to facilitate the most effective and fair investigation and resolution procedures, which includes asking questions in ways that solicit information and participation by the complainant and the respondent. This includes best practices in student conduct, cultural differences and how they affect communication, and the specific experiences relevant to both complainants and respondents that may affect how

[1] The terms victim and survivor are used interchangeably throughout this document, though I recognize not all victims identify as survivors.

they present themselves or information in an investigation or hearing. For complainants, this includes learning how trauma impacts the physical and neurobiological responses of victims of acts of sexual violence. For respondents, this includes due process/procedural protections, the implications of participating in a student conduct process if criminal charges are also pending, and an understanding of defense mechanisms and how they may affect communication.

- A description of any restrictions regarding the extent to which an advisor may participate in the proceedings, and a statement that the restrictions apply equally to both parties. Restrictions should include a limitation prohibiting advisors from sharing information, or to ask or answer questions on behalf of a student.
- Use of the preponderance of the evidence standard.
- Maintain that both parties must be offered an opportunity to explain what occurred from their perspective, to review all information that the adjudicator(s) will use in making decisions about findings of responsibility and/or sanctions, and to respond to that information.
- Provide an opportunity for both parties to appeal based on specified criteria such as new information not available at the time of the hearing or procedural error which would significantly alter the outcome.

The aforementioned information, if required to be disclosed by the institution (in the Annual Security Report, institutional policies, or both) would help to ensure that campuses send a strong message to all parties that they will preserve rights and protections for both the accuser and the accused in the disciplinary process.

With respect to what the committee should not do in this area, I would strongly discourage the committee from attempting to legislate the forum of resolution used by campuses to address sexual violence complaints. Campuses employ a variety of resolution options, such as hearing boards, civil rights investigations, or single-person adjudicators, and these forms of resolution are informed by the institution's resources, student culture, and the volume and nature of cases. I would also discourage the committee from attempting to direct details related to how the disciplinary process is carried out, such as establishing additional timelines or methods of communicating with the parties. Finally, I would continue the practice of articulating topics to be addressed in training without directing how that training is to be carried out or for what duration.

I would also encourage the committee to consider requiring institutions/systems to conduct an external review of their sexual violence resolution procedures and publicize the findings to their campus communities, along with any plans for improvement (perhaps the first review occurs by Fall 2017, then every 3 years thereafter). Such a review would be consistent with the existing requirement for institutions to conduct a biennial review of their drug and alcohol abuse prevention programs under the Drug-Free Schools and Communities Act of 1989. Institutions could also be required to provide a means to allow any participant in the sexual violence resolution process to provide feedback to the institution about their experience in the process to the office responsible for the process (i.e., continual quality improvement). This information could be considered in the institution's external review of its sexual violence resolution procedures. Both of these measures serve to ensure that the institution is considering both best practices beyond the institution as well as the student experience at the institution itself.

Question 4. Are there requirements in the Clery Act that you believe could be clarified or eliminated so institutions are not spending unnecessary time on paperwork?

Answer 4. The most notable Clery Act requirement that could be eliminated is the requirement to collect and disclose crime statistics for foreign short-term use locations of U.S. institutions. As described in my testimony, this interpretation of crime reporting requirements by the Campus Safety Helpdesk[2] has left institutions with little choice but to develop elaborate systems to track all locations where the institution sends students as part of education abroad activities and write each local law enforcement agency at those locations to request crime statistics. In some instances, this results in campuses sending tens or hundreds of letters to foreign law enforcement officials which frequently are ignored and divert important human and fiscal resources that could otherwise be invested in promoting *campus* safety. The crime definitions used by the Clery Act often do not apply to laws of the foreign countries, thus if information is received in response to a request, it is often not clear that the incident being reported meets the U.S. definition of the crime. Furthermore,

[2] The Campus Safety Helpdesk provides compliance guidance to institutions of higher education subject to the Clery Act and is operated on behalf of the Department of Education by a Federal contractor.

even when campuses do receive responses from law enforcement agencies, these statistics are combined into a single statistic category for the noncampus geography, which provides the consumer with virtually no useful information about where in the world the crime occurred. It is hard to imagine this was the intent of Congress when the law and its amendments were passed.

For those noncampus locations in the United States, Congress could greatly clarify the requirement to collect and disclose crime statistics for these locations by developing a bright-line standard that would assist institutions in determining whether a particular location is "frequently used by students" for the purposes of adhering to the Noncampus definition. We've seen correspondence from the Campus Safety help desk that says "frequently used by students, i.e. more than one night" as an example. I would recommend that a suitable standard be adopted (such as 14 or more days)[3] of usage within a calendar year would be of sufficient duration to indicate "frequent" use by students. Currently, the usage of a location more than once is deemed to be "repeated use" and countable (ex., a hotel used one night by the softball team for a game and then used the following month by the baseball team for one night would currently fall under the repeated use standard). There is currently no bright line standard regarding repeated use when the same location is used more than once (ex., if a location is used once a year versus if a location that is used every other year). It is not clear when the repetition begins and ends. If a suitable standard as identified above were used to clarify "frequently used by students," the repeated use standard could be eliminated, thus dramatically simplifying this issue.

For example, it would not matter if the location was used 14 days in a row or 14 days throughout the year: once a location meets this threshold, it would be countable. This type of solution would provide clarity around an issue that is incredibly challenging, causes a great deal of administrative work and provides information that is not useful, as it is placed in a general noncampus category in the statistics and the consumer does not know where the crime occurred.

Question 5. Does the Department of Education ever impose new requirements on institutions that are not in regulations? If so, please provide examples.

Answer 5. Yes, usually in the form of sub-regulatory guidance delivered in the form of a Dear Colleague Letter or, in the case of the Clery Act, via the Handbook for Campus Safety and Security Reporting. For example, the title IX regulations (34 C.F.R. §106.1 *et seq.*) do not identify a standard of evidence to which campuses must adhere when determining whether a respondent has engaged in prohibited sexual harassment. However, the Dear Colleague Letter on Sexual Violence (April 4, 2011) indicated that "in order for a school's grievance procedures to be consistent with title IX standards, the school must use a preponderance of the evidence standard" (p. 11).

Another example described in my testimony relates to the requirement to publish all crimes occurring in a single incident in the Daily Crime Log. The Department indicated in the 2011 *Handbook for Campus Safety and Security Reporting* that the Daily Crime Log requires all crimes occurring in a single incident to be disclosed on the Daily Crime Log. This practice runs contrary to how crime statistics are compiled and reported annually for which the "Hierarchy Rule" commands that only the most serious crime reported in the incident be disclosed when multiple crimes are reported (with some notable exceptions, such as Arsons and Hate Crimes).

The original Daily Crime Log requirement was the result of the 1998 Amendment to the Clery Act and was addressed in the Department's initial *Handbook for Campus Crime Reporting*, published in 2005. However, it was not until 2011 in the revised Handbook that the Department stated—for the first time—that all crimes occurring in a single incident are to be recorded in the log and therefore the Hierarchy Rule does not apply to the log. By that point, many campuses had made significant financial investments in electronic records management systems that were designed to implement the Hierarchy Rule when producing the Daily Crime Log, unknowingly in contravention to the Department's previously unspoken expectations. Neither the statute, the implementing regulations nor prior sub-regulatory guidance had ever alerted campuses to this distinction, but the Department took it upon itself to create this rule when it published the revised Handbook 13 years after the requirement went into effect.

[3] I am not wedded to 14 days as the bright line standard, but I do believe the number of days should be significant enough that it would not be considered transient use by a reasonable person.

This recommendation is also echoed in the report issued by the Task Force on Government Regulation in Higher Education, initiated by the Senate HELP Committee, which noted that,

> "The definition of 'noncampus property' should be clarified and narrowed to focus more directly on property that is a core part of a college or university. At a minimum, it should exclude all foreign locations as well as short-term stays in domestic hotels" (p. 38).

It is my observation that the Department of Education sometimes imposes what could be considered new requirements not enumerated in the regulations when regulations are vague. Specificity in the law and in the regulations themselves can help keep regulatory compliance in check with Congress's intent.

Question 6. Do you believe there are ways the Department of Education can improve the negotiated rulemaking process?

Answer 6. I have participated in the negotiated rulemaking process as both a primary negotiator (1999 and 2009) and, most recently, voted in by the committee as an advisor (2014). Overall I have found the process to be effective. However, one limitation of the current approach is that the Department of Education solicits categories of potential negotiators which do not account for all relevant categories of stakeholders. For example, while the Department's call for negotiators mentioned organizations or groups representing lesbian, gay, bisexual, and transgendered students; male students; female students; minority students; and students with disabilities, as well as victims' and human rights organizations, title IX advocacy groups, and anti-defamation groups, the Department inadvertently (we assume) omitted professional associations whose members are primarily responsible for complying with existing and proposed regulations. This oversight may have been because associations specifically representing Clery Act and title IX practitioners didn't exist prior to the 2009 negotiated rulemaking process. One such group is the National Association of Clery Compliance Officers and Professionals (NACCOP), which represents Clery compliance practitioners and has considerable expertise in the law. In the future, I would encourage the Department to make specific mention in the call for nominations of organizations whose members are involved in day-to-day compliance efforts beyond those constituencies already mentioned in the call for negotiators.

