

1 MAJORITY ROUNDTABLE ON CAMPUS SEXUAL ASSAULT:  
2 THE ADMINISTRATIVE PROCESS AND THE CRIMINAL JUSTICE SYSTEM

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4 MONDAY, JUNE 23, 2014

5 United States Senate,  
6 Subcommittee on Financial and Contracting Oversight,  
7 Committee on Homeland Security and Governmental Affairs,  
8 Washington, D.C.

9 The roundtable met, pursuant to notice, at 2:30 p.m.,  
10 in Room SD-106, Dirksen Senate Office Building, Hon. Claire  
11 McCaskill, Chairman of the Subcommittee, presiding.

12 Present: Senators McCaskill and Blumenthal.

13 OPENING STATEMENT OF SENATOR McCASKILL

14 Senator McCaskill. Good afternoon, everyone. Since we  
15 have a lot of ground to cover and a lot of smart people  
16 around this table, I am going to go ahead and get started.  
17 And I know that Senator Blumenthal will be joining us, and  
18 when he does I might interrupt whoever is talking at that  
19 point and give him a chance to make a few opening remarks  
20 when he arrives.

21 First, I want to welcome all of you who are here today.  
22 I am very excited about this particular roundtable because  
23 of my background as a sex crimes prosecutor for many years.  
24 This is the last in our series of three roundtables, which  
25 are discussions about sexual violence on college campuses

1 and university campuses.

2 This has been a terrific process and also a very  
3 helpful one. On May 19th, we had a really good discussion  
4 on the Clery Act and the Campus SaVE Act. On June 2nd, we  
5 had a thought-provoking and intense discussion about the  
6 role of Title IX.

7 I wanted to hold these roundtables so that we could  
8 bring people together rather than having all of the  
9 university officials at one and all of the police at one and  
10 all of the victim, survivor, and advocacy groups at one. I  
11 wanted to mix each one so we could get the discussion back  
12 and forth, which I think has been really helpful in us  
13 finding where really there are points that we can move on in  
14 terms of making improvements and changes and holding out  
15 best practices to other campuses.

16 We cannot make good policy choices if we do not really  
17 know what is happening on the ground. These discussions  
18 have been very helpful in informing my Senate colleagues and  
19 me as we work on legislation, and I know that today's  
20 roundtable will also contribute to that effort.

21 This topic is very near and dear to me, today's  
22 roundtable. As a former prosecutor, I have been on the  
23 front lines of the fight against sexual assault. I want to  
24 do everything possible to make sure that these crimes are  
25 prosecuted and that the perpetrators of these crimes are

1 held responsible to the fullest extent of the law.

2 But as a former prosecutor and a former law maker at  
3 the State level, I know that our criminal justice system and  
4 the laws that support it are not always perfect and it has  
5 not been willing or able to handle many sexual assault  
6 cases, particularly cases involving consent as a defense,  
7 and especially when there may have been intoxication--in  
8 fact, the fact pattern that we see most frequently on  
9 college campuses. Even law enforcement and prosecutors have  
10 been known to fall into stereotypes about what "rape" is  
11 supposed to look like.

12 Educational institutions have a role to play here, too.  
13 They have a commitment to their students and their  
14 community, and when incidents of sexual violence happen,  
15 they have an obligation to investigate what happened,  
16 support the survivor, ensure a safe campus for all students,  
17 and if the facts bear it out, punish the offender for  
18 violating the school's code of conduct.

19 The problem is colleges and universities have not  
20 always done that. They may have ignored the problem, swept  
21 it under the rug, and hoped the survivor would give up and  
22 go away. Many schools are working to improve their  
23 administrative procedures and be more responsive. But we  
24 know there is room to do better.

25 In my many conversations with survivors, I have heard

1 again and again how both systems have failed, to the point  
2 where it appears many survivors have little or no confidence  
3 in either the criminal justice system or the administrative  
4 process in their own colleges and universities. I hope we  
5 can talk today about how to ensure that both processes work  
6 better, support victims, and hold perpetrators accountable.

7       There is also a need for these two systems--the  
8 administrative system and the criminal justice system--to  
9 work together. I think there might be a perception that  
10 they cannot work together because they have different  
11 responsibilities and obligations, which is true in some  
12 sense, but these two systems also share a common goal, which  
13 is support and justice for the survivor.

14       In fact, the White House Task Force is recommending  
15 that universities and local law enforcement enter into  
16 memorandums of understanding so they can build stronger and  
17 better relationships working together. I know we have some  
18 organizations here today that are already working together,  
19 and I look forward to learning more from you.

20       Now, if you would, go around the table and introduce  
21 yourself and tell us briefly where you are from and what  
22 role you play in this discussion. And then we will begin a  
23 series of areas that we will talk about. I will caution we  
24 have a lot of people on the roundtable today, and a lot of  
25 you know a lot. And there is going to want to be--I am

1 going to do my best to be not like a Senator and I will try  
2 to talk less frequently. I will try to be unsenatorial--oh,  
3 here is Dick. This is Senator Blumenthal. Before we begin  
4 introducing, Senator, would you like to make any opening  
5 comments?

6 OPENING STATEMENT OF SENATOR BLUMENTHAL

7 Senator Blumenthal. Well, I caught the tail end of  
8 what you were saying about saying less rather than more,  
9 which I think is exactly the right approach. We are here to  
10 listen. And I, first of all, want to thank you, Senator  
11 McCaskill, for bringing together yet another really stellar,  
12 highly qualified group of people to enlighten us. And I  
13 want to thank all of you for coming, particularly Darcie  
14 Folsom from the University of Connecticut, and you will hear  
15 her story from herself, but it is very impressive, and I  
16 know each of you have an impressive contribution to make.  
17 So just thank you for being here. I know it is not easy to  
18 get here, just having gotten off a flight myself. But thank  
19 you for making the trip and the effort and, most important,  
20 for all your great work, all the work that you are doing on  
21 your campuses, in your States and localities. And law  
22 enforcement for both of us is our first career, I would say,  
23 and so we particularly welcome you.

24 Thanks so much.

25 Senator McCaskill. Thank you, Senator Blumenthal, and

1 I want to also say that my job today is to move this  
2 discussion along and make sure that everybody has a chance  
3 to share. But I also want this to be very informal. We  
4 have found that the previous roundtables worked so well  
5 because it was not just a typical hearing where Senators are  
6 asking prepared questions and witnesses are trying to give  
7 answers but usually not complete ones. So we want this to  
8 be free flowing. We want you to feel free to jump in if  
9 someone is making a point that you think you can add to or  
10 augment. But we also want to hear from everyone.

11 So to some extent, I will be kind of corralling  
12 everyone, and not that I would ever want to cut anybody off,  
13 but we want to make sure that all voices are heard from.

14 So let us start--

15 Senator Blumenthal. And I just want to correct the  
16 record. Did I say "University of Connecticut"? I meant  
17 Connecticut College. Sorry.

18 Senator McCaskill. Big difference.

19 Senator Blumenthal. That would be a cardinal sin.

20 [Laughter.]

21 Senator McCaskill. That is right. That would be like  
22 me saying Mike was from Mizzou. I would not do that, Mike.  
23 He is a Bear. He is not a Tiger.

24 Okay. Let us go around the table and introduce  
25 everyone.

1           Ms. Booth. Good afternoon. Thank you. It is my  
2 pleasure to be here this afternoon. My name is Katharina  
3 Booth. I am a chief trial deputy with the Boulder County  
4 District Attorney's Office. That is Boulder, Colorado. In  
5 that capacity, I work as both the supervisor of the unit  
6 which handles all of our felony domestic violence and felony  
7 sexual assault crimes that are committed within the 20th  
8 Judicial District. I am a hands-on prosecutor. I am still  
9 in the fight with a heavy and active caseload of our felony  
10 sexual assaults. And I also serve as the supervisor acting  
11 on many of the committees working with our university  
12 partners, so from our multidisciplinary committees, our  
13 agencies' approach, and try to make that collaborative  
14 effort and outreach to our universities so that we can work  
15 together on prosecuting crimes of sexual assault.

16           Thank you.

17           Ms. O'Connor. Good afternoon. My name is Becca  
18 O'Connor, and I am the vice president for public policy at  
19 the Rape, Abuse, and Incest National Network, or RAINN.  
20 RAINN for 20 years has worked to inform the conversation  
21 about sexual violence. We do so through public education.  
22 Pointedly, we work with college campuses across the country.  
23 We empower students through an annual day of action to bring  
24 awareness to this issue. And we also have worked heavily in  
25 the space of public policy, and we run the national sexual

1 assault hotline, which to date has helped more than 2  
2 million people.

3 Ms. Gaffney. Good afternoon. My name is Jennifer  
4 Gaffney. I am the deputy chief of the Sex Crimes Unit in  
5 the New York County District Attorney's Office. Thank you  
6 so much for having me and for all of the attention you have  
7 paid to this issue.

8 In our office, the Sex Crimes Unit handles all of the  
9 sexual assault prosecutions of victims age 14 and over as  
10 well as some sex-trafficking prosecutions and our sex  
11 offender registry. In my capacity as a deputy chief, I  
12 supervise our assistants on those cases. I, too, have a  
13 caseload of my own, and I participate in our  
14 multidisciplinary task force and do outside trainings to  
15 different groups, including advocacy groups, college groups,  
16 safe examiners, et cetera.

17 Ms. Hull. Good afternoon. Thank you for having me. I  
18 am Detective Carrie Hull from the Ashland, Oregon, Police  
19 Department. I am an active detective in that agency. My  
20 primary caseload is adult sexual assault crimes and then  
21 child sexual assault crimes, though we are all general  
22 crimes detectives. I also sit on the Legislative and Public  
23 Policy Committee for the Oregon Sexual Assault Task Force  
24 and am a law enforcement instructor for their Training  
25 Institute as well as a forensic interviewer of children.

1           Ms. Brodsky. Hi. Thank you so much for inviting me to  
2 join this conversation today. I am Alexandra Brodsky. I am  
3 a student at Yale Law School and one of the founding co-  
4 directors of Know Your IX. Know Your IX is a grass-roots,  
5 student-driven national campaign to end campus sexual  
6 violence. Toward that end we work to make sure our fellow  
7 students across the country are aware of their civil right  
8 to an education free from violence and also to advocate for  
9 better Federal enforcement of that right.

10           Ms. Ladd-Webert. I first want to thank you, Senator,  
11 for all your support around the issues of sexual assault. I  
12 am Jessica Ladd-Webert. I am the director of the Office of  
13 Victim Assistance which is at the University of Colorado,  
14 Boulder. We are a free and confidential counseling and  
15 advocacy center. We are therapists and advocates who help  
16 people who have been impacted by a variety of crimes, with  
17 sexual assault being one of our topic areas we focus on the  
18 most. And we are here to make sure that our clients are  
19 empowered and informed when something like this happens.

20           Chief Denton. Good afternoon, Senator. Thank you very  
21 much for the invitation to participate today. My name is  
22 Paul Denton. I am the chief of police for the University  
23 Police Division at The Ohio State University, Ohio's  
24 flagship land grant institution of higher education. I have  
25 held this position for 8 years now, and for 28 years prior

1 to that, I served at the Columbus Division of Police. I  
2 have experience both in municipal law enforcement at a large  
3 agency and at campus policing now.

4 Recently I served, as some other colleagues here, on  
5 the Negotiated Rulemaking Committee as an alternate and had  
6 full voice in that process and recent rules that were  
7 released related to VAWA. And I am an appointed commission  
8 member for the Ohio Peace Officers Training Commission.

9 Senator McCaskill. Thank you, Chief.

10 Chief Zoner. Hi, and I echo my colleagues' sentiment  
11 for being invited to the roundtable, and we look forward to  
12 working together to inform legislative writing and policy  
13 changes in this area. I am Kathy Zoner. I am the chief of  
14 police at Cornell University. My office holds a primary  
15 Clery statistical gathering as well as reporting, the annual  
16 security report. We work with the Title IX coordinators  
17 whenever possible, and as aligned with to help with their  
18 investigations.

19 I convene our Public Safety Advisory Committee, which  
20 keeps us in compliance with New York State education law,  
21 Article 129-A, which is a prime example, I think, of a well-  
22 intended, overlegislated directive. And we also on campus  
23 are--our president created a Council for Sexual Violence  
24 Prevention that we think better speaks to what the intent of  
25 Article 129-A was, which is collaborative work across

1 genders, across sexuality, and in the efforts of rape  
2 education and prevention.

3 I have served on the Campus Codes and Judicial  
4 Committee, which was charged with aligning our code with  
5 OCR's recommendations and guidances, as well as its  
6 mandates. I also chair the Human Resources and Safety  
7 Services Diversity Committee, which is charged with creating  
8 a more welcome environment for all aspects and all walks of  
9 life on campus.

10 Also in my iteration I started 23 years ago all with  
11 Cornell University as a dispatcher, and through that time  
12 frame was elected to the Board of Directors of the then  
13 Ithaca Rape Crisis and served there for over 12 years; 9 of  
14 those years were as the board president.

15 So I think in order to emphasize my passion for this  
16 subject matter, I cannot emphasize it enough. So thank you  
17 very much for the invitation.

18 Senator McCaskill. Thank you.

19 Ms. Folsom. Thank you for having me. I am Darcie  
20 Folsom. I am the director of Sexual Violence Prevention  
21 Advocacy at Connecticut College, which is a small, private,  
22 liberal arts school in New London. And we are an OVW campus  
23 grant success story. We had the grant from 2010 until 2013,  
24 and the campus administration really saw the success of the  
25 program and the work that we were doing on campus and saw

1 the value and continued to fund the program as well as my  
2 budget. So we have instituted Green Dot, which is a  
3 bystander inventory program that is a national program,  
4 which has seen a lot of success at Connecticut College, and  
5 with widespread student buy-in, I think that we have got a  
6 really solid program to talk about.

7 Ms. Cantalupo. Thank you, Senator. I add my thanks to  
8 everyone. My name is Nancy Cantalupo, and I have been  
9 working on this issue for nearly 20 years from various  
10 perspectives. I started out as a student activist, and then  
11 became a women's center director at the same institution,  
12 Georgetown University, and later, after I spent some time in  
13 practice as a lawyer, went back to Georgetown Law as an  
14 assistant dean and began volunteering to act as faculty  
15 counsel to students who were accusing other students of  
16 sexual violence through the student disciplinary system. So  
17 I have litigated administrative proceedings under Title IX  
18 and the Clery Act. And those experiences led me to start  
19 researching and writing in this area, so I have now authored  
20 seven articles on Title IX and the Clery Act and the case  
21 law that applies to accused students' rights in civil court,  
22 so their administrative due process rights, and have  
23 continued in this work in various ways, including being a  
24 negotiated rulemaking participant, now finishing up with  
25 being--continuing as a researcher at Georgetown Law, but

1 also having a position as a research fellow with the Victim  
2 Rights Law Center.

