

1 MAJORITY ROUNDTABLE ON CAMPUS SEXUAL ASSAULT:  
2 COMPLYING WITH AND ENFORCING  
3 THE CLERY ACT AND THE CAMPUS SaVE ACT

4 - - -

5 MONDAY, MAY 19, 2014

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

10 The Subcommittee met, pursuant to notice, at 2:05 p.m.,  
11 in Room SD-342, Dirksen Senate Office Building, Hon. Claire  
12 McCaskill, Chairman of the Subcommittee, presiding.

13 Present: Senators McCaskill and Baldwin.

14 OPENING STATEMENT OF SENATOR McCASKILL

15 Senator McCaskill. Hi, everybody. Welcome. We are  
16 glad that you are all here, and we are going to convene our  
17 first of three roundtables on the serious problem of sexual  
18 assault on college campuses. These roundtables will occur  
19 every two weeks for the next six weeks.

20 Today, as you know, we are going to focus on the Clery  
21 and SaVE Acts and talk to you about the challenges that  
22 those rules and regulations present. Two weeks from today,  
23 we will cover Title IX. And then, four weeks from today, we  
24 will cover both the administrative process, but spend a  
25 great deal of focus on the criminal law enforcement process

1 and where we are failing to get these perpetrators into the  
2 criminal justice system and what we need to do to improve  
3 our abysmal record in that regard.

4 I thank you all for being here. You were all invited  
5 because you are experts in various ways on this issue. This  
6 is not a hearing, this is a conversation. The goal here,  
7 and I want to say for Senator Gillibrand and Senator  
8 Blumenthal, they are both very sorry they cannot be here  
9 today. I am sure they will be participating in the other  
10 roundtables we will have.

11 But, we are working on drafting legislation, and what  
12 we want to do is maybe simplify, because I know this is now  
13 a complex labyrinth of different rules between SaVE and  
14 Clery and Title IX, and different standards of proof,  
15 different State statutes. We do not even agree on the  
16 definition of consent. So, those are challenges that I know  
17 this area represents and we want to see if we can simplify,  
18 clarify, augment, support, perhaps provide more mandatory  
19 training, but with the grants that go with that so that  
20 universities can access grants to help train people on  
21 campuses for important things like that initial forensic  
22 interview that we all know is crucial that, frankly, if  
23 there was one thing I could do by waving a magic wand, and  
24 that is making sure every victim at the moment of report is  
25 immediately seen to by someone who is trained that can do

1 the type of interview that makes the difference between  
2 success and failure in terms of ultimately bringing someone  
3 to justice for a serious felony.

4 As many of you know, I have already sent letters  
5 requesting detailed information from the Department of  
6 Justice and the Department of Education regarding their  
7 enforcement and oversight. I have also launched a survey of  
8 450 colleges and universities regarding their policies and  
9 procedures relating to sexual violence.

10 I am holding these roundtables to hear from a variety  
11 of stakeholders regarding how they think we can best address  
12 this significant problem on college campuses. Today, as I  
13 said, we will focus on Clery and Campus SaVE Act, two pieces  
14 of legislation which, among other requirements, mandate that  
15 schools collect and report information about sexual  
16 violence. These requirements are, in fact, a great start,  
17 but I am concerned they have not been adequately enforced.  
18 I also believe that we can do better to address this problem  
19 through this enforcement regimen.

20 I am a former prosecutor with years of prosecuting  
21 sexual assault crimes, and obviously, that informs my  
22 approach to this problem. I want to know that survivors are  
23 getting the services they need and that perpetrators of  
24 sexual violence are being held criminally accountable. But,  
25 I know that is not all that is required. I also want to

1 make sure that whatever steps we take going forward are the  
2 right ones and that we respect the rule of law in this  
3 country, which includes due process. I know that commitment  
4 is shared by Senator Gillibrand and Senator Blumenthal.

5 I would now like to invite our participants to go  
6 around the table and introduce themselves, and if you would,  
7 give a very brief introduction as to the work you do and  
8 where you are from. I would ask that you keep your remarks  
9 limited at this point so we have plenty of time. As you  
10 might imagine, I have got lots of questions, so I want to  
11 make sure we have time to get to all the questions and that  
12 I hear all of your concerns and comments that I know will  
13 help inform our decisions as to legislation moving forward.

14 So, why do we not start to my left.

15 Ms. Vitchers. My name is Tracey Vitchers and I am with  
16 SAFER, or Students Active For Ending Rape. We were founded  
17 by students at Columbia University in 2000 and later  
18 reorganized as a national nonprofit organization that  
19 empowers college student activists to reform their campuses'  
20 sexual assault policies and hold their campuses accountable  
21 to transparent investigative and disciplinary processes and  
22 supporting survivors.

23 Ms. Rider-Milkovich. My name is Holly Rider-Milkovich  
24 and I am the Director of the Sexual Assault Prevention and  
25 Awareness Center at the University of Michigan. In that

1 role, I am responsible for overseeing the institution's  
2 prevention efforts, our response efforts as it relates to  
3 students who are survivors of sexual assault, intimate  
4 partner violence, sexual harassment, and stalking, and I  
5 also serve in a leadership role in developing policies and  
6 processes at the institution and ensuring compliance with  
7 Campus SaVE and other Federal mandates.

8 Ms. Mahaffie. Good afternoon, Senator McCaskill. My  
9 name is Lynn Mahaffie. I work for the Office of Post-  
10 Secondary Education at the U.S. Department of Education. I  
11 am responsible for the regulations that implement the  
12 Violence Against Women Act and other Clery issues.

13 Senator McCaskill. And SaVE?

14 Ms. Mahaffie. Yes.

15 Ms. Kiss. Hi. I am Alison Kiss. I am the Executive  
16 Director for the Clery Center for Security on Campus. We  
17 were founded in 1987 by Howard and Connie Clery and we  
18 provide training and technical assistance specific to Clery  
19 compliance and some prevention work, as well.

20 Ms. Fultz-Carver. I am Caroline Fultz-Carver. I  
21 represent the University of South Florida System. I am the  
22 Associate Compliance Officer for that system. My chief  
23 responsibilities are to oversee Higher Education Opportunity  
24 Act compliance, including Clery, Campus SaVE, the Violence  
25 Against Women Act, and also where those laws interface with

1 Title IX.

2 Mr. Heath. Good afternoon. My name is Eric Heath. I  
3 am the Chief of Police at George Mason University, but I am  
4 here on behalf of the International Association of Campus  
5 Law Enforcement Administrators, where I sit on the  
6 Government Relations Committee for that entire organization.

7 Senator McCaskill. Thank you very much.

8 Mr. Heath. Thank you.

9 Ms. Dunn. And, I am Laura Dunn. I am a campus sexual  
10 assault survivor and have been a long-time activist, over  
11 eight years now, and I recently graduated from the  
12 University of Maryland Law School, just this last Friday, so  
13 I guess I am a lawyer now, and I have also--

14 Senator McCaskill. That is the first time you have  
15 been able to say that.

16 Ms. Dunn. Yeah, kind of.

17 [Laughter.]

18 Ms. Dunn. Feels good. And, I am also the founder of  
19 SurvJustice, which assists survivors, empowers activists,  
20 and supports institutions in handling sexual violence.

21 Senator McCaskill. Great. Well, let us--oh, and Tammy  
22 got here.

23 Senator Baldwin. Hi.

24 Senator McCaskill. Senator Baldwin, welcome. We are  
25 glad you are here, and I will turn it over to you, if you

1 have any comments you want to make before we begin.

2 OPENING STATEMENT OF SENATOR BALDWIN

3 Senator Baldwin. Well, absolutely. I, first of all,  
4 want to thank you, along with some of our other Senate  
5 colleagues, for convening this first in a series of  
6 roundtable discussions on sexual assault and violence on  
7 campus, and I want to thank you for your critical work on  
8 the issue.

9 I also want to share some words of praise with the  
10 administration for taking, I think, very important steps to  
11 raise the profile of student sexual violence, including an  
12 establishment of a White House Task Force to look further  
13 into the issue.

14 And, while I am encouraged by the advances that we are  
15 seeing on this issue, including the strengthening of Federal  
16 law that we are going to be talking a little bit more about  
17 today, I also think we can all agree that there is much,  
18 much left to be done. And so I wanted to just call  
19 attention to two quick issues.

20 I was proud in recent weeks to introduce the Tyler  
21 Clementi anti-harassment bill that would include cyber  
22 bullying and harassment into our anti-harassment policies.  
23 For those of you who know about the life of Tyler Clementi,  
24 he was the victim of cyber bullying and ended up after his  
25 freshman year committing suicide because of the activities.

1           I also, and we can address this in the discussion, but,  
2 Senator McCaskill, you and your colleagues on the Armed  
3 Services Committee have just done such an incredible job of  
4 elevating the issue of the sexual violence that we see in  
5 our military. There is one issue that I see sort of overlap  
6 between what we are talking about today and that and that is  
7 the ROTCs on our campuses across the country, where many of  
8 our officers are trained and come through, and I have  
9 certainly heard anecdotal information that concerns me and  
10 think we need to raise, or elevate the focus on that in  
11 terms of data collection and understanding, really, what is  
12 happening. And so it complements your leadership on that  
13 Committee with what we are doing here today.

14           So, again, thank you to all of you for coming. I see a  
15 fellow Badger. Thank you for being here.

16           Senator McCaskill. Well, thank you, and we are glad  
17 you are here, Senator.

18           Let us start with the Clery Act, and maybe, Alison, you  
19 can start off. And all of these, everyone should just jump  
20 in. This is going to be a free-flowing discussion. The  
21 worst thing that could happen is for you to leave this room  
22 saying, I wish I would have told her this, or I wish I would  
23 have told them about this. We want to hear everything that  
24 frustrates you, everything that you think is working,  
25 everything that you think is problematic. Please do not

1 hold back.

2       The Clery Act, I think that, at least in some of the  
3 people I have talked to, I think it was originally  
4 envisioned that this would be data that people could rely on  
5 and that would be consumable by someone. The problem is,  
6 now, I do not think anybody knows the data is even there. I  
7 mean getting past the first problem, that it is not  
8 reliable, the second problem is that it does not appear to  
9 me to be out there where families even know that it exists,  
10 that this is something they could even ask for and find out  
11 what the data is on a campus.

12       So, Alison, who do you believe the data is intended to  
13 be for?

14       Ms. Kiss. Sure. So, I would--and, again, I just  
15 interviewed one of our founders, Connie Clery, recently for  
16 something separate, and we talked about the intention being  
17 for--to be forewarned, is something that she talks so often  
18 about, to let people know when they are going to a campus  
19 what crimes have been reported on that campus, so, for  
20 current students, prospective students, current employees,  
21 prospective employees.

22       The other side to that--and you said to air anything  
23 that we had to air, so I will take that to heart--is that,  
24 often, how it plays out, if you have a campus, for example,  
25 that reports 60 sex offenses versus a campus that reports

1 zero, the perception by the public is that that campus  
2 reporting 60 is unsafe, when, in fact, I would disagree with  
3 that, that that campus reporting 60--and as a former  
4 prosecutor, you certainly know it is an under-reported  
5 crime. So, if students are coming forward and they are  
6 reporting and they are seeking help and they know where to  
7 go, they are getting the education to know that what  
8 happened to them, to know to call that sexual assault.

9           So, that is one of the challenges I see with the  
10 numbers. The annual security reports that campuses produce  
11 that are to be made public for families, for employees are  
12 wonderful documents that provide summaries of policies.

13           One of the other struggles I see is to check-off the  
14 compliance box. Sometimes, those documents are created and  
15 they have policy statements, so summaries, for example, of  
16 the sex offense policies, but then there is no complete  
17 policy behind it, or if there is a complete policy behind  
18 it, that policy is not being implemented on the campus.

19           I am sure some of my colleagues could probably add to  
20 how I just started the conversation, but--

21           Senator McCaskill. So, how do we get--how do we do  
22 better on the problem that if a college campus says they  
23 have had zero, that should be a real red flag to any parent  
24 that that means they are not reporting their statistics and  
25 do not take this problem seriously, as opposed to one that

1 may have 60, which is counterintuitive. It may mean that  
2 they have a really robust program where they are accurately  
3 collecting data and victims feel comfortable coming forward.  
4 Does anybody have any ideas as to how we could get past that  
5 bump, because that is going to be the problem. I mean, I  
6 think that is the problem now. I think that there is an  
7 incentive to not accurately report.

8 Ms. Dunn. I think the White House actually already  
9 started addressing that. They called it a climate survey,  
10 but what they are really talking about is a victimization  
11 survey.

12 We do have an under-reported problem, and when we  
13 measure that and have that number at the top of the Clery  
14 chart saying there are 100 rapes here, and then have the  
15 number on the bottom be, and only five are reported, that is  
16 how you contrast it. I mean, sexual violence is everywhere  
17 and we need to get that understood. But, I think when  
18 colleges have to face those numbers, that incentive is to  
19 have the 60 and close that gap as well as decrease  
20 victimization.

21 I know the White House is looking to implement that in  
22 2016, but I think we start thinking about that now and how  
23 that works with Clery. So, the challenge is, Clery is  
24 geographically based and bound and how does that work with  
25 victimization, which happens everywhere, and between

1 students, off campus and on campus.

2 Senator McCaskill. Right. So, the answer to the Clery  
3 problem is maybe mandating, because the White House is  
4 talking about voluntarily doing climate surveys?

5 Ms. Dunn. I am very for mandating. I mean, they make  
6 you return books before you can get your diploma. They can  
7 figure out how to make students take a survey. And, we need  
8 to be thoughtful about how the survey is framed. It cannot  
9 just be, like, were you raped, yes or no. It has to be the  
10 subtle method of, have you had an experience where you did  
11 not want this to happen, because when you force people to  
12 identify legally, you are going to see under-reporting.

13 I did not know what happened to me was rape for a long  
14 time. I just thought it was my fault or something bad that  
15 happened, and it took me a long time to come to that  
16 realization. So, the content of the survey also is an  
17 issue.