Question 7. In your experience as a former campus Chief of Police, is campus law enforcement going to need different support from local law enforcement when it comes to investigating sexual assault than an institution that does not have sworn police officers on campus?

Do you think the Campus Accountability and Safety Act allows for these differences as drafted or are their changes to the legislation we should consider?

Answer 7. As I mentioned in my answer to Question 2, campus agencies will need different support depending upon their enforcement and arrest authority and the scope of their jurisdiction. CASA does not take into consideration differences in these factors as they exist among campus police/public safety agencies. CASA, as currently written, would require campuses to enter into a memorandum of understanding (MOU) with "each law enforcement agency that has jurisdiction to report as a first responder to a campus of the institution." This provision would appear to force a campus that has a sworn law enforcement agency with primary jurisdiction on the campus to enter into an MOU with another law enforcement agency that does not have primary jurisdiction. If CASA cannot force municipal and State agencies to come to the table with campuses to actually develop mutually beneficial MOUs, then CASA should strongly *recommend* (but not require) campuses to pursue an MOU if they have not done so already with the local law enforcement agency. Furthermore, the proposed process for obtaining a waiver is onerous and unnecessary. Campuses should not have to prove they can't get an MOU with the local agency, and to pursue one after a local agency expresses their disinterest in the name of complying with a Federal law applicable only to the campus is likely to harm, rather than enhance, relationships with the local agency. Furthermore, the waiver is burdensome to both the Department of Education and the Department of Justice, each of whom will have to develop policies and protocols for receiving and reviewing requests and/or how, if at all, the Department of Justice will followup with local law enforcement agencies who refuse to enter into any agreements (CASA is silent as to what authority DOJ has to provide a remedy for a municipal agency's refusal to enter into such an agreement). The additional funding and time that would be required by those agencies to manage the process of reviewing and maintaining thousands of waivers could no doubt, be better spent assisting campuses in coming into compliance.

If the committee decides to impose a mandatory MOU, I strongly encourage the committee to provide an exemption for sworn campus agencies so they do not have to enter into an MOU with another sworn agency when the campus agency already has primary jurisdiction to respond to crimes on the campus.

Question 8. You and your colleagues are the people on the ground that will have to implement parts of the Campus Accountability and Safety Act if it's made law. Do you have any suggested changes to the bill to make implementation as practical as possible?

Answer 8. In addition to recommendations expressed in other answers regarding confidential advisors and the MOU with local agencies, we would suggest that the Department of Education's requirement (per CASA) to provide via a website all pending investigations, enforcement actions, letters of finding, final resolutions and voluntary resolution agreements for all complaints and compliance reviews under title IX be extended to include all pending and completed reviews conducted by the U.S. Department of Education, Federal Student Aid office (including media reviews, general program reviews pertaining to Federal student aid programs, campus security focused reviews, FBI UCR program reviews conducted by the FBI Criminal Justice Information Services division, etc.). This sort of transparency is just as important for the Clery Act as it is title IX, but CASA fails to extend these transparency and disclosure requirements to both laws.

SENATOR HATCH

Question 1. We have heard from several community colleges in Utah regarding the "confidential advisor" aspect of the CASA bill. They are concerned about the undue burden that might arise by tying the number of advisors to the number of students. On average, non-residential campuses, like community colleges, have fewer incidents of sexual assault cases reported than residential campuses. Because the numbers of incidents vary based on the type of institution, should we tie the number of advisers for a campus based on the number of incidents reported, rather than student body?

Answer 1. The answer to this important question is best addressed by the negotiated rulemaking process that the legislation would require. This would give all stakeholders an opportunity to provide input into this requirement and discuss the implications of various approaches.

As you know, the current CASA legislation requires institutions to designate one or more confidential advisors. The legislation further indicates that the appropriate number of advisors for an institution will be determined based on its size and through a negotiated rulemaking process. I recommend eliminating the "based on its size" language in the current legislation (page 25, line 2) to give the negotiated rulemaking committee the flexibility it needs to address the diversity of institutions and determine what criteria should be considered in determining the appropriate number of confidential advisors (whether more than one advisor is required or optional). To that point, CASA could also be revised to require a minimum of one advisor per institution but encourage (without requiring) institutions to appoint additional advisors using criteria that the rulemaking committee determines to be most appropriate to achieve the goals of the law.

On its face, tying the number of confidential advisors to the number of reported incidents appears counterintuitive in that reports may not increase without the availability of a confidential advisor to assist in the provision of resources and explain reporting options. Additionally, title IX requires only a single coordinator to oversee the institution's compliance with title IX. Institutions are free to designate additional personnel to assist these coordinators as they deem it appropriate (such as designating a separate "deputy" title IX coordinator for students and another "deputy" title IX coordinator for employees). This model gives institutions the flexibility they may need based on their enrollment and other characteristics and could work well for confidential advisors.

I would further submit that the criteria for who may not be a confidential advisor is both unnecessary and problematic. Specifically, persons who may function as higher education responsible employees or a title IX coordinator are forbidden from serving in this role. This rules out a large number of personnel with both interest and expertise in assisting victims, which is the most important aspect of the confidential advisor role. Additionally, ruling out "full-time graduate students" would categorically prevent masters and doctoral-level counselors in training from serving in this role, in spite of the wealth of knowledge and skills these individuals could bring. Campuses should be permitted to exercise discretion to determine who can or should serve as a confidential advisor, as who the most appropriate person should

be will vary significantly from campus to campus based on their staffing levels and organizational structure.

CASA should be revised to preclude persons with conflicts of interest from serving in that capacity (for example, the questions and answers on title IX and sexual violence notes,

> "Title IX does not categorically preclude particular employees from serving as title IX coordinators. However, title IX coordinators should not have other job responsibilities that may create a conflict of interest. Because some complaints may raise issues as to whether or how well the school has met its title IX obligations, designating the same employee to serve both as the title IX coordinator and the general counsel (which could include representing the school in legal claims alleging title IX violations) poses a serious risk of a conflict of interest. Other employees whose job responsibilities may conflict with a title IX coordinator's responsibilities include directors of athletics, deans of students, and any employee who serves on the judicial/hearing board or to whom an appeal might be made."

These types of reasonable restrictions, if placed on the confidential advisor role, would be more aligned with the Department's historical approach and gives campuses discretion to determine who should serve in this role consistent with their personnel, job functions, and resources which vary across institution types.

Question 2. There is a clear conflict of interest inherent in the confidential advisor role, since that person is employed by an institution of higher education and has certain reporting responsibilities under the Clery Act, as Senator Collins has pointed out. I would be interested in learning if there were other, non-affiliated resources available to students that may more appropriately play a confidential and/or counseling role, and if this would be a suitable use for funds generated by the fines.

Answer 2. The systems of campus sexual violence complaint resolution and resources/options available to victims can be multifaceted and nuanced on many campuses. I would be concerned about whether non-affiliated entities could fully and accurately present these nuances to victims that are exploring their options to receive assistance and/or report to campus or civil authorities.

Instead, the conflict of interest could be greatly diminished by granting confidential advisors the same exemptions for Clery Act reporting that already exist for pastoral and professional counselors (who are not, as a matter of law, campus security authorities unless they have other job functions, such as advising a student organization, that would strip them of their statutory exemption from reporting offenses brought to their attention while serving in their counselor roles). Extending this type of exemption to confidential advisors would take advisors out of a crime reporting role (and wisely so, since no personally identifiable information could be shared by the confidential advisor with the campus entity responsible for compiling crime statistics on behalf of the institution. The absence of this type of information could prove exceedingly difficult for institutions to ensure statistical accuracy if basic information about the incident, such as names of persons involved, could not be shared. The consequence could be systematic over-reporting of crime).

Additionally, the conflict can be further reduced, if not eliminated, by maintaining the provision in CASA that expressly excludes confidential advisors from being considered higher education responsible employees. However, this provision could be strengthened by indicating that even if an individual designated as a confidential advisor has other responsibilities that would ordinarily make the person a campus security authority or a higher education responsible employee, the statutory exemptions would take precedence such that confidential advisor would not be required to adhere to the requirements imposed upon other campus security authorities or a higher education responsible employees.

In order for this exemption to be consistent with existing title IX requirements to investigate or otherwise determine what occurred when a school knows (or reasonably should know) of possible sexual violence, the confidential advisor's role should be limited to providing information to the victim about where a victim could obtain accommodations. This would be a change in the confidential advisor's role, as currently envisioned, in that the advisor would no longer be authorized to arrange accommodations on behalf of the victim. If a confidential advisor seeks accommodations on a victim's behalf, that action may cause the school to believe they know, or should reasonably know, of possible sexual violence which then triggers their responsibility under title IX to investigate or otherwise determine what occurred. CASA indicates that an advisors request for accommodations shall not trigger an investigation by the institution, but without a change in the advisor's role or a clearer statement that a request for accommodations by the confidential advisor is not sufficient notice to an institution that should trigger an investigation (for title

IX or other purposes), institutions will be between a rock and a hard place in trying to reconcile responsibilities under Title IX and CASA.

Question 3. Some non-residential and online institutions in Utah have expressed a concern about the practicality of the 24 hours notice, as stated in the CASA bill. I am interested to know how feasible this timeline is, and if there is a more practicable timeline?