3 Mr. Jungers. Senators, my name is Mike Jungers. I am  
4 dead of students at Missouri State University, and it is my  
5 pleasure to be here.

6 In my role at the university as dean of students, I am  
7 responsible for our behavioral intervention team, another  
8 group that I bring together, a campus safety group. I am  
9 tasked with not only the prevention and education program  
10 around sexual violence, but I also am responsible for  
11 student conduct on our campus, so our conduct process is  
12 under my guidance. And I have been in higher education  
13 quite a long time and in student conduct so that I have seen  
14 from when I was in school and there was no student conduct  
15 process the many different alliterations to where we are  
16 today, and I am frankly excited about where we are moving.

17 Senator McCaskill. Great. Well, that is terrific. So  
18 I will start with one area, and then I will trade off with  
19 Senator Blumenthal, and hopefully we will get through all of  
20 this within the next couple of hours.

21 We have learned that most schools do not have written  
22 protocols between campus law enforcement and local law  
23 enforcement. And maybe, Chief Denton, you are the best one  
24 to start off here since you have been in both worlds. I do  
25 not need to tell you that it is not always a bed of roses

1 between local law enforcement and campus law enforcement. I  
2 have seen those two groups work together well and, frankly,  
3 I have seen them behave badly where one is dismissive of the  
4 other, where there is territorial, inappropriate behavior.  
5 And I would like your take on what we should do, how we can  
6 do a better job, and you should start, and anybody else can  
7 jump in, certainly Chief Zoner and any of the others, the  
8 detective.

9       One of my fears here is we are having way too many  
10 interviews of sexual assault victims that are not being  
11 conducted by someone who knows how to do a forensic  
12 interview. And I think the detective will tell you and the  
13 prosecutors will tell you that in a lot of cases the  
14 difference between holding someone accountable sometimes has  
15 more to do with how the victim is interviewed than the  
16 underlying facts of the case. And so in a perfect world, I  
17 would have someone on every college campus who was the very  
18 first person to talk to a victim, when a victim is willing  
19 to talk, make sure that every single one of those people had  
20 been trained in a forensic interview technique as it relates  
21 to a sexual assault crime. But tell me your sense of how  
22 well you all are working with local law enforcement, and you  
23 may be an anomaly because you have come from their  
24 department, and many times you do not have that. So you do  
25 not have that kind of--you have relationships there, I am

1 sure, that assist you in terms of keeping a working  
2 relationship. Why don't you speak to that?

3 Chief Denton. That does help, Senator, to speak to the  
4 professionalism of campus law enforcement agencies, I am a  
5 very big advocate of accreditation efforts, either through  
6 the CALEA accreditation or IACLEA accreditation. We  
7 recently achieved that at our agency, and that is a very  
8 defined and specific process where agencies have to create  
9 policies and procedures to address everything from Clery  
10 compliance to response to investigations and cases.

11 Fundamentally--so that is how I think you build that  
12 relationship and wind up increasing your professionalism.  
13 You know, central Ohio, we probably are very, very  
14 fortunate, the people I have come up through the ranks with,  
15 people I have worked with, known professionally for 25 to 30  
16 years, are now heads of agencies, so we do have very good  
17 working relationships, and I am fortunate for that.

18 In terms of response to crimes, I think it is basic and  
19 fundamental police service. When we get a call or request  
20 for service from us, I expect the very basics on every crime  
21 as much as possible, whether that is locating a crime scene,  
22 collecting evidence, conducting and identifying interviews  
23 when you identify witnesses so you do not have to re-  
24 interview victims or survivors multiple times. It is  
25 fundamental police work in many, many cases, and then you

1 can proceed with that case in the courts as you would any  
2 other case.

3 Senator McCaskill. What do you think is preventing  
4 strong working relationships between police departments--for  
5 those of you that have seen the side of this that is not as  
6 good, what is preventing good, strong working relationships  
7 between campus police and local police?

8 Ms. Hull. Well, I can address some of that. We have a  
9 really great relationship with Southern Oregon University  
10 that is within our jurisdiction. Now, our department is a  
11 little unique, maybe different from some here, where they do  
12 not have sworn law enforcement. So our municipal law  
13 enforcement would take the case if it was a sexual assault  
14 anyway.

15 However, you still have to have that working  
16 relationship because oftentimes a victim may present to a  
17 campus public safety officer, so you still need all that  
18 same training there.

19 We have found that it needs to be an open line of  
20 communication for training--training is incredibly  
21 important--with a clear understanding--and, again, our  
22 department is a little bit different. We have what is  
23 called the You Have Options Program that was developed to  
24 increase sexual assault reporting within our city. And then  
25 the other side of that program was by increasing reporting,

1 we are increasing intelligence on serial sexual offenders  
2 for law enforcement.

3 Absolutely the foundation of that program is in  
4 confidentiality, so that is--with Title IX, we then have to  
5 be very cautious about information that we share with the  
6 university that would trigger a Title IX investigation. So  
7 you will actually see a flip maybe from what you have heard  
8 in previous roundtables in that our municipal law  
9 enforcement agency has to be cautious of what we provide to  
10 a university.

11 Now, the intent is always still there, though, to share  
12 information, to collaborate, because it is much better for  
13 the survivor ultimately if we want to go forward with  
14 anything to have that collaboration there. But what I would  
15 like to enter in for everybody as a starting point is that  
16 it is always at the victim's request and with the victim's  
17 permission. And we found great success with that happening.

18 And then I also have the unique opportunity to train  
19 nationally with different law enforcement agencies and to  
20 speak with them very openly about their problems. And there  
21 is not typically that collaboration in many that I have  
22 spoken with, with university law enforcement and municipal  
23 law enforcement. And again, I think it goes back to a  
24 fundamental understanding of what this caseload requires to  
25 be successful. And the fact that there is just a general

1 lack of education for law enforcement, be it campus or  
2 municipal and general.

3         Mr. Jungers. I think there is another gulf besides the  
4 one between campus police and the area police, and that is  
5 between often student affairs professionals on campus, dean  
6 of students office, student conduct, other offices,  
7 departments, and campus safety, and sometimes that can be a  
8 huge gap. And when I go to my national conference, I hear  
9 that repeatedly, that we just do not get along, we do not  
10 talk.

11         I am really blessed to work at an institution where we  
12 do talk, we do collaborate, that Safety Matters group, there  
13 are active participants from campus safety as well as our  
14 Springfield Police Department.

15         I would also note--and I do not think everyone can do  
16 this, but we have got a very unique situation that the  
17 Springfield Police Department has a substation on our  
18 campus, and they are responsible for the entire city, but  
19 their concentrated efforts, unless they are called away, are  
20 the campus and the surrounding area. So that leads to, I  
21 think, a better relationship all around.

22         I think having been there long enough where there was  
23 distrust among the elements, it is really about  
24 communicating what our needs are as an entity and expressing  
25 appreciation for the important work that they do, because I

1 think often safety officers feel unappreciated, police  
2 officers feel misunderstood, and really sitting down and  
3 talking about what each of us brings that is of great value  
4 in helping students, in helping citizens of our community to  
5 be safe.

6 Ms. Booth. I recognize another obstacle that we have,  
7 and I think come from more of the traditional model where we  
8 have the university police, we have our city police, and  
9 then, of course, you have the organizations on campus that  
10 would be handling the investigations on Title IX Clery. And  
11 therein lies the problem. It is exactly that. We come at  
12 it from different perspectives with different goals, and  
13 sometimes we are crossing over and stepping on each other's  
14 feet, depending on timing of when the complaint might come  
15 forward, say it is the end of the semester versus where it  
16 exactly happens. It can start off campus, come onto campus  
17 and so forth. So we have that disconnect.

18 We do try to collaborate, we try to communicate. We do  
19 not have a written policy. I think it is more unique to  
20 have a written, like, MOU or policy between the agencies.  
21 We are actually meeting next month for a joint working  
22 session towards that goal, but we certainly have different  
23 charges in mind as we come forward, and sometimes those are  
24 at odds. If I am university legal counsel, and I am worried  
25 about timely warnings, that can be inconsistent with my city

1 police investigation and some of the investigative efforts  
2 they would like to do first because Legal acts for campus  
3 containment.

4 Senator McCaskill. So either one of the police  
5 officers or one of the prosecutors, if a victim reports to a  
6 campus police officer at either Cornell or Ohio State, and  
7 if that police officer then takes the statement, in your  
8 jurisdictions does the detective then come after that and  
9 start over again? Or is the first statement that is taken  
10 from the victim, are you making an effort to have that  
11 statement be done by someone who understands the particular  
12 requirements of a forensic interview of a sexual assault  
13 victim?

14 Chief Zoner. We have multijurisdictional issues. We  
15 have cross-jurisdiction with not only local law enforcement  
16 but Federal and State agencies as well. So our goal is  
17 always to first determine location because that affects  
18 whether or not we have authorization to investigate from a  
19 sworn law enforcement perspective. But once we establish  
20 that, we do not even start an interview until we know we are  
21 taking them to the right place, and then we advocate as a  
22 law enforcement officer, not as a sexual assault survivor  
23 advocate, but as a law enforcement, someone who knows the  
24 system, to bring them to the right place and guide them to  
25 the right people to take the kind of forensic statement that

1 you would want to have taken in those circumstances.

2 Senator McCaskill. So your effort is to get them to  
3 the right place initially.

4 Chief Zoner. That is the first step, yes. And, then,  
5 again, it is at their wishes. So if their wish is to let us  
6 know, simultaneously we are letting our Title IX offices  
7 know that this incident happened. It does not matter where  
8 it happened. The Title IX is going to take that on and work  
9 their investigative process. So we sort of simultaneously  
10 launch both notifications, but we advocate with the student  
11 through the processes that can be very confusing when you  
12 are working with a lot of different agencies.

13 Chief Denton. It would be rare for a survivor to  
14 contact us immediately as the very first contact.  
15 Oftentimes it is either a hall adviser, someone in the  
16 Wellness Center, someone in Student Conduct, Student Life.  
17 We assure that all of those support services are in place,  
18 are available, but that the survivor, as Chief Zoner said,  
19 is in the right place before we then really start to flesh  
20 out an interview schedule and touch base in terms of the  
21 kinds of interviews you are asking for or suggest.

22 Chief Zoner. These things are all done without an MOU  
23 in place, and what we have found on a number of occasions is  
24 that our local law enforcement agencies are not beholden to  
25 the DOE or any other directives to enter into any agreement.

1 So if I approach them with something they are going to have  
2 to sign, they are going to run it up through their legal  
3 counsel, and they are either going to refuse to sign or not  
4 refuse to sign, but handshake and work with us.

5 So we have not had a problem working with people. The  
6 MOU does not drive whether or not we work with the people.  
7 It is never a bad idea to try to come up with something that  
8 forces agencies that are having difficulty working together,  
9 but I am not sure an MOU is the right thing for that.

10 Ms. Cantalupo. The--

11 Chief Denton. We do have a--excuse me. Go ahead,  
12 Nancy.

13 Ms. Cantalupo. Go ahead.

14 Chief Denton. We do have a Franklin County Sexual  
15 Assault Response Protocol that has been developed among all  
16 law enforcement agencies, again, led by our county  
17 prosecutor, that serves as that road map or guide as well, a  
18 guiding document, and that is, you know, reviewed and  
19 analyzed and--

20 Senator McCaskill. And the university is part of that.

21 Chief Denton. Absolutely.

22 Ms. Cantalupo. I just wanted to underline what Mike  
23 was saying about coordination being a bigger issue than just  
24 law enforcement and the university. It is an internal  
25 university issue, and there is also another key relationship

1 outside of the university, and that is with whoever the  
2 community sexual violence advocates are--anti-sexual  
3 violence advocates are. And, you know, SARTs--Sexual  
4 Assault Response Teams--have really been a key best practice  
5 that have been--you know, that has been developed and shown  
6 to work over and over again, because you can pull in both,  
7 you know, the people internally that need to be coordinated  
8 and the people externally that need to be involved. And  
9 they all have to talk to each other. And my colleague from  
10 the Victim Rights Law Center who does a lot of training with  
11 institutions--she was on the Title IX panel--she often says,  
12 you know, you should start a sexual response team but  
13 understand that, for the first 6 months at least, they are  
14 just going to fight with each other. And that is sort of a  
15 necessary process because, as Mike was saying, you know,  
16 there are lots of--sometimes there are a lot of  
17 dysfunctional relationships that need to be gotten through.  
18 But oftentimes once you get through those, you have a level  
19 of coordination and cooperation and sort of like-mindedness  
20 that you would never have been able to achieve without that  
21 process, having gone through that process.

22 And I think it is important to understand that part of  
23 the reason why you want this many people at the table is  
24 because of the different goals issue. You know, from a  
25 Title IX and a Clery Act perspective, the most important

1 thing is getting the survivor--getting her Title IX and her  
2 Clery Act rights met, or his rights met, and those rights  
3 are based on equality in the Title IX context in particular,  
4 and, therefore, are much broader than anything that the  
5 criminal justice system can provide. You know, the criminal  
6 justice system is really not about--I mean, it is about  
7 justice, but it is not about equality. And so it is  
8 important to set up a process--and that includes  
9 coordination--that can fulfill all of the goals that  
10 institutions need to fulfill, not just the goals of the  
11 criminal justice system.

12 Senator Blumenthal. I would like to follow up on the  
13 point that you have just made, which I think is very, very  
14 important. In the course of the roundtables that I did  
15 around the State of Connecticut--I did seven roundtables--we  
16 did a report, and we tried to address the issue of  
17 underreporting. Why are women--mostly women are victims--  
18 not coming forth more frequently? And this crime is hugely  
19 underreported, maybe outside the campus as well. Senator  
20 McCaskill and I have had some experience with the military  
21 system as well as the civilian. The underreporting seems to  
22 be a chronic and repeated problem, and that is one reason  
23 why enforcement is so important, because enforcement gives  
24 credibility. You cannot have punishment unless you have  
25 reporting, and the effectiveness of punishment and

1 prosecution in turn enhances the credibility of the system  
2 and leads to more reporting because it bolsters the trust  
3 that survivors have.

4         So maybe you and I have heard Darcie and Alexandra--I  
5 spent some time on the Yale campus--and others can comment  
6 on the issues of the different goals and to what extent more  
7 reporting can be encouraged by pursuing all of the goals, or  
8 whether some of them have to be chosen over others.