18 Senator Baldwin. Content and probably how it is  
19 actually conducted. There has been a long history of  
20 victimization surveys in the United States done by the  
21 Department of Justice. Do you have thoughts or  
22 recommendations on that in terms of people, you know,  
23 sharing?

24 Ms. Rider-Milkovich. So, one of the recommendations  
25 that I would encourage is that campuses who are doing

1 surveys use validated instruments for those surveys so that  
2 we are able to be able to compare from campus to campus the  
3 information that is coming out of these surveys in the ways  
4 that Clery, I believe, was intended to function, also, that  
5 there would be able to be comparable data. So, that will be  
6 possible when we are using survey instruments that have been  
7 tested, that have been demonstrated to actually measure that  
8 which we are hoping to measure.

9           And, I would note that the University of New Hampshire  
10 has had for 20 years a survey that they have used and that  
11 that has a validated instrument that could be the beginnings  
12 of an instrument that other campuses could adopt.

13           Senator McCaskill. So, what you are saying is,  
14 potentially, Education or DOJ would come up with a standard  
15 survey that everyone would use, with standard language on  
16 the questions?

17           Ms. Rider-Milkovich. I would hope that we would come  
18 up with a core of standard information that would be able to  
19 be comparable from institution to institution, but also that  
20 institutions be able to adapt some portions of the survey so  
21 that they can actually measure some of the other kinds of  
22 interventions that are happening from campus to campus, that  
23 this serve not only as a tool for consumers to be able to  
24 use to compare data, but also as a learning instrument for  
25 the campus itself to be able to identify what practices are

1 effective, and it is my hope that those kinds of measures  
2 will feed into the yawning gap of research and evidence on  
3 what are best practices for prevention, as well as response  
4 on the college campus.

5 Ms. Fultz-Carver. I just--to state the painfully  
6 obvious, those surveys need--we need to be able to afford  
7 whoever responds to those surveys anonymity,  
8 confidentiality, so we can truly get at the heart of what is  
9 happening, because if anyone has an inkling that their  
10 identity is going to be revealed, they are not going to  
11 answer honestly and the data is going to be useless.

12 Senator McCaskill. Go ahead.

13 Ms. Kiss. No, I was going to say a good model for that  
14 would be something like the American College Health  
15 Association, or ACHA, which administers a survey annually at  
16 many college campuses, so looking at some of the instruments  
17 that they use to administer--I mean, many institutions, if  
18 not all, regularly do. It is just a matter--

19 Senator McCaskill. Which is all private health data--

20 Ms. Kiss. Right.

21 Senator McCaskill. --but it is done anonymously, and  
22 there is--

23 Ms. Kiss. Correct.

24 Senator McCaskill. --confidence that the people taking  
25 this survey realize that it is anonymous.

1           Ms. Kiss. Absolutely.

2           Ms. Vitchers. And, to speak to Senator McCaskill's  
3        question about the accessibility of the data on the OPE's  
4        website, currently, depending on how you filter the data and  
5        how you access the data through the OPE's website, if it  
6        pushes the information out in a CSV or Excel format,  
7        sometimes, the tabular data comes out incorrect and there  
8        are many typographical errors. There are errors in spacing.  
9        There are errors in the columns. And, we have found that to  
10      be a huge challenge, and--

11          Senator McCaskill. Now, tell me again where you are  
12      getting--you used an acronym--

13          Ms. Vitchers. The Office of Post-Secondary Education's  
14      website.

15          Senator McCaskill. Okay.

16          Ms. Vitchers. If you go to their website on the Clery,  
17      it is--

18          Senator McCaskill. To try to get the Clery data from  
19      there.

20          Ms. Vitchers. and you try to download the Clery data  
21      from them, it often comes out with significant typographical  
22      errors, spacing issues. The headings are sometimes not  
23      correct. There are periods or commas where they should not  
24      be. And, so it really questions on how valid the data is  
25      and if you are getting the most accurate data for the campus

1 that you are looking at.

2 Ms. Dunn. And, kind of related to that, just talking  
3 about accessibility of data, I mean, obviously, the  
4 Government came out with [notalone.gov](http://notalone.gov), but I can say, as a  
5 student survivor, we were very disappointed. They did not  
6 mention the Clery Act reporting process on that website.  
7 They listed the 55 schools under investigation, but they are  
8 not going to do that again. Now, you have to request it.

9 And one of the big problems with this issue, and I know  
10 law enforcement can speak to it, is it is a silent issue.  
11 So, people do not even know there is a complaint on campus,  
12 and if they did, they would feel more comfortable coming  
13 forward, sharing more information, and then the data gets  
14 fleshed out. All the other incidences that were not  
15 reported come forward. So, I definitely think data is of  
16 concern.

17 Senator McCaskill. Well, let me ask our Police Chief.  
18 One of the things that I realized is that the Clery Act uses  
19 definitions from both the UCR, FBI UCR, and the National  
20 Incident Base Reporting, and it is my understanding that if  
21 someone is taken by force into their car and driven across  
22 town, and then they break in someone else's apartment and  
23 then there is a rape, you are reporting a kidnapping, a  
24 rape, and a breaking and entering as three separate  
25 incidents and nobody has any idea that it was the same, all

1 in one, crime. Is that actually the way it works?

2 Mr. Heath. Yes, Madam Senator. One of the challenges  
3 within campus law enforcement, and it is something that  
4 IACLEA has talked greatly about, is not only accessibility  
5 of the information, but making that information useful, and  
6 that is one of the problems that we encounter in our  
7 business in law enforcement on campuses, is the challenge of  
8 the differences between UCR and NIBRS and the fact that,  
9 over time, the Clery Act has even expanded some definitions  
10 that are not even covered under UCR and NIBRS.

11 So, that creates a lot of logistical challenges for  
12 campus law enforcement to address when other municipality  
13 counterparts or sheriffs' departments or other local  
14 municipal agencies, they are counting these particular  
15 statistics, yet college campuses are required to come up and  
16 determine where, specifically, does it meet that particular  
17 crime, because as we all know, State laws vary throughout  
18 this country, and so being able to capture that particular  
19 information.

20 And then, to answer the second portion of your  
21 question, the hierachial rule of how we count those  
22 particular crimes, when we talk about making it accessible  
23 but also useful, the fact of the matter is, when the  
24 information comes out, it is just aggregate data. It looks  
25 like all of these particular crimes are occurring on your

1 campus when, in fact, it actually may just be one incident  
2 of a recurring or separate particular pieces to that  
3 incident.

4 Senator McCaskill. Somebody could go on a crime spree  
5 one night and could blow up the data over one continuing  
6 criminal behavior over one evening because it embraces so  
7 many different types of criminal behavior.

8 Mr. Heath. That is correct. A good example would be,  
9 possibly, as well as, like, a hate crime. When you have to  
10 designate a crime, maybe it is a robbery but there is some  
11 hate bias to it, you designate it as a robbery based on the  
12 geography of where it occurred. But, then you also  
13 designate it under a hate crime. When that information  
14 comes out, it looks to the untrained eye as two particular  
15 crimes.

16 Senator McCaskill. So, why is it that way? Why are we  
17 using both UCR and NIBRS? I mean, does anybody know how  
18 that came about?

19 Ms. Dunn. I cannot answer that specific question, but  
20 I can say that I know that Clery already handles an incident  
21 such as that as allowing there to be a description of the  
22 event. So, rather than putting statistics and numbers,  
23 schools actually have the flexibility of writing a narrative  
24 and showing that it is one event, and I believe that is what  
25 we turned out to do with the gender of violence crimes,

1       dating violence, domestic violence, stalking, and sexual  
2       assault.

3           My concern actually is we only count by victimization,  
4       so you can have a gang rape that is one rape, even though  
5       there are ten perpetrators. That, to me, is shocking, and  
6       that is actually covering up a bigger problem we have on  
7       campus, especially within fraternities and athletic teams  
8       where that is a common form of sexual violence.

9           Senator McCaskill. So, we are counting all the  
10      different crimes, but we are not counting all the different  
11      perpetrators?

12           Ms. Dunn. Yes. We are very victim-centric to the  
13      point that we forget who is--like, where the problem is  
14      coming from.

15           Ms. Kiss. But, we also--just to add on it, too--there  
16      is also the public crime log requirement under Clery. So,  
17      there is the opportunity there to not be--where you have the  
18      opportunity to explain or kind of detail in more plain  
19      language, user-friendly language, so to speak, that is  
20      accessible. So, if you are looking at institution  
21      statistics, you have the ability to request the crime log  
22      and get a sense for what occurred or what happened and so  
23      there would be a little more detail there.

24           Ms. Fultz-Carver. Can I just add to that?

25           Senator McCaskill. Go ahead.

1           Ms. Fultz-Carver. That is true about the crime log,  
2       but I am thinking as a parent here, and the whole idea of  
3       this is to give parents and students who go to this  
4       institution informed information. The probability that they  
5       are going to even know that they can request the crime log,  
6       much less read through it to figure out, was it one event  
7       being counted as many or a gang rape being counted as one--  
8           Senator McCaskill. Right.

9           Ms. Fultz-Carver. --I think that is too much to ask.  
10          And, the third issue to counting is that it is reported  
11       as raw numbers. So, two rapes at a campus that is, you  
12       know, a small, I do not know, cosmetology school, 25  
13       students, and a small rural area, versus a large  
14       institution, two rapes, 100,000 people, they are both two  
15       rapes, they are both horrible, but it is a very different  
16       safety situation, I think, in my mind. And, with the raw  
17       numbers, there is no way for a parent to compare apples to  
18       apples.

19           Senator McCaskill. So, do we need a whole new data  
20       schematic for this? Anybody willing to sign up for that  
21       project?

22           Ms. Dunn. Well, I think you can capitalize on  
23       not alone. So, right now, you can go on there, type in your  
24       ZIP code, and see all the crisis intervention surveys. Why  
25       not be able to type in a school, have their annual security

1 data show up there, have an ability to contrast a few  
2 colleges? I mean, if we want the data to be useful, we need  
3 it in one location, and actually, the question on the crime  
4 log, my understanding is that is physical and you have to be  
5 on campus and you can go see it. It can also be electronic,  
6 and maybe that is also something that schools can either  
7 have a link to or route to. That way, we have this data  
8 accessible in one location.

9 Senator McCaskill. Well, it seems to me, with  
10 technology today, we ought to be able to do a lot of this  
11 more simply with electronics. There ought to be a way that  
12 you could have a user-friendly dynamic where you could go on  
13 and click on a university, get the data, get the crime logs,  
14 and so that you could get context, you know, how many  
15 students, and even allow the university to talk about where  
16 their numbers are. Are they up? Are they down? I mean,  
17 let them do a narrative to explain, for example, if they  
18 have a high number, that this is because they have put an  
19 emphasis on reporting and that they have doubled the number  
20 of rape crisis centers and the number of rape crisis  
21 counselors, and as a result, victims--I do not know. Should  
22 that all be done through Clery? Probably, right?

23 Ms. Rider-Milkovich. One of the things that I think  
24 would be very helpful, and I would just reflect, also, that  
25 when we look at the numbers and we know that reports do not

1 equal a clear picture of what is happening on campus, I talk  
2 to a lot of parents and parents want to know, how do I make  
3 determinations about what is a safer campus for me to send  
4 my child, and I think that looking at the prevention and  
5 response efforts that are happening on a campus are an  
6 excellent determination, because that is something that  
7 campuses are able to affect and that is something that we  
8 have more evidence makes an impact on campus.

9 So, I think as we are looking at finding ways to  
10 compare campuses, I think allowing for parents to have the  
11 data about those prevention efforts and have the data about  
12 those response efforts in addition to the reported  
13 incidences would be a very helpful matrix.

14 Senator McCaskill. It is context.

15 Ms. Rider-Milkovich. Absolutely, it is context. It is  
16 not only what is happening on the campus, but what is the  
17 campus doing to address these matters, both proactively and  
18 in the event of a traumatic incident.

19 Senator McCaskill. One of the things the White House  
20 talked about and spent some time on and have not--I do not  
21 think it has come to any conclusion, and that is, should  
22 somehow this data be included in school rankings, like the  
23 U.S. News and World Report rankings.

24 Ms. Vitchens. One of the challenges with that is  
25 because we are requiring schools to self-report this data,

1 that it might not actually paint an accurate picture if you  
2 are just looking at the statistical numbers. If you are  
3 looking at things that Holly mentioned, like, what are the  
4 prevention efforts happening on campus? Do they connect  
5 students with a local rape crisis center? How many  
6 counselors do they have? Do they have a Director of Sexual  
7 Assault Prevention and Intervention? I think that that may  
8 speak more strongly than the data itself, because as we have  
9 seen across the country as students have filed more and more  
10 Clery Act violation allegations against their campuses, we  
11 recognize that we cannot necessarily trust every institution  
12 to report the data accurately.

13 If you look at New York State campuses, for example, if  
14 you go into the Clery data and you look at how many assaults  
15 are occurring per campus in New York State, it is less than  
16 a half of an assault occurring per campus. And, if you have  
17 one in five women who is a survivor of a completed or  
18 attempted sexual assault on their college campus, we know  
19 that that data is not correct and you really have to rely on  
20 the institutions to generate that data. So, I do not know  
21 if using those numbers is the best way. It is sort of--

22 Senator McCaskill. How about the climate surveys?

23 Ms. Vitchers. The climate surveys would potentially be  
24 a more accurate picture.

25 Ms. Dunn. Absolutely, and I know that VTV Family

1 Outreach Foundation is doing--I believe it is 32 NCSI--they  
2 are trying to figure out how to measure not just compliance  
3 with the laws, but actually true safety. And so having an  
4 objective third party kind of coming in as a watchdog and  
5 saying, institutions, of course, you think you are doing a  
6 great job, but let us actually go through. Do you have this  
7 policy? Do you have this practice? Are you coordinated  
8 with local law enforcement or do you only have your own  
9 security force? I think we need to look outside of schools  
10 to get a true picture of what is happening.