Answer 3. As the timelines proposed by CASA do not impact the amount of time institutions have to make such determinations, I do not see prompt notification to be especially unworkable. However, in its current form, "within 24 hours" makes no provision for when the institution is actually open. For example, if a determination is made on a Friday, CASA would require the determination to be relayed on Saturday. A far more reasonable approach, consistent with other Clery Act requirements, would be to amend the propose language to "within one business day" in lieu of "within 24 hours." The term "business day" is defined already for Clery Act purposes (in the final implementing regulations) to mean "Monday through Friday, excluding any day when the institution is closed."

I support one business day under two very important conditions. First, institutions must be empowered to determine when a "determination" or "change" has been made, as that is the point that starts the clock on 24 hours/1 business day. This will allow sufficient time to plan for consultation with appropriate administrators, including legal counsel, before any draft written outcomes are determined to have been finalized. This can also allow the institution time to conduct a preliminary investigation upon receipt of a complaint to determine if it has merit in proceeding with a disciplinary procedure.

Additionally, there must be some provision that allows campuses to extend the deadline for good cause. There is precedent for this already in withholding information from being added to the Daily Crime Log within 2 business days. Specifically, institutions may temporarily withhold information from the Daily Crime Log only if there is clear and convincing evidence that the release of information would:

- Jeopardize an ongoing (criminal) investigation;
- Jeopardize the safety of an individual;
- Cause a suspect to flee or evade detection; or
- Result in the destruction of evidence.

Institutions may withhold only that information that could cause an adverse effect, and must disclose such information once the adverse effect is no longer likely to occur.

A similar provision could be added by CASA to identify the acceptable parameters for delaying notification beyond the standard imposed by CASA. For example, a campus conduct office could be preparing to send out notification of outcomes in a case when another incident occurs, requiring immediate response of interim suspension to multiple students and causing a delay in notification of outcomes in the former case. There needs to be an allowance for the day to day professional discretion for campus administrators to reasonably prioritize their caseloads. Perhaps CASA could be revised to require notification within 1 business day unless there is reasonable cause to delay such notification and let the specifics of this approach be determined through a negotiated rulemaking process.

SENATOR MURKOWSKI

Question 1. The Campus Accountability and Safety Act (CASA) would require an institution to provide a confidential advisor to an assault victim. This is intended to provide support and resources to the victim in a way that will provide the victim with a sense of safety and control, which is laudatory. I am concerned, however, about provisions in CASA that specifically state a confidential advisor is not obligated to report crimes to the institution and that any requests for accommodation the Advisor makes on behalf of a student "shall not trigger an investigation by the institution". These provisions seem to conflict with institutions" moral and legal obligation under title IX to ensure that a campus is safe for all students. Keeping information about a crime secret and prohibiting an investigation could lead to an increased risk for other students as well as lead to liability for the institution should the perpetrator harm additional students. What changes do you recommend, to CASA, Title IX, or both, to reconcile this conflict?

Answer 1. As noted in my answer to Senator Hatch's concerns about the conflict of interest, the confidential advisor position could be exempted from crime reporting by extending the exemption given to pastoral and professional counselors and by more directly indicating that even if a person that serves as a confidential advisor would otherwise have functions that would make them a campus security authority

or higher education responsible employee, the exemptions provided by CASA for confidential advisors would take precedence such that confidential advisors would not be expected to perform functions traditionally required of campus security authorities or higher education responsible employees when learning of possible sexual violence (or other Clery Act crimes or forms of sexual harassment). This would address your concern as to the legal conflict with the Clery Act and Title IX. It is worth noting that the Department of Education's April 29, 2014 questions and answers on title ix and sexual violence indicated that,

> "Professional counselors and pastoral counselors whose official responsibilities include providing mental-health counseling to members of the school community are not required by title IX to report *any* information regarding an incident of alleged sexual violence to the title IX coordinator or other appropriate school designee" (p. 22).

As Congress and the Department of Education has determined that some employees of colleges and universities, but not all, are mandatory reporters under the Clery Act and Title IX, it would appear that granting confidential advisors exemptions would not present an increased risk to other students than would circumstances in which a disclosure is made to employees who are not already considered to be campus security authorities or higher education responsible employees. Furthermore, with the victim centered, trauma-informed approach that the confidential advisor must take, it seems as though designating a truly confidential employee to explain reporting options and provide resources may provide the best chance that a victim will decide to access resources and report the matter to the title IX coordinator, law enforcement (campus or municipal), a campus security authority and/or a responsible employee once they are fully apprised of the options and resources by a person who is empowered to provide information confidentiality (notwithstanding any State laws that may impact certain employees reporting obligations).

Question 2. Experts consulted by the University of Alaska have consistently stated that the best way to get absolutely accurate results on a campus survey about sexual assault is to assure absolute confidentiality and to prohibit publishing the results. This promotes higher response rates and allows the institution to respond to gaps, concerns, and problems in campus safety issues. CASA advocates suggest that a homogenous survey, the results of which are published, will assist the consumer in making educated choices. Data suggests that few prospective students, their families, or enrolled students review campus crime statistics. Do you agree that the campus surveys should be used for institutional improvement of policies and practices rather than as a consumer tool? Why or why not? Do you recommend that if institutions are required to use a survey developed by the Department that individual institutions should be able to delete questions that are locally or culturally inappropriate? Should there be two surveys—one developed by the Department of Education and used as a consumer tool and one developed by an institution and used only to improve internal practices and policies?

Answer 2. While I am not familiar with the conclusions drawn by the experts you've consulted or the data on which their conclusions are based, I am of the opinion that surveys are only worthwhile to the extent the data collected are used to understand and improve existing conditions/experiences.

In conducting an exhaustive review of available literature on the Clery Act, Dennis Gregory (Old Dominion University) and Steven Janosik (Virginia Tech) concluded,

> "There is no evidence that parents and students are using the [Clery] Act to make decisions regarding where to attend college and there are no reports that the [Clery] Act has had an impact on reducing crime" (2013, p. 56).

Given these research-based conclusions, it seems unlikely that making additional data available to consumers is likely to change consumer behavior. By extension, fashioning the required survey as a consumer tool may fail to meet its intended goals.

However, if the data collected can provide valuable insights as to policies or circumstances that impede campus efforts to effectively prevent and/or respond to sexual violence, then the data ought to be used to drive solutions that a campus believes would address these challenges as identified in survey results. If the survey is designed with this goal in mind, the results of surveys are far more likely to affect positive change. The data from surveys could be used in a regular assessment of campus sexual violence prevention and response efforts, similar to the required biennial review of drug and alcohol abuse prevention programs required by the Drug Free Schools and Communities Act of 1989 (which the Department of Education also enforces).

Having two separate surveys is unworkable and may not yield a sufficient response to either survey as to draw meaningful conclusions or generalize the results to the entire student population. Whether institutions develop their own surveys or the Department develops a survey to which institutions may add questions, it is imperative that appropriate experts within and outside of higher education are consulted on the development of these instruments to ensure usable, valid and reliable results. As to dissemination, I believe schools should be required to share the results upon request if they are not mandated by CASA to publish a summary of the results. This would be consistent with other consumer disclosure provisions of the existing Clery Act.

Question 3. CASA requires that institutions develop Memorandums of Understanding with each law enforcement agency that has jurisdiction. Many institutions, including public and private institutions, have developed significant e-learning opportunities for their students who may never attend classes on campus. This CASA requirement is viewed by those institutions, therefore, as fatally vague and unworkable. Do you agree, if so, do you have suggestions for addressing this concern?

Answer 3. The Memoranda of Understanding required by CASA should be limited to those local law enforcement agencies that would have primary jurisdiction on the institutions on campus (as this location category is defined by the Clery Act). Further, as I noted in my response to Senator Alexander (Question 7), the committee should provide an exemption for sworn campus agencies so they do not have to enter into an MOU with another sworn agency when the campus agency already has primary jurisdiction to respond to crimes on the campus.

Question 4. Several witnesses spoke to the complexity of compliance with Clery and Title IX. Adoption of the CASA provisions would add additional requirements and complexity. Looking at the issue of campus safety as a whole, would you recommend that the committee completely re-write institutional responsibilities across Clery, Title IX, VAWA, and CASA in order to reduce complexity, increase crime reporting and transparency, and provide for the rights of all students to a safe campus on which to gain an education? If so, what specific suggestions do you have for the committee?

Answer 4. This issue should be within the scope of the task force recommended in my response to Senator Alexander's question regarding areas of conflict and duplication between Title IX and Clery (Question 1). The results of the Task Force's examination could determine whether rewriting institutional responsibly is necessary and/or desirable once the actual areas of overlap/diversion between the various laws and guidance documents are known.

Question 5. I have received concerns from students who have been accused of sexual assault on campus and their parents. They tell me their rights to a fair hearing were not respected. Complaints included that as the accused, they were not informed of their rights under the institution's hearing policies, that the victim was provided more robust counsel by the university, and that they were denied the right to question their accuser and witnesses. CASA requires institutions to provide certain information about process to both the victim and the accused but leaves to the institution to follow their own policies for conducting investigations and hearings. Can this section be improved? Should the committee mandate that institutions follow basic policies and procedures? If so, please provide specific suggestions.

Answer 5. I believe the existing VAWA requirements to provide a prompt, fair and impartial proceeding, coupled with the aforementioned disclosures of procedural protections proposed in my response to Senator Alexander's question regarding procedural fairness (Question 3), address much of these concerns.