9         Ms. Brodsky. I think that it is important that even as  
10 we are talking about streamlining that we do maintain all  
11 these different goals precisely because survivors have such  
12 a range of needs, both in the immediate aftermath of  
13 violence and in the years that follow. So at Know Your IX  
14 we have heard many different stories from survivors across  
15 the country. Some people at that moment really want public  
16 vindication through the courts. Some people just want an  
17 extension on their English paper. Some people do not want  
18 to have to see their rapist in their dorm the next day. And  
19 in order to, I think, really have a survivor-centered  
20 approach, we should really be embracing the fact that we  
21 have this wonderful opportunity to pursue different goals  
22 through different processes, depending on what the survivor  
23 wants.

24         Ms. O'Connor. And I would add to that that it is not  
25 just--I agree completely that it is not just also offering

1 as many options and available ways to report, but making  
2 sure that people know what those are and having clarity  
3 around it. And going back to what we were talking about  
4 with the MOUs, I think that one thing that will promote  
5 survivors coming forward is having that coordinated  
6 community response so that they see that the systems are  
7 working together, that there is collaboration, that they are  
8 not going to have to tell their story again. We have seen  
9 this model work in the Children Advocacy Center model. And  
10 so just being sensitive to the fact that, like Alexandra  
11 said, you know, it is not one size fits all in terms of what  
12 justice means. And I think for many survivors, just knowing  
13 that there are different outlets available, that can make  
14 all the difference to them when they are ready to come  
15 forward.

16 Ms. Brodsky. I think it is just tricky. I think one  
17 of the contentions here is making sure that different  
18 approaches are coordinated without being merged into one.  
19 So most of the survivors that we have spoken to out of  
20 hundreds said that they would be less likely to report to  
21 their school if they felt that that would necessitate some  
22 sort of police involvement. So I think that we have to be  
23 very clear that everyone is working together if they want  
24 them to work together, but that that decision is ultimately  
25 up to them.

1           Ms. Booth.  Although with my prosecutor hat on, I have  
2 to say that while I am all for giving lots of different  
3 options, oftentimes you might negate my option of the  
4 criminal prosecution depending on how the initial  
5 investigation is led, and how that is performed, it  
6 sometimes binds our hands and we then have an inability to  
7 actually prosecute it, when that may be promised up front.  
8 You can think about criminal later, but then it has run its  
9 course and interfered with our ability to do criminal later.  
10 So it is a fine balance.

11           Senator McCaskill.  It is such an issue, and I am  
12 really struggling with this.  My staff is nervous right now.  
13 We go round and round.  These cases are hard cases.  They  
14 are makeable--and I know I have witnesses here--if the  
15 victim has the right kind of interview, the right kind of  
16 evidence, and the right kind of investigation is done as  
17 close in time as possible to the event.  The more time that  
18 passes, the less likely it is that there will be successful  
19 criminal prosecution, because a lot of this is about  
20 corroborating the victim.  When you have a he said/she said,  
21 it is very difficult to get a jury to unanimously agree  
22 beyond a reasonable doubt, which it was in my jurisdiction,  
23 if you do not have corroboration.  Corroboration is  
24 sometimes very easy to obtain, and so part of this is my  
25 sense--and I do not know how we deal with this, and maybe,

1 Darcie, you can dive in here, is how do we have a system  
2 that is multijurisdictional in terms of people's roles and  
3 obligations but that at its center is making sure that  
4 victim gets as much information as possible, as quickly as  
5 possible, and fully understands that waiting to think about  
6 whether or not her brutal rapist will ever have a difficult  
7 interview with somebody in a uniform or whether her brutal  
8 rapist will ever have a fear of actually going to prison has  
9 everything to do with her willingness to not only come  
10 forward, but come forward quickly. And I do not think that  
11 that--I mean, what my sense is, after all these roundtables,  
12 is there is almost a bias in the system away from the  
13 criminal justice system. And I understand why. The  
14 criminal justice system does not have--we have had some--I  
15 am speaking writ large, not me or hopefully the  
16 professionals I worked with when I was doing these cases,  
17 but there are some horrible stories about how victims have  
18 been treated and the way they have been talked to and the  
19 way that their cases have been handled. And that is being  
20 used, I think, almost as a cudgel to in some ways keep  
21 victims from believing that there are people like the people  
22 on this panel that will listen and investigate and handle  
23 their cases in a very professional and supportive manner,  
24 obviously with an eye towards the facts, not an eye towards  
25 a certain result.

1           But how do we do this? I mean, how do we--help me  
2 here, prosecutors and detective, and help me here, advocates  
3 that are worried about victims not having control. Maybe,  
4 Carrie, this is where you can talk about you have options.

5           Ms. Hull. Yeah, and if I may, I am dying to answer  
6 everything that you have said.

7           [Laughter.]

8           Ms. Hull. And anybody who knows me here knows. So a  
9 lot of what I think you have been hearing--and I am  
10 notoriously hard on my own profession, so I am going to  
11 acknowledge that first. But it is because we do not have a  
12 great history of doing this caseload, sexual assault, well.  
13 And I am not saying that that is everybody, but let us just  
14 address the fact. If we were doing these well, we would not  
15 be sitting at this table, okay?

16           So I always have a problem with legislating or with  
17 putting rules forward for law enforcement with the  
18 assumption that they are going to screw it up, because I do  
19 not think that solves the problem. And there is a really  
20 wonderful trend now, thankfully, among law enforcement where  
21 they are starting to acknowledge that this has to be done  
22 differently. And the traditional model of policing that  
23 works for all these other cases does not work in sexual  
24 assault because the dynamics are so drastically different.

25           So, for instance, when we built this program--this was

1 back in 2009 before any of these conversation were  
2 happening. We never intended to be sitting here today. All  
3 we wanted to do was make things better in the city of  
4 Ashland. But what we did is we went to every victim that  
5 was willing to come forward and report to us, and we asked  
6 them, "If you could change things, what would you do?" No  
7 restrictions, whatever it was. And I completely agree with  
8 you because every person answered that differently as to  
9 what their individual barrier was. So anything that goes  
10 forward that is coming from someone assuming what a survivor  
11 wants is grossly mistaken. You cannot do that, because what  
12 is right for one survivor is not right for another. And for  
13 anybody in a profession to assume that they know what the  
14 answer to that is egotistical and it is damaging to this  
15 caseload.

16 So what we had to do as law enforcement is we had to  
17 get out of our own way. We had to say, "Tell us how to do  
18 this better," because obviously we are not doing it well.  
19 My chief, who is extremely forward thinking, says it best.  
20 He says, listen, let us just take the highest statistic of  
21 34 percent. Right? If we say--and I do not think there is  
22 34 percent of reporting, but let us just say there was.  
23 Even if we were 100 percent successful in all of those  
24 cases, it is still an epic failure. So we had to do  
25 something different. And what we said was let us try

1 everything they asked us to do. And the one thing they  
2 asked every single time was for confidentiality. Now--

3 Senator Blumenthal. You know, that is such an  
4 important point, and at the end of these roundtables that I  
5 held, I came up with a bill of rights for survivors. And  
6 one of the rights was to confidentiality.

7 Ms. Hull. Yes.

8 Senator Blumenthal. And I think this discussion is  
9 extremely valuable, but the other thing we did in the  
10 roundtable was we heard from survivors about how this system  
11 looks from their perspective. And what impressed me at  
12 Connecticut College and some of the other places--and maybe  
13 we can hear from Jessica as well on this issue--is how they  
14 provided advice to the survivors, because that makes all the  
15 difference as to whether, number one, somebody comes from  
16 and, number two, whether they stay with it, because it is  
17 not only the initial report, it is also, Where do I go from  
18 here? You know, am I just going to retreat? Am I going to  
19 take the semester off? Because I do not want to run into  
20 this guy.

21 So I think the initial--maybe we can hear a little bit  
22 more about how, you know, we have options, you have options,  
23 you have choices, confidentiality, how all this looks from  
24 the standpoint of the survivor.

25 Ms. Ladd-Webert. There is actually research that says

1 if you have an advocate from the very beginning, a  
2 confidential advocate, that you are going to be more likely  
3 to be continuing through whatever administrative or criminal  
4 process. So if they have that advocate, they are going to  
5 be more likely to cooperate.

6 But I think what has to happen is there has to be  
7 trust, because advocates, some of you really do promise that  
8 we do not have an agenda, we are not not telling them to not  
9 report, which I fear is sometimes the problem, is they are  
10 thinking that confidential advocates are turning them away  
11 from some of these options.

12 So what I can promise is that I will give them all of  
13 their options and let them choose, because I do come from a  
14 victim empowerment model, and then support them, whatever  
15 option they want. But I think there has to be that trust  
16 that we are not turning them away from one of those options  
17 but fairly telling them what they are.

18 Senator Blumenthal. Darcie.

19 Ms. Folsom. And like Jessica, I mean, we are totally  
20 giving many options, but the big piece, too, is that I want  
21 to be open and honest with students, that it is not like an  
22 episode of "SVU" and it is not going to be over in 45  
23 minutes. And I think that with our population, you know, it  
24 may happen their senior year, and they are off to a job four  
25 States away. And so that is a big inhibitor, that students

1 might not necessarily come forward for the criminal justice  
2 system because that process could take years to go through,  
3 and they just want to move on with their life and do  
4 something different, where with the Title IX model, 60 days,  
5 something has to be handled.

6         And to your point, Senator McCaskill, about having  
7 somebody come in quickly, it may take several days, several  
8 months for somebody to decide to come and see an advocate.  
9 And at that point, even if they turn around and say the next  
10 day that they want to file criminal justice--or, you know, a  
11 criminal report, then that time has passed; where, again, at  
12 least at Connecticut College we do not have a statute of  
13 limitations, so if something happens as a freshman, a  
14 student can come back senior year and file that report.  
15 Obviously the case is harder to prove, but that option is  
16 still there for a student, and I think that that is  
17 important, too, to remember, the length of the process.

18         Ms. Brodsky. I--oh, I am sorry.

19         Ms. Ladd-Webert. I was just going to add not only the  
20 length, but it is the different types of evidence, where in  
21 the criminal justice system it is beyond a reasonable doubt,  
22 and then we have got our administrative process, which is a  
23 preponderance of the evidence, more likelihood than not.  
24 You are going to have victims wanting to go with what they  
25 might see as the easier, less burdensome.

1           Ms. Folsom. And the people that are on college  
2 judicial panels have all been trained as Federal mandate,  
3 where an average juror is making a decision. So your  
4 prosecution, your police officers, could be doing an amazing  
5 job with the investigation, but if that defense attorney  
6 does a really great job--

7           Senator McCaskill. They have not all been trained.

8           Ms. Folsom. Right.

9           Senator McCaskill. Just so you know. The adjudication  
10 panels on college campuses have not all been trained. They  
11 probably have been at Connecticut College, but I can assure  
12 you they have not been across this country. We have a  
13 variety of people making these decisions that are asking  
14 wildly inappropriate questions at these adjudications.

15           Chief Denton. We use the survivor bill of rights, Mr.  
16 Blumenthal, and offer that on our campus. But frequently we  
17 see that where that runs headlong is to public records laws  
18 and restrictions that require us to make our police records  
19 open to a very large extent, even with listing survivors' or  
20 victims' names, releasing those to the public. So there is--  
21 -while that may be a best practice, I think that is going to  
22 be a challenge for some States to do that.

23           Senator McCaskill. Well, how do you all handle public  
24 records stuff in terms of your model and where the victim  
25 gets to decide? Because this is very similar to the

1 military system, restricted and unrestricted reports. So  
2 what happens on public record requests to your police agency  
3 on a report where a victim--where a report has been made,  
4 but she is wanting to keep it confidential?

5 Ms. Hull. Sure, and let me say first, too, that the  
6 difference between us and the military model is that we are  
7 getting the information to those that are actually doing the  
8 investigation, and so that is the goal from the beginning  
9 where it is not going to somebody who is restricted and not  
10 doing the investigation. And that is what I do believe. I  
11 believe this information needs to go to law enforcement, but  
12 with the victim's permission.

13 So specifically to when these reports are released,  
14 what we do is--and, again, this is a huge break from  
15 traditional policing, but we can do this legally, and it may  
16 vary different State by State. In Oregon, with public  
17 records laws, again, that is when a case has been closed and  
18 is no longer being investigated. So we have pretty lengthy  
19 statutes of limitation, so what we do is we inactivate it.  
20 It does not mean that they have told us they never want to  
21 do something. They just do not want to right now. And it  
22 really solves a lot of problems because how in the world can  
23 you expect a survivor to make a determination about  
24 adjudication when something has just happened? I mean,  
25 there is no way. Frankly, they would not even have the

1 information necessary to say whether they want a prosecutor  
2 or not, because we do not have any time corroborating that  
3 information. I mean, we do not even now if they have a  
4 trial case. So that is never even a conversation that we  
5 have.

6 We document everything they will let us, and what it  
7 does is it does help with some of those delays that you are  
8 talking about. What I would also say, though, is we can  
9 overcome those delays. That is a very traditional policing  
10 response to say it is a delayed report and, therefore, you  
11 know, it is unlikely to go forward.

12 Senator McCaskill. Right

13 Ms. Hull. We actually have shown for years now that is  
14 not the case. We give much better cases because we are  
15 working with a victim the entire time. It is not  
16 adversarial. It is not, you know, "I need you to do this,  
17 and you do not have a choice in it." Prosecutors get much  
18 better cases.

19 Now, what I would say is when that case is inactivated,  
20 we do not have to release it. Of course, could there be a  
21 time? Yes. But, again, you would have to have somebody  
22 that knows they made the report to come request the report.  
23 And I think that is pretty unlikely. It is not impossible,  
24 but it is unlikely.

25 Now, when we get to a public record, typically, we have

1 already come to a decision with that victim that they want  
2 to go forward with what is called a "complete  
3 investigation," and that is a traditional model. It goes to  
4 the DA's office, and, again, the options are not available  
5 at the DA's office because we are not going to tell them how  
6 to do their work. But the victim understands that before we  
7 make the decision for that to go--

8           Senator McCaskill. So if it goes to the DA's office  
9 and the DA's office decides to not take it, then it becomes  
10 open?

11           Ms. Hull. Yes.

12           Senator McCaskill. But the decision is by the victim  
13 as to whether or not they want it to be a complete  
14 investigation with the possibility of referral to the  
15 prosecutor.