11 Senator Baldwin. Can I just--I mean, I think it is a  
12 very wise suggestion to look at the climate survey  
13 victimization report, but in terms of getting better, more  
14 accurate, higher quality Clery data, are there clear  
15 impediments that we should just be thinking about? For  
16 example, you were talking about campuses that have their own  
17 police departments versus campuses that are reporting and  
18 interacting with one or more municipal police departments  
19 that are responding because there is not a campus, you know,  
20 definitions that may be being applied differently in  
21 different States, in different campuses. Are there a set of  
22 clear obstacles that we ought to be grappling with to make  
23 that campus-based data more accurate?

24 Ms. Fultz-Carver. I have something, if you do not  
25 mind. One of the things that is very difficult for me is

1 the compliance person--

2 Senator McCaskill. Could you put the microphone up  
3 just a little bit closer.

4 Ms. Fultz-Carver. Sure.

5 Senator McCaskill. There you go.

6 Ms. Fultz-Carver. One of the most difficult things for  
7 me as a compliance person is compliance is all about  
8 training, getting information out there, having everybody on  
9 the same page, reporting the same things. And the way--even  
10 the way that the VAWA is written right now, we are to train  
11 new students and employees on the definitions of these  
12 crimes in the local jurisdiction.

13 Now, I come from a jurisdiction that has definitions  
14 for all the VAWA crimes, but I could be in a State that does  
15 not, so--sexual assault, yes, but, like, dating violence,  
16 domestic violence, and stalking, they may or may not have a  
17 definition. They may or may not have a definition of  
18 consent. But, I have to train them on what is the  
19 definition in the local jurisdiction, but when I report for  
20 my school, I must report based on the Clery definitions and  
21 they are not always the same, obviously.

22 So, to me, there is a disconnect. To me, it needs to  
23 be very simple. Everybody has the same definition. We all  
24 report on the same things. Apples to apples.

25 Ms. Kiss. And, I think, to piggyback on that, the

1 first thing I want to talk about is we talked about having  
2 this document that talks about prevention, then it has a  
3 statistic. Institutions have to do that right now with  
4 their annual security report, which essentially has these  
5 Cliff Notes of policies and then the numbers. And, in order  
6 to put that together well, it requires training. So, having  
7 training, that when you have these summary policies, these  
8 policies actually have full policies that they support. And  
9 then, a step further, the institutions are trained to  
10 implement them.

11 What we have seen with a lot of the cases on college  
12 and university campuses across the news is that they are not  
13 implementing policies well and survivors are suffering as a  
14 result, and that is when you see major changes made. So,  
15 some of the institutions who have made some major changes  
16 specific to Clery compliance as well as Title IX, but that  
17 is a conversation for two weeks for now, you--they are  
18 making changes because they have been called out on it,  
19 right. There has been public scrutiny.

20 So, now, they are investing resources. Now, they are  
21 investing energy from leadership. They are talking about  
22 Clery when their board of trustees or their presidents or  
23 chancellors have never talked about it before, or have  
24 possibly misspelled it for several years. So, now they are  
25 talking about it and they are doing some work around

1 compliance.

2 So, a lot of, too, a lot of what is there in the law,  
3 if you are trained on it, if it is being implemented, I  
4 think, works well. The challenge that I see a lot, just day  
5 to day as a technical assistance provider for campus  
6 grantees on Clery, and then also just as an organization  
7 that works and trains folks on compliance with Clery, are we  
8 get some people who get it on campuses who really--who are  
9 in a compliance role, and they get it and they understand  
10 what the requirements are, but they are that lone soldier.  
11 They have no support.

12 Senator McCaskill. No support.

13 Ms. Kiss. So, I mean, there is a difference, too. I  
14 think if we have resources, it would be great. But, a lot  
15 of times, when we talk to institutions, we will say, just  
16 support. Ask them what they are doing and how you can help,  
17 even if having the president's name attached to something  
18 can help.

19 So, I think there is--and I do not have a solution. I  
20 wish I did. But, I think you cannot have this conversation  
21 without ignoring the organizational dynamics that come into  
22 play [sic].

23 Senator McCaskill. Yes. It almost has been, like, a  
24 check-the-box thing on too many campuses. We are supposed  
25 to do this, so we are going to do the bare minimum that we

1 must do so that we can be, quote-unquote, "compliant," but  
2 we are not really having the robust training or the  
3 underlying support on campus to make this work the way it is  
4 supposed to work.

5 I mean, frankly, we do not have the data yet from the  
6 survey, but I think we do need to make some changes, because  
7 nothing is more frustrating than a rote exercise that you  
8 are required to do that has no meaning. That is why people  
9 get mad at the Government. And that is one of the problems  
10 we have got here, is that if every campus took it seriously  
11 and tried to support it and understand that there is  
12 something that is required other than cut and paste on--oh,  
13 it is time to cut and paste on the security report again,  
14 right, and put the same language in. I bet, if we look, I  
15 bet those reports change very little in terms of the  
16 verbiage year to year.

17 Ms. Kiss. And, I am someone that says, I wish we did  
18 not have to do enforcement. I wish we could train and  
19 education and people would do it. But, what we are seeing  
20 anecdotally is that enforcement is the only way we are going  
21 to see changes, if, again, naming the--I can name five  
22 institutions on one hand who do it really well. They are  
23 all under investigation.

24 Ms. Vitchers. To piggyback off of what Alison was  
25 saying, in October of last year, SAFER published the results

1 of our Campus Accountability Project, and we looked at 300  
2 school policies related to campus sexual assault. A third  
3 of those policies were not fully compliant with the Clery  
4 Act in written policy. And, so, if we are seeing a third of  
5 the schools out of 300 sample size are not compliant in some  
6 way in their policy, how can they then be compliant in  
7 action?

8 Senator McCaskill. That means thousands of schools are  
9 not compliant--

10 Ms. Vitchens. Potentially, yes.

11 Senator McCaskill. --when you extrapolate it.

12 Ms. Fultz-Carver. And, Senator McCaskill, I would like  
13 to add, to me, as a compliance officer, what I do is I look  
14 at the statutes, I look at the regulation, and then I help  
15 administration and management interpret it into a policy,  
16 and then I work with the units to help them get it done.

17 But, you know, we are not--I am a compliance officer,  
18 and my management team, they are not experts in sexual  
19 assault, dating violence, domestic violence, preventing  
20 those types of crimes. What we need is the simple things.

21 Give us model policy. What does it look like? And, not  
22 just cut and paste, here is the legalese from the  
23 regulation. I put it in my policy. Now, we magically have  
24 a compliant policy, because the policy is just the  
25 beginning. We need the procedures to implement it.

1           And to get those procedures to implement it, I thought  
2       of a simple solution. The Department of Education, they  
3       conduct audits. Surely, they could publish best practices.  
4       What have they seen when they have gone into institutions,  
5       the institutions that are implementing procedures that are  
6       right? Could they publish their audit reports so that we  
7       can see the good and the bad?

8           Senator McCaskill. Where are those audit reports? Do  
9       those audit reports get published?

10          Ms. Mahaffie. Our Office of Student Aid does  
11       compliance reviews and that information does become public.  
12       I wanted--

13          Senator McCaskill. And where--if I wanted to go look  
14       at the results of a compliance audit done by DOE, the  
15       Department of Education, where would I look? Where would I  
16       find it?

17          Ms. Mahaffie. It is on the FSA Data Center website.

18          Senator McCaskill. What does FSA stand for?

19          Ms. Mahaffie. I am sorry. The Office of Federal  
20       Student Aid.

21          Senator McCaskill. Okay. So, if I go on the Office of  
22       Federal Student Aid website and I click on there, am I going  
23       to be able to find these audits and universities that have  
24       been cited for not being compliant on Clery?

25          Ms. Mahaffie. Yes.

1 Senator McCaskill. And, is that just part of a larger  
2 audit, or do you do Clery-specific audits?

3 Ms. Mahaffie. We have put a highlight on Clery in  
4 recent years. In 2010, the Office of Federal Student Aid,  
5 which is responsible for enforcing the Clery rules, created  
6 a special unit that does nothing but Clery compliance. It  
7 started out with five staff members. It has grown to 13,  
8 and we have plans to double that in the next few years. So,  
9 there are specifically Clery compliance reviews being done.  
10 As well, when we do audits on larger compliance issues, we  
11 also look at Clery through those. So, it is being done  
12 through two different mechanisms.

13 Senator McCaskill. So, about how many institutions,  
14 would you say, on an annual basis are getting a Clery  
15 compliance audit, either through this Clery-specific unit or  
16 as part of a larger Federal--Federal Student Aid, is that  
17 what it is called, FSA?

18 Ms. Mahaffie. Yes.

19 Senator McCaskill. A larger FSA audit. What would be  
20 the number on an annual basis--

21 Ms. Mahaffie. I do not know the number on an annual  
22 basis. [Whispering.] About 300.

23 Senator McCaskill. Three hundred a year?

24 Ms. Mahaffie. Mm-hmm.

25 Senator McCaskill. And, has there been any attempt to

1       collate those results and put a report together on the  
2       status of Clery compliance on college campuses on an annual  
3       basis that we could look at year to year? Has there been  
4       any effort to do that?

5           Ms. Mahaffie. We have not done it yet, but we are  
6       going to implement that.

7           Senator McCaskill. Okay. Besides being a prosecutor,  
8       I was also an auditor. Thirteen auditors is not very many  
9       for, what, you have 7,000 campuses?

10          Ms. Mahaffie. Yes. We certainly are planning to grow  
11       that office, and as I mentioned, we are also doing that  
12       through our larger compliance effort, so it is not just 13  
13       people.

14          Senator McCaskill. Well, I--how many of the just-Clery  
15       audits are being done by the 13 auditors on an annual basis  
16       as opposed to the 300 number? What is the--the Clery  
17       special unit, how many are they doing?

18          Ms. Mahaffie. About 20.

19          Senator McCaskill. That is still a lot for 13 people.  
20       I cannot wait to look at the audits. I want to see what  
21       they are.

22          Ms. Kiss. We actually have a summary, if it would be  
23       helpful, too, of a content analysis of the findings that we  
24       put together in a spreadsheet that I am happy to share with  
25       you--

1 Senator McCaskill. That would be great.

2 Ms. Kiss. --your staff or the Committee.

3 Senator McCaskill. That would be great. I would like  
4 to see it.

5 Ms. Dunn. And, to the Department's credit, they are  
6 the only division enforcing a law addressing sexual assault  
7 that has a dedicated unit. The Office of Civil Rights that  
8 enforces Title IX enforces every law. They are not  
9 specialized, and that is a big part of this problem. We  
10 spend all day making laws, making rules, making regulations.  
11 It is overwhelming institutions. And then when it comes to  
12 survivors who ask for enforcement, we do not even have  
13 specialized enforcers who know the details of this law or  
14 even work together with--the Clery Division does not  
15 necessarily work with the Office of Civil Rights.

16 So, on the Government side, there could be a better  
17 process, having more people, having more funding. I am not  
18 a big person on giving more money, you know, for anyone  
19 other than survivors to recover, but if you are going to  
20 spend money somewhere, please spend it on enforcement.

21 Allow them to have specialized units, because it does--

22 Senator McCaskill. Or, at least force integration--

23 Ms. Dunn. Yes.

24 Senator McCaskill. --between--

25 Ms. Dunn. Absolutely.

1 Senator McCaskill. --OCR and Education folks.

2 Ms. Dunn. And, I think that would help institutions,  
3 because they are splitting their minds on the issue of  
4 sexual assault between two laws, and now three, if you count  
5 VAWA as its own law, and that is difficult. So, if the  
6 Government can figure out how to put it into one unit, so  
7 can institutions.

8 Senator McCaskill. And, they can model that better for  
9 the institutions.

10 Ms. Dunn. Absolutely.

11 Ms. Fultz-Carver. And, let me add this to that. I was  
12 also a former auditor, but of clinical trials, and what we  
13 did for FDA-regulated studies, the FDA had a wonderful self-  
14 assessment tool, a checklist, if you will. So, we knew when  
15 the audit team came in, what are they going to look for.  
16 So, that is what we were going to be graded on.

17 Why can we not do the same thing, because to me, if you  
18 find it at audit, it is too late. The regulation went into  
19 effect and you have got all this time where we are not  
20 getting it right. And, I would rather get in front of it  
21 and get it right and know, Caroline, you have got to do X,  
22 Y, Z. Okay, fine. I will do it. I just--

23 Senator McCaskill. The only problem with that is, I  
24 will tell you that having--you know, when--the Federal  
25 Government does audits on child support collection, and when

1 I took over that office, we were not collecting very much  
2 child support, but we were passing every audit. So, they  
3 were so busy checking the box that they knew they were going  
4 to be looked at, no one was asking the question, why are we  
5 not collecting more child support, because they were busy.

6 So, you have got to be careful when you do that,  
7 because then institutions train themselves to be audit  
8 responsive as opposed to getting at the underlying problem,  
9 because, ultimately, here, it is not that they passed the  
10 audit. It is that victims are getting services on campuses,  
11 young people on campuses are being trained about the reality  
12 of this problem, and we are getting more law enforcement  
13 activity around these crimes. I mean, that is ultimately  
14 the goal here. That is the ultimate deterrence. I mean, it  
15 is hard for me to not talk about the criminal justice system  
16 today because I have got to wait two weeks to do that, but  
17 it is a huge part of the problem.

18 Let us look at some of the other things I have on my  
19 list here. The reporting changes that are coming through  
20 SAVE, which were part of VAWA, I know we are supposed to see  
21 a draft rule very soon.

22 Ms. Mahaffie. Yes. We will publish that in mid-June.  
23 Senator McCaskill. Okay. Under the new law, domestic  
24 violence, dating violence, and stalking must be included.  
25 How are you going to handle the confusion around those three

1       crimes? We already have the confusion of reporting each  
2       crime separately, but maybe not each perpetrator separately.  
3       Are you going to be providing definitions for the difference  
4       between dating violence and domestic violence?

5           Ms. Mahaffie. Yes. We had a negotiated rulemaking  
6       committee and several of the members of this roundtable  
7       served on that committee and we were very grateful for the  
8       expertise that you brought to the table. The committee  
9       represented a very wide group of interests, from law  
10      enforcement, victims' advocates, State Attorney Generals.  
11      Basically, we tried to get the gamut of different interests  
12      that would be affected by these regulations.