However, I would note that I do not believe campuses should be providing any *legal* counsel to individuals involved in its own disciplinary processes. However, campuses should provide the accuser and accused with adequate information about the resolution procedures to enable the parties to meaningfully and fully participate in the process.

Toward that end, the committee should encourage and/or require campuses to train a pool of students and/or employees (i.e., members of the campus community) on the investigation and resolution processes, and make this pool of individuals known to persons participating in the process in case they would like to secure an advisor trained on the specific resolution procedures that will be utilized in cases of sexual violence. This would provide equitable support options for both parties and may help to offset perceptions by the accused that the institution only provides resources and support to the accuser (a perception that is sure to be bolstered by the appointment of one or more "confidential advisors" required by CASA).

I do not think the committee should require campuses to allow direct cross-examination. Institutional disciplinary procedures are not akin to courts of law, and the Office of Civil Rights noted in its 2011 Dear Colleague Letter on Sexual Violence that,

> "OCR strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing. Allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment" (p. 12).

However, parties *should* have the right to challenge/question/respond to the *information* in the case, which does not require direct questioning or responding to each other, and can sometimes be done without even physically or verbally interacting with each other.

Finally, as CASA discusses the need for "victim-centered, trauma-informed" training for those investigating and resolving these cases, CASA should also include a requirement that persons involved in the investigation and adjudication of these cases (including any appeals) be trained on how to design and implement fundamentally fair student conduct procedures, including an understanding of the rights/protections afforded to the parties (including the accused) and the institution's obligations under title IX for all students and employees. As many institutional policies and procedures governing how the institution responds to allegations of sexual violence are written or subject to approval by presidents, compliance officers, and/or campus attorneys, any such individuals with that policy authority should also receive this training. This would address the interests and protections of both the accuser and the accused at the investigation/hearing level as well as the institutional governance level.

SENATOR WHITEHOUSE

Question 1. In the context of campus sexual assault, campus investigations and law enforcement investigations can sometimes work at cross purposes. How can we disentangle the campus and law enforcement investigations so that one does not impede the other?

Answer 1. I don't think you can disentangle a law enforcement investigation and a civil rights (title IX/campus) investigation. If there are two investigations happening in tandem, they will—by their very nature—be entangled. The investigative processes have different end goals and use different strategies, evidentiary standards, personnel, etc. Campuses believe they have approximately 10 days to initiate their civil rights investigations based on OCR guidance,[4] regardless of the pace of a law enforcement investigation, which can take months. The local law enforcement agency often carries the perception that the campus civil rights investigation will interfere with the law enforcement investigation, and in some cases, that may be true. For example, all of the statements that witnesses, the accuser and the accused make in the context of civil rights investigations could have a negative affect with the law enforcement investigation that will ensue, especially to the extent the statements made are inconsistent. Given that institutions have a legal obligation to conduct a title IX (civil rights) investigation, it would behoove institutions to meet with their local law enforcement and prosecuting agencies to identify potential challenges and strategies to meet those challenges in a way that minimizes adverse effects to each entity.

Although there are going to be some challenges inherent to tandem investigations, this issue presents another opportunity for which a task force could be useful to the committee. Such a task force could explore various challenges and opportunities related to the investigation and prosecution/discipline of sexual violence cases on campus and within the criminal justice system. Campus police and public safety officials, title IX coordinators, institutional general counsel, victims' advocates, municipal law enforcement agencies, and prosecutorial authorities could collaboratively explore these issues to identify best practices and workable solutions. Such a col-

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[4] The 2011 Dear Colleague Letter on Sexual Violence advised campuses that,

> "Although a school may need to delay temporarily the fact-finding portion of a title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges), the school must promptly resume and complete its fact-finding for the title IX investigation."

This passage was footnoted with a statement that police's evidence gathering stage typically takes 3–10 calendar days in a jurisdiction in which OCR conducted an investigation, and campuses have generally interpreted this example to establish a 10-day standard.

laboration could also be instructive to the HELP Committee at determining what legislative actions to take to assist in this area.

Question 2. In the context of domestic violence, law enforcement officers have become better qualified to address the needs of victims by drawing on the expertise of advocacy groups and experts. How can we best support the law enforcement community so that officers are similarly well-trained to assist survivors of campus sexual assault?

Answer 2. This is an important question, and one, members of the law enforcement community (campus and municipal agencies alike) could benefit from additional support. To that end, I would recommend that the Department of Justice's Community Oriented Policing Services (COPS) office commission a task force to explore this question with higher education industry leaders, victim advocates, and members of the law enforcement community (both campus and municipal).

Question 3. Many survivors fear that they may lose control over campus sexual assault proceedings if law enforcement gets involved early. What can we do to inform students about the course of a law enforcement investigation, so they can make an informed choice about how to proceed?

Answer 3. I believe that survivors fear that they may lose control if law enforcement gets involved at all, and to some degree that could hold true. If the victim reports the crime to law enforcement, in some States, the officer may be obligated to interview the alleged perpetrator, even if the victim requests that they don't want that to happen. In my experience at GW, I can tell you that the majority of victims who reported a sexual assault to our department said that they wanted to put the incident "on the record" but they "didn't want us to do anything" with the information. As a private law enforcement agency, we could honor that request. I imagine that there may be agencies that won't (by policy) or can't (by law) honor that kind of request. Institutions of higher education are obligated by title IX to conduct an investigation, to the extent possible, of any sexual violence. This also means that victims can lose control over that process as well. For example, if the victim shares the name of the perpetrator with the institution, the institution may need to interview the subject to conduct an investigation to the extent possible. The fear of the victim losing control over the process(s) is very real and possible.

On the other hand, as part of the training they receive, a confidential advisor should possess detailed information about the full range of local law enforcement's potential involvement and investigative processes and the victim's options and influence within and throughout that process and any criminal prosecution that may follow. This kind of training could supplement the written information about the victim's rights and options which institutions must provide victims of domestic violence, dating violence, sexual assault and stalking (per the VAWA Amendments to the Clery Act). Providing confidential advisors with detailed information about criminal investigation and prosecution, coupled with the existing VAWA disclosures that must be made to victims about reporting options and the involvement of law enforcement, should help considerably, although the victim's wishes to prosecute or not prosecute should still be the primary driver of whether law enforcement gets involved at any stage.

Question 4. Absent the concern of loss of control (perceived or otherwise) by the survivor, are there reasons that experienced, trauma-informed, sensitive, effective law enforcement should not be involved at early stages of an investigation?

Answer 4. This concern cannot be set aside, as addressed in our response to the last question. Often the most important factor to a victim is that they maintain control over what happens to their report, including whether the subject will be interviewed, witnesses will be interviewed, law enforcement will be involved or if a case will be prosecuted. Even the most experienced, trauma-informed, sensitive, effective law enforcement officer cannot or should not try to convince a victim to cooperate with a criminal investigation or the subsequent prosecution of such an offense. The victim should maintain autonomy in that regard. The victim's prerogative to involve or not involve law enforcement should be of paramount importance and should not be undermined by any law, statute or regulation that would cause the victim to participate in ways that they are opposed. To force a victim to do anything beyond what is right for them would only serve to re-victimize the victim. No process should do that, intentionally or unintentionally.

SENATOR CASEY

Question 1. One of the comments I have heard on multiple occasions from institutions is that it is important to remember that not all institutions are the same: the

institutions covered by title IV (the Federal financial aid title) of the Higher Education Act are extremely diverse, from large, multi-institution State systems to small liberal arts colleges; community colleges with commuter populations; and very small technical schools that may only have a couple of classrooms. What are some of the different ways in which these diverse institutions have met their obligations under the Clery Act?

Answer 1. More often than not, the complexities of compliance are increased for institutions with larger volumes of crime reports and larger real estate portfolios for which institutions must collect and report crimes for their core campus and noncampus properties. Very few of the requirements of the Clery Act do not apply to all institutions that receive Federal funding. Noteworthy examples include creating and maintaining a daily crime log (only if the institution has campus police/campus security) and compliance with the missing persons and fire safety provisions (if the institution has on-campus student housing facilities). All institutions, however, must comply with all remaining Clery Act requirements (a summary of which is provided in my testimony).

The Department of Education recognizes that all institutions are differentially impacted by the Act's requirements, including the new VAWA requirements. For example, in the small entity compliance guide made available by the Department of Education in June 2015 (see *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/vawa-compliance-guide.doc*), the Department notes that the burden imposed by the new VAWA requirements may be greater for smaller entities, noting,

> "The Department recognizes that small entities may need to hire additional employees to collect and report the required statistics. However, each of the elements of these provisions must be addressed" (p. 6).

They continue:

> "Institutions will incur costs associated with the additional reporting and disclosure requirements of the regulations. The additional workload may result in costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities, especially in smaller institutions without campus law enforcement or campus security personnel. However, as stated above, each of the elements of these provisions must be addressed" (p. 6).

Much of compliance with the Clery Act involves disclosing policy statements. Institutions must typically advise the campus community what policies, practices and resources it has for a variety of campus safety issues. The VAWA Amendments to the Clery Act go beyond requiring disclosure of what policies a campus has to proscribing very specific policies and programs institutions must implement *and* disclose. In other words, not only do campuses have to tell their communities about their processes, but now they are required to have certain procedures as part of their processes. This is what we mean when we say the law has become more prescriptive. The more prescriptive the law is in telling HOW campuses must do something (rather than the historical requirements of telling WHAT they do without prescribing HOW to do it), the more adverse the effect on institutions that aren't mid- to large-sized residential institutions.