16           Ms. Hull. Yes. Absolutely. It is completely with  
17 them. We want to keep it inactive and not close it for as  
18 long as possible because we have found time and time again--

19           Senator McCaskill. You are going to do it again.

20           Ms. Hull. Yeah, the way they feel at 6 months--and  
21 maybe if we--and, again, the other half of the program is we  
22 identify serial perpetration, which changes the entire  
23 conversation, right? But let us say we do not. We could  
24 still get someone coming in 2 years later that says, "I am  
25 ready now." And because we did a good job documenting it,

1 we did a good forensic interview or we audio-recorded it,  
2 our prosecutor stands a chance. I am not saying it is easy,  
3 but it is better than it is.

4 Senator Blumenthal. Jennifer, were you going to make a  
5 comment?

6 Ms. Gaffney. Going back to the students and, you know,  
7 knowing their options, the sense we get is that they are  
8 given an option, you can go to law enforcement, but then it  
9 is with the negatives. And there are negatives to law  
10 enforcement. Obviously our standard of proof is higher, and  
11 it does take more than the 6 months of your semester to  
12 finish a case. But I do not know that when students are  
13 given their options they are also told sort of the positives  
14 of law enforcement, which are that the law enforcement  
15 officers will be able to collect more evidence more quickly,  
16 especially in cases where something happened off campus,  
17 they have more power there; and that if you ultimately have  
18 a result in the criminal justice system, it is a permanent  
19 result. The person will have a record. Your orders of  
20 protection--you will have an order of protection that will  
21 last many years.

22 We had a young woman who was sexually assaulted on  
23 campus outside of New York State, had an order of protection  
24 on campus, came to New York for a job, and then the offender  
25 was coming to her workplace--not doing anything criminal,

1 just violating that order of protection. And it was  
2 completely, completely unenforceable.

3 So I think they need to be told their options, but  
4 maybe in a written form that says yes, this is your law  
5 enforcement option, and it will take this amount of time,  
6 and this is the standard of proof, but these are also the  
7 benefits of it, to encourage more reporting.

8 Senator McCaskill. Alexandra, do you think that--I am  
9 sorry.

10 Senator Blumenthal. Go ahead.

11 Senator McCaskill. Do you think that it is fair to say  
12 that now victims are being discouraged from reporting to law  
13 enforcement overall? Or Nancy or Darcie or Jessica, do you  
14 believe that victims are being told all of the negative  
15 about going to law enforcement and not being talked to about  
16 the positives that could come from going through that  
17 system?

18 Ms. Brodsky. Yes. So I can say when I reported  
19 violence to my school 5, 6 years ago now, I was explicitly  
20 told not to go to the police, that it would not be worth it,  
21 that it would be emotionally draining.

22 With that being said, I know I never would have come  
23 forward if I had been forced into that option.

24 Senator McCaskill. Right.

25 Ms. Brodsky. And we have also seen another version of

1 this where most schools offer an informal or a formal  
2 complaint, so you can go through a disciplinary proceeding  
3 where the assailant might be suspended, expelled, if your  
4 school is doing a good job, or asked to write a book report,  
5 or an informal sort of mediation response. And we do see  
6 schools doing sort of a similar thing where they say, You  
7 have these two options, you can go informal or formal; but  
8 if you go formal, it is going to be really hard, and you are  
9 going to get behind on your school work, just letting you  
10 know.

11 And I think that some of that comes from the position  
12 of these administrators who might only talk to that student  
13 while they are actively engaged with the board, so they see  
14 a student who is, you know, these are hard proceedings, we  
15 are really drained by it for those months. What they do not  
16 see is the student who is forced to spend time with his or  
17 her rapist three and a half years on a campus because here  
18 she went through mediation rather than a disciplinary  
19 hearing.

20 So I think that this is definitely an opportunity to  
21 talk about sort of along the model of a bill of rights, what  
22 is the kind of language that schools should be using to  
23 present options that is drawn from the experiences of people  
24 who have gone through this process, that have implemented  
25 this process in many different ways?

1 Senator Blumenthal. Darcie?

2 Ms. Folsom. I think that comes back to the importance  
3 of MOUs, and even if it is not a formal written document,  
4 just the relationship building, because I was on a first-  
5 name basis with our detective and can call him from my cell  
6 phone. You know, so having that reassurance when a student  
7 does come, I can say we can call this person, I know them  
8 personally, and give them those positive aspects of things.  
9 And I think back to Jessica's point, how important it is to  
10 have an advocate through the whole process, because yes, it  
11 may be hard, but I will help all along the way. Do you need  
12 help with your academic stuff? Let me talk to your dean.  
13 You know, so being real with the student but helping them  
14 through all of that is so important.

15 Senator Blumenthal. And one of the rights that I  
16 incorporated was to an advocate, confidentiality and  
17 advocate. You know, there is different--and, by the way,  
18 Senator McCaskill and I joined in expanding the right to an  
19 advocate within the military system. So I thought from what  
20 I heard in my roundtables that the idea of an advocate who  
21 would provide advice, it is not just that the advocate  
22 speaks to the world in advocacy, but also can advise on  
23 these options with confidentiality, because that is what an  
24 advocate, a lawyer, does for a client. And rather than the  
25 university having that obligation to provide advice, which

1 really puts the university in a very anomalous and  
2 conflicting position, the guarantee of an advocate provides  
3 those rights.

4 Chief Zoner. I would like to speak a little towards  
5 the confidentiality piece as well, and in that, you know,  
6 you can have the best forensic interview, you can have the  
7 best prosecutor, you can have the best case going forward,  
8 you can maintain confidentiality throughout all of this, and  
9 social media just ends around and gets you. Enough  
10 information is generally present because we are not usually  
11 the first people reported to, even as an administrator, a  
12 friend, or a friend tells another friend. So the battle  
13 that we have or the blame, I think, that our system takes on  
14 for lack of confidentiality is sometimes actually--it is  
15 just the leakage of what we have to deal with right now.

16 And there is very little we can do to manage that. It  
17 is unfortunate. It is also very impactful on the victims.  
18 It is very impactful on the investigations, that people are  
19 presuming things that have happened, they tell stories.  
20 Once a comment is out there, it is unretractable. And these  
21 are battles that we all face.

22 Senator McCaskill. 99 percent of which would not be  
23 admissible in court. That is the good news.

24 Chief Zoner. But it does impact the ability to move  
25 forward, and it impacts--

1 Senator McCaskill. It impacts the victim.

2 Chief Zoner. --the victim tremendously. Tremendously.

3 Chief Denton. It is even fundamentally--on posting the  
4 report on the daily log that we are required to keep, unlike  
5 municipal agencies, every incident report goes on a daily  
6 log as reported, the classification of the offense that we  
7 have classified it, you know, a rape, sexual assault,  
8 whatever it might be, another challenge that will have to be  
9 resolved in this issue as you wrestle with the issue of  
10 confidentiality. Interesting--

11 Senator McCaskill. And that log is under Clery, Chief?

12 Chief Zoner. Correct.

13 Chief Denton. Yes, ma'am. Interesting that Chief  
14 Zoner and I were talking as well, we have used social media  
15 and technology to assist building cases, and I think that  
16 the prosecutors might be able to speak to this more, but  
17 everything from video evidence, you know, as we enhance our  
18 camera systems on campus to observe and confirm that people  
19 were coming or going. We do subpoena phone records. We  
20 subpoena e-mails, text messages, and help build that case.  
21 So at the point that the case is ready for court and the  
22 survivor says, "Now I am ready," we have that case built,  
23 and a lot of confirmation information that is built up  
24 through a really aggressive evidence collection process.

25 Ms. Booth. Only if law enforcement is allowed to be

1 involved in the process to begin with, because if they are  
2 not given that option, we lose text messages too quickly, we  
3 lose content, we lose all of those things. So we have that  
4 inability, if there is not truly a real option to go law  
5 enforcement after you have--you know, it is that basic needs  
6 discussion, which is I just need the person away from me on  
7 campus right now, I have got to make the decision about  
8 criminal later. But we lose what we lose--

9 Senator McCaskill. Yeah, and how common is it that  
10 this report comes to an RA or comes to someone who is not  
11 part of campus police and stays within the administrative  
12 part of the university, coming to your point earlier, Nancy,  
13 that it never gets to even campus law enforcement for the  
14 kind of subpoenaing of phone records or text messages or  
15 things of that nature?

16 Ms. Cantalupo. Well, if that is the victim's choice,  
17 if that is the survivor's choice, then that--you know, there  
18 is nothing wrong with that, right, if it stays within the  
19 institution, you know, if, for instance, she has no  
20 interest, or she has no interest at that moment, in pursuing  
21 a criminal investigation. But, you know, the dilemma for  
22 the on-campus person who is advising a survivor in the  
23 moment, in the aftermath, the immediate aftermath, with  
24 regard to the criminal process, is that you have to--you  
25 have to balance between giving full informed consent or, you

1 know, giving enough information about the options so that  
2 she can make an informed choice about the options. And you  
3 are restricted in terms of what information you can give her  
4 by what the options actually are, right? So we are not all  
5 living in Ashland, Oregon, unfortunately, and not everyone  
6 has a criminal justice system that is structured to give  
7 multiple options and to hold on to evidence for years so  
8 that there can be a prosecution later if the survivor is  
9 ready for it.

10         You know, all of those things are relatively uncommon,  
11 and if you are going to be a good advocate and support for  
12 the survivor who has come to you as the campus person, then  
13 you need to give them an honest idea of what they can expect  
14 from various processes, you know, whether it be internal or  
15 external. And, you know, some of those are just going to be  
16 fact-based, and I am going to be very clear with anyone who  
17 I talk to that, you know, if you have this goal, if your  
18 goal is to not have to see him in the cafeteria, then, you  
19 know, you are going to be better off going through the  
20 university's Title IX system. If your goal is to have him  
21 incarcerated, then we need to talk to the police.

22         Senator McCaskill. Or what about a goal of him not  
23 doing this to another woman? Is that ever presented to the  
24 victim?

25         Ms. Ladd-Webert. We want to empower them, because I

1 would say that to a victim, you should report because I do  
2 not want this person to do it again, because I am focused on  
3 them and what their needs are as a survivor, and I want them  
4 to feel empowered to choose what is best for them, and they  
5 should not--while I want this person not to rape anyone  
6 else, that should not be on this victim's burden. They have  
7 already been victimized. They have already lost power and  
8 control. Why is it their burden now to have to do something  
9 they do not want to do? So I struggle with that because I  
10 want the bad people off the streets, but I also want to  
11 empower someone to do something after already losing power.

12 Ms. Brodsky. I think that there is also just a  
13 practical concern. I do not think this is do we have  
14 students report to their schools or do we hold perpetrators  
15 accountable for a couple of reasons: one, because schools  
16 can hold perpetrators accountable because often the criminal  
17 justice system does not hold perpetrators accountable; and  
18 because ultimately if we do not--I understand if we do not  
19 push survivors into the criminal justice system early, we  
20 might miss out on text messages. But if we do push them in,  
21 we will miss out on survivors.

22 Ms. Hull. And I am going to say this from a law  
23 enforcement perspective, and it is probably not one that you  
24 would hear from many law enforcement officers,  
25 unfortunately. But what we have learned--and it took us a

1 while to get there. I mean, there were years of fleshing  
2 this out, and it still makes us uncomfortable. We are not  
3 happy with it, because, of course, we want to get to a place  
4 where we can arrest serial sexual offenders, because that is  
5 what they most are. What we had to realize, again, was in  
6 order to get there, we needed to understand and fully  
7 acknowledge that it is never the victim's responsibility for  
8 that arrest. They are never responsible for the offender  
9 doing that next offense. The offender is responsible for  
10 that next offense, not the victim.

11 Senator McCaskill. Correct.

12 Ms. Hull. And we cannot lose sight of that, because  
13 what we hear--and I hear this in all different groups, all  
14 different professions, not just law enforcement. I hear it  
15 in advocacy, too. We will get to a place where we--it makes  
16 us uncomfortable, right, to acknowledge that somebody could  
17 know that this happened and we are not doing anything about  
18 it.

19 What I think we have to realize is we are doing  
20 something about it by allowing a survivor to enter the  
21 criminal justice system in the way that is right for them.  
22 And so the focus should not be: She did not come forward  
23 and give us everything. The focus should be: We are  
24 grateful that she came forward and gave us anything. And  
25 that is a very different perspective that changes the entire

1 caseload. You will be successful if you come from that  
2 perspective.

3 Senator McCaskill. So is your reporting up?

4 Ms. Hull. Yes, 106 percent.

5 Senator Blumenthal. Over what period of time?

6 Ms. Hull. 2009 was our zero year where we did nothing  
7 of this; 2010 to 2013 was a 106-percent increase.

8 Senator Blumenthal. And to what extent can any of you  
9 comment, do any of you have numbers like that either up or  
10 down based on changes in practices?

11 Chief Zoner. I cannot cite the exact numbers. I do  
12 know that we have been in discussion in the groups that we  
13 have seen an increase in reporting. As a matter of fact, we  
14 have been under fire for increased reporting. This is  
15 actually what we are trying to see for at least, as you  
16 said, from a year zero forward, we actually hoped to see--

17 Senator McCaskill. Who was giving you trouble about  
18 increased reporting? Because I will call them.

19 Chief Zoner. Parents, other students.

20 Senator McCaskill. Yeah, they should understand. The  
21 campuses that say that they do not have a problem because  
22 there are none that are reported are lying.

23 Chief Zoner. When people ask me--

24 Participant. Or they have the biggest problem.

25 Senator McCaskill. Or they have the biggest problem.

1 Senator Blumenthal. They are lying and denying.

2 Chief Zoner. Right.

3 Senator McCaskill. Lying or denying or incompetent.

4 Ms. Cantalupo. Or setting up their processes so that  
5 it chills reporting.

6 Senator McCaskill. Right.

7 Senator Blumenthal. Right, which raises--

8 Ms. Cantalupo. Right, which is not always--to be fair,  
9 it is not always a sort of--you know, it is not like there  
10 is some evil mastermind who is, you know, back in a back  
11 room setting things up to chill reporting with the goal of  
12 chilling reporting. I think that it happens in a much more  
13 subtle fashion, and one of the ways in which it happens is  
14 by importing unnecessarily criminal justice-like processes  
15 into--in the traditional policing model, the traditional  
16 model, importing those processes into administrative  
17 processes that do not have the power even to do the kind of  
18 coercive things that the traditional model sort of relies  
19 upon, right? So schools do not even have the power to  
20 subpoena witnesses, for instance, and so, you know, they do  
21 not have the power to collect forensic evidence. There are  
22 all kinds of things that they simply cannot do.