13       And, we grappled with a lot of the issues that we have  
14      been talking about today, including definitions, including  
15      how crimes are counted. We talked a lot about training  
16      programs, as well. And, we were able, with this group with  
17      very different interests, to come to consensus on language,  
18      and I really credit the group, all of you who worked on  
19      that, because a lot of time and effort went into it and you  
20      really worked very hard to come to consensus on that.

21       So, we feel as if we have got a very good regulation  
22      that we are going to be publishing in mid-June for public  
23      comment, and then we plan to publish it in final by November  
24      1.

25       Ms. Dunn. The only thing missing from those

1 definitions was actually a definition on consent, which did  
2 come up at the rulemaking table and we ultimately did not  
3 create--you mentioned using the UCR. That leaves it up to  
4 States. Unfortunately, not all States handle sexual  
5 assaults in the same--

6 Senator McCaskill. We have 16 States that--

7 Ms. Dunn. Yes.

8 Senator McCaskill. --still do not have incapacitation  
9 as--

10 Ms. Dunn. Absolutely. Wisconsin used to be one of  
11 them when I was a victim. I was specifically told, alcohol  
12 is not included. It does not count for you. And, I know  
13 what that feels like. So, I do not know what can be done on  
14 a Federal level there, but we did have a very wonderful--the  
15 Department did a great job of presenting a definition of  
16 consent that not only talks about affirmative consent, but  
17 also how to show when consent lacks.

18 You do not have to fight back. You do not have to  
19 yell, "No." You simply are focusing on, is there the  
20 presence of a "Yes"? Is there agreement? And, absent that,  
21 you cannot infer consent, and that is what really kills on  
22 this issue. That is why it is silent. That is why it hurts  
23 survivors so much--

24 Senator McCaskill. Right.

25 Ms. Dunn. --to have someone else say, well, clearly,

1 it is consensual, because you did not do X, Y, Z, when we  
2 lived through it. So, I do not know what can be done on the  
3 Federal level, but that is missing. It was not able to be  
4 done through Clery and it needs to exist.

5 Senator McCaskill. Well, the problem is, is that,  
6 obviously, this is not a Federal crime unless you are in the  
7 District of Columbia or Indian Reservations, in some  
8 instances. These crimes are State crimes. So, we cannot  
9 define for States elements of their crimes.

10 Ms. Dunn. But, we can do models and incentives--

11 Senator McCaskill. We can, and I think that is one  
12 thing that we should look at in this legislation, is how can  
13 we incentivize States to update their definitions of  
14 consent. I was surprised we still had 16 States that said  
15 it was only by force or threat of force. That is a lot of  
16 States that still do not understand that that is an  
17 inappropriate and incomplete definition of consent, so--

18 Mr. Heath. Madam Senator, that is exactly what Laura  
19 was talking about specifically, but also, when you go back  
20 to negotiated rulemaking and coming up with a consensus, the  
21 piece on the UCR and the NIBRS, that is if we can get States  
22 to the point where they are consistent in their laws,  
23 because even now, you know, under the new regulations of the  
24 VAWA and the SaVE Act, dating violence in those--while  
25 unfortunate, are not listed in UCR or NIBRS, so you are

1 going to still continue to have an inconsistent definition  
2 between what other municipalities and local sheriffs'  
3 departments are reporting versus what college campuses are  
4 reporting because of the inconsistent definitions.

5 Senator McCaskill. Should we put Clery data as part of  
6 the UCR? Should it go into the FBI's Uniform Crime  
7 Reporting program? Has anybody given that any thought?

8 Ms. Dunn. If I thought the data was accurate, I would  
9 say yes, but I know it is so--it is very much not at this  
10 point. I think, in the years to come, when survivors are  
11 more empowered, that will change. We will feel safe coming  
12 forward and reporting. I do not know if it would have the  
13 effect we would want right now, but in the future.

14 Senator McCaskill. Okay. Let us talk a little bit  
15 about accountability and enforcement. When I realized that  
16 the punishment for the Department of Education and for DOJ  
17 is suspending--I know there is the \$35,000 fine per  
18 violation, but then there is the punishment that is supposed  
19 to provide all the meat behind this, all the stick behind  
20 this, suspending institutions from participating in Federal  
21 Student Financial Aid Programs. Now, does anybody in this  
22 room believe that punishment is ever going to be given to  
23 anyone?

24 Okay. So, every time I told my kids, if they did that  
25 again, I am never going to speak to you, it took them about

1 ten minutes to do it again, because that was not an adequate  
2 deterrent because they knew it was not a realistic  
3 punishment.

4 So, what do we need to do, and this is, obviously, not  
5 just with Clery in terms--and, by the way, the \$35,000 fine  
6 is nothing to a large institution. I mean, I cannot imagine  
7 what the--what is the annual budget at the University of  
8 Michigan?

9 Ms. Rider-Milkovich. Several billion.

10 Senator McCaskill. Yes. I mean, so a \$35,000 fine to  
11 an institution who has a \$2 billion budget, or \$3 billion  
12 budget, whatever it is--I knew it was a lot because you guys  
13 have a huge system--compared to a very small campus that  
14 maybe has 500 students, you know, that does not appear to  
15 make much sense, and it certainly does not make sense to  
16 threaten something we are never going to do. So, what do we  
17 do about meaningful deterrence in terms of punishing  
18 institutions? Does anybody have any ideas about other ways  
19 that we could make this work?

20 Ms. Dunn. This is my favorite discussion to have  
21 because it is so needed. Clery, I do think the fines are  
22 smaller. I do not know if there is a way to do it  
23 percentage-wise so it is taking a percentage of a school's  
24 gross income or whatever you want to call it so that it does  
25 hurt, but not overwhelm smaller institutions. I know at

1 lunch, we were discussing Penn State getting fined more for  
2 their sports violation--millions--versus what Clery can ever  
3 do to it.

4 I do think, at least--and I think you were hinting at  
5 it--Title IX, the removal of Federal funds, right now, there  
6 are two ways to enforce Title IX under Section 1682, and one  
7 of them requires voluntary compliance first.

8 Senator McCaskill. Right.

9 Ms. Dunn. We just saw at Tufts that they had a  
10 voluntary resolution agreement. They violated it, and we  
11 made another agreement again. Watch out. You are only  
12 going to get a contract every time you violate, and these  
13 violations are not just law. These are survivors' lives  
14 being destroyed, leaving school. So, I do think we do need  
15 intermediate sanctions. SaVE was aiming at that.

16 Obviously, that fine is arbitrary and it is not  
17 meaningful, so I do not know if we can look at adjusting it  
18 per institution. But, at least under Title IX, you have got  
19 to remove that voluntary requirement. This law has been  
20 around since 1972. We are being way too nice to  
21 institutions, and as a survivor who suffered in an  
22 institution, they do not care. They did not pay the cost.  
23 They still do not, and we need to change that.

24 Senator McCaskill. Anybody else on fines?

25 Ms. Rider-Milkovich. I would say that institutions are

1 already operating, I think, under a lot of anxiety and fear  
2 around addressing sexual assault on a college campus. I  
3 would be concerned about adding more sticks with no carrots  
4 additionally. One of the things that we do not have enough  
5 of are programs or grants that encourage and inspire  
6 innovation and new practices and new knowledge about this  
7 issue. When we are placing all of our resources in  
8 enforcement and we are not complementing that with  
9 innovation, then I think that we are creating a situation  
10 where we do have box checking instead of new thinking.

11 Senator McCaskill. Well, you know, one of the things  
12 about that--and I understand what you are saying. I get  
13 what you are saying. But, one of the things that is  
14 disappointing to me about this is that we depend on college  
15 campuses for innovation for so many things in our society,  
16 and you have on a college campus--and I do not want to pick  
17 on Michigan, although I kind of would like to pick on  
18 Michigan--

19 [Laughter.]

20 Senator McCaskill. If you were Kansas, I would really  
21 like to pick on you.

22 [Laughter.]

23 Senator McCaskill. But, you know, your system, you  
24 have a law school. You have a medical school. You are  
25 training psychologists and psychiatrists and social workers.

1 You have every discipline and academic excellence in every  
2 discipline that is needed to come together on this problem.

3 And, you have endowments--

4 Ms. Rider-Milkovich. Yes--

5 Senator McCaskill. You have alumni. If this problem  
6 is causing such stress to universities, and I think it is  
7 because they are worried that they are going to be next,  
8 that there is going to be a victim that is going to come  
9 forward and tell another horrific tale about how they were  
10 marginalized, how they were shunted aside, how they did not  
11 get help, or another heart-breaking suicide where there is a  
12 trail of tears and inaction by people that were in a  
13 position to help, what I do not understand is why we are not  
14 getting more innovation from these college campuses on an  
15 interdisciplinary approach that they are willing to put some  
16 money behind from their own resources to make it work  
17 better.

18 Ms. Rider-Milkovich. I am very proud to say the  
19 University of Michigan is, in fact, innovating, that we  
20 created one of the first ever primary prevention programs  
21 for the college-aged population, that we also have  
22 implemented an IRB-approved control group matched four-year  
23 longitudinal study of that program so that we can rigorously  
24 identify its efficacy on our campus, that we are planning to  
25 launch a second, as well, to look at other stages of our

1 efficacy programs, and that is because the University of  
2 Michigan has an extraordinary wealth of resources in all of  
3 the ways in which you have identified and we have chosen to  
4 invest them in this effort.

5 Many campuses do not have that benefit, and we need to  
6 be able to extend the ability to innovate to other campuses  
7 that do not have those kinds of resources, because campuses  
8 look different and we need to have different kinds of  
9 knowledge and different kinds of innovations to address  
10 specific campus populations. And for those campuses that do  
11 not have these resources, it is important that they be  
12 provided the support and the encouragement to actually do  
13 that research and to do that new thinking.

14 Senator McCaskill. So, if Michigan has--I am sure you  
15 do have a program that you have put together that is  
16 excellent. That is one of the reasons you are on this  
17 panel. What are we doing--and maybe, Laura, you can speak  
18 to this, or any of the other roundtable participants--what  
19 are we doing to share that? I mean, if you put together a  
20 model that works, where you have got an interdisciplinary  
21 approach, where you have got a criminal justice degree,  
22 where forensic interviewing is taught so that there are  
23 people on campus who understand there is a big difference--  
24 where were you, why were you there, what did you do, as  
25 opposed to the kind of interview that should be done when

1 someone is willing to talk about what had occurred--why are  
2 we not seeing this cross-pollinate across the country?

3 Ms. Dunn. I know that the Office on Violence Against  
4 Women has been considering doing things that are more of the  
5 positive aspect, highlighting what has been done, what does  
6 work, and I think that they should be provided resources to  
7 do that. I will say, in this discussion of carrot, what  
8 they find is they will give a grant for three years and the  
9 school gets rid of their program when the grant is up. It  
10 is about enforcement, because schools will have an incentive  
11 to keep funding their own programs.

12 They have money. They do not need more. They need to  
13 use that money wisely, and unless there is a cost, they will  
14 not. But, there are models of schools that do well.  
15 University of Michigan has been highlighted. I am very  
16 proud that they have done such great things. But, leave  
17 that to newspapers and other things. I do not know if that  
18 is really the business of the Government, to be doing it.  
19 The Government needs to put the incentive in the right  
20 place.

21 We do not need to be handing out money to rich and  
22 wealthy institutions. Harvard is in trouble. Hopkins is in  
23 trouble. They have money. They will figure it out.  
24 Because right now, the people that are suffering are the  
25 victims who leave school in debt, have no compensation ever

1 for what is done to them. If we are going to give money,  
2 let us give scholarships to survivors who are brave enough  
3 to file complaints and have a negative experience on their  
4 campus, to make the school better for everyone else.

5 Senator McCaskill. Well, the prosecutor in me just  
6 said we cannot give scholarships to someone who is brave  
7 enough to make a complaint, because then they are going to  
8 be cross examined--

9 Ms. Dunn. Yes.

10 Senator McCaskill. --that they may be--

11 Ms. Dunn. That was very tongue-in-cheek, actually.

12 Senator McCaskill. --because they got a scholarship  
13 and their credibility would be attacked on that. So, we  
14 could not do that. But, I get the point you are making--

15 Ms. Dunn. Yes.

16 Senator McCaskill. --and it is a valid one.

17 So, does anybody disagree that we should look at fines  
18 to be tied to the size of the school as opposed to a set  
19 amount?

20 Ms. Kiss. I do not know that I necessarily agree, and  
21 I say that reluctantly. I agree with the point that Holly  
22 made, that--and, again, going back to--I did make the  
23 statement that institutions that have changed have been  
24 under investigation. So, they have not even been found in  
25 violation yet. So, they have made the changes, from my

1 view, based on--or, from where I sit--based on the media  
2 scrutiny, that they have been on the cover of Time,  
3 Newsweek, newspaper A, B, and C, and they have made changes  
4 even before there is any finding of violation yet. So,  
5 while fines, I am sure, serve as some deterrent, I almost  
6 think that the public, being out there in public, the  
7 attention that has been on this issue, particularly in the  
8 last six months to two years, but six months, in particular,  
9 I think the spotlight has really shone on this. So, I do  
10 not know that putting all of the eggs into looking at fines  
11 and the energy into looking at fines, I am not sure if that  
12 is the way to tackle it.

13 Holly makes a great point that I really agree with,  
14 putting on my prevention hat, working in a community  
15 organization in prevention and formerly in a college in  
16 prevention. So, I was charged with preventing alcohol use,  
17 suicide, eating disorders, sexual assault, dating--whatever  
18 the "issue," quote-unquote, was that came up through  
19 athletics, through Greek life, they would pick up the phone  
20 and say, okay, we have an eating disorder problem. You need  
21 to go out and educate on it.

22 And, we need to start being strategic about prevention.  
23 And, often--and look at the public health model, which is, I  
24 think, where we pulled the primary prevention piece, the  
25 stuff that the Centers for Disease Control has done.