Question 2. As we have seen in the last several years, many schools are struggling to respond appropriately to instances of sexual assault, dating violence, domestic violence and stalking. The Campus SaVE Act provides additional guidance for schools, without being overly prescriptive. For example, the law requires institutions to have education and prevention programs in place that meet certain benchmarks, but recognizes that a large university is very different from a small college and provides flexibility as to how those programs are provided. The regulations, developed with input from a varied group of stakeholders (including survivors and advocates, institutions of different sizes/types, law enforcement, and other higher education constituencies) provide further guidance for institutions on how to operationalize the law. Finally, I understand that the Department of Education is in the process of updating the Clery Handbook for Campus Safety and Security Reporting to reflect the changes made by the VAWA Amendments. Thus, I do not understand how you can simultaneously claim that the law is too prescriptive and too vague at the same time. Which is it?

Answer 2. As I mentioned in my response to question 1, the Campus SaVE Act *is* prescriptive about what procedures a campus must adopt, which is an historical departure from the requirement to disclose policy statements. The Campus SaVE Act issues mandates, not guidance, in that regard.

With regard to examples of the Department's vagueness, please see my answer to Senator Alexander's question about occasions when the Department imposes new requirements that are not contained in the regulations (Question 5). I believe these highlight some problems associated with vagueness in the law.

Question 3. You claim that the Annual Security Report must contain 111 separate policy disclosures under the Clery Act. My staff have spent significant time trying to replicate that extraordinary claim, and have been unable to do so. Please explain how you reached this number.

Answer 3. We have reviewed the statutory and regulatory requirements as enumerated in the Clery Act and its implementing regulations. We also reviewed the Handbook for Campus Safety and Security Reporting (2011) which provides more specific guidance about what policy statements should and must be included in the institution's Annual Security and Fire Safety Reports. Our listing of the required disclosures is as follows.

I. CAMPUS LAW ENFORCEMENT POLICIES

Question 1. A statement of policies concerning campus law enforcement that—Addresses the *enforcement authority* of security personnel.

2. A statement of policies concerning campus law enforcement that—Addresses whether those security personnel have the *authority to make arrests*.

3. A statement of policies concerning campus law enforcement that—Addresses the *jurisdiction* of security personnel.

4. A statement of policies concerning campus law enforcement that—Addresses the *working relationship* of campus security personnel with State and local police agencies.

5. A statement about whether the institution has *any agreements*, such as written memoranda of understanding, *with the local PD regarding the investigation of alleged criminal offenses*.

II. REPORTING PROCEDURES

6. A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus.

7. A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include *the institution's policies concerning its response to these reports*.

8. *A list of the titles of each person or organization to whom students and employees should report the criminal offenses described in the law for the purpose of making timely warning reports and the annual statistical disclosure.*

9. A statement of policies concerning campus law enforcement that—Encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies, when the victim of a crime elects to, or is unable to, make such a report.

10. Disclose whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and if so, a description of those policies and procedures.

11. A statement of policies concerning campus law enforcement that—Describe procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.

III. TIMELY WARNING PROCEDURES

12. Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes listed in the Clery Act.

13. A statement that such reports shall be provided to students and employees in a manner that is timely, that withholds the names of victims as confidential, and that will aid in the prevention of similar occurrences.

14. The circumstances for which a warning will be issued.

15. The individual or office responsible for issuing the warning (who writes it or develops content?).

16. The individual or office responsible for issuing the warning (who initiates it or sends it?).

17. The manner in which the warning will be disseminated.

IV. EMERGENCY RESPONSE AND EVACUATION PROCEDURES

18. A statement of current campus policies regarding immediate emergency response procedures.

19. A statement of current campus policies regarding evacuation procedures.

20. A statement of current campus policies regarding immediate emergency response and evacuation procedures, including *the use of electronic and cellular communication (if appropriate)*.

21. A statement that the campus will immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus.

22. Provide a description of the process the institution will use to: Confirm that there is a significant emergency or dangerous situation. (Include a list of the titles of the person(s) or organization(s) responsible for carrying out these actions)

23. Provide a description of the process the institution will use to: Determine the appropriate segment or segments of the campus community to receive a notification. (Include a list of the titles of the person(s) or organization(s) responsible for carrying out these actions)

24. Provide a description of the process the institution will use to: Determine the content of the notification. (Include a list of the titles of the person(s) or organization(s) responsible for carrying out these actions)

25. Provide a description of the process the institution will use to: Initiate the notification system. (Include a list of the titles of the person(s) or organization(s) responsible for carrying out these actions)

26. If there is an immediate threat to the health or safety of students or employees occurring on campus—describe how the institution will provide followup information to the community.

27. A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency.

28. Indicate procedures for disseminating emergency information to the larger community.

29. Publicize the procedures to test emergency response and evacuation procedures on an annual basis, including—Tests may be announced or unannounced. *(Test is defined as regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities)*.

30. Publicize the procedures to test emergency response and evacuation procedures on an annual basis, including—Publicizing its emergency response and evacuation procedures in conjunction with at least one test per calendar year;

31. Publicize the procedures to test emergency response and evacuation procedures on an annual basis, including—Documenting, for each test, a description of the exercise, the date, time, and whether it was announced or unannounced.

V. LOCAL POLICE DEPARTMENT

32. A statement of policy concerning the monitoring and recording through local police agencies of criminal activity by students at noncampus locations of student organizations officially recognized by the institution, including student organizations with noncampus housing facilities.

VI. SECURITY OF AND ACCESS TO CAMPUS FACILITIES

33. A statement of current policies concerning security of campus facilities, including campus residences.

34. A statement of current policies concerning access to campus facilities, including campus residences.

VII. MAINTENANCE OF CAMPUS FACILITIES

35. Security considerations used in the maintenance of campus facilities.

VIII. EDUCATION PROGRAMS

36. A description of the *type and frequency* of security awareness programs designed to inform students and employees about campus security procedures and practices.

37. A description of the type and frequency of security awareness programs designed to inform students and employees about campus security procedures and practices *and to encourage students and employees to be responsible for their own security and the security of others*.

38. A description of programs designed to inform students and employees about the prevention of crimes.

IX. ALCOHOL AND DRUG POLICIES

39. A statement of policy regarding the:

a. possession;
b. use;
c. sale of alcoholic beverage; and
d. the enforcement of State underage drinking laws.

40. A statement of policy regarding the:

a. possession;
b. use;
c. sale of illegal drugs; and
d. enforcement of Federal and State drug laws.

41. A description of any drug or alcohol-abuse education programs, as required under section 120(a) through (d) of the HEA, otherwise known as the Drug-Free Schools and Communities Act of 1989. For the purpose of meeting this requirement, an institution may cross-reference the materials the institution uses to comply with section 120(a) through (d) of the HEA.

X. CRIME STATISTICS

42. The crimes required by the Clery Act that occurred on or within an institution's Clery Geography that were reported to a campus security authority.

43. Policies for preparing the annual disclosure of crime statistics.

XI. ANNUAL FIRE SAFETY REPORT

44. Is the fire safety report printed in the Annual Security Report or as a separate document? If they are printed together, does the title of the report reflect that is the Annual Security and Fire Safety Report? If not, does each document reference where to find the other?

45. The report must contain a description of each on-campus student housing facility fire safety system?

46. The report must contain the number of fire drills held during the previous calendar year?

47. The institution's policies or rules on:

a. portable electrical appliances;
b. smoking; and
c. open flames in a student housing facility.

48. The institution's procedures for student housing evacuation in case of a fire.

49. The policies regarding fire safety education and training programs provided to the students, faculty, and staff.

50. Describe the procedures that students and employees should follow in the case of a fire.

51. For purposes of including a fire in the statistics in the annual fire safety report, a list of the titles of each person or organization to which students and employees should report that a fire occurred.

52. Plans for future improvements in fire safety, if determined necessary by the institution.

53. An institution must report statistics for each on-campus student housing facility, for the three most recent calendar years for which data are available, concerning:

- The number of fires.
- The cause of each fire.
- Number of injuries related to a fire that result in treatment at a medical facility.
- Number of deaths related to a fire.
- Value of property damage caused by a fire.

XII. MISSING STUDENTS

54. Indicate a list of titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours.

55. Require that any official missing student report must be referred immediately to the institution's police or campus security department, or, in the absence of an institutional police or campus security department, to the local law enforcement agency that has jurisdiction in the area.

56. Contain an option for each student living in an on-campus student housing facility to identify a contact person or persons whom the institution shall notify within 24 hours of the determination that the student is missing, if the student is determined missing by the institutional police or campus security department, or the local law enforcement agency.

57. A statement that advises students that their contact information will be registered confidentially, and that this information will be accessible only to authorized campus officials and law enforcement and that it may not be disclosed outside of a missing person investigation.

58. A statement that advises students that if they are under 18 years of age and not emancipated, the institution must notify a custodial parent or guardian within 24 hours of the determination that the student is missing, in addition to notifying any additional contact person designated by the student.