23 Senator McCaskill. Right.

24 Ms. Cantalupo. But yet they are importing things like,  
25 you know, right to counsel or they are having evidence

1 collected that would be forensic evidence, but some campus  
2 police officer is just keeping all this evidence in their  
3 office? And all of these things just mean that it leads us  
4 to believe that the campus system is the same as the  
5 criminal system, and the criminal system does not have a  
6 good reputation when it comes to sexual violence. So that  
7 ends up chilling reporting just, you know, by operation of a  
8 bunch of, as I said, pretty much unintentional things. But  
9 it ends up being quite effective. You know, the lack of  
10 reporting can be seen as a veto on the system. If you have  
11 fewer reports, that means that your system is not--is not  
12 doing what it should be doing.

13 Senator McCaskill. Right. I think the point I was  
14 trying to make is if you have a lot fewer reports at any  
15 given campus, no parent should take that as a signal that  
16 there is a lot less sexual assault.

17 Ms. Cantalupo. Right, which is why, you know, the  
18 mandatory survey idea is the way to kind of level the  
19 playing field between the various--all of the schools  
20 because they will all be collecting data on the same basis,  
21 and separating data--data collection from getting victims'  
22 services, which, as Jessica said, is what this--what  
23 reporting should be about is helping them to access what  
24 they need rather than depending on them to solve our crime  
25 problems for us.

1           Ms. Booth. I think this is a very cyclical problem,  
2 though, and it is what we keep talking about, is what their  
3 goal is on Day 1 could be very different Day 10 and 6 months  
4 down the road, and it should not be just an us-versus-them--  
5 "us" being criminal--versus administrative process, because  
6 what I find is that after--you know, there is a  
7 discouragement. You asked the question, Are people  
8 discouraged from going to the criminal justice system? You  
9 can see there is already a built-in perception that you are  
10 not going to get justice or be treated properly through the  
11 criminal justice system unless you are doing it right. And  
12 I think we are doing it right where I am at. But the point  
13 is where I find our difficulties is if they are not truly  
14 vetted, then they come to us after--it was a five-page paper  
15 that was the sanction, and then now they want us to do  
16 something about it. And at that point we are so hampered  
17 that then they say, see, you never take cases anyways, and  
18 it is just a perpetuation of the reputation that we are not  
19 helping them and that we are not there for them from the  
20 beginning.

21           So if there is an Ashland approach where we can  
22 collect--you know, I can sit all day long. I can wait a  
23 year, 2 years, whatever, until the survivor is ready to move  
24 forward and move through the system. Just help me get some  
25 of that evidence at the get-go, from the beginning.

1           Senator McCaskill. So you are saying they are coming  
2 to you after they are dissatisfied with--

3           Ms. Booth. With the administrative process.

4           Senator McCaskill. --the weak result of the  
5 administrative process.

6           Ms. Booth. Yes. Yes.

7           Ms. Hull. And that is the whole reason, right? I  
8 mean, there is the "this is just the right thing to do"  
9 human element of this program, but we are still criminal  
10 justice, and so, you know, we say it--this gives options to  
11 survivors, but it also gives information to law enforcement.  
12 It had to be beneficial for both. That is what we  
13 discovered. So traditional law enforcement is only  
14 beneficial for law enforcement, we go forward in the way  
15 that is best for us. And I am obviously overgeneralizing  
16 here, but that is true. It needed to be beneficial for both  
17 survivors and law enforcement to be effective.

18           And what I could say is, I mean, I hear the try here to  
19 get something from the administrative process that can be  
20 helpful for the criminal justice process, and if I could  
21 say, the one thing I have seen throughout the years that  
22 would make the biggest difference is some mandate that  
23 anybody who is interviewing a survivor of sexual assault be  
24 trained to do so, and for that option to be recorded. So  
25 the victim has the option to demand that that is recorded,

1 because I cannot tell you how many reports I have been given  
2 where somebody did a synopsis of what a survivor said, and  
3 it was nothing of what the survivor intended. So if those  
4 two things happened, I can take that case and I can  
5 corroborate it 5 years later. But I have to have that audio  
6 recording of what was actually said by the survivor, by who  
7 interviewed them. Those two things could actually make a  
8 difference.

9 Ms. Booth. And that is your interplay with the 60-day  
10 in Title IX, too, because it depends on who that lead  
11 investigator is, what and how they are trained, and so where  
12 their pushes and time frames are and where that stuff is on  
13 the toes of the criminal justice system for our ability to  
14 just wait and pause for--

15 Senator McCaskill. So does that work better with the  
16 single investigator model?

17 Ms. Booth. I would think so.

18 Chief Denton. I do not know about that. I would be  
19 curious what the advocates and the survivors think about the  
20 recording, because I have been in conversations that say  
21 that that is chilling in itself, that by recording it, it  
22 does put an extra burden that their testimony is going to be  
23 impeached at some future point, particularly if their  
24 recollection has changed or if they come out of trauma and  
25 they have a whole different perspective on it. I would just

1 be curious.

2           Senator McCaskill. But if the interview is done right,  
3 then their recollections are not going to change, because  
4 the interview will not ask them to remember things they do  
5 not remember, but will, rather, just ask them to say what  
6 they can remember as opposed to a typical--I mean, as you  
7 well know, Chief, there are two different kinds of  
8 investigative interviews, and this kind of investigative  
9 interview is acknowledging they may not remember everything.  
10 We do not want you to remember things that you do not really  
11 remember, because what happens so often is the victim will  
12 try to bootstrap their credibility by making up things they  
13 do not really remember because they are so worried whether  
14 or not they are going to be believed. And that is the exact  
15 opposite of what you really want the victim to do.

16           Ms. Hull. And,, again, if I can address that, we--and,  
17 again, we had all these same--in the beginning, right, we  
18 had all these same ideas, but what we did is we went out and  
19 talked to researchers, we consulted with victims, we  
20 consulted with victim advocates heavily. They are who built  
21 the program. So what we learned was you had victims who  
22 traditionally did not want the recording if it was not an  
23 option for them. But when you sit down and you tell  
24 someone, I am not going to make you do this, but here is why  
25 I want to, because I want to accurately reflect your

1 statements, I do not want to sit down 2 hours later, if I am  
2 lucky--maybe it is 2 days later that I sit down and write my  
3 report--and guess as to what you said. And I want to, if  
4 you disagree with what my report said, to be able to go back  
5 to this and make sure that I am right. And I also never  
6 want someone later to say that you said something you did  
7 not. And I have never, ever in 4 years had someone tell me  
8 no. Ever.

9 Senator Blumenthal. When you gave them the option.

10 Ms. Hull. But it has never been pushed on them. I  
11 explain why I want to. And we have had people say, "I am  
12 not ready to do that yet." Right? Like, "I need some time  
13 before that happens." And, again, I am a forensic  
14 interviewer. We do this for kids all the time. This has  
15 been a model that has been replicated well for children, and  
16 I am not trying to say that adult survivors of sexual  
17 assault should be treated like children. However, they  
18 should be given the opportunity to talk about what they are  
19 able to remember in an environment that is accepting and  
20 understanding of trauma. And we do not do a good job of  
21 that with law enforcement.

22 Ms. O'Connor. And I think that gets to the bottom line  
23 of I wish that we all lived in Ashland, Oregon, sometimes.  
24 I am moving. But I think that it gets back to training in  
25 trauma-informed interviews and in forensic interviews.

1           Senator Blumenthal. And I think that is a very  
2 important point because it gets us back to what we can do,  
3 you know, what we, meaning the Congress, the legislature.  
4 As much as I miss my prosecuting days, we are not going to  
5 be--neither of us is going to be doing that. And I think  
6 supporting training is so critical, but also are there  
7 models for how the administrative--the school deals with it  
8 that would be useful? Because--and I want to sort of  
9 address a point that you made, Nancy. You know, I think  
10 there are due process requirements for the schools as well,  
11 because they have the power to have an impact on individual  
12 lives that can be transformative, that can change those  
13 lives forever. So they have a responsibility--you know, it  
14 is a due process responsibility. It is a fairness, it is a  
15 justice responsibility, that I think is as important as the  
16 criminal justice system. The standards, the procedures may  
17 be different. The obligations may be different. But they  
18 need to be concerned about those obligations as well, and it  
19 goes back to, you know, maybe the victim needs an advocate  
20 there, too, with the administrative process. It may not be  
21 a--you know, we do not want lawyers sort of dealing with  
22 this as a mini-trial necessarily, but are there ways that  
23 we, the Federal Government, can help with that  
24 administrative process, number one, training, as Senator  
25 McCaskill has said, we have, you know, heard about training

1 and the lack of it, and the diversity in how universities  
2 approach these issues. But are there sort of models that we  
3 could encourage?

4 Ms. Cantalupo. Well, one thing that I think sort of  
5 gets lost is that, in fact, universities can very easily  
6 meet their due process requirements, their administrative  
7 due process requirements, at the same time that they meet  
8 their Title IX requirements, because actually both of those  
9 legal regimes require equality of procedural rights. So if  
10 you just give equality to both sides of the proceeding, then  
11 you are going to be meeting--you are going to be meeting  
12 both of those obligations.

13 The administrative due process obligations, as set out  
14 by the Supreme Court and enforced by many, many courts,  
15 many, many lower courts, is, you know, notice and a right to  
16 be heard. And that is just for State institutions. Private  
17 institutions proceed under contract law, and all they have  
18 to do is follow their own procedures.

19 Now, everyone has to follow their own procedures as--  
20 you know, the State schools have to follow their own  
21 procedures as well, but they have these constitutional  
22 requirements as well because they are State actors. But  
23 even in the case of a State institution, the requirements  
24 are really quite minimal in comparison to the criminal  
25 justice system. And that is critical because it makes it

1 possible for schools to put the complaining student and the  
2 responding student on an even playing field. The criminal  
3 justice system does not do that, and it--and there are  
4 reasons, there are good reasons for why that is, because the  
5 criminal justice system can throw someone into jail or put  
6 them to death, and those kinds of issues are not relevant in  
7 the campus context.

8         So for the campus context, what they need to be doing  
9 is protecting the living and learning environment of all of  
10 their students, which means equality, and is also what Title  
11 IX requires.

12         So all of these things, actually you can have a very  
13 robust administrative process while meeting the legal  
14 requirements on all sides, and there is a tendency to assume  
15 that the criminal justice due process requirements are the  
16 same due process requirements for all proceedings, but that  
17 just is not true, and that is not true based on Supreme  
18 Court precedent as well as many, many lower-court judgments  
19 in these cases.

20         Mr. Jungers. I totally agree, Nancy, and at our  
21 university--and I do not think we are unique, but we have  
22 following Office of Civil Rights and what they have provided  
23 as guidelines. A number of us, not only Title IX  
24 coordinator's office but also in student conduct, we have  
25 gone through Title IX investigator training and have made

1 the shift in our conduct process when we are dealing with  
2 the issues of sexual violence. So we are not using the  
3 traditional model, which is more adversarial. We try to be  
4 fair, but now that I have been introduced to the  
5 investigator training, I see a huge difference. And this is  
6 just, you know, the student conduct officer reporting that  
7 adopting the Title IX model and following through very well  
8 with it, we are getting more education and more cooperation  
9 from the respondent. You know, they used to lawyer up  
10 immediately. First thing, you do not--you know, you are cut  
11 off from talking to your student, which drives me crazy, by  
12 an attorney saying, "This is my client, and you will talk"--  
13 "you do not talk to him or her directly. You talk to me."  
14 The Title IX investigation kind of just melts all of that  
15 away so that you proceed in a very objective, fact-finding  
16 manner, and everyone seems to get more on board with it  
17 because they know you do not have a particular outcome that  
18 you are searching for. The outcome will rise from the  
19 facts.

20 Senator McCaskill. Do you think that--do any of the  
21 schools that you work with or that you are familiar with,  
22 are any of them using students on their decisionmaking  
23 boards?

24 Ms. Brodsky. Yale is, and I think it is a bad idea. I  
25 think that students are discouraged by the idea that now not

1 only might they have to see their assailant in the  
2 cafeteria, but they might have to see the person who told  
3 their story to.

4 Senator McCaskill. Do we have any idea--there is  
5 probably no one here that would know that, maybe, Nancy, how  
6 many schools are still using students to make these  
7 decisions?

8 Mr. Cantalupo. No, I do not know that.

9 Senator McCaskill. That is something we need to find  
10 out, and maybe we need to even think about--

11 Ms. Cantalupo. I would say that, you know, just  
12 because it is sort of tangentially related to this, that one  
13 of the things--one of the problems in this area--and I say  
14 this as a researcher--is just there is too little research  
15 on what is actually going on.

16 Senator McCaskill. Right.

17 Ms. Cantalupo. And that is connected to the  
18 transparency issue in a couple of different ways. One is  
19 that if schools have an incentive to pretend that this is  
20 not a problem, and they are successful in pretending that  
21 this is not a problem, then the last thing they are going to  
22 want to do is empower their faculty or anyone else to be  
23 conducting research as to the extent of the problem and,  
24 therefore, how to fix it, right? You need research on the  
25 extent of the problem before you can determine whether or

1 not you can fix it and how to fix it and whether the ways  
2 that you are seeking to fix it are actually effective.

3 So, you know, I do not know the answer to that  
4 question, in part because there is an enormous research gap,  
5 and part of the reason why there is an enormous research gap  
6 is because of the transparency issues.

7 Ms. Ladd-Webert. While I do not know who is using  
8 students or not, but my school did away with hearing boards  
9 a long time ago and just use the investigator model. And  
10 being a victim advocate, I can say that we have a lot more  
11 victims wanting to go through the administrative process  
12 when they are told they are just talking to a trained  
13 investigator, this is the only person they have to talk to,  
14 they do not have to face their faculty, their students,  
15 their suspect. And so I think that is a more victim-  
16 friendly model, and so I do think we need training, though,  
17 on not only the investigators in the administrative process  
18 but the police, anyone who is talking to a survivor, could  
19 be something that we could have more of.

20 Senator Blumenthal. And that may well include, you  
21 know, the dormitory--I do not know quite what the  
22 terminology is on all of your campuses, but the person who  
23 is in charge of the entryway, the student adviser who often  
24 may be the line of first reporting; in other words, you  
25 know, at midnight when a distraught student wants to talk to

1 someone, if it is not the roommate, it may be the person  
2 who--

3 Senator McCaskill. The RA.

4 Senator Blumenthal. Exactly.

5 Ms. Ladd-Webert. Right, and I think that is where  
6 other training could be, because the first person that  
7 someone is going to tell after a sexual assault is going to  
8 be their friend or their resident hall adviser, and how that  
9 person responds is going to influence if they actually want  
10 to report it to anyone or tell anyone again. So if the  
11 first person they tell believes them, supports them, and  
12 knows the resources, that person is going to be more likely  
13 to go through the process. So we also need to be training  
14 our community.

