that is largely because the persons who surrounded the President declined to carry out orders or accede to his requests. Comey did not end the investigation of Flynn, which ultimately resulted in Flynn's prosecution and conviction for lying to the FBI. McGahn did not tell Acting Attorney General Rod Rosenstein that the Special Counsel must be removed, but was instead prepared to resign over the President's order. Lewandowski and Dearborn did not deliver the President's message to Attorney General Sessions that he should confine the Russia investigation to future election meddling only. And McGahn refused to recede from his recollection about events surrounding the President's direction to have the Special Counsel removed, despite the President's multiple demands that he do so.

That is again quoting from the Mueller report.

The American people can take little comfort in the fact that the episodes of potential obstruction of justice would have been much worse had the President's staff actually followed through on his orders. The misconduct here emanates from the President himself.

The report notes the marked change in the President's behavior—after the firing of FBI Director Comey—once the President realized that ''investigators were conducting an obstruction-of-justice inquiry into his own conduct . . . The President launched public attacks on the investigation and individuals involved in it who could possess evidence adverse to the President, while in private, the President engaged in a series of targeted efforts to control the investigation.

For instance, the President attempted to remove the special counsel. He sought to have Attorney General Sessions unrecuse himself and limit the investigation. He sought to prevent public disclosure of information about the June 9, 2016, meeting between Russians and campaign officials. And he used public forms to attack potential witnesses who might offer adverse information and to praise witnesses who declined to cooperate with the government.

The report continues:

The conclusion that Congress may apply the obstruction laws to the President's corrupt exercise of the powers of office accords with our constitutional system of checks and balances and the principle that no person is above the law. . . . In sum, contrary to the position taken by the President's counsel, we concluded that, in light of the Supreme Court precedent governing separation-of-power issues, we have a valid basis for investigating the conduct at issue in this report. In our view, the application of the obstruction statutes would not impermissibly burden the President's Article II function to supervise prosecutorial conduct or to remove inferior law enforcement officers.

The report concludes:

The protection of the criminal justice system from corrupt acts by any person—including the President—accords with the fundamental principle of our government that ''no person in this country is so high that he is above the law.''

They cited U.S. v. Lee, Clinton v. Jones, and U.S. v. Nixon.

Congress, through its oversight powers and constitutional responsibilities, should closely examine, investigate, and take testimony on the following episodes and events relating to potential obstruction of justice by President Trump.

The special counsel examined these episodes in great detail and found supportive documentary and testimonial evidence that raised significant concerns about potential wrongdoing in a number of cases, including the Trump campaign's response to reports about Russia's support for Trump; conduct involving FBI Director Comey and National Security Advisor Michael Flynn; the President's reaction to the continuing Russia investigation; the President's termination of Comey and efforts to have Rosenstein take responsibility; the appointment of special counsel and efforts to remove him; efforts to curtail the special counsel's investigation; efforts to prevent public disclosure of evidence or affect witness cooperation or testimony; further efforts to have Attorney General Sessions take control of the investigation, after recusal; efforts to have White House Counsel Don McGahn deny that the President had ordered him to have the special counsel removed; conduct towards Flynn and Manafort; and conduct involving Michael Cohen. That is quite a long list.

Congress should now rise to its constitutional responsibility and conduct vigorous oversight based on the roadmap provided by the Mueller report, both as to Russia's interference in the 2016 Presidential election and efforts to obstruct justice during the Mueller investigation.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

LEGISLATIVE SESSION

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate resume legislative session and be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

HIGHER EDUCATION ACT

Mr. ALEXANDER. Mr. President, I ask unanimous consent that a copy of my opening statement at the Senate Health Education, Labor, and Pensions Committee be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REAUTHORIZING HEA: ADDRESSING CAMPUS SEXUAL ASSAULT AND ENSURING STUDENT SAFETY AND RIGHTS

Mr. ALEXANDER. The Senate Committee on Health, Education, Labor and Pensions will please come to order. Senator Murray and I will each have an opening statement, and then we will introduce the witnesses. After the witnesses' testimony, senators will each have 5 minutes of questions.

Today's hearing will focus on how colleges and universities should respond to accusations of sexual assault. This is an important and difficult topic. For that reason, I am glad that Senator Murray and I have been able to agree to a bipartisan hearing and to agree on the witnesses.

On these issues, I have the perspective of a father of daughters and sons, of a grandfather, a lawyer, a governor, and also a former Chairman of the Board and president of a large public university. As a university administrator, my first priority always was the safety of students. My goal was to quickly and compassionately respond to victims of alleged assaults, offering counseling and other support, including assisting the victim if he or she wished to report the assault to law enforcement. And my goal also was to protect the rights of both the accused and the victim to ensure that campus disciplinary processes were fair.