59. A statement that advises students that the institution will notify the local law enforcement agency within 24 hours of the determination that the student is missing, unless the local law enforcement agency was the entity that made the determination that the student is missing.

60. The procedures that the institution must follow when a student who resides in an on-campus student housing facility is determined to have been missing for 24 hours include:

(i) If the student has designated a contact person, notifying that contact person within 24 hours.

61. The procedures that the institution must follow when a student who resides in an on-campus student housing facility is determined to have been missing for 24 hours include:

(ii) If the student is under 18 years of age and is not emancipated, notifying the student's custodial parent or guardian and any other designated contact person within 24 hours.

62. The procedures that the institution must follow when a student who resides in an on-campus student housing facility is determined to have been missing for 24 hours include:

(iii) Regardless of whether the student has identified a contact person, is above the age of 18, or is an emancipated minor, informing the local law enforcement agency that has jurisdiction in the area that the student is missing within 24 hours.

XIII. HEOA VICTIM NOTIFICATION

63. Statement that the institution will, upon written request, disclose to the alleged victim of a crime of violence or a non-forcible sex offense, the report on the results of any disciplinary proceeding conducted by the institution against a student who is the alleged perpetrator of such crime or offense. If the alleged victim is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this paragraph.

XIV. SEX OFFENDER REGISTRY

64. A statement advising the campus community where law enforcement agency information, provided by a State under section 121 of the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16921), concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

XV. POLICIES AND PROCEDURES RELATED TO DATING VIOLENCE, DOMESTIC VIOLENCE, SEXUAL ASSAULT AND STALKING

65. A statement of policy regarding the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking, as defined in paragraph (a) of this section. The statement must include:

66. A statement that the institution of higher education prohibits the crimes of domestic violence, dating violence, sexual assault, and stalking.

67. The definition (from VAWA) of dating violence.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

i. The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

ii. For the purposes of this definition—

(A) Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(B) Dating violence does not include acts covered under the definition of domestic violence.

68. The definition (from VAWA) of domestic violence.

Domestic Violence:

i. A Felony or misdemeanor crime of violence committed—

(A) By a current or former spouse or intimate partner of the victim;

(B) By a person with whom the victim shares a child in common;

(C) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;

(D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or

(E) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

69. The definition (from VAWA) of sexual assault.

Sexual Assault: An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting (UCR) program. Per the National Incident-Based Reporting System User Manual from the FBI UCR Program, A sex offense is "any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent."

- *Rape:* The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- *Fondling:* The touching of the private parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- *Incest:* Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- *Statutory Rape:* Sexual intercourse with a person who is under the statutory age of consent.

70. The definition (from VAWA) of stalking.

Stalking:

i. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(A) Fear for the person's safety or the safety of others; or

(B) Suffer substantial emotional distress.

ii. For the purposes of this definition—

(A) Course of conduct means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

(B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

(C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

71. The definition, in the applicable jurisdiction, of:

a. dating violence,

b. domestic violence,
c. sexual assault, and
d. stalking.

72. The definition of consent, in reference to sexual activity, in the applicable jurisdiction.

73. A description of safe and positive options for bystander intervention; *(Bystander intervention means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene).*

74. Information on risk reduction *(Risk reduction means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence).*

75. A statement of policy that addresses the institution's *programs to prevent dating violence, domestic violence, stalking and sexual assault*. The statement must include: *(Programs to prevent dating violence, domestic violence, sexual assault, and stalking means comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that—*

(A) Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and

(B) Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.

Programs to prevent dating violence, domestic violence, sexual assault, and stalking include both primary prevention and awareness programs directed at incoming students and new employees and ongoing prevention and awareness campaigns directed at students and employees).

76. A description of the institution's *primary prevention and awareness programs* for all incoming students and employees, which must include:

77. A statement that the institution of higher education prohibits the crimes of domestic violence, dating violence, sexual assault, and stalking;

78. The definition (from VAWA) of dating violence, domestic violence, sexual assault and stalking;

79. The definition of "dating violence," "domestic violence," "sexual assault," and "stalking" in the applicable jurisdiction;

80. The definition of consent, in reference to sexual activity, in the applicable jurisdiction;

81. A description of safe and positive options for bystander intervention;

82. Information on risk reduction; and

83. The information described in paragraphs (b)(11) and (k)(2) of the Clery Act regulations *(these references pertain to the applicable sections in the final regulations. (b)(11) is the statement of policy regarding the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking and of procedures that the institution will follow when one of these crimes is reported. (k)(2) pertains to the procedural requirements for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, and stalking).*

84. A description of the institution's *ongoing prevention and awareness campaigns* for students and employees, including information described in including information described in paragraph (j)(1)(i)(A) through (F) of the final regulations *(i.e., includes the red text above). (Ongoing prevention and awareness campaigns means programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution)*.

85. A statement of policy regarding the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking, as defined in paragraph (a) of this section. The statement must include the procedures that the institution will follow when one of these crimes is reported.

86. *Procedures victims should follow if a crime of domestic violence, dating violence, sexual assault, or stalking has occurred*, including written information about—

87. The importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order;

88. How and to whom the alleged offense should be reported; *(indicate that it can be reported to the title IX coordinator)*;

89. Options about the involvement of law enforcement and campus authorities, including notification of the victim's option to—Notify proper law enforcement authorities, including on-campus and local police;

90. Options about the involvement of law enforcement and campus authorities, including notification of the victim's option to—Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses;

91. Options about the involvement of law enforcement and campus authorities, including notification of the victim's option to—Decline to notify such authorities; and

92. Where applicable, the rights of victims and the institution's responsibilities regarding orders of protection, "no contact" orders, restraining orders or similar lawful orders issued by a criminal, civil, or tribal court or by the institution.

93. A statement that, when a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution *will provide the student or employee with a written explanation of the student or employee's rights and options*, as described in paragraphs (b)(11)(ii) through (vi) of this section *(these sections of the final regulations include the procedures victims should follow if a crime of dating violence, domestic violence, sexual assault or stalking has occurred; information about how the institution will protect the confidentiality of victims and other necessary parties; a statement that the institution will provide written notification to students and employees about victim services within the institution and in the community; a statement regarding the institution's provisions about options for, available assistance in, and how to request accommodations and protective measures; and an explanation of the procedures for institutional disciplinary action)*.

94. A statement that the institution will provide written notification of victims about *options for, available assistance in, and how to request changes to* academic, living, transportation, and working situations or protective measures. The institution must make such accommodations or provide such protective measures if they are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

95. A statement that the institution will provide written notification to students and employees about existing resources available for victims within the institution:

a. counseling,
b. health,
c. mental health,
d. victim advocacy,
e. legal assistance,
f. visa,
g. immigration assistance,
h. student financial aid, and
i. other services available for victims.

96. A statement that the institution will provide written notification to students and employees about existing resources available for victims within the larger community:

a. counseling,
b. health,
c. mental health,
d. victim advocacy,
e. legal assistance,
f. visa,
g. immigration assistance,
h. student financial aid, and
i. other services available for victims.

97. A statement of policy regarding the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking, as defined in paragraph (a) of this section, and of procedures that the institution will follow when one of these crimes is reported. The statement must include—*Information about how the institution will protect the confidentiality of victims and other necessary parties*, including how the institution will—

98. Complete publicly available recordkeeping, including Clery Act reporting and disclosures, without the inclusion of personally identifying information about the

victim, as defined in section 40002(a)(20) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)(20)); and

99. Maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures.

100. Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking . . . that (2) Provides that the proceedings will—*Include a prompt, fair, and impartial process from the initial investigation to the final result*; *A prompt, fair, and impartial proceeding includes a proceeding that is—*

(A) Completed within reasonably prompt timeframes designated by an institution's policy, including a process that allows for the extension of timeframes for good cause with written notice to the accuser and the accused of the delay and the reason for the delay;

(B) Conducted in a manner that:

(1) Is consistent with the institution's policies and transparent to the accuser and accused;

(2) Includes timely notice of meetings at which the accuser or accused, or both, may be present;

(3) Provides timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings; and

(C) Conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused.

101. Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking . . . that (2) Provides that the proceedings will—*Be conducted by officials who, at a minimum, receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability*;

102. Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking . . . that (2) Provides that the proceedings will—*Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice. (Advisor means any individual who provides the accuser or accused support, guidance, or advice.)*

103. Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking . . . that (2) Provides that the proceedings will—Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

104. Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking . . . that (2) Provides that the proceedings will—Require simultaneous notification, in writing, to both the accuser and the accused, of—*The result of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking*; *(Result means any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution. The result must include any sanctions imposed by the institution. Notwithstanding section 444 of the General Education Provisions Act (20 U.S.C.1232g), commonly referred to as the Family Educational Rights and Privacy Act (FERPA), the result must also include the rationale for the result and the sanctions.)*

105. Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking . . . that (2) Provides that the proceedings will—Require simultaneous notification, in writing, to both the accuser and the accused, of—*The institution's procedures for the accused and the victim to appeal the result of the institutional disciplinary proceeding, if such procedures are available.*

106. Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking . . . that (2) Provides that the proceedings will—Require simultaneous notification, in writing, to both the accuser and the accused, of—*Any change to the result.*

107. Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking . . . that (2) Provides that the

proceedings will—Require simultaneous notification, in writing, to both the accuser and the accused, of—When such results become final.

108. Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking . . . that—*Describes each type of disciplinary proceeding used by the institution* to include:

- the steps;
- anticipated timelines;
- decisionmaking process for each type of disciplinary proceeding;
- how to file a disciplinary complaint; and
- how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking. *(Proceeding means all activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact finding investigations, formal or informal meetings, and hearings. Proceeding does not include communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim.)*

109. Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking . . . that—*Describes the standard of evidence that will be used during any institutional disciplinary proceeding arising from an allegation of dating violence, domestic violence, sexual assault, or stalking.*

110. Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking . . . that—*Lists all possible sanctions that the institution may impose following the results of an institutional disciplinary procedure for an allegation of dating violence, domestic violence, sexual assault, or stalking.*

111. Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking . . . that—*Describes the range of protective measures that such institution may offer to the victim following an allegation of dating violence, domestic violence, sexual assault, or stalking.*

RESPONSE BY MOLLIE BENZ-FLOUNLACKER TO QUESTIONS OF SENATOR ALEXANDER, SENATOR HATCH, SENATOR MURKOWSKI, SENATOR WHITEHOUSE AND SENATOR CASEY

SENATOR ALEXANDER

Question 1. Do you have specific suggestions about how Title IX and the Clery Act, including their implementing regulations and guidance, can be improved and/or clarified to provide institutions of higher education the flexibility they need?

Are there areas where these laws, regulations, or guidance conflict?

Are there areas where they are duplicative?

Answer 1. We appreciate the opportunity to work with Congress to provide greater clarity about the intersection between the Clery Act, Title IX, and proposed CASA provisions. While Title IX and the Clery Act are not necessarily contradictory, there are some areas of overlap that should be taken into account when crafting CASA or other legislation that affects one or both laws. For example, the Violence Against Women Act (VAWA) amendments to the Clery Act established parameters around institutional policies for campus disciplinary processes, and these types of policies are also addressed in detailed guidance from the U.S. Department of Education's Office of Civil Rights (OCR) regarding title IX implementation. Although the Clery Act states that the Secretary does not have authority to mandate specific policies under the Act, OCR title IX guidance does require specific types of disciplinary policies to be in place. Requirements to report instances of sexual assault are also addressed in both the Clery Act and OCR guidance on title IX.

CASA or any new legislation should take great care to not create further areas of overlap or confusion. There are cases when slightly different roles, responsibilities, and policies among the statutes, regulations, and guidance are appropriate to protect students and/or to distinguish between criminal and other acts. For example, the CASA concept of an individual to help students report sexual assaults and obtain accommodations might be the same person as the title IX coordinator, or it might be a different employee, based on the best judgment of an institution of higher education. However, these differences and areas of overlap must be carefully thought through and coordinated in statute, regulations, and guidance to ensure an efficient, cohesive system that reduces confusion for students, families, and institutions working to comply with the various Federal laws and requirements.

AAU and the broader higher education community are in the process of identifying other specific areas of conflict or duplication to inform the legislative process, including recommendations for solutions.

We do not think that the current provision in CASA requiring OCR and the Office of Postsecondary Education to issue guidance within 6 months on how the laws interact will be helpful. This is, in part, because there is no requirement that colleges or universities or advocacy groups would be consulted as part of the effort, and the 6-month deadline does not allow enough time for this complex task. We believe the Department should be required to conduct a negotiated rulemaking process to identify issues and seek workable solutions.

Question 2. Do you have suggestions about how institutions of higher education can best coordinate with law enforcement without turning the institutions into *de facto* law enforcement agencies?

Answer 2. Colleges want State and local law enforcement agencies to be involved in dealing with crimes on campus including incidents of sexual violence, while also honoring the victims' wishes.

Memoranda of Understanding (MOUs) can be very useful tools for improving coordination and establishing procedures for responding to and handling reports of sexual assault. Many colleges already have, or are in the process of developing, MOUs. Some State laws also require colleges to develop MOUs. The current content requirements in CASA for an MOU are too prescriptive; colleges need more flexibility to better protect their students. MOUs are probably most helpful when they include general protocols for responding to and handling reports of sexual assault, including, for example, clarifications of each agency or department's responsibilities under Federal, State or local laws and policies, and provisions to ensure that responding local law enforcement may notify an alleged victim of sexual assault of the existence of university resources required by this section, where such responder has reason to know or believe that a student is involved.

Question 3. Do you have suggestions about what we can do, or not do, to make sure colleges establish procedures dealing with allegations of sexual assault that are fair and protect the due process rights of the accuser and the accused?

Answer 3. We support giving higher education institutions the resources they need to conduct prompt, fair, and impartial campus processes, as is currently required by the Clery Act. Institutions have responsibilities to both parties involved in any given case. At a minimum, Congress should ensure that CASA does not include language that contradicts current Federal law, particularly with respect to additional training techniques, and to ensure these techniques are fair to both parties involved in a given case. Any written notice of institutional disciplinary processes and determination should include information about the rights and protections available to both parties under institutional policy and current law.

SENATOR HATCH

Question 1. We have heard from several community colleges in Utah regarding the "confidential advisor" aspect of the CASA bill. They are concerned about the undue burden that might arise by tying the number of advisors to the number of students. On average, non-residential campuses, like community colleges, have fewer incidents of sexual assault cases reported than residential campuses. Because the numbers of incidents vary based on the type of institution, should we tie the number of advisers for a campus based on the number of incidents reported, rather than student body?

Answer 1. We strongly support giving survivors of sexual assault access to a confidential advisor whose sole responsibility is to counsel and support the victim. Colleges should have responsibility for identifying a reasonable number of advisors based on an assessment of institutional needs. There is no precedent, nor is there any need, for the Department of Education to specify how many employees colleges must have for a particular job category, as required in CASA. Those decisions are best made by campus leaders and administrators.

Question 2. There is a clear conflict of interest inherent in the confidential advisor role, since that person is employed by an institution of higher education and has certain reporting responsibilities under the Clery Act, as Senator Collins has pointed out. I would be interested in learning if there were other, non-affiliated resources available to students that may more appropriately play a confidential and/or counseling role, and if this would be a suitable use for funds generated by the fines.

Answer 2. We agree that requiring the confidential advisor to report cases of sexual assault is highly problematic and recommend that Congress eliminate this requirement from the advisor's set of responsibilities. Instead, similar to personnel at a campus counseling center or other mental health services provider, the main role of the confidential advisor should be that of a counselor, who retains the same com-

mitment to confidentiality as similar professionals under ethics codes and local, State, and Federal laws. The confidential advisor should be trained to refer students to other persons or entities on campus for reporting or accommodation purposes. The confidential advisor might be an employee of the university or a trained professional from a non-affiliated community resource, such as a crisis counseling center.

At the same time, the duty to report instances of sexual assault and provide accommodations to survivors is also critical. Students should be informed about who holds the responsibility to report or investigate these instances. Colleges are required under title IX to track and report accommodations provided in response to sexual assault, which directly conflicts with the CASA requirement that an accommodation shall not trigger an investigation by the school.

For many schools, they typically believe that if they are making accommodations for a student, it is sufficient to warrant an investigation. Instead of creating a confusing conflict for both students and counselors, we recommend a bright-line rule between individuals serving in the confidential advisor's counseling role and those individuals responsible for reporting instances of assault and liaising to provide accommodations.

Question 3. Some non-residential and online institutions in Utah have expressed a concern about the practicality of the 24 hours notice, as stated in the CASA bill. I am interested to know how feasible this timeline is, and if there is a more practicable timeline?

Answer 3. Colleges take very seriously their responsibilities to survivors of sexual assault. The legislation creates new 24-hour requirements for institutions to notify both the accuser and accused of campus disciplinary decisions and outcomes in proceedings for sexual violence. While we believe colleges should make every effort to inform both parties promptly, this short timeframe may be unrealistic in certain circumstances and is likely to lead to unintended and negative consequences for students. A temporary delay also may be necessary to protect a student in fragile circumstances following a traumatic event. In most cases, these notices would require legal review, thereby requiring additional time. We believe colleges should be given greater flexibility, perhaps a 3-day period with flexibility beyond that time window given for extenuating circumstances.

SENATOR MURKOWSKI

Question 1. The Campus Accountability and Safety Act (CASA) would require an institution to provide a confidential advisor to an assault victim. This is intended to provide support and resources to the victim in a way that will provide the victim with a sense of safety and control, which is laudatory. I am concerned, however, about provisions in CASA that specifically state a confidential advisor is not obligated to report crimes to the institution and that any requests for accommodation the Advisor makes on behalf of a student "shall not trigger an investigation by the institution." These provisions seem to conflict with institutions' moral and legal obligation under title IX to ensure that a campus is safe for all students. Keeping information about a crime secret and prohibiting an investigation could lead to an increased risk for other students as well as lead to liability for the institution should the perpetrator harm additional students. What changes do you recommend, to CASA, Title IX, or both, to reconcile this conflict?

Answer 1. Similar to personnel at campus counseling centers or other mental health services providers, the main role of the confidential advisor should be that of a counselor, who retains the same commitment to confidentiality as similar professionals under ethics codes and local, State, and Federal laws. This confidential advisor should be trained to refer students to the appropriate persons or entities on campus for reporting an assault or for accommodations purposes. We believe that requiring the confidential advisor to report cases of sexual assault is highly problematic for confidentiality purposes under title IX obligations, and we strongly recommend that it be eliminated.