15 Ms. O'Connor. And they are going to be more likely to  
16 go to that first responder if they understand that what  
17 happened to them is a crime. So I think we need to get some  
18 very baseline knowledge out there, and I know this has been  
19 talked about at other roundtables, but just so that people--  
20 you know, all of this conversation is assuming that people  
21 get to a certain stage in the process, and I know that so  
22 many survivors say, "What happened to me was not rape."

23 Senator McCaskill. It is interesting because it is so  
24 fascinating to me that in this day and age there are so many  
25 young people that think rape can only occur between

1 strangers. They do not think if it is rape between people  
2 who know each other that that is the same thing. You are  
3 right, there is a baseline. And talk a little bit about  
4 some of the statutory challenges we have in States. I know  
5 that New York has a--and, you know, I think every State is  
6 different, about incapacitation and consent. Let us talk  
7 about that. That is not something we can fix, obviously, in  
8 Washington. But I think it is important that we  
9 acknowledged that there is work to be done at the State  
10 level in terms of underlying statutes.

11 Ms. Gaffney. Well, there is certainly a gap between  
12 the college definitions and the college policies on what is  
13 sexual assault, and then our State statutes, what we can  
14 actually prosecute. That goes back to what you said before  
15 about sometimes people do go to law enforcement, and they  
16 are sent away. In New York State, obviously a forcible rape  
17 is a rape. If someone is intoxicated to the point of being  
18 physically helpless, so they are sleeping or they are  
19 unconscious, that is a rape; that is a sexual assault. But  
20 if a person is voluntarily intoxicated but still  
21 functioning, walking, talking, and participates in a sexual  
22 act, they are not presumed to be unable to consent. It is  
23 not like driving while intoxicated. You know, you are 0.08  
24 and you are presumed you cannot drive. It is not the same.  
25 If you are intoxicated and you did that on your own, you are

1 still considered legally able to consent. So that is sort  
2 of a difference between our State law and what a lot of the  
3 policies that we have in the colleges that we have in our  
4 jurisdiction say where a person is, you know, not consenting  
5 if they are intoxicated to the point where they are not  
6 making a rational decision.

7 Ms. Booth. That makes me thankful to be a prosecutor  
8 in Colorado, and it goes back to your initial comments and  
9 questions about what does consent mean, like you are talking  
10 about the definition of consent and the overplay with  
11 intoxication. In Colorado, we do have the physically  
12 helpless standard, but we also have an additional standard  
13 of incapable of appraising the nature of your conduct, which  
14 is going to encompass the bulk of what we see, which is the  
15 intoxicated, you know--

16 Senator McCaskill. Voluntarily intoxicated--

17 Ms. Booth. Yes, voluntarily--

18 Senator McCaskill. --but beyond the point of being  
19 able to--

20 Ms. Booth. But not all the way as the passed-out  
21 stage, so we are in that gray area, and you need that kind  
22 of State protection in order to--you know, an alternative--  
23 we often, of course, alternatively charge those or look at  
24 those as two different theories of prosecution, but  
25 certainly I have greater options before me, and so that is a

1 very important note.

2 Senator McCaskill. What about rape shield statutes?  
3 Do we need to legislate rape shield statutes for the  
4 university-based administrative process? We have them in  
5 the criminal justice system, that is, that it would be  
6 irrelevant and not appropriate to bring into the  
7 adjudication process any evidence that would have anything  
8 to do with the victim's prior sexual conduct?

9 Mr. Jungers. I would hope that every university in the  
10 country would be committed without any legislation.

11 Senator McCaskill. No, we have talked to victims who  
12 have been asked questions--

13 Mr. Jungers. I am sorry, but--

14 Senator McCaskill. We have talked to victims who have  
15 been asked questions that would--

16 Mr. Jungers. Okay.

17 Senator McCaskill. --be highly objectionable in a  
18 criminal courtroom.

19 Senator Blumenthal. And that is really, you know, what  
20 occurred to me when Nancy was talking about, well, all we  
21 need is equality. You know, what occurred to me was, well,  
22 if you have equality, we have heard about--or at least I  
23 have--situations where the accused could literally  
24 interrogate the survivor. Well, giving the survivor the  
25 right to interrogate the accused may not really be equality,

1 especially when it comes to certain areas like past  
2 experience. So as Senator McCaskill said, maybe there need  
3 to be some kind of limits.

4 Ms. Cantalupo. Right. I mean, I think that is about--  
5 when I say equality, I mean equality of rights, procedural  
6 rights. So you can set up your proceeding so that no one  
7 cross-examines anyone else, right? And a lot of schools  
8 even that use, continue to use a hearing board kind of model  
9 have adopted a system whereby no one--neither of the two  
10 students are allowed to talk to each other. They have to  
11 give their questions through the board. So that is--you  
12 know, that is an improvement.

13 It is mainly just, you know--and I think that this--you  
14 know, getting back to Becca's point about this making sure  
15 that students understand that what has happened to them is a  
16 crime, I also want them to know that what happened to them  
17 is a violation of their Title IX rights. It is a violation  
18 of their right to an equal--to equal educational  
19 opportunity, and, you know, that gets--they do not  
20 understand that even more so than they do not understand the  
21 fact that it is a crime.

22 Alexandra, I am sorry. I interrupted you.

23 Ms. Brodsky. Oh, no. I was just going to say that I  
24 know a student who lost her disciplinary hearing because she  
25 had a previous sexual relationship with the offender, and

1 the board decided that, based on that previous relationship,  
2 it was okay for him to take cues from her body language,  
3 that even though she was saying no, she really wanted it,  
4 which was literally the school saying "no" means "yes."

5 Ms. Booth. You asked the question earlier, and I do  
6 not pretend to be an expert on the administrative process by  
7 any means, but what I hear from the prosecution side where  
8 we still have some problems, especially--so the high focus--  
9 and if a school is under-pending a complaint, there is this  
10 enhanced reaction and almost feeling that I need to make  
11 sure that I am being so appropriately consistent with Title  
12 IX that you can get an overreactionary response, and we can  
13 get cross-wise with our local law enforcement, so, for  
14 example, a timely warning requirement. If a survivor is not  
15 ready to move forward yet but they are struggling with like--  
16 -Legal is struggling with, well, is there a serious or  
17 ongoing threat, I do not know if there is an ongoing threat  
18 because they are not telling me everything. So in the  
19 exercise of caution, because I do not want to get cross-wise  
20 with Clery, I am going to do a timely warning, which can  
21 blow us from the beginning. It outs the survivor  
22 oftentimes, and it blows the investigation from the  
23 beginning. So overlegislation is almost sometimes--

24 Senator McCaskill. Yeah, I do not know about this  
25 timely warning thing.

1 Ms. Booth. And so that is a problem.

2 Senator McCaskill. I mean, do we need the timely  
3 warning in sexual assault cases?

4 Chief Zoner. We have actually had some success in  
5 circumstances where you are dealing with more likely than  
6 not a consent issue, especially as it involves maybe  
7 intoxication or drug usage. The incident is not what you  
8 are telling people about. What you are telling about is how  
9 the incident came about, and it is a very fine line. And we  
10 have been able to work with language that--we have to be  
11 very careful. We do not want to be in a position where we  
12 are using language that can come across as blaming the  
13 victim for being in a circumstance, and yet the circumstance  
14 did add to the situation and the confusion. So using  
15 language very carefully to say that there was, in fact, a  
16 report of a sexual assault, so we are being transparent and  
17 we do say something happened on this campus, and then just  
18 sort of trailing out a little bit, because sometimes the  
19 report does not come to us in--it still might be an ongoing  
20 threat because we might be dealing with the background of a  
21 serial rapist, so you need to get something out there, but  
22 you do not have enough information to move anything forward  
23 other than to say this is still a pervasive problem on  
24 campus, it has not gone away. Your timely warning is  
25 actually a re-advisory that the world has not changed enough

1 that we can move forward from here.

2 Ms. Hull. I also think there needs to be some reality  
3 about how this crime is perpetrated. A timely warning?  
4 What exactly is that going to do? Because to me--and,  
5 again, I am not an expert at all on the college process, but  
6 I am just thinking from a commonsense standpoint and  
7 somebody that looks at these cases and investigates them,  
8 this is reinforcing the myth that people are jumping out of  
9 bushes and sexually assaulting people. That is not what is  
10 happening. So if it is non-stranger sexual assault  
11 predominantly, any warning that goes out, everybody is going  
12 to think, well, that is not going to happen to me anyway,  
13 right? I mean, because nobody is--it is always a surprise  
14 attack because you are never thinking the person that is  
15 going to do this to you would do it to you. Therein lies  
16 one of the fundamental--what makes it hard to investigate  
17 these. So that timely warning just seems so  
18 counterproductive and also just reinforcing what we are all  
19 trying so hard to fight to get out to society that that is  
20 not the reality of these cases.

21 Chief Denton. I can live with what Chief Zoner and  
22 Detective Hull just said, but when you are facing a  
23 potential Clery audit, the Department of Education, you are  
24 probably going to think about this differently. Again if we  
25 are identifying challenges here, I think that one should be

1 very up front and foremost here, because the other extreme--

2 Senator McCaskill. Well, we are capable of

3 overlegislating.

4 Chief Denton. The other extreme that we have been--

5 Senator McCaskill. We have done this on several

6 occasions, I might add.

7 [Laughter.]

8 Mr. Jungers. Well, we have been on the side of before

9 timely warnings, and it has been spoken of today about

10 hiding the reality of sexual assaults on campus. And I

11 think, you know, one of the--you know, they should never be

12 so specific that they would out the victim. They should

13 never be that specific. But it does say--

14 Chief Zoner. But if the campus is small enough, you

15 can do everything you can--

16 Senator McCaskill. Yeah, see, I mean, if you are

17 dealing with a small campus and you say it occurred, then

18 you are asking for social media, you are asking for all of

19 that. I think we have got to really look at this. It is

20 one thing if it is a jumping out of the bushes, you know, a

21 darkened part of campus where someone has been physically

22 assaulted and sexually assaulted by a stranger, but it is a

23 whole other thing if it is a drunken fraternity party where

24 a young lady is assaulted by three or four young men.

25 Senator Blumenthal. And my guess is--and this goes

1 back to Nancy's point and the general point made here about  
2 the lack of reliable data, information generally on these  
3 issues. But my guess is that more likely than not the  
4 victim and the assailant know each other.

5 Chief Denton. At the right time, if there could be  
6 some clarity that comes out of this discussion, particularly  
7 for the Department of Education, for the compliance audits,  
8 we would sincerely appreciate that. As the negotiated  
9 rulemaking, that was one of our guiding principles, to seek  
10 for clarity in the language that came out of that and make  
11 things simpler, and this is one issue that, again, I hear  
12 colleagues speak of, help guide us in these timely warning  
13 issues, the notification issues. Because I also hear from  
14 advocates on my campus that they want a timely warning for  
15 all sexual assaults. I do not know if that is correct or  
16 not, if that is the right approach, but I think we would  
17 just like to know what--

18 Chief Zoner. We have been questioned as well: We knew  
19 you had a sexual assault. Why didn't you do a timely  
20 warning? Not by the DOE but by my campus. And it did not  
21 meet the threshold. There is no ongoing we have the person  
22 in hand, everything is all set. But responding back to  
23 educating the public on what exactly all these efforts are  
24 for is very helpful.

25 Mr. Jungers. Something else I want to bring up

1 regarding regulations is to say that the Clery crime  
2 statistics are very misleading, and I never hear that, so I  
3 am going to say it. Clery defines very carefully what areas  
4 our crime is to be reported. I would say well over 50  
5 percent of sexual assaults that we are aware of on our  
6 campus are occurring off campus. They are student-to-  
7 student, they are in a house or a loft apartment or  
8 whatever. They are among people who know each other. They  
9 will not fall into the Clery statistics because they occur  
10 off campus.

11 It is important, you know, if we want people to make  
12 educated decisions and be aware, it is important that those  
13 crime statistics reflect as much as we know about where  
14 sexual assaults occur.

15 Ms. Booth. I would mimic what Mike just said. That is  
16 incredibly important. And I can carry it one step further.  
17 In our university, our fraternities are not part of the  
18 official student Greek system, and so any sex assaults  
19 occurring out through the fraternities are not being  
20 captured in Clery as well as, you know, all the off-campus  
21 or, you know, those different kind of group residences that  
22 are not official residences on campus or officially  
23 sanctioned by the university.

24 Senator McCaskill. And there are more students living  
25 in those locations than there are on campus.

1 Ms. Booth. Yes.

2 Senator McCaskill. So it is even worse because the  
3 vast majority of the students are simply just not being  
4 captured.

5 Ms. Brodsky. If I could just say in defense of timely  
6 warnings for a second, I think that one of the most powerful  
7 tools for change that we have seen is students taking the  
8 law into their own hands and filing Federal complaints. It  
9 is really hard to file a Clery complaint because you do not--  
10 --your are dependent on your school's information to know if  
11 your school's information is correct or not. I know  
12 students who have had to trek off to some remote office and  
13 take cell phone pictures of records with their phones to  
14 make sure that--because they were not allowed to take these  
15 records out of the office. And I think that one thing that  
16 a timely warning does is it allows people to know that they  
17 are being counted. So I think that if there is a move away  
18 from that, we really need to see an increase of Department  
19 of Education proactive investigations, because students just  
20 are not going to have the information they need to do that  
21 work themselves.

22 Ms. Cantalupo. One thing I would suggest with the  
23 timely warning is if any changes are going to be made to  
24 that, that you consider carefully some ways in which to give  
25 the victim control over how the timely warning--if the

1 timely warning is given and how it is given, whether that be  
2 allowing her to or him to, you know, veto a timely warning  
3 in their case, or, you know, making it more of an opt-in  
4 situation. But if what we want is--or what our concern is  
5 that certain survivors are going to not want a timely  
6 warning, but certain survivors are, then the way to resolve  
7 that dilemma is to put the decision in the hands of the  
8 survivor. And, you know, acknowledging that there may be  
9 problems in terms of, you know, asking a survivor to make  
10 that decision at that moment in time, with these policy  
11 choices it is rarely a perfect situation.

12         So I just want to put that on the table as something to  
13 consider if there are going to be changes to the timely  
14 warning.

15         Ms. Ladd-Webert. And I would also not want to see a  
16 timely warning used as a way to get information out of a  
17 victim that they do not want to share, because timely  
18 warnings are about a threat, ongoing threat, and maybe the  
19 victim does not want to report yet: "I do not want to tell  
20 you who sexually assaulted me, but my RA told you that this  
21 happened." I do not want them to be, like, "Well, if you do  
22 not tell us, then we are going to have to do a timely  
23 warning because now there is an unknown ongoing threat." So  
24 I would also not want to see them used that way either.