1 Colleges and universities have not--some have, so I do not  
2 want to put them all in one bucket, but many, again, because  
3 of either, A, lack of support, or lack of resources,  
4 depending on their budget endowment, are not building robust  
5 programs around prevention. And, if they do have programs  
6 around prevention, or maybe one person, if they are lucky  
7 enough, they are not being strategic about how they prevent.  
8 So, they may do a one-shot orientation presentation.

9           And, I struggle with this daily, with how do we get--  
10 how do we have them--how do we help them change that.  
11 Beyond writing a check, which I certainly cannot do from our  
12 nonprofit budget, to every institution, let alone the  
13 University of Michigan, how do they do this, right, and even  
14 if it is creating a grant program--we have one. OVW has  
15 their grant program for colleges and universities. They do  
16 not hand out a lot of those. It is only a small amount, and  
17 it is writing, again, being at an institution who could have  
18 applied for that, I would have had to then also write that  
19 Federal grant, with maybe the help of IRB, who would just  
20 simply sign a piece of paper.

21           So, I think that struggle comes in, and again, I think  
22 that goes back to some of the organizational dynamics within  
23 in terms of what is valued, and is prevention valued, and I  
24 wish I did not have to say it because I value it, but I do  
25 not know that it is valued in all institutions yet. I think

1 we have a long way to go on the prevention side.

2 Senator McCaskill. Well, but if we do not step up the  
3 enforcement side, I mean, the enforcement side brings the  
4 media attention.

5 Ms. Kiss. It does.

6 Senator McCaskill. I mean, so, if we are going to say  
7 we are going to--the only thing we can rely on--

8 Ms. Kiss. Sure.

9 Senator McCaskill. --to make these universities and  
10 colleges do what they should be doing is for them to get a  
11 bad story--

12 Ms. Kiss. Sure.

13 Senator McCaskill. --first of all, that is a lot of  
14 victims.

15 Ms. Dunn. Yes. It is every school's story--

16 Senator McCaskill. --and that, to me, would be a  
17 depressing conclusion. So, we have got to figure out some  
18 way to up the ante that is short of waiting for another  
19 tragedy to hit the front pages.

20 Ms. Kiss. I would almost say, less a dollar amount,  
21 more folks with the Department of Education to do the work.  
22 A 13-person team cannot do it. So, again, I think it is--  
23 the changes I have seen institutions start to make are when  
24 they are immediately under investigation, so no fine yet.  
25 So, we do not know if the fine is \$35,000 or upwards of a

1 million. So, I would almost rather see kind of that  
2 investment in a bigger team to do--

3 Ms. Dunn. But, in all fairness, the fines will be  
4 paying for this. I mean, we have an issue with budget in  
5 our Government. Where does that money come from? We cannot  
6 just endlessly hand it out. It can come from institutions  
7 that have done wrong. They can fund their own enforcements.  
8 I think that is justice, and I think every survivor would  
9 back that up.

10 Mr. Heath. Senator McCaskill, do you mind if--if I  
11 could add that enforcement, I understand that component,  
12 especially being in law enforcement. The important piece is  
13 to have clarity around all of these particular issues. So,  
14 you are enforcing something, but yet there are so many  
15 people that are so confused about how to read the regulation  
16 or how to understand what is going on. So, it is really  
17 hard to say to up enforcement when you have so many people  
18 that do not understand the regulations. It really comes  
19 down to training. It comes down to doing a lot of things on  
20 the back end so you can get people on the same page, because  
21 I work with a lot of really good people who want to do the  
22 right thing and so I am cautious to label institutions when  
23 you know the back side of people who are--a lot of people  
24 are really doing the right thing. It is just there is mass  
25 confusion--

1           Ms. Dunn. But, what about the victims? I mean, being  
2 told that the law is hard for you to figure out is not an  
3 answer, because a lot of it is not about law. It is about  
4 treatment. It is about value that you give to students.  
5 Like, I understand. I went to law school. I studied this  
6 law. I understand how hard it is. But, we are talking  
7 about victims.

8           Mr. Heath. And, at the end of the day, we all want to  
9 be on the same page, and that is exactly what I am talking  
10 about.

11          Senator McCaskill. So, that is one of the things we  
12 are going to try to do, is through these roundtables--I  
13 mean, I already today--I thought I knew this area pretty  
14 well. I have already learned several things today that I  
15 did not know. I mean, there are ways that we could simplify  
16 this. I think it is particularly around what needs to be  
17 reported and how you define it.

18          And, we need to be less reticent about best practices  
19 models being provided to schools. There has been--I know  
20 that the task force has done some of that, tool kits for  
21 universities to help them figure out the right way. And,  
22 the more we do of that, the more consistency we are going to  
23 get from campus to campus, which means all of it becomes  
24 more reliable, because we can compare apples to apples,  
25 because now there is no--we have no ability to really know

1 which campuses are doing well and which ones are not because  
2 they are not even doing it the same way. I get the point  
3 you are making.

4 Should--in the Campus SaVE Act, it requires a school to  
5 publish their evidentiary standard, but we still do not have  
6 an evidentiary standard in law.

7 Ms. Dunn. Well, one is provided in the guidance of the  
8 "Dear Colleague" letter. The Title IX grievance process  
9 does address sexual assault. So, in a sense, that answer is  
10 provided somewhere. I do think it should exist in statute.  
11 I do think it needs to be solidified, because we have this  
12 idea that victims falsely report. We need a high standard.  
13 Campuses are not dealing with crimes. Yes, the behavior may  
14 also qualify as a crime, but they are talking about  
15 misconduct, and preponderance of the evidence is a  
16 sufficient standard.

17 Senator McCaskill. I agree, but I will tell you that  
18 while I know it is in a "Dear Colleague" letter, I will tell  
19 you that if I were in court, the judge would say to me, "I  
20 do not remember where we studied that 'Dear Colleague'  
21 letter in the statute."

22 Ms. Dunn. It is just guidance. It is not--

23 Senator McCaskill. It is just guidance, and I think it  
24 is problematic for institutions. I think it is very hard  
25 for us to come down on an institution that is not using that

1 standard when our Government has not had the political will  
2 to, in fact, put it in law--

3 Ms. Dunn. I agree.

4 Senator McCaskill. --that, for the administrative--we  
5 are not talking about losing someone's liberty here. We are  
6 talking about losing something of value. A preponderance of  
7 the evidence is an appropriate standard in our system of  
8 justice for losing something of value, not your liberty, and  
9 that is all we are talking about in the administrative  
10 proceedings. So, I feel pretty strongly that we need to  
11 step up and do that and I think it would send the right  
12 message, that this is what it is and no one should--because  
13 there are still campuses that are not using it.

14 Ms. Dunn. Oh, absolutely.

15 Senator McCaskill. Yes. Does anybody disagree with  
16 that, that there are still campuses that are not using the  
17 preponderance of the evidence standard?

18 Ms. Vitchens. I think that having the preponderance of  
19 evidence standard would actually empower more colleges to  
20 take more, not necessarily severe, but, like, more stronger  
21 punitive action against assailants. I think, in many cases,  
22 colleges and universities that we have spoken to are afraid  
23 of taking a stronger stance for fear of having the alleged  
24 assailants come back and file a lawsuit for being expelled  
25 or being suspended, stating that it is not a criminal

1 courtroom. It is not. You know, you cannot call it rape.  
2 You cannot call it sexual assault. You have to call it  
3 sexual misconduct. You have to call it a violation of the  
4 college's misconduct policies. And, I think, having that  
5 stronger preponderance of evidence might actually encourage  
6 and empower institutions to take a stronger stance against  
7 assailants, and especially repeat perpetrators, who we know,  
8 based off of the evidence, do the majority of the sexual  
9 assaults on campus.

10 Senator McCaskill. All right. Here is a hot one,  
11 mandatory reporting to law enforcement. Would more  
12 survivors report to law enforcement if they had clear  
13 information on how to do so or were accompanied by an  
14 advocate during the process?

15 Ms. Dunn. I know, as a victim, the only reason I  
16 reported is because I first tried going to the school, and  
17 when they were supportive and said, do you want to go to the  
18 police, I felt comfortable. I think it is really hard just  
19 to go to the police off the gate. I think very few people  
20 do that. And, I really appreciated that the White House  
21 talked about having confidential space. Even in the  
22 military, we have options for keeping it silent or not, and  
23 people who have a safe space to make that decision for  
24 themselves are empowered, will use the system.

25 I am very pro reporting it to law enforcement. It is a

1     crime. But, the only way to get a survivor there without it  
2     being traumatizing is for them to be of their free will.  
3     So, as long as mandatory does not mean taking away a choice  
4     from a survivor.

5                 Senator McCaskill. What about requiring law  
6     enforcement to report it--the university to report it to law  
7     enforcement unless the survivor affirmatively opts out?

8                 Ms. Dunn. I think it can be used as a threat to keep  
9     victims silent, to be very honest. I know when it goes to  
10    the police, sometimes your family finds out. Your friends  
11    find out. It can be a very, very big thing, and not  
12    everyone wants a spotlight on their sexual assault. I see  
13    the good in it. I see the intention in it. But, I am  
14    worried that it will be used as a threat. Well, if you talk  
15    to me, I have to tell the police. It is out of your  
16    control. Maybe you do not want to talk to me anymore. That  
17    will actually deter some reporting even to the school level.

18                 Senator McCaskill. But, if they have the ability to  
19     opt out, if they have the ability to say, no, I do not want  
20     it reported--

21                 Ms. Dunn. Who is going to make sure they know their  
22     rights?

23                 Senator McCaskill. Well, I know this, that I have  
24     talked to an awful lot of campuses and an awful lot of  
25     victims in the last few months, and this requirement, that

1   they are required to say, you may report to law enforcement  
2   or you may not report to law enforcement, they are hearing,  
3   do not report to law enforcement. That is what they are  
4   hearing. Now, I think that might be because some of the  
5   universities are shading it that way because they know if it  
6   does not go to law enforcement, it remains an administrative  
7   proceeding on campus and it is not as difficult for the  
8   university.

9                 But, that is what a lot of victims are telling me they  
10   hear, that when they are being told, you may report this to  
11   law enforcement, but you do not have to, you are not  
12   required, that they are just hearing the second part.

13               Ms. Dunn. It is a tough issue. I am not saying it is  
14   easy. But, I can tell you, the silence cuts both ways. You  
15   can be pressured into reporting. You can be pressured into  
16   not reporting.

17               Senator McCaskill. Right.

18               Ms. Dunn. Both are bad.

19               Senator McCaskill. What about "Jane Doe" reporting?  
20   What about--

21               Ms. Kiss. A couple of things on both topics. One, I  
22   think all--Clery has information on here where campuses can  
23   have in their policies these types of pieces, one being the  
24   option to report to law enforcement and assistance doing  
25   that, but exactly what you said. It depends how that

1 picture is painted, right. If it is painted in terms of, we  
2 can go to local law enforcement, but you really do not want  
3 to do that--

4 Senator McCaskill. They never take the cases--

5 Ms. Kiss. --Bob Smith working--

6 Senator McCaskill. They are going to ask you really  
7 embarrassing questions. It is going to be awful for you.

8 Ms. Kiss. Right. So, my solution, which I love the  
9 White House Task Force addressed this, building that kind of  
10 MOU relationship with community crisis centers, local rape  
11 crisis centers, victims' service centers, where they are  
12 trained to provide options and empowerment counseling,  
13 which, I think, sometimes I throw out those terms and they  
14 sound fluffy, but if they are done well, they really work in  
15 terms of explaining, providing the education to the student  
16 who is reporting about what happened and providing some of  
17 the definitions in language that the student may understand  
18 what happened to them.

19 I can actually be raped by my friend. And then  
20 actually explaining to them what the process is. If you go,  
21 this is what insurance covers. This is when your parents  
22 will be contacted, or guardians will be contacted. Someone  
23 who can actually explain to them, something that I did for  
24 years with survivors that takes three sessions sometimes--

25 Senator McCaskill. Right.

1       Ms. Kiss. --to fully explain the process from A to B.

2       Senator McCaskill. Right.

3       Ms. Kiss. I think the VAWA Amendments to Clery has  
4       that obligation, to have something in writing that goes  
5       through all the options, so if a student is experiencing  
6       trauma, they can look back at that, or they will have that  
7       document so they know what is afforded to them.

8       The other piece, the "Jane Doe," the anonymous--and,  
9       again, per Clery, you have to include, if you do that  
10      anonymous reporting or that voluntary confidential  
11      reporting, and I think, again, very much similar to the  
12      climate surveys, it gives you an accurate number. If your  
13      counseling center is giving you the anonymous numbers of  
14      what--if they are saying to students, listen, we can include  
15      this number in our statistics. It is confidential. It is  
16      voluntary. But, this way, we can have an accurate picture  
17      of what is going on on our campus.

18       So, I am certainly in favor of that, if it captures the  
19      correct data. But, again, getting institutions on board  
20      with that--and some have, I believe, come on board with that  
21      and have been proactive about saying, we are doing this. We  
22      are getting our numbers. This happens here, and that is  
23      why, Board of Trustees, we are hiring a prevention person,  
24      or we are hiring an advocate.

25       Senator McCaskill. Just to make sure I am clear, it is

1 my understanding that there are now a number of college  
2 campuses and universities who are not reporting the data if  
3 the only place the data resides is in an institution that  
4 has confidentiality. In other words, if someone goes to a  
5 mental health center or to a hospital and the only people  
6 they tell are people who have a requirement of  
7 confidentiality, then they are not even including that data  
8 in their Clery data because they are considering it  
9 confidential, even though it is just an aggregate of the  
10 data.

11 Ms. Kiss. Some are, but it depends on the  
12 institutions.

13 Ms. Rider-Milkovich. And, I have to--I want to agree  
14 with what Alison said, that it is very important that we  
15 have "Jane Doe" reporting options, and also that victim  
16 advocates are training side by side with law enforcement so  
17 that, together, they understand that they are working as a  
18 team. They have different roles, but they are a team.