If you are an administrator at one of 6,000 American colleges and universities and you ask your legal counsel what laws the institution must follow when it comes to allegations of sexual assault, your counsel would reply that there are several places to look.

First, you would look to federal statutes. Two federal laws govern allegations of sexual assault. All colleges and universities that receive federal funds, including federal financial aid, must follow them. First, Title IX of the Education Amendments Act of 1972, which states ''no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity.'' In 1999, the Supreme Court ruled in Davis v. Monroe County Board of Education that student-on-student sexual harassment is covered by Title IX.

And second, the Clery Act, as amended in 2013 by the Violence Against Women Act, which requires colleges to have ''procedures for institutional disciplinary action in cases of alleged domestic violence, dating violence, sexual assault, or stalking.''

The law mandates ''such proceedings shall provide a prompt, fair, and impartial investigation and resolution'' and ''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.'' That advisor may be a lawyer. The law also requires institutions to state in their procedures ''the standard of evidence that will be used during any institutional conduct proceeding,'' but it did not say what that standard had to be.

Next your counsel would refer you to regulations based upon these two federal laws. These regulations also have the force of law. First, the relevant regulation under Title IX requires schools to have a disciplinary process which is defined in the regulation as ''a grievance procedure providing for [a] prompt and equitable resolution.''

Regulations under the Clery Act define a ''prompt, fair, and impartial proceeding.'' Under these regulations, the institution ''may establish restrictions regarding the extent to which the advisor of choice may participate in the proceedings.'' Your counsel will also tell you that sometimes the U.S. Department of Education will send out a letter or guidance to institutions, giving its interpretation of what a law or regulation might mean. Such letters or guidance do not have the force of law; they are only advisory.

But campuses sometimes consider them binding as a law and unfortunately Department officials have, in the past, made the same mistake.

For example, in 2011 and 2014, during the Obama Administration, officials at the U.S. Department of Education wrote two guidance letters interpreting Title IX, saying, in deciding whether an accused student is guilty of sexual assault, the decider ''must use a preponderance of the evidence standard.''

It was no surprise that many campuses thought this interpretation was the law because the Department acted as if it were the law, when it was only advisory. On June 26, 2014, at a hearing before this Committee, I asked the former Assistant Secretary for Civil Rights at the Department of Education, Catherine Lhamon,''do you expect institutions to comply with your Title IX guidance documents?'' She responded, ''We do.''

In September 2017, Secretary DeVos withdrew both of these letters of guidance and a year later, in November of last year, proposed to replace them with a new rule under Title IX, a process which allows extensive comment and discussion and would have the force of law when it is final.

That is not all your legal counsel would tell you. If you're the president of a public institution—where 80 percent of undergraduates attend college—your counsel would remind you that your disciplinary process must meet the standards of the 14th Amendment to the United States Constitution which says ''nor shall any state deprive any person or life, liberty, or property without due process of law.''

And then finally you'd have to look at any applicable state laws. For example, if you are an administrator at one of Tennessee's public colleges, the state's Uniform Administrative Procedures Act mandates that at public colleges and universities a student facing suspension or expulsion must be given the option to have a full administrative hearing with the right to counsel and ''the opportunity to . . . conduct cross-examination.''

This array of laws and regulations creates a challenge for college administrators, for students who allege an assault, and for those who are accused to know what the law requires, so the purpose of today's hearing is to hear how we can create more certainty in how colleges and universities should appropriately and fairly respond to allegations of sexual assault. During this hearing, I would like to focus on three issues raised by the Department's proposed rule: The requirements of due process, including cross examination; the effect of the location of the alleged assault; and The definition of sexual harassment.

According to an article published by the Cornell Law Review, more than 100 lawsuits have been filed by students accused of sexual assault who claim schools denied them due process. In one lawsuit, an accused student sued Brandeis University. The opinion of the judge of the U.S. District Court for the District of Massachusetts criticized the Department of Education's earlier 2011 guidance for causing schools to adopt unfair procedures saying:

''In recent years, universities across the United States have adopted procedural and substantive policies intended to make it easier for victims of sexual assault to make and prove their claims and for the schools to adopt punitive measures in response. That process has been substantially spurred by the Office for Civil Rights of the Department of Education, which issued a 'Dear Colleague' letter in 2011 demanding that universities do so or face a loss of federal funding. The goal of reducing sexual assault, and providing appropriate discipline for offenders, is certainly laudable. Whether the elimination of basic procedural protections—and the substantially increased risk that innocent students will be punished—is a fair price to achieve that goal is another question altogether.''