25         Senator McCaskill. We have got a problem with timely

1 warnings. You are damned if you do, and you are damned if  
2 you do not.

3 Participants. Right.

4 Senator McCaskill. So you guys need to put your heads  
5 together and give us some advice about this.

6 Speaking of equality, should we contemplate legislating  
7 that all Title IX violations that occur and all Code of  
8 Conduct violations that occur all be handled by the same  
9 process, regardless of who the alleged perpetrator is, and  
10 get away from the reality on some campuses that the athletic  
11 department has their own process if the accused person is an  
12 athlete?

13 Mr. Jungers. Yes. I think it is just--it is core that  
14 all students must be treated the same, regardless of who is  
15 the victim, who is the respondent, and what their status is.  
16 I cannot imagine any equality if you do not have that.

17 Where I thought you were going--and I got  
18 uncomfortable--was that, you know, we are talking about  
19 students, but there is also faculty and staff, and I know on  
20 our campus the faculty will have a different process because  
21 of the faculty handbook that has developed over time. And  
22 so that is where I thought you were going. But I do not  
23 have--I have no discomfort--actually, I would applaud that  
24 all students are treated--

25 Senator McCaskill. Do any of the universities

1 represented here have two separate systems, one for the  
2 athletic department and one for the rest of the campus?

3 Chief Denton. No, absolutely not.

4 Participants. No.

5 Senator McCaskill. Okay. Some schools do.

6 Chief Denton. We do have the different human resources  
7 process for those that are staff. It might have to go  
8 through human resources hearings. We have the faculty  
9 hearing process there Academic Affairs. We also have crimes  
10 that occur that have no affiliation with the university that  
11 happen on our property. We have visitors and we deal with  
12 those as well, and none of this applies in terms of  
13 administrative processes, which is obvious.

14 Mr. Jungers. I think the mandated reporting that has  
15 evolved--or not evolved but is in place now really also  
16 addresses that issue. We not only emphasize with RAs you  
17 must report, but it also--the same message is to coaches.  
18 You know, you must report up until it reaches the Title IX  
19 coordinator. You know, there needs to be a lot of training  
20 of faculty and staff, but I think that may be already in  
21 place.

22 Ms. Folsom. One thing I would like to just bring up is  
23 the fact that when I hear training, I think of a 2- or 3-  
24 hour training session that we can check a box and say we  
25 have accomplished this. But I think it is more about

1 building a culture where we are constantly talking about  
2 this issue so that--you know, I have a really great  
3 relationship with our athletic department, and it is not  
4 just the 1-hour training I go in, but I call coaches just to  
5 say hi and build rapport so that they know if something  
6 happens, they can call me and we can work together through  
7 the process, because our numbers are going to go up. The  
8 more and more work you are doing on a campus, those numbers  
9 will increase. And I think that with your help to really  
10 let everybody know that that is a good thing, because people  
11 do get worried and they think, "I do not want to have all  
12 these Clery numbers."

13 Senator McCaskill. Right.

14 Ms. Folsom. And how can we show--and I struggle with  
15 that with parents. I do a parent orientation when the  
16 first-year students move in. And I learned how to paint it  
17 in a very positive light very quickly and let students'  
18 parents know we are no different than any other college  
19 across the country. How we are different is that we are  
20 doing something about it and being proactive. And so that  
21 does reflect a higher number because students know where to  
22 go, they feel comfortable with the process. And so I think  
23 to change that public perception is huge. And that is going  
24 to increase people reporting the numbers for the campuses as  
25 well.

1           Ms. Booth. And, Darcie, I think you can take that one  
2 step further, too. We have a joint task force with our  
3 athletic department with the district attorney's office for  
4 that same reason. So you do start building those lines of  
5 communication and systems approach for when those kinds of  
6 cases pop up.

7           Ms. Folsom. And especially looking at athletes as a  
8 positive thing, too, I think we so often vilify athletics,  
9 and they can be such a huge asset, because just like the  
10 number of perpetrators is a small percentage of the  
11 population, same thing with the athletics. And so for the  
12 most part athletes do not want to have that stigma. So how  
13 do we get athletes to be allies with us and not working  
14 against us.

15           Senator Blumenthal. And you have done that at  
16 Connecticut College.

17           Ms. Folsom. Yeah. We have a really good relationship  
18 with our men's ice hockey team, which is our big helmet  
19 sport, because we do not have a football team. But they  
20 have really taken Green Dot as a major initiative for their  
21 team and have really stood behind it as their mantra and  
22 have just helped us raise a huge amount of awareness around  
23 the program and really created a success.

24           Senator McCaskill. Did they make the puck green?

25           Ms. Folsom. Pardon?

1 Senator McCaskill. Did they make the puck green?

2 Ms. Folsom. The NCAA regulations, you cannot do that,  
3 but they did get Green Dot jerseys specifically for their  
4 annual game.

5 Senator Blumenthal. Can I raise an issue? We have  
6 mentioned it a little bit here, but very often it is sort of  
7 the elephant in the room: alcohol use. You know, we have  
8 mentioned--it is not a defense. Clearly it is not a defense  
9 to the crime of sexual assault. We ought to repeat that  
10 again and again and again. But university presidents have  
11 said to me, "Oh, I wish we did not have so much alcohol  
12 abuse because it leads to all these problems."

13 From an enforcement standpoint, you know, as though  
14 they had nothing to do with it, as though they could do  
15 nothing about it, but we are here about enforcement, and is  
16 it something that needs to be addressed more forcefully and  
17 aggressively because so often it is involved in non-  
18 consensual and other kinds of crimes, sexual assault?

19 Ms. Brodsky. I think it is important that we are clear  
20 about what we mean by "involved," because I think it is  
21 absolutely true that a lot of students are drinking when--or  
22 have been drinking when they are assaulted. I do not think  
23 that the alcohol is sort of the "but for" there. I think  
24 that often, you know, because it is with--they are assaulted  
25 by people they know, they have been out in a social

1 environment, and there is alcohol involved. I have heard a  
2 lot of survivor stories. There is only one I have ever  
3 heard where it was really alcohol that played the definitive  
4 role where it was, you know, sort of the rape--the college  
5 rape story of the popular imagination, which is woman wakes  
6 up and has no idea what has happened. And this was not an  
7 ambiguous situation. She was passed out, picked up, and put  
8 into a car and driven away.

9         So I think that we can talk about sort of training  
10 students, again, as bystanders in social situations. I do  
11 not think that if we stop college drinking, we are going to  
12 stop college rape.

13         Senator Blumenthal. Right.

14         Ms. Ladd-Webert. I agree, because sex assault does  
15 happening without alcohol, and so alcohol is the weapon that  
16 perpetrators are using to cause sexual assault. So I think  
17 we have to be careful that when we focus on alcohol, it is  
18 not about, you know, stopping drinking, people should not  
19 drink, if you do not drink you will not be raped, because  
20 that is not going to stop sexual assault. We need to be  
21 talking about perpetrators who are using alcohol as a way to  
22 be able to perpetrate sexual assault. And I think that  
23 easily gets confused.

24         Ms. Hull. And I just want to say, too, we thought so  
25 much about this specific problem because we do find that in

1 law enforcement I have seen some truly awful community  
2 presentations about how to, you know, keep safe and women's  
3 safety, I mean, that just make me absolutely cringe. And it  
4 is a very slipper slope--

5 Senator McCaskill. "Do not drink," and, "Have a  
6 buddy," right?

7 Ms. Hull. Yeah, you know, cover your--you know, all  
8 these things that I think are very well intentioned and  
9 extremely ill informed. And so I am just going to--I will  
10 read you just a brief part in the MOU for any agency that  
11 wants to participate in the program. We put it in here  
12 because we believe so much about it:

13 "Caution shall be used when providing any community  
14 education regarding risk reduction strategies to avoid  
15 shifting the focus from the offender's responsibility to not  
16 commit a sexual assault. For example, risk reduction  
17 strategies should be framed by how the perpetrator targets a  
18 victim, i.e., they are intoxicated or isolated persons,  
19 instead of how a victim's behavior allowed an assault to  
20 occur, i.e., the victim consumed alcohol."

21 That is a very important clarification to be made if  
22 you are going to go down that road, because we do not--we do  
23 not, as the professionals in this trying to effect change,  
24 need to be perpetuating these myths.

25 Ms. Ladd-Webert. Because those myths get in the way of

1 some people when they investigate the cases, like, "Oh,  
2 well, they should not have been drinking or this would not  
3 have happened." And that gets in the way of people's  
4 investigation, be it police or administrative.

5 Ms. Hull. And you have to understand it, right? If  
6 you are going to be a good criminal investigator, you need  
7 to understand the vulnerabilities, the accessibilities, and  
8 how a perpetrator makes victims appear to lack credibility  
9 and oftentimes all of those are wrapped up in a drug-  
10 facilitated or alcohol-facilitated assault. The difference  
11 is in showing how they premeditated that, not how the victim  
12 allowed it.

13 Ms. O'Connor. And the conversation also comes to, you  
14 know, often we get asked--we talk to the media about, well,  
15 you know, how many beers is too many in order to consent?  
16 It is as if there is some hard and fast one-beer-too-many  
17 rule. There is no such thing. And, again, this is an area  
18 where State laws are a giant quilt, a mixed bag. It is  
19 really hard to say to people, well, in this State we have an  
20 intoxication standard that does not even talk about that.  
21 They talk about mental incapacity. People do not even see  
22 themselves and what we are talking about in that law. So it  
23 is really hard to just try and draw black and white in this  
24 area. And, again, I think we need to shift the dialogue so  
25 that we are talking about how this is a factor in the crime

1 but not a cause of the crime.

2 Senator McCaskill. Do we have model State statutes  
3 around incapacity and consent that have been put out by the  
4 NDAA, by the National District Attorneys Association, or by  
5 DOJ or any of those?

6 Ms. Hull. No, and I can tell you, I sit on the Public  
7 Policy Committee for the Oregon Sexual Assault Task Force,  
8 and this is something that has come up actually routinely,  
9 because anybody who actually spends any time investigating  
10 these crimes will soon become frustrated by the amount of  
11 consent cases that they cannot take to a DA's office that  
12 they want to, you know, you are trying to--

13 Senator McCaskill. Because of the variety of different  
14 State statutes that impact it.

15 Ms. Hull. Yes.

16 Senator McCaskill. Well, we ought to try to pull  
17 together the police chiefs and the National DAs Association  
18 and Justice and try to get them to work on a model State  
19 statute on consent. I would think in this environment it  
20 would have some political success.

21 Ms. Booth. Colorado is--I mentioned the two different  
22 subsections earlier. But its routine--I mean, we expect  
23 almost 100 percent of the time it is the consent defense.  
24 But within the statutes that we have, we are able to work  
25 through that and what consent means. So I do not know that,

1 you know, there is a model that is being proposed out there,  
2 but Colorado certainly is a workable series of statutes that  
3 we can provide through either one of those.

4 Senator McCaskill. We will look at--we will pull some  
5 of the statutes and take--

6 Senator Blumenthal. I am surprised there is not one.

7 Ms. Booth. I am going astray for a second, but earlier  
8 you asked the question about where you might be able to help  
9 on the administrative side. I would like to bring up one  
10 thing from the prosecutor/law enforcement side, and it does  
11 have overlap with the university. We still have an extreme  
12 shortage of SANE programs and the ability for survivors to  
13 come forward to get SANE exams. And while selfishly that is  
14 very helpful to me on the forensic evidence collection,  
15 there is that side, but there is the well-being and safety  
16 and medical support that the survivor is lacking in getting.  
17 And I have been working really hard in establishing one in  
18 my community, and we have all kinds of--

19 Senator McCaskill. There is not one in Boulder?

20 Ms. Booth. No.

21 Senator McCaskill. What?

22 Ms. Booth. Yeah, and we are progressive, and we are  
23 educated, and we are intelligent in this area. But it  
24 becomes a lack of funds. And you can say go get a grant,  
25 but everybody is competing for those grants. And nobody

1 thinks it is their one job or role to provide the SANE exam.  
2 And so I have universities--

3 Senator McCaskill. Women of America, rise up. There  
4 should be a SANE exam in every community in the country,  
5 availability of SANE exams.

6 Ms. Booth. And we started to see legislation go that  
7 way, like for Texas, and I think it was West Virginia  
8 started to have some of that State by State legislation that  
9 you cannot discourage and/or you must provide one. But the  
10 problem is you have got a lot of students who are going to,  
11 say, their university-based medical, so ours--and nobody is  
12 equipped to do that and help in that way, and that is often  
13 what is prompting them to report.

14 So I still think we need a lot of work and help and  
15 funding availability and support for medical in the realm of  
16 getting SANE programs more established and accessible to our  
17 survivors, because that is a huge hurdle for us.

18 Chief Zoner. And the impact of the collection of the  
19 evidence and the retention of that evidence is tremendous in  
20 our field, and for the hospital. So even if they do not  
21 report to law enforcement, the hospital is mandated to hang  
22 on to that forever and ever amen.

23 Ms. Booth. We have Colorado legislation now that has  
24 been very proactive in saying you cannot discourage, you  
25 help, you get it, and then we are sending every test kit

1 down now. But there are only a couple--our survivors have  
2 to drive 45 minutes to 50 minutes to get a SANE exam. That  
3 is enough right there that people are deterred and are not  
4 going to drive out there. So we need more well-established  
5 and, you know, available SANE programs.

6 Ms. O'Connor. And DOJ has done a great job of  
7 supporting telehealth and new innovations so that you can  
8 make that available, particularly in the rural communities.  
9 So I think it is something that, you know, there is just--we  
10 need additional push behind.

11 Senator McCaskill. Okay. Well, we will look at that  
12 as we look at the grant funds that we are going to try to  
13 put in. You know, it is sad to me because I was involved in  
14 establishing the first rape kit examinations in the Kansas  
15 City hospital at St. Luke's in 1979, and that we are still  
16 talking about this, it is sad to me that we have not--this  
17 has not become--

18 Ms. Booth. Well, we have had programs before, but they  
19 failed because of funding issues. And it depends on--there  
20 are different models. You know, there is your rape crisis  
21 center-based kind of model. There is your medical facility-  
22 based model. And so there is a difference of opinion and  
23 philosophy on those, but it comes down to funding.

24 Senator McCaskill. Right. Okay.

25 Ms. Ladd-Webert. Well, speaking of funding, I mean, it

1 really comes down to funding for all of this. We have just  
2 created new regulations for Clery. We have all these FAQs  
3 coming out of Title IX. That is a lot of time and money  
4 that the universities need to be doing that, and I am lucky  
5 that I work at a place where we have a dedicated victim  
6 assistance service. But there are some people who are their  
7 Title IX coordinator, who are their--you know, have many  
8 hats doings prevention, doing response, and there is just  
9 not enough funding. And I know--I watched the last  
10 roundtable--there is a grant out there, but they only can  
11 give out so much money. I am grateful for it because that  
12 is how I am a standing office now, but there is just not  
13 enough to do prevention, to do crime statistics, to do  
14 response.