19 When it comes to explaining a survivor's options and  
20 choices, we want for survivors to be fully informed and to  
21 make those informed choices, and that takes time and it  
22 takes trust and it also takes--on the side of the victim  
23 advocate--and it also takes well-trained, well-informed law  
24 enforcement officers, as well, who have not only the  
25 knowledge about forensic examination that is so important,

1 but also understand the impact of trauma and are able to be  
2 sensitive to a survivor so that they are getting really good  
3 information that they are able to pursue, so we have fewer  
4 matters coming before prosecutors that do not have enough  
5 information to move forward, which is the biggest issue that  
6 we see when it comes to law enforcement, is not having  
7 enough information for whatever reason so that a case can  
8 move forward.

9                   Mr. Heath. A lot of campuses, if I could add onto what  
10 Holly is talking about, a lot of campuses are really devoted  
11 to creating that collaborative environment, especially  
12 within law enforcement and victim advocates, and what they  
13 are establishing are Sexual Assault Response Teams that  
14 include a number of individuals who have a responsibility  
15 for responding to those particular crimes, that way, to  
16 create an environment of collaboration. That way, they can  
17 go with the victim as a solidified unit to say, this is what  
18 we can do for you. These are the avenues that we can take  
19 with that particular crime. That would be something I would  
20 definitely advocate for, is establishment of some sort of  
21 team on the college campus that deals with those particular  
22 issues, a more intimate way to address those concerns.

23                   Ms. Vitchers. One of the challenges that we found at  
24 SAFER is that survivors who go through their college and  
25 then go through law enforcement often are doubly

1      traumatized. They are doubly victimized by the time that  
2      they go through the law enforcement side of things. If the  
3      local law enforcement that works with the college campus  
4      does not have a specific person or group of people who are  
5      properly trained in how to conduct an interview with a  
6      sexual assault survivor and how to collect that forensic  
7      evidence, it can be doubly traumatizing.

8            I am not sure if any of you read the story that came  
9      out of Columbia University this week, where one of the  
10     sexual assault survivors who has been working very closely  
11     with Senator Gillibrand, she went through her college  
12     disciplinary process, did not--the college did not find her  
13     assailant guilty of anything. He was not removed from  
14     campus. And so she finally said, "I was not getting the  
15     outcome that I wanted from my university, so I am going to  
16     go to the NYPD."

17           The NYPD officer showed up at her room, basically  
18     disregarded a lot of her concerns, kept wanting her to  
19     repeat very traumatizing information about her assault, kept  
20     trying to question the nature of her relationship and the  
21     nature of the assault with the assailant, because they had  
22     had consensual sex two times previously before he did rape  
23     her. And, she said, she was, like, "I came out of that  
24     experience feeling incredibly disempowered," and the officer  
25     basically walked out and was, like, "Well, we do not know if

1   this will go anywhere. Probably will not." And if you walk  
2   out of--

3           Senator McCaskill. And where was this?

4           Ms. Vitchens. At Columbia, with the NYPD, and it--the  
5   story is in the Columbia Spectator, the Columbia University  
6   student newspaper. And, if the NYPD, which is one of the  
7   largest law enforcement bodies in the Nation, is not  
8   training officers properly in how to interact with college  
9   sexual assault survivors, I do not think we can start to  
10   require students to have to opt out until we can train local  
11   law enforcement officers.

12          Senator McCaskill. It is shocking to me that--I mean,  
13   I am just not aware of any even moderately-sized police  
14   department that has not--does not have trained sexual  
15   assault detectives that would take that report, and that  
16   does not sound like a trained sexual assault detective.

17          Ms. Vitchens. It did not. The story did not sound as  
18   if he was trained.

19          Senator McCaskill. It does not sound like it.

20          Ms. Dunn. Yes, and I have brought people to report to  
21   police before, and sometimes they make them report to  
22   someone initially to even go see the detective from the  
23   right unit. And so, like, you cannot always control who is  
24   coming and responding.

25          You know, I hear that you are concerned about the

1 reporting to law enforcement. I promise you, if we handle  
2 this issue well, it will go up on its own. You do not ever  
3 have to mandate it. I think it is a reflection of where  
4 society is. Our system is failing criminally and campus-  
5 wise. When they get better, victims are empowered. We are  
6 filing complaints. We are talking. Our faces are on the  
7 news. Our names are out there. It is changing already.

8 But, what we need to see is the pieces we cannot  
9 control. We can decide how to report. We cannot control  
10 where there is a consequence for the people who did it to  
11 us. When we see that consequence, we know it is safer for  
12 us to speak out.

13 Senator McCaskill. I guess, and this would--we will  
14 spend a lot of time on this in the criminal justice one. I  
15 just--I understand the incredible stress and heartache and  
16 problems with coming to law enforcement, but I also know  
17 that the vast majority of these perpetrators are not even  
18 getting a criminal interview. I mean, they are never having  
19 that moment where a police officer sits across the table  
20 from them and asks them the difficult questions. We are not  
21 going to get any meaningful deterrent on this problem until  
22 that begins happening.

23 Ms. Dunn. That is true.

24 Senator McCaskill. So, there is a chicken-and-egg  
25 problem here. If you are not getting meaningful law

1 enforcement action, it is going to be very, very difficult  
2 for the victims to feel that there is any point for them to  
3 put themselves out in the most public and painful way  
4 imaginable if they do not have any confidence that, in fact,  
5 something could happen to this perpetrator in terms of being  
6 convicted of a crime.

7 Ms. Dunn. Absolutely, and I think training law  
8 enforcement--it is not just about how sensitive you are to a  
9 victim. It is actually knowing about how perpetration looks  
10 for acquaintance rape, for alcohol-facilitated sexual  
11 assault. I know Dr. Lisak has done amazing work. I  
12 constantly shock people by talking about repeat  
13 perpetrators. They do not know that that happens still.

14 So, I think when law enforcement, the quality of the  
15 training of law enforcement is more guaranteed, they will  
16 investigate better, we will see questioning, because right  
17 now, we only talk about the victim, and that needs to  
18 change. You cannot put a victim through that.

19 Senator McCaskill. "Jane Doe" reporting, I guess--I  
20 guess part of it is that if I have--part of me thinks that  
21 if the universities were required to report that this crime  
22 occurred to law enforcement without any identifying  
23 information, that is another check on the institution, that  
24 they would have to be telling the police that this occurred,  
25 even though they would not be giving out the name of the

1       alleged perpetrator or the name of the victim.

2           Ms. Dunn. Would the police be required to investigate  
3       them?

4           Senator McCaskill. Well, obviously, I do not think the  
5       police would investigate if they do not know the name of the  
6       victim or the name of the perpetrator. But, it would be  
7       another place the data would be located besides sending it  
8       in to the Federal Government, which feels distant and,  
9       frankly, not really something that people are that worried  
10      about. But, if the university president is confronted by  
11      his chief of police that he turned in 12 incident reports to  
12      the local police without identifiers, then, all of a sudden,  
13      he is seeing a front page article in his future, or she is  
14      seeing a front page article in her future. And, to me, that  
15      is just another place that you would have to be accountable,  
16      and, if nothing else, it opens a line of communication  
17      between the university and local law enforcement, which may  
18      not be a problem where you are--

19           Ms. Dunn. So, I think--

20           Senator McCaskill. --Chief, but, I mean, I know that  
21      there is a huge issue. I bet you spend a lot of time at  
22      your meetings talking about how you get meaningful and  
23      healthy cooperation between local police and university  
24      police, because there is just a natural friction there.

25           Mr. Heath. There can be. It depends on the

1 jurisdiction and it depends on the institution--

2 Senator McCaskill. And the leadership.

3 Mr. Heath. Absolutely. Correct. The interesting  
4 piece, I think, is as Title IX and Clery has expanded and  
5 local law enforcement, not campus law enforcement but local  
6 law enforcement, has begun to understand these particular  
7 things, it has even created a little bit more friction, to a  
8 certain extent, because their understanding of what our  
9 requirements as a campus law enforcement agency and how we  
10 have to be collaborative with our institution, it goes  
11 against, to a certain extent, the mission within their own  
12 agency.

13 Senator McCaskill. Right.

14 Mr. Heath. So, it becomes very difficult. You know,  
15 the "Jane Doe" reporting, I understand that particular  
16 nature, but, obviously, in that particular case, it becomes  
17 extremely difficult to investigate those crimes without any  
18 willing victim or name of perpetrator or anything like that,  
19 but--

20 Senator McCaskill. I will point out, however, that  
21 when I began the Domestic Violence Unit in Kansas City in  
22 the 1990s and I had members of the police department come to  
23 me and members of my own staff come to me and say, "We  
24 cannot do domestic violence because, most of the time, we do  
25 not have a victim." I said, well, we need to disband that

1 homicide unit, because last time I looked, we did not have  
2 any victims testifying that were dead.

3 Mr. Heath. That is correct.

4 Senator McCaskill. So--but, we managed to put cases  
5 together.

6 Mr. Heath. Well, I think the--

7 Senator McCaskill. It is amazing that there are cases  
8 that can be put together--

9 Mr. Heath. Well, I think the positive impact of that  
10 is--

11 Senator McCaskill. --without a cooperative victim.

12 Ms. Dunn. But, that is the problem. That is why we do  
13 not want mandatory reporting. We do not want that done for  
14 us. I do not want my friends and family questioned to build  
15 a case without my consent. That is traumatizing.

16 I think Clery has already anticipated what you are  
17 trying to do, the MOUs. We are supposed to have campus law  
18 enforcement developing a relationship with the city  
19 enforcement, and I do know in those relationships that the  
20 city can share data and supplement the report. Now, the  
21 problem is, campuses have no authority to make city police  
22 work with them. That is something the Government could do.  
23 We could obligate non-campus law enforcement to work with  
24 campus enforcement, because they can oppose and hold back.  
25 And, that way, you are not forcing victim disclosure. You

1   are just having a better relationship, and that sounds to me  
2   what you are actually getting at. You want a good  
3   relationship.

4                 Mr. Heath. I do not know specifically if that is the  
5   particular answer, but I know that, from Laura's  
6   perspective, the difference is that when you do have a  
7   college campus that does have a full sworn law enforcement  
8   agency that is trained versus a college campus that does  
9   not, you seem to see more of a disconnect between local law  
10   enforcement and the institution when you do not have that  
11   particular entity on the campus. So, they create a lot of  
12   different challenges when dealing with sharing of  
13   information and collaboration.

14                 Senator McCaskill. Should campus staff that do not  
15   have a requirement of confidentiality be required to report  
16   to the administration when they know that the sexual assault  
17   has occurred?

18                 Ms. Rider-Milkovich. I am not sure if I know the  
19   answer about whether or not they should or not, but what I  
20   do know is that if we require faculty, especially, but also  
21   staff, to report information, then, number one, we have to  
22   vigorously educate our student body about where there are  
23   confidential resources and about what the responsibilities  
24   are of anyone who they share information with to report.  
25   And, also, we need to ensure that every member who has an

1 obligation to report also has an equally robust training so  
2 that they are appropriately responding to that student so  
3 that the student is getting support and care at those  
4 reporting locations.

5 One of the challenges when we expand our reporting  
6 requirements is that we say to students, you can tell  
7 anybody on campus this information and they will share it  
8 with the institution, and then we create the obligation that  
9 that person is going to be equally poised to be able to  
10 address those matters. And so that is something that I  
11 think that we should think carefully on, as to whether or  
12 not all members of the campus are going to be equally adept  
13 at supporting survivors, which is the second half of that  
14 important reporting piece.

15 Ms. Kiss. And, I think, one of the pieces on there--I  
16 mean, right now, under law with Campus Security Authorities  
17 under the Clery Act and then responsible employees under  
18 Title IX, so CSAs, Campus Security Authorities, under the  
19 Clery Act, one of the--obviously, it is someone who is law  
20 enforcement, someone who is monitoring access. But, one of  
21 the kind of blanket, anyone you designate--you can designate  
22 crime reports go to A, B, C. But then there is the piece,  
23 the blanket piece, you know, professionals or people with  
24 significant responsibility for student activity. So, that  
25 often encompasses most of your student affairs, student

1 life, coaches, Greek life, Greek advisors, if they are  
2 faculty and they are Greek advisors. And then with the  
3 responsible employee side, with Title IX, it sometimes goes  
4 off to also include faculty.

5 One of the pieces with CSAs that we have seen from the  
6 organization that I sit at is if it is done really well, so,  
7 if there is a lot of training--and I think this is the theme  
8 of the day--but, if there is training about what you do when  
9 a student discloses and how you handle that disclosure. If  
10 there is not training, then it could have a chilling effect,  
11 because it kind of creates this mandated reporter piece, or  
12 the institution running around saying, you are all mandated  
13 reporters because of what we saw happen at Penn State.  
14 Well, you cannot say that to people and then not train them  
15 on what that means.

16 If you sit and you train them, if you train RAs and  
17 say, listen, you are a Campus Security Authority. If a  
18 student discloses to you, you have to provide the  
19 statistics. You also have to provide information in case  
20 there is a reason to issue some type of warning. But, then,  
21 talking to the students and saying, listen, we know you are  
22 building rapport with students, but you are not qualified to  
23 handle this. You are not qualified to take this disclosure.  
24 And these are some says you can talk to your residents  
25 regularly about what your requirements are and that if you

1 do have to disclose, you can keep it private, you know. It  
2 may not be able to be confidential, but you can keep it  
3 private. So, I think it is good if it is done well.

4 Senator McCaskill. So, I am an RA--go ahead.

5 Senator Baldwin. If I could, I want to apologize that  
6 I have to leave now, but wanted to, first of all, just share  
7 how valuable this feedback is for us. I really appreciate  
8 your time here.

9 And, Senator McCaskill started the meeting by saying,  
10 this roundtable will be a success if nobody feels like they  
11 have left and said, oh, I wanted to make that point and I  
12 did not. So, right before I leave, I guess I want to offer  
13 the opportunity, if there is a topic that we have not delved  
14 into in this first hour and a half that you want to leave  
15 the two of us with before I, unfortunately, have to depart.