At the same time, the duty to report instances of sexual assault and provide accommodations to survivors is critical; and students should be informed about who holds the responsibility to report or investigate these instances. Colleges are required under title IX to track and report accommodations provided in response to sexual assault, which directly conflicts with the CASA requirement that an accommodation shall not trigger an investigation by the school.

For many schools, they typically believe that if they are making accommodations for a student it is sufficient to warrant an investigation. Instead of creating a confusing conflict for both students and counselors, we recommend a bright-line rule between individuals serving in the confidential advisor's counseling role and those

individuals responsible for reporting instances of assault and liaising to provide accommodations.

Question 2. Experts consulted by the University of Alaska have consistently stated that the best way to get absolutely accurate results on a campus survey about sexual assault is to assure absolute confidentiality and to prohibit publishing the results. This promotes higher response rates and allows the institution to respond to gaps, concerns, and problems in campus safety issues. CASA advocates suggest that a homogenous survey, the results of which are published, will assist the consumer in making educated choices. Data suggests that few prospective students, their families, or enrolled students review campus crime statistics. Do you agree that the campus surveys should be used for institutional improvement of policies and practices rather than as a consumer tool? Why or why not? Do you recommend that if institutions are required to use a survey developed by the Department that individual institutions should be able to delete questions that are locally or culturally inappropriate? Should there be two surveys—one developed by the Department of Education and used as a consumer tool and one developed by an institution and used only to improve internal practices and policies?

Answer 2. We agree that the campus survey should be designed first and foremost as a research-based tool to help schools better understand the attitudes and experiences of their students with respect to sexual assault and inform campus policies and procedures going forward. We also think that survey data can be useful to Federal policymakers as they consider legislative and administrative responses, as well as provide researchers with new data as they continue to study this complex issue. Schools should share survey results with their students, in the spirit of transparency.

We have serious concerns with the requirement for the Secretary of Education, as outlined in CASA, to develop a single survey instrument without the input of higher education experts for use at all colleges. It is unclear in CASA how the Department of Education plans to gather, publicly release, and provide college to college comparisons from the survey results. We believe that a campus-controlled (either directly or contractually administered) survey is most helpful for colleges in designing questions that fit their unique campus culture and, to the extent possible, in maximizing their student participation rates.

Question 3. CASA requires that institutions develop Memorandums of Understanding with each law enforcement agency that has jurisdiction. Many institutions, including public and private institutions, have developed significant e-learning opportunities for their students who may never attend classes on campus. This CASA requirement is viewed by those institutions, therefore, as fatally vague and unworkable. Do you agree, if so, do you have suggestions for addressing this concern?

Answer 3. We believe any requirements related to MOUs should refer to those agencies that, by policy or practice, may reasonably be expected to have primary jurisdiction to respond to a report of sexual assault from an enrolled student of an institution.

Question 4. Several witnesses spoke to the complexity of compliance with Clery and Title IX. Adoption of the CASA provisions would add additional requirements and complexity. Looking at the issue of campus safety as a whole, would you recommend that the committee completely re-write institutional responsibilities across Clery, Title IX, VAWA, and CASA in order to reduce complexity, increase crime reporting and transparency, and provide for the rights of all students to a safe campus on which to gain an education? If so, what specific suggestions do you have for the committee?

Answer 4. We appreciate the opportunity to work with Congress to provide greater clarity about the intersection between the Clery Act, Title IX, and proposed CASA provisions. While Title IX and the Clery Act are not necessarily contradictory, there are some areas of overlap that should be taken into account when crafting CASA or other language. For example, the VAWA amendments to the Clery Act established parameters around institutional policies for campus disciplinary processes, and these types of policies are also addressed in detailed guidance from OCR regarding title IX implementation. Although the Clery Act states that the Secretary does not have authority to mandate specific policies under the Act, OCR title IX guidance does require specific types of disciplinary policies to be in place. Requirements to report instances of sexual assault are also addressed in both the Clery Act and OCR guidance on title IX.

CASA or any new legislation should take great care to not create further areas of overlap or confusion. There are cases when slightly different roles, responsibilities, and policies among the statutes, regulations, and guidance are appropriate to

protect students and/or to distinguish between criminal and other acts. For example, the CASA concept of an individual to help students report sexual assaults and obtain accommodations might be the same person as the title IX coordinator, or it might be a different employee, based on the best judgment of an institution of higher education. However, these differences and areas of overlap must be carefully thought through and coordinated in statute, regulations, and guidance to ensure an efficient, cohesive system that reduces confusion for students, families, and institutions working to comply with the various Federal laws and requirements.

AAU and the broader higher education community are in the process of identifying other specific areas of conflict or duplication to inform the legislative process, including recommendations for solutions.

We do not think that the current provision in CASA requiring OCR and the Office of Postsecondary Education to issue guidance within 6 months on how the laws interact will be helpful. This is, in part, because there is no requirement that colleges or universities or advocacy groups would be consulted as part of the effort, and the 6-month deadline does not allow enough time for this complex task. We believe the Department should be required to conduct a negotiated rulemaking process to identify issues and seek workable solutions.

Question 5. I have received concerns from students who have been accused of sexual assault on campus and their parents. They tell me their rights to a fair hearing were not respected. Complaints included that as the accused, they were not informed of their rights under the institution's hearing policies, that the victim was provided more robust counsel by the university, and that they were denied the right to question their accuser and witnesses. CASA requires institutions to provide certain information about process to both the victim and the accused but leaves to the institution to follow their own policies for conducting investigations and hearings. Can this section be improved? Should the committee mandate that institutions follow basic policies and procedures? If so, please provide specific suggestions.

Answer 5. We support giving schools the resources they need to provide notice of and conduct prompt, fair, and impartial campus processes, as is currently required by the Clery Act. Colleges have responsibilities to both parties involved in any given case. Additionally, recently updated current law—which took effect July 1, 2015—already requires prompt notice to both parties at decision points throughout the disciplinary process. At a minimum, Congress should ensure that CASA does not include language that creates confusion by contradicting current law. We do not support mandating specific procedures for disciplinary proceedings because there is no one-size-fits-all model that works for all schools.

SENATOR WHITEHOUSE

Question 1. In the context of campus sexual assault, campus investigations and law enforcement investigations can sometimes work at cross purposes. How can we disentangle the campus and law enforcement investigations so that one does not impede the other?

Answer 1. Colleges are open to working with local law enforcement and ensuring that processes don't impede one another. CASA can help foster a more collaborative context by focusing primarily on sexual assault (i.e., criminal offenses) when it comes to interactions with local law enforcement so that definitions, roles, and responsibilities are better aligned between institutions of higher education and local law enforcement.

Question 2. In the context of domestic violence, law enforcement officers have become better qualified to address the needs of victims by drawing on the expertise of advocacy groups and experts. How can we best support the law enforcement community so that officers are similarly well-trained to assist survivors of campus sexual assault?

Answer 2. Colleges are committed to ensuring that their employees have the information and tools they need to assist survivors of campus sexual assault and to provide prompt, fair, and impartial campus disciplinary processes. We are committed to collaboration with our colleagues in the law enforcement community to ensure that campuses are safe for students.

Question 3. Many survivors fear that they may lose control over campus sexual assault proceedings if law enforcement gets involved early. What can we do to inform students about the course of a law enforcement investigation, so they can make an informed choice about how to proceed?

Answer 3. It should be the role of the confidential advisor to inform the survivor about college reporting processes, how to file an official police report, and available on-and off-campus resources.

These resources should include information specific to the local law enforcement in the jurisdiction. It should then be up to the survivor to decide how best to proceed.

Question 4. Absent the concern of loss of control (perceived or otherwise) by the survivor, are there reasons that experienced, trauma-informed, sensitive, effective law enforcement should not be involved at early stages of an investigation?

Answer 4. The survivor should decide when and how to proceed with local law enforcement. Colleges welcome State and local law enforcement agency involvement in dealing with crimes on campus, if supported by the survivor. However, we do not support legislation mandating that colleges hold off on any campus investigation pending an outside criminal investigation.

SENATOR CASEY

Question 1. In your testimony, you talk about the sexual assault climate survey that AAU contracted with Westat to do. You worked with a number of experts and institutional stakeholders to design the survey instrument. Did you, at any point in this process, consult with students, survivors or victims? advocates about the design of the survey instrument and what information they would find helpful? If not, how might that have affected the usefulness and validity of the survey?

Answer 1. The development process for the survey instrument was extensive. The survey design team received more than 700 comments about the survey from participating institutions during the development period. In addition, college students provided feedback through two rounds of cognitive testing conducted at Westat and pilot administration groups conducted at four participating colleges, which included survivor and victims? advocates.

Question 2. One of the comments I have heard on multiple occasions from institutions is that it is important to remember that not all institutions are the same: the institutions covered by title IV (the Federal financial aid title) of the Higher Education Act are extremely diverse, from large, multi-institution State systems to small liberal arts colleges; community colleges with commuter populations; and very small technical schools that may only have a couple of classrooms. Do you believe that the policies currently contained in the statutory text of the Clery Act include sufficient flexibility for different types of institutions of higher education?

Answer 2. N/A.

[Whereupon, at 11:30 a.m., the hearing was adjourned.]

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