15       Senator McCaskill. Well, and we have to look--I mean,  
16 one of the things we are going to try to do as we draft this  
17 legislation is to address the problems that we have heard  
18 about, but also see if there are places we can simplify and  
19 make things less complicated, because the worst thing is to  
20 have someone in your job that feels they are so overburdened  
21 by filling out reports that they do not have time to check  
22 to see whether the underlying policies are taking root and  
23 whether or not they are really making a difference in terms  
24 of establishing protocols and processes that are supportive  
25 of victims. And, you know, this is an area where we can

1 definitely overlegislate because it sounds good and we want  
2 information. And the saddest part is a lot of the  
3 information we demand, there are very few people that  
4 actually consume it, And that is really a waste of time.

5 Ms. Folsom. That is a large concern, is to have mass  
6 quantities of reports and not have that information. And,  
7 you know, I think that having the funding there for the  
8 crime statistics is so important, but as a prevention  
9 person, I would be remiss to say that that is where we  
10 should be throwing our money, because we can be doing a lot  
11 of work around prosecution in the criminal justice system  
12 and the judicial process, but how wonderful would it if  
13 there was not that problem?

14 And so I talk to students all the time about culture  
15 change. You know, it takes time. It is not an overnight  
16 process. But it is doable. Pick any type of cultural  
17 aspect of our community, and we can talk about how it has  
18 changed over 30, 40, 50 years. But I truly believe that we  
19 can work with college students to then become the future  
20 jurors and the future prosecutors and defense attorneys so  
21 that they are changing that culture overall. And I think  
22 that it is a challenge that we are waiting until college to  
23 be talking about these issues. These things need to be  
24 coming up in elementary school and middle school and high  
25 school because when students get to us, they are 18 years

1 old and have set ideas of how to treat people. And we  
2 cannot just undo that in a 45-minute orientation program.  
3 So how can we change that culture from when they are 5 and  
4 learning about consent because somebody is tickling them and  
5 not stopping? And so they are learning, well, if I say no,  
6 it does not matter anyways. So how can we change that  
7 personally I think is where the money should be going.

8 Chief Zoner. I would like to echo that sentiment. It  
9 is one of the strong urges I have to share with you, that we  
10 really are dealing with people who have been socialized for  
11 18 years on the gender roles, on respect, on civility, on  
12 differences that are still present of boys will be boys and  
13 girls need to be polite. And it is very--we can be  
14 reactive, but I am with Darcie on that. Let us get the  
15 education in there sooner. Let us get it more pervasive,  
16 and let us get it to a place where the equality starts the  
17 conversation much earlier.

18 Senator McCaskill. Is there anything else that we have  
19 not talked about today that any of you feel we have skipped  
20 over, that we did not--it is interesting because I had a  
21 list of questions, and as I look through them, we have  
22 covered almost all of them just in the natural course of  
23 talking about the things we have talked about in these 2  
24 hours. Is there anything that we have neglected to address  
25 that we need to bring up before we finish today?

1           Ms. Brodsky. I guess I would just like to say, kind of  
2 building on this discussion of prevention, that enforcement  
3 is also really good prevention. And if we are going to talk  
4 about what we are going to require of schools, we need to  
5 make sure that someone is holding them accountable, too.  
6 That also circles back to our conversation about money  
7 because the Department of Education needs to be big enough  
8 to be on the ground actually conducting investigations to  
9 identify the gaps between what they can see on paper of a  
10 university's policies and how survivors are actually being  
11 treated.

12           Chief Denton. On that regard, I would encourage a  
13 collaborative process in the Department of Education in the  
14 Office of Civil Rights rather than an adversarial process.  
15 We have been exposed to voluntary compliance reviews that  
16 then were crafted in reports of something else. I think,  
17 you know, if you want compliance, if you want enforcement,  
18 it has to be a different flavor to it, so to speak, to  
19 encourage compliance through training, through education.  
20 As it stands now, there is a fear that if you call the  
21 Office of Civil Rights or you call the Department of  
22 Education for guidance, you may be waving a red flag, and  
23 the focus then becomes on you in terms of resolving a  
24 problem.

25           Ms. Brodsky. Sorry, I have to respectfully really

1 disagree. I am on a campus where the Department of  
2 Education came in, identified a series of violations, and  
3 said, "Sorry, we are not going to find them out of  
4 compliance. That is just not what we do." And I think that  
5 is one of the reasons why we are seeing--today is Title IX's  
6 42nd birthday, and why we are still having this  
7 conversation, that schools know, just as perpetrators do,  
8 that they are never going to be held accountable. And that  
9 does feel in some ways very gendered to me, that we are  
10 expected to be here as good, forgiving women and give  
11 perpetrators and schools second chance after second chance  
12 after second chance.

13 Senator McCaskill. Well, we are working on--I think  
14 that there is value to both points of view. I think there  
15 is value to cooperating, but then there is also value to  
16 bringing the hammer down. And we have got to figure out--I  
17 mean, if no school ever thinks the hammer is going to come  
18 down, then that is also a problem. And, frankly, that is--  
19 we have talked a lot about the statute, that the only real  
20 penalty that they have is to remove all Federal funding,  
21 which we all know is totally unrealistic and never going to  
22 happen. So we need to have some kind of middle ground of a  
23 problem.

24 They are adamant about wanting to stay with a voluntary  
25 compliance program. I have got no problem with a voluntary

1 compliance program with maybe a first offense. But if a  
2 campus--if you are back on that campus and they have not  
3 kept their end of the bargain, they have not done what they  
4 agreed to do, then there needs to be something other than an  
5 idle threat. And I do not think they have that right now.

6 Senator Blumenthal. And the hammer has to be something  
7 that does not punish students who are, after all, you know,  
8 potentially the victims. So to have a penalty that is, in  
9 effect, a nuclear option without any other kinds of  
10 graduated responses, and also to have the penalty hit the  
11 people whom you are trying to protect and trying to give  
12 those rights of equality to does not seem very smart either.

13 Senator McCaskill. It is hard.

14 Ms. Cantalupo. You know, to kind of follow up on both  
15 the enforcement and the technical assistance and the  
16 training that we were talking about earlier, you know, one  
17 good way to sort of--one good place to put our money as the  
18 Federal Government is to require training from not only law  
19 enforcement or, you know, the sort of front-line first  
20 responders, but also, you know, those trauma-informed  
21 interviewing techniques should also--every Title IX  
22 coordinator on campus should be required, and that training  
23 should be provided by the Federal Government.

24 You know, it can be--it does not have to be provided  
25 by, you know, staff of the Office for Civil Rights. It can

1 be provided by, say, a technical assistance provider who is  
2 identified by OVW, by the Office on Violence Against Women  
3 in the Department of Justice, which is what they do with the  
4 campus grantees. You know, there are a number of different  
5 ways to do it. But the training should be as uniform as  
6 possible and, therefore, it should come--you know, it should  
7 be controlled at a fairly detailed level by the Federal  
8 Government and should be required.

9       And you also deal with the funding issues because if  
10 the Federal Government is providing that training, then  
11 schools do not have to come up with the money to provide it  
12 themselves. And, you know, from my perspective, that is how  
13 you get--that is part of the way that you get these various  
14 messages and information about multiple goals and the fact  
15 that there are Title IX rights as well as, you know, the  
16 right to be free from crime and things of that sort.

17       Mr. Jungers. I agree with Nancy, and something that I--  
18 --in terms of the administrative process that we have  
19 discussed, I would really recommend looking to the  
20 Association of Student Conduct Administrators for best  
21 practices. I mean, I recognize clearly there are outlier  
22 institutions. There are institutions not doing the right  
23 thing.

24       Senator McCaskill. But there are a lot that are doing  
25 the right thing.

1           Mr. Jungers. There are a lot, and I would look to the  
2 association that provides leadership.

3           Senator McCaskill. Okay. Good suggestion

4           Ms. Hull. For just my final comments, I just want to  
5 touch base briefly on the prevention side of it from a  
6 different perspective. I do believe that many of the issues  
7 that we are talking about today and dealing with do have an  
8 enforcement answer to a point. I acknowledge that law  
9 enforcement is not going to be the right answer for  
10 everybody. However, when you break from the traditional  
11 model of law enforcement and you start providing an  
12 environment that encourages reporting and, therefore,  
13 identifying serial perpetrators and providing that  
14 information to our DAs to prosecute those offenders, that is  
15 a form of prevention. And it will have an impact on our  
16 college campuses, because we are not only sending a message  
17 to victims that they should be heard and what happened to  
18 them is important and will be taken seriously; we are  
19 sending a message to offenders--

20           Senator McCaskill. That is right.

21           Ms. Hull. --that they can no longer keep people silent  
22 in the same way they have before. And I do believe if we  
23 focus--no matter how you feel about law enforcement, if we  
24 focus on fixing some of the issues with our response right  
25 now to this, some of the other issues will be affected in a

1 positive way.

2 Senator McCaskill. I think I love you.

3 [Laughter.]

4 Participant. Ditto.

5 Senator McCaskill. I think all the prosecutors are  
6 going, "Yes." And, by the way, I think it is, you know,  
7 very interesting that you have kind of reworked the  
8 traditional law enforcement model, and one of the things I  
9 think we need to do is we need to figure out a way to make  
10 that model Title IX compliant. And if we could do that, I  
11 think we might be on to something that could have a real  
12 positive impact on empowering victims and ultimately holding  
13 perpetrators accountable, which is, you know, what we want  
14 to do--first empower victims and take care of victims; but,  
15 second, hold them accountable. And I know right now it is  
16 not Title IX compliant. I have already talked to the White  
17 House about this challenge, and I think we are going to try  
18 to get our heads together and figure out if we can somehow  
19 legislate away to make that particular model Title IX  
20 compliant. It is a little tricky because of the reporting  
21 stuff, but I think it might be worth it.

22 Ms. Hull. Well, we have--and I apologize if I said  
23 this already, but we have over 40 campus law enforcement  
24 agencies, sworn, that have reached out and said, "I want to  
25 do the right thing, and I want to do this." And we have to

1 tell them right now, "You are amazing, and that is so great,  
2 and I am sorry."

3 So I think it is a positive thing that they are  
4 reaching out. It is an unfortunate answer that they cannot  
5 provide the model.

6 Senator McCaskill. Well, let us figure out a way that  
7 we can make it Title IX compliant, because that is one of  
8 those things that technically it is not compliant, but I  
9 think what you are doing embraces what we want to see happen  
10 within Title IX. So we ought to figure out a way to get  
11 that done.

12 Ms. Hull. That would be great.

13 Ms. Cantalupo. I think we are in a better place with  
14 Title IX after the FAQs came out. You know, I just want to  
15 give OCR credit for having done--you know, from my  
16 perspective, you know, acknowledging that there is a wide  
17 diversity among how well schools are handling this issue,  
18 that it might not be enough. You know, what we set up was  
19 this three-path approach where you had privilege reporters  
20 and you have confidential reporters, and then you have  
21 responsible employees who--where their confidentiality is  
22 ultimately the decision of the Title IX coordinator. But  
23 the confidential employees, that middle category, is now  
24 based on the judgment of the school. And so the school  
25 could not identify anybody, including people who sort of

1 very obviously should be confidential employees. They could  
2 refuse--they can refuse under this system to identify them  
3 as confidential employees, and so that might be a place to--

4 Senator McCaskill. Well, if you hear of a school that  
5 has done that, make sure and let me know, because I will  
6 have them as a witness at a hearing, because that would  
7 really be bad if they tried to take mental health  
8 professionals or health professionals and tried to--

9 Ms. Cantalupo. Right. No, I am not talking about  
10 those folks, because those folks have privilege based on  
11 State law. I am talking about the folks like women's center  
12 directors, like I used to be, who do not have privilege  
13 based on counseling license, for instance, but are likely--

14 Senator McCaskill. Would be considered to be--right.

15 Ms. Cantalupo. --to be considered by students as being  
16 someone who I can go to confidentially and my report will  
17 not be automatically advanced to the Title IX coordinator.  
18 And part of, you know, the idea of you have options is that  
19 you have options.

20 Senator McCaskill. Right.

21 Ms. Cantalupo. You know, so there might be a way under  
22 Title IX to retain the sort of enforcement idea, but still  
23 give options.

24 Senator McCaskill. Right.

25 Ms. Cantalupo. But that may not be--it may not be

1    advisable to leave that entirely up to the school to  
2    determine, and to actually identify some folks on campus in  
3    certain roles that should be confidential, regardless of  
4    whether they have privilege.

5           Senator McCaskill. Well, in this model the only person  
6    who would decide whether someone was confidential or not  
7    would be the victim.

8           Ms. Cantalupo. Right.

9           Senator McCaskill. It would not be the schools.

10          Ms. Hull. And the hangup that we have seen is that for  
11    this to truly be effective--because, of course, due to time  
12    we did not talk about the other side of the program, which  
13    is the investigation--you would have to make your campus law  
14    enforcement not Title IX reporters--

15          Senator McCaskill. Right.

16          Ms. Hull. --in order for this to truly be effective so  
17    they could identify serial perpetration, and I think a lot  
18    of people have a hard time saying that a campus law  
19    enforcement who is, you know, employed by a campus is not a  
20    responsible person. But that is a departure.

21          Senator McCaskill. Well, we have got to work on it. I  
22    want to thank all of you. It has been terrific.

23          Senator Blumenthal. Thank you all.

24          Senator McCaskill. We have learned a lot, and I think  
25    we are better informed than when we began, and you all are

1 doing tremendous work, and I really appreciate you taking  
2 the time and traveling to be here today and helping us with  
3 this. And please continue to communicate with us as we--  
4 especially once the legislation is drafted and you have a  
5 chance to look at it. We will tell you with certainty that  
6 a piece of legislation being drafted does not mean that it  
7 is going to look anything like that when it is finished. So  
8 there will be plenty of opportunities--

9 Senator Blumenthal. It will be better or worse.

10 [Laughter.]

11 Senator McCaskill. Yes, right. --plenty of  
12 opportunities to shape it and change it and tweak it and  
13 amend it, and we will look to your for guidance on the best  
14 ways that we can get the very best package possible to get  
15 at this problem that I know that you all work at every  
16 single day.

17 Thank you very much.

18 Senator Blumenthal. Thank you.

19 [Whereupon, at 4:45 p.m., the roundtable was  
20 concluded.]