16 Ms. Dunn. Well, I think something that may be of  
17 interest to you, considering your legislative background,  
18 when we were sitting at the table for VAWA, we were talking  
19 about also considering Internet crimes, not just physical,  
20 geographical crimes, and we, unfortunately, as a rulemaking  
21 committee, could not address it, but that is an issue, the  
22 cyber elements, not just of, like, stalking, but of  
23 harassment, intimidation. Those are not actually captured  
24 under Clery and it may not be something on universities'  
25 kind of boards, so it may be an area to look into.

1 Senator Baldwin. Thank you.

2 Ms. Rider-Milkovich. Additionally, I just want to  
3 revisit that I think it is important to fund more research  
4 on this issue. One of the places where campuses do receive  
5 research dollars to address significant public health issues  
6 is around alcohol and other drugs. I think that there is an  
7 opportunity to create similar grant programs so that  
8 campuses can do research on these matters, as well, to  
9 increase our knowledge body on this issue, so that when we  
10 are complying with the acts of Campus SaVE, that we are  
11 doing so with practices that are based on evidence.

12 Ms. Vitchens. Also, going along the line of the  
13 Internet and technology, the technology sector right now is  
14 coming up with a lot of great intervention strategies and  
15 programs for either reporting acts of sexual violence on  
16 campus, bystander intervention, access to resources  
17 regarding campus sexual violence, and to have funding and  
18 access to those kinds of programs on college campuses, I  
19 think, could go a really long way.

20 I do not know how many of you attended the Data Jam on  
21 Campus Sexual Violence at the White House, but there were  
22 some really great proposals there about how you can create  
23 intervention and prevention strategies using technology, and  
24 also creating accountability for colleges regarding the  
25 number of--the aggregate data that is reported through third

1 party sexual assault reporting systems on college campuses.

2 Senator Baldwin. Anyone else?

3 Senator McCaskill. Thank you, Tammy, very much.

4 Thanks, Senator.

5 So, I am an RA and somebody on my floor brings me a  
6 video on a cell phone and it is clearly someone having sex  
7 with someone, and it is pretty obvious from the video that  
8 the victim is completely incapacitated, and there is even  
9 conversation among one or more perpetrators about the fact  
10 that she is incapacitated. And the RA recognizes who the  
11 victim is. Does the RA in that circumstance have a duty  
12 under the law now, or should she have a duty under the law  
13 now, to report it?

14 Ms. Dunn. The statute actually contemplates a scenario  
15 like that in saying that colleges need to create a policy  
16 encouraging reporting when a victim is unable to do so.  
17 Being intoxicated or passed out and having this all happen  
18 to you, obviously, the victim may not even know it occurred,  
19 and I think that is a different circumstance. So, it does  
20 not mandate reporting, but it does say that colleges are  
21 supposed to be encouraging that type of reporting. I would  
22 agree with that.

23 Senator McCaskill. But, does she--does that RA need to  
24 talk to the victim first?

25 Ms. Dunn. I do not think so, because the victim may

1 not know it happened.

2 Senator McCaskill. Okay. So, what if the victim was  
3 not incapacitated and she saw the video and, clearly, it  
4 still looked to this RA as if this was non-consensual. Does  
5 that RA have a duty to report that?

6 Ms. Kiss. I would--my advice there as a CSA would be  
7 good faith. So, there is that piece for good faith. So, if  
8 the director of a rape crisis center were to call and say,  
9 we received three reports, you know, this has happened, this  
10 would be the same type of thing. So, that is--and, you  
11 know, it is very clear for Campus Security Authorities that  
12 they are not to investigate. So, the last thing you would  
13 want the RA to do, in my opinion, is to go to the victim and  
14 say, listen, this is what I--you should not have--to me, it  
15 sets up a bad--it is the start of a bad--it has already been  
16 a bad situation, but it is the start of a bad situation if  
17 that RA goes to question the student in the video--

18 Senator McCaskill. Well, I guess what I am getting at  
19 is, so, we want the victim, the survivor, to have great  
20 power as to whether or not this case is criminally  
21 investigated or not, but at the same time, there is a public  
22 safety duty of people that work at this university to  
23 protect other people from these crimes.

24 And so if we are going to give all the power to the  
25 survivor as to whether or not the case goes forward, then

1 any time a bystander comes forward, you are saying that they  
2 would almost have to check off with the victim before they  
3 could, in fact--because once law enforcement gets the name  
4 and once law enforcement gets that video, then law  
5 enforcement has a duty to go and question that victim. The  
6 law enforcement does not have a choice. They cannot then  
7 say, well, yes, this crime was committed, but--now, the  
8 victim still has the opportunity not to cooperate and say,  
9 "I am not going to tell you anything." I mean, ultimately,  
10 the victim, the survivor-victim has a lot of power because  
11 it is very, very difficult to move forward with an  
12 investigation with a non-cooperative, obviously, the most  
13 important witness to the crime.

14 So, I guess that is--you know, everyone said, we cannot  
15 mandate reporting. Well, wait a minute. We need to mandate  
16 reporting because very few people do this once. Very few  
17 people do this once.

18 Ms. Rider-Milkovich. Senator McCaskill, one of the  
19 ways in which the University of Michigan has addressed this  
20 very conundrum is by creating a review panel. In the  
21 instances where we have a survivor who is unwilling to  
22 participate in the institution's process for whatever  
23 reason, a review panel that is made up of a representative  
24 from law enforcement, a representative from my organization,  
25 a representative who represents the interests of the accused

1 student, and also our Title IX coordinator, get together to  
2 look specifically at matters of community safety versus  
3 survivor autonomy and talk through the issues that are  
4 presented to make a determination as to whether, in the  
5 instance where there is a survivor who is unable or  
6 unwilling to move forward with the institution's process,  
7 whether or not the institution has an obligation to continue  
8 to review or investigate that matter, or if there is other  
9 action that the institution may take to address the  
10 responsibility for community safety while not investigating  
11 that particular incident.

12 Senator McCaskill. Yikes. That makes me really  
13 uncomfortable. I mean, if there is a video of someone being  
14 raped, I want law enforcement to get it, like, in ten  
15 minutes, and--

16 Ms. Dunn. I hear your concern.

17 Senator McCaskill. --I mean, convening a panel to  
18 discuss whether or not law enforcement should receive direct  
19 evidence of a felony--

20 Ms. Rider-Milkovich. I am sorry. That was looking  
21 specifically at campus responsibilities, not law enforcement  
22 responsibilities.

23 Senator McCaskill. Yes. I am talking about campus  
24 personnel having a responsibility to report to the  
25 university, which would then have a duty to report to law

1 enforcement under those circumstances, I believe.

2 Ms. Dunn. If you want to solve this problem, make  
3 victims comfortable making that choice themselves. I cannot  
4 say it any other way. I hear the pain. I have worked with  
5 victims of gang rape. I am a victim of gang rape. I have  
6 helped a school, Hopkins, who had a gang rape that hid it  
7 from their students. I care for every survivor. The reason  
8 I reported was because I did not want someone else to be  
9 victimized by the same men.

10 Senator McCaskill. Right. Right.

11 Ms. Dunn. But, I did not report it for me. And, when  
12 I felt I could come forward, I was able to do so, but you  
13 cannot take that choice away. I know that we want to get  
14 the individuals that are committing this harm. We can get  
15 them when our systems are better. Victims will see the  
16 systems work. They will see the newspaper article that does  
17 not let the football player go for rape but sees him  
18 actually get in trouble. There are victims reporting and  
19 their cases are mishandled, and we see that and we know it.  
20 We know it in our bones that it is not safe yet. When we  
21 see those cases that are reported handled better, we will  
22 automatically have higher reporting. If we do it this way,  
23 we will deter survivors from speaking.

24 Senator McCaskill. So, your recommendation would be  
25 that the law would not require someone who has direct,

1 independent corroboration of a felony, that they would not  
2 report it.

3 Ms. Dunn. I do not think they should be mandated to  
4 report it. If they choose to do so, that is one thing.  
5 Mandatory, taking it away from victims who can report it  
6 themselves because they are capable, intelligent  
7 individuals, that can still occur. It is not as if that  
8 crime is never going to get reported if we do not force  
9 someone else to do it.

10 Ms. Fultz-Carver. Would you be comfortable if, in the  
11 law, it said that it could be--it had to be reported, but it  
12 could be reported anonymously, so at least that the  
13 institution would know that there is an issue?

14 Ms. Dunn. I mean, I think the whole idea of reporting  
15 is for it to be investigating those men to take off the  
16 street. You make it anonymous and you still do not do that.

17 Senator McCaskill. Well, I do not know. Clery is  
18 based on reporting for purposes of keeping track of whether-  
19 -the severity of the problem. The Clery data is not a basis  
20 for prosecution. It is not a basis--I mean, it is all  
21 anonymous data.

22 Ms. Dunn. But, now you are trying to suggest that it  
23 also have the law enforcement purpose, which, you are right,  
24 it has not had before. I think you will change the nature  
25 of the beast, and I will promise you that campus survivors

1 will not appreciate it.

2 Ms. Kiss. I believe, as a Campus Security Authority,  
3 in the scenario you gave--now, every scenario is different--  
4 that the RA would have to give that to their law enforcement  
5 and the statistic, and then they would have to give--they  
6 may not know the name of the person in the video. Maybe  
7 they do. I think there are a lot of unknowns. But, then  
8 campus public safety or campus law enforcement would then  
9 need to determine if they need to warn, if this is something  
10 they need to warn on. And, if they know the person in  
11 there, that is where I think a team like Holly's may come  
12 in--

13 Senator McCaskill. Right.

14 Ms. Kiss. --with the Title IX coordinator and others  
15 to reach out, to not say, this was reported. It was  
16 mandated reporting. I think that would be the bad way to  
17 play it, although it sounds that way, but then to reach out  
18 to that student and say, okay, this came to our attention.  
19 This was brought by a third party. Do you want to talk  
20 about this? The student there may say, I do not want to do  
21 anything, and--

22 Senator McCaskill. Which is their right.

23 Ms. Kiss. --but they have been given their options.

24 Senator McCaskill. Right.

25 Ms. Kiss. So, I would--you know, as the scenario you

1 are giving, again, as a Campus Security Authority, the RA,  
2 to me, they--I would think it was a Clery violation. I  
3 would put them on a Clery violation for not--  
4 Senator McCaskill. For not reporting it.

5 Ms. Kiss. --reporting it. Absolutely. I think, how  
6 the Act is written now, they are obligated to report that.  
7 I would think that would be in good faith, seeing it on  
8 video.

9 Mr. Heath. I agree with Alison in her assertion that  
10 if she is mandated as a--or he, he or she, the RA--if they  
11 are mandated as a Campus Security Authority, then they most  
12 likely would have an obligation. The problem is, from a  
13 campus law enforcement perspective, as we talk about CSAs,  
14 they are very--the definition of a CSA is very broadly  
15 defined, and so some institutions may designate an RA as a  
16 CSA and others may not. And so one of the things we talked  
17 specifically about is narrowing that definition and then, as  
18 Laura suggested, encouraging that reporting for those who  
19 are not designated as a CSA.

20 Senator McCaskill. Well, and I--there is--I think it  
21 is really important that everything we do in this area  
22 empower victims and survivors and empower survivors to be  
23 the ones who make the decisions. I completely agree with  
24 you, Laura. It just is very difficult when there is clear  
25 evidence of a serious crime and you know there are repeat

1 offenders, that someone would get the wrong impression that  
2 they did not have any obligation to bring that forward.  
3 And, frankly, in some instances, at least in my experience,  
4 the survivors, when they realize other people were there  
5 that wanted to help, it made all the difference in the  
6 world. The loneliest journey is the journey when you think  
7 no one is on your side.

8 Ms. Dunn. Yes. It is all in how it is framed.

9 Senator McCaskill. Right.

10 Ms. Dunn. I want prosecution of sex crimes and I feel  
11 very passionate that our system has failed and it needs to  
12 be reformed. It can do better. It is just how it is  
13 framed, because the survivors are being told, well, do not  
14 tell me anything because I will have to tell the police.  
15 You are going to deter reporting, and that would move us  
16 backward. So, as long as it can be framed in a way that  
17 makes it clear--

18 Senator McCaskill. Right.

19 Ms. Dunn. --that survivors can keep having their  
20 voice.

21 Ms. Fultz-Carver. And, you know, I would almost say,  
22 too, some of the cases that we have heard about, the problem  
23 is not getting it to law enforcement, because they are  
24 getting there. It is the response you are hearing. I mean,  
25 I do not want to speak for everyone at this table, but there

1 are things I have read in media accounts that I thought,  
2 nobody would actually say that. And then you learn, because  
3 you meet that person in a training, wow, somebody said that.  
4 They said, yes, we had a mistake. This person said one of  
5 these absurd statements, you know, students are going to  
6 keep getting raped until the chickens come home, or whatever  
7 the statement was, and then you find out that actually was  
8 said. And so, there is not much you can do. It goes back--

9 Senator McCaskill. You cannot legislate--

10 Ms. Fultz-Carver. --to training, and the trauma  
11 informed and--exactly. So, that is--you know, there is only  
12 so much we can do in the law in terms of getting it to law  
13 enforcement, but, like Laura said, until we are all, I  
14 think, having a campus process and a defined campus process  
15 through Clery and with guidance from Title IX, until we get  
16 to the point where those statements are not being made--and  
17 they are being made in the campus process, too, do not get  
18 me wrong.

19 Senator McCaskill. Anything else? I have gotten  
20 through my list, and we have done it in less than two hours.  
21 Anything else that you all want to bring up that we have not  
22 talked about, or anything that you feel like you need to  
23 augment?

24 Ms. Dunn. I think that one of the things with Clery  
25 that is going to come up over and over in time, the more we

1 talk about Internet and different things, Clery originally  
2 had this idea that how, like, safe the physical campus was  
3 is some kind of indicator. Having gone now to an urban  
4 school that I walk a block and I am not on campus, but I am  
5 definitely right by my school still, I know that the fact  
6 that Clery is geographically bound creates a lot of issues  
7 just in the rulemaking process, the nitty-gritty. If we add  
8 victimization surveys, well, did it happen on campus or is  
9 it off campus?