In February of this year, Supreme Court Justice Ruth Bader Ginsburg told the Atlantic, ''There's been criticism of some college codes of conduct for not giving the accused person a fair opportunity to be heard, and that's one of the basic tenets of our system, as you know, everyone deserves a fair hearing.''

In an attempt to meet that requirement, the Department's proposed rule would require institutions to hold a ''live hearing,'' which is defined as a hearing in which ''the decision-maker must permit each party to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the hearing must be conducted by the party's advisor of choice.''

The proposed rule would allow parties who do not feel comfortable being in the same room with each other to request to be in separate rooms, visible by a video feed, for example. This definition of a live hearing aligns with recent decisions by the U.S. Sixth Circuit Court of Appeals and a California State Court of Appeals.

In the Sixth Circuit case, a student accused of sexual assault sued the University of Michigan, alleging the school violated the Due Process Clause of the Fourteenth Amendment when it did not hold a hearing with the opportunity for the accused to cross-examine his accuser and other witnesses. The Sixth Circuit ruled in favor of the accused student stating: ''if a public university has to choose between competing narratives to resolve a case, the university must give the accused student or his agent an opportunity to cross-examine the accuser and adverse witnesses in the presence of a neutral fact-finder.''

And in California, the State Court of Appeals for the Second District made a similar finding, stating: ''when a student accused of sexual misconduct faces severe disciplinary sanctions, and the credibility of witnesses . . . is central to the adjudication of the allegation, fundamental fairness requires, at a minimum, that the university provide a mechanism by which the accused may cross—examine those witnesses, directly or indirectly, at a hearing in which the witnesses appear in person or by other means.''

Some college administrators have said to me, I do not want to turn our campus into a courtroom. Others point out that the requirements of fairness and due process often require inconvenient administrative burdens. It seems to me that the question before us is, how can the law satisfy the Constitutional requirements of Due Process without imposing unnecessary administrative burdens and expense on higher education institutions.

A second issue is the location of the alleged assault. The proposed rule requires schools to respond to an allegation of sexual assault even if it is off-campus if the ''conduct occurs within [an institution's] education program or activity.'' For example, the proposed rule cites a federal district court in Kansas that held that Kansas State University was required to respond to an allegation of sexual assault that occurred at an off-campus fraternity house because the house was university-recognized and the school exercised oversight over the fraternity. There is some question about the definition of university program or activity. And a second question is if a university can choose to go beyond university programs or activities to protect their students.

The third issue is how federal law or regulation should define sexual harassment. The proposed rule uses a definition established by the United States Supreme Court in 1999 in the case Davis v. Monroe County Board of Education, which requires the conduct to be ''so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the [institution's] education program or activity.'' Some have suggested we look at other definitions in federal law or Supreme Court precedent.

In the future, regulations with the force of law and guidance letters that are merely advisory will continue to interpret federal laws and constitutional requirements governing allegations of sexual assault on campus. But as Congress seeks to reauthorize the Higher Education Act this year, we should do our best to agree on ways to clarify these three issues. The more we do that the more certainty and stability we will give to the law governing how institutions of higher education should respond to accusations of sexual assault.

FAFSA

Mr. ALEXANDER. Mr. President, I ask unanimous consent that a copy of my opening statement at the Senate Health Education, Labor, and Pensions Committee be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FAFSA SIMPLIFICATION HEARING

Mr. ALEXANDER. There are not many things that United States senators can do to cause 20 million American families to say, ''thank you.''

After five years of work, we are ready to do just that by reducing the Free Application for Federal Student Aid—the FAFSA—from 108 questions to two dozen, and eliminate the need for families to give their financial information to the federal government twice.

This will help 400,000 families in Tennessee, 350,000 families in Senator Murray's Washington State, and millions more for each of us who have it in our hands to finish our work on simplifying the FAFSA.

A volunteer mentor with Tennessee Promise, which is our state's program that provides two years of free community college, told me that the FAFSA—the form that 20 million families fill out each year to apply for federal student aid—has a ''chilling effect'' on students and on parents.

The former president of Southwest Tennessee Community College in Memphis told me he believes that he loses 1,500 students each semester because the FAFSA is too complicated.

East Tennessee State University said a third of their applicants—approximately 10,000—are selected each year for verification—a complicated process that stops Pell Grant payments while a student and their family scrambles to submit their federal tax information or prove they did not have to file taxes.

Former Tennessee Governor Bill Haslam told me that Tennessee has the highest rate of filling out the FAFSA, but it is still the single biggest impediment to more students enrolling in Tennessee Promise.

And one of the questions I hear most from students is, can you please make it simpler to apply for federal aid?

Five years ago at a hearing before this Committee we heard that the vast majority of questions on the FAFSA are unnecessary.

I asked if the four witnesses could each write a letter to the Committee recommending how they would simplify the FAFSA.