10 A lot of schools are worried about having crimes count  
11 against them and making them look unsafe, and I think it is  
12 just an area that needs to be explored. I do not have an  
13 answer. But, campus is really, in the students' mind, where  
14 the students hang out, where people live, and that may not  
15 be considered campus under the Clery Act, but it is very  
16 much Clery to any student walking around.

17 So, I know that that is an issue that needs to be  
18 addressed and Title IX does a great job kind of thinking of,  
19 it does not matter where it happens as long as it affects  
20 education. Clery also will need that update in the near  
21 future.

22 Senator McCaskill. I think that is right. I think in  
23 the military, it is wherever the member of the military is.  
24 It is not just on base.

25 Ms. Dunn. Yes.

1 Senator McCaskill. We do not limit the authority of  
2 the UCMJ to--if the perpetrator or the survivor is a member  
3 of the military, then there is jurisdiction, and it does not  
4 matter if it happens--now, there is dual jurisdiction--

5 Ms. Dunn. Yes.

6 Senator McCaskill. --if it happens in town, as opposed  
7 to happen on a base. But, I think that is right, and I  
8 think we need to look at that. And even on some campuses,  
9 they do not consider Greek houses on campus, which really  
10 seems to defy logic, because there are campuses that do not-

11 -

12 Ms. Dunn. Yes, absolutely. And, another idea, I know  
13 we kind of floated it earlier, the Clery complaint process,  
14 with Campus SaVE now going into effect with the regulations  
15 taking force in the fall, will be enforced for the first  
16 time ever. I know students know all about Title IX, because  
17 it is in the news. They do not always know about Clery.  
18 They do not know about the rights there. And, a lot can be  
19 done to make sure that that process is on notalone.gov or  
20 wherever we centralize a lot of this information.

21 But, I also know that the investigators have some  
22 limitations in how they can update about progress, and as a  
23 victim, whether you are doing a Title IX complaint, a Clery  
24 complaint, it is so stressful to be on campus and not know  
25 if anything is being looked at, not know who is being talked

1 to, and I think the Government can do more for transparency,  
2 showing, hey, there is an investigation here. It helps  
3 survivors who did not make that complaint say, oh, someone  
4 is talking about it? Let me add my story, too. Let us  
5 expose what has been happening. So, the more we can do with  
6 transparency in relation to this, I think, matters.

7 Senator McCaskill. Well, let us hear from the  
8 universities about that, and maybe from you, Lynn. Why  
9 should we not have all these investigations? Why do they  
10 need to be a secret until they are over?

11 Ms. Rider-Milkovich. The University of Michigan is  
12 currently under investigation by the Office of Civil Rights  
13 and we have shared that information with our community, so I  
14 am not certain why a campus would not share that information  
15 with their community.

16 Senator McCaskill. Why--I know that they put the 55  
17 names out there, but there is no--there evidently has not  
18 been a change in the policy that will have that as the  
19 ongoing disclosure.

20 Ms. Mahaffie. We did make those 55 names public, and  
21 we certainly can give some more thought to how to move  
22 forward in the future.

23 Senator McCaskill. Yes. You know, I understand if  
24 there is an investigation, that you do not want to reveal  
25 the details of the investigation while the investigation is

1 pending, because you can screw up your investigation and bad  
2 guys can get away. But, if it is just a matter of letting  
3 people know that there is an investigation, I think you are  
4 right. I think that, just knowing someone is looking at it,  
5 will give comfort to other survivors that there is a process  
6 in place and that they can rely on some kind of structural  
7 support.

8 Ms. Dunn. Yes, and even giving information of,  
9 wherever that announcement is made, whether it is through  
10 the school or wherever, here. Here is who you can e-mail if  
11 you would like to add or contribute to this investigation,  
12 because I know, just through my work with SurvJustice, we  
13 get calls from people who see our complaints in the news and  
14 say, we want to add our story to that, add this complaint,  
15 add this information. So, I do think there is a benefit to  
16 doing that.

17 Senator McCaskill. Right. More information.

18 Ms. Dunn. Mm-hmm.

19 Ms. Fultz-Carver. And the final resolution of the  
20 investigation. What happened?

21 Senator McCaskill. Right.

22 Ms. Fultz-Carver. Not just, we investigated it. We  
23 internally corrected everything and it all magically goes  
24 away. I mean, we need to know what went wrong so that  
25 others can look at that and learn and do better.

1           Ms. Dunn. And, I think that even came up when we were  
2 on the rulemaking committee when we would talk about  
3 sanctions. Right now, we just have the regulation that will  
4 go into effect, hopefully, in the fall, that requires  
5 schools to show all possible sanctions for sexual violence,  
6 dating violence, domestic violence, and stalking.

7           But, what about sanctions? A lot of times, campuses  
8 are not doing a good job of sanctioning. They will do an  
9 educational video as a consequence, or a summer suspension,  
10 or some other meaningless--like, an essay. We have seen  
11 really meaningless consequences, and Clery maybe can require  
12 that in their annual security reports, we have had five  
13 reports of sexual assault. We have had zero consequences.  
14 Or, we have had two suspensions--

15           Senator McCaskill. Right.

16           Ms. Dunn. --one expulsion. That says something about  
17 a campus, how they are taking it.

18           Senator McCaskill. Right.

19           Ms. Dunn. So, I think that could be something that  
20 could be added to Clery and requiring sanctions.

21           Ms. Fultz-Carver. And, I think we should do the same  
22 thing for institutions. If an institution is not complying  
23 with the law, this is what is going to happen to you, and  
24 not just a \$35,000 fine, because that is not going to do  
25 much.

1 Senator McCaskill. Right.

2 Ms. Mahaffie. We do think it is important to have  
3 opportunities for people to add information to our  
4 investigations, and we have started doing some public  
5 listening sessions as part of our review process to provide  
6 that opportunity.

7 Ms. Dunn. Yes, but public means on campus normally,  
8 and what about alumni who have graduated and who have left?  
9 I think it can still be expanded, because we are seeing  
10 alumni organizations at Dartmouth, at Harvard, say, hey,  
11 that happened to me 20 years ago and it was handled poorly,  
12 too. So, I think, just thinking beyond that, still.

13 Senator McCaskill. Anybody else?

14 Ms. Rider-Milkovich. I would just additionally add  
15 that in the Campus SaVE regulations, which I am very proud  
16 of, that are going to be promulgated--well, that have been  
17 promulgated and will be issued in November--we have set  
18 appropriate bars for campuses to reach, I believe, as it  
19 relates to training and prevention. But, for many campuses,  
20 this is going to be a lot of new information and I am  
21 concerned that those campuses get guidance and support and  
22 resources from the Federal Government to be able to be  
23 compliant. I see already the cropping up of many for-profit  
24 organizations that are looking to--

25 Senator McCaskill. Cash in.

1           Ms. Rider-Milkovich. --cash in. Looking to cash in on  
2 an institution's fear. And, what we really want is for  
3 institutions to be operating from the point of the best  
4 practice possible, not from a place of fear. So, that would  
5 be my encouragement.

6           Senator McCaskill. Well, do people like you have an  
7 organization across the country?

8           Ms. Rider-Milkovich. We do not currently have an  
9 organization across the country, though this is something  
10 that a number of us who work on campuses are hoping to  
11 create in the next year. In fact, I have a colleague in the  
12 audience who is going to be joining me after this to discuss  
13 this very matter.

14           Senator McCaskill. I think you should.

15           Ms. Rider-Milkovich. Thank you.

16           Senator McCaskill. I think you all that are being  
17 tasked with putting your universities and colleges in a  
18 compliant position, not just by making sure you have done  
19 all the things you are supposed to do, but that you have  
20 robust training and policies supporting it and that everyone  
21 understands that it is not just your office that has a role  
22 here, I think you all could benefit from some collegiality  
23 and some cross-pollination.

24           Ms. Rider-Milkovich. Thank you for that encouragement.

25           Senator McCaskill. I do not know what I can do besides

1 say, it is a great idea for you to form an organization, but  
2 I think it is.

3 Ms. Kiss. I think that even--I mean, before it starts  
4 to happen throughout the country, it has to happen on the  
5 campus, because there are just so--there are so many silos--  
6 Senator McCaskill. Right.

7 Ms. Kiss. --that are existing on campus. So, I am  
8 sure that everyone at Michigan knows the great work Holly is  
9 doing, but there are probably some folks who do not. So, I  
10 think knowing your resources on your campus, for all  
11 campuses, and I do not know, I guess that is nothing we can  
12 legislate, so to speak, but, you know, having folks--you  
13 know, I think we have seen the Clery compliance coordinator  
14 role or Title IX coordinator role crop up on campus.

15 One of the things that we do at our organization is  
16 have the--we have a collaborative learning program and we  
17 have campuses kind of sign up and do ongoing professional  
18 development in teams of five. So, it forces them as a team  
19 of five, not just their Clery guy or gal, but as a team of  
20 five, to really examine compliance from all levels and then  
21 assess themselves with a self-assessment tool where they  
22 have to go through and assess and do their own program  
23 review, essentially, where they are doing their own program  
24 review--

25 Senator McCaskill. Right.

1           Ms. Kiss. --to see what they can find and do it with  
2       others. So, I think that is another thing. While it is  
3       great to see it happening nationally, I do think we need to  
4       see it happen in our own campus, and it sounds so  
5       simplistic, but that is what we are missing. If you had to  
6       say the top three things I see the biggest challenges  
7       around, silos would probably be number one, silos-slash-  
8       organizational dynamics.

9           Ms. Rider-Milkovich. And, this is another place where  
10      the campus climate assessment can be a very useful learning  
11      tool, so not only looking at the unreported rape, the  
12      victimization, but also look at the levels of information  
13      saturation on a campus.

14           Senator McCaskill. Right.

15           Ms. Rider-Milkovich. And, having campuses set goals  
16      for, you know, for improvement over the course of time. So,  
17      when we are looking at these campus climate assessments, it  
18      is important that they are happening on intervals so that  
19      campuses actually can monitor their progress.

20           Senator McCaskill. Well, I am glad to see that you are  
21      excited about the climate assessment. I have a feeling we  
22      will have some pushback from some universities about a  
23      mandated campus climate assessment, so we are going to have  
24      to be ready to win that fight, so--

25           Ms. Dunn. Absolutely.

1           Ms. Fultz-Carver. And, Senator McCaskill, I just  
2        wanted to add on to what Alison was talking about. You  
3        know, coordinating across the campus for the USF system, for  
4        example, just looking at Higher Education Opportunity Act  
5        and compliance, which includes all of this--when I had  
6        started this initial compliance project, and this is three  
7        or four years ago, completely grassroots because we  
8        realized, okay, we have a problem, we need to get everything  
9        into compliance--when it was all said and done, I coordinate  
10      with 27 separate organizational units, everybody from law  
11      enforcement to wellness to DEO to--and so it is very  
12      complicated.

13       And, I agree with Alison. It has to start with the  
14      institution and there needs to be a centralized entity to  
15      keep track of it all, because what, you know, my law  
16      enforcement officers do every day is completely and utterly  
17      different than my Title IX coordinators, than my folks in  
18      athletics, versus general counsel's office. So, yes,  
19      central organization is very important.

20       Ms. Vitchens. Just to--

21       Ms. Fultz-Carver. And a Clery coordinator is huge.

22       Ms. Vitchens. Yes. Just to piggyback off of what  
23      Caroline is saying, some really great work around this issue  
24      of, like, coordinated community responses are actually  
25      happening at the community college level, because they

1 typically operate within the local community and have to  
2 have more cooperation with local law enforcement, with local  
3 domestic violence shelters, plus their students, plus Title  
4 IX, plus on-campus law enforcement.

5 Bergen County Community College in New Jersey has  
6 actually created a really great violence intervention and  
7 prevention program that is bilingual to serve their student  
8 population that connects them with all the resources on and  
9 near campus and is really, you know, leading the way. And  
10 so we have seen a lot of this great work coming from  
11 community colleges because they are set so much in the  
12 community that they are required to then work with more of  
13 the community members and do not operate in the sort of,  
14 like, ivory tower, or within silos of the university.

15 Ms. Dunn. So, this is kind of a side issue to take us  
16 away from that conversation. I know you were interested in  
17 the idea of maybe combining forces within the Department  
18 focusing on sexual violence. I think the Department of  
19 Education obviously has done some good work, but I have been  
20 continually disappointed, at least with a lot of the Title  
21 IX cases regarding enforcement, and I have had the thought  
22 with a lot of other survivors that the Department of  
23 Justice, their Office of Civil Rights needs to be involved,  
24 because sometimes schools are doing more than just violating  
25 some civil rights or, you know, deterring reporting. They

1 are actually obstructing justice in many ways. And so I  
2 think in looking, at least at that model, bringing in the  
3 Department of Justice, I think, would be a statement. This  
4 is not just Education. We are not just throwing money at  
5 this problem. We are actually laying down the law. This is  
6 a crime. It is a civil rights violation. It is many  
7 things.

8 So, I again encourage the enforcement aspect. I think  
9 that really needs to happen from the Government end. It is  
10 not something activists can do. It is not something  
11 institutions can do or nonprofits can do. Only the  
12 Government can demand significant enforcement, and I hope  
13 you look at the Department of Justice and the role it can  
14 play.

15 Senator McCaskill. Okay. I learned a lot today. I  
16 appreciate all of you being here, very much. Please  
17 consider this an open channel of communication. We should  
18 have draft legislation done sometime after the last  
19 roundtable. We are working on it now, and, obviously, we  
20 will anxiously await everyone's input to the draft and what  
21 we include and what we do not.

22 But, we are working on it collaboratively, and,  
23 obviously, it is really going to be informed by these  
24 roundtables. I know I have got a lot of staff in this room  
25 today taking lots of notes and all of that will be collated

1 and we will look at all of it in light of the list of things  
2 we are talking about legislating about and, hopefully, come  
3 up with the right piece of legislation that will augment and  
4 improve what we have and empower survivors in a way that  
5 they have not been empowered before, with the right mix of  
6 regulation, support, and penalties.

7 So, thank you all very much for being here.

8 [Whereupon, at 4:00 p.m., the Subcommittee was  
9 adjourned.]