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MAJORITY ROUNDTABLE ON
CAMPUS SEXUAL ASSAULT: THE ROLE OF TITLE IX

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MONDAY, JUNE 2, 2014

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

The Subcommittee met, pursuant to notice, at 2:32 p.m.,
in Room 106, Dirksen Senate Office Building, Hon. Claire
McCaskill, Chairman of the Subcommittee, presiding.

Present: Senators McCaskill and Tester.

Also Present: Senator Blumenthal.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator McCaskill. Thank you all for being here today.
I am pleased that we have a great group around this table.

I expect that Senator Tester and Senator Blumenthal
will join us at some point during our discussion, and we
will break from what we are doing at that point and make
sure that their questions are answered and they have an
opportunity to put anything on the record if they would
like.

I want to start by welcoming the participants here
today. This is the second roundtable in a series of three,
focusing on the complex and various issues that surround

1 sexual assault on college campuses.

2 Two weeks ago, we had a really productive discussion on
3 the Clery Act and the Campus SaVE Act.

4 On June 23rd, we will be holding the third roundtable
5 discussion on something that I am very concerned about, and
6 that is the interaction and coordination and working
7 collaboration between law enforcement and university
8 campuses in terms of holding perpetrators criminally
9 accountable.

10 I am holding these roundtables in order to bring
11 together a diverse group of stakeholders to hear about what
12 is working and what is not, what we can do to improve the
13 response to sexual violence on college campuses, where we
14 may need to legislate and maybe where we may need to
15 unlegislate.

16 In addition to these discussions, we are currently
17 working on analyzing the data collected through the survey
18 of 450 colleges and universities that was launched last
19 month. We hope to have the results of that survey, which
20 will be statistically valid, to share with my colleagues in
21 the Senate and the American people in the coming weeks.

22 Today's roundtable will focus on the role that Title IX
23 plays in addressing sexual violence. I know that when many
24 people think about Title IX they think about it in the
25 context of women's athletics, but it is so much more. It is

1 part of our Federal civil rights scheme that ensures that
2 students have equal access to educational opportunities free
3 from sexual discrimination. This also means an educational
4 environment free from sexual harassment and free from sexual
5 violence.

6 Under Title IX and the regulations that have been
7 developed to implement it, there are numerous compliance and
8 enforcement tools available to schools, students and the
9 government. My concern is that either due to a lack of
10 training, inadequate resources and little proactive
11 enforcement, which may directly be related to resources,
12 these tools are not being used to their fullest extent.
13 And, even when they are being used, there is always room for
14 improvement.

15 I am hoping the discussion today will bring some new
16 ideas and perspective to the table and will help inform the
17 work that I and my Senate colleagues, including Senator
18 Gillibrand and Senator Blumenthal, are doing on these
19 issues.

20 I am very pleased that the Department--oh, here is
21 Senator Tester.

22 Senator Tester. Hello, Claire.

23 Senator McCaskill. Senator Tester, would you like to
24 make any comments as we begin.

25 Senator Tester. You are doing good.

1 [Laughter.]

2 Senator McCaskill. Well, this is the part I was going
3 to say, if any other Senators are present, ask them if they
4 would like to make any remarks. So I think you are present.

5 So would you like to make any remarks?

6 OPENING STATEMENT OF SENATOR TESTER

7 Senator Tester. I would love to make some remarks as
8 well.

9 Thank you all for being here.

10 This is an issue that, unfortunately, we should not
11 even have to be here talking about. It should be something
12 that is handled in a way that treats people with dignity.

13 And, obviously, there are some problems. We had some
14 problems at our University of Montana. I think they have
15 got it squared away, but they are going to have to remain
16 diligent to make sure it happens that way.

17 My daughters are both out of school, but I have got
18 grandkids that will soon be teenagers; believe it or no.

19 Senator McCaskill. You are really old.

20 Senator Tester. I know I am.

21 [Laughter.]

22 Senator Tester. And, hopefully, will be looking at
23 furthering themselves in society by getting a degree. A
24 four-year degree, I hope, and maybe even a Master's or
25 Doctorate. And the last thing I want to have to worry

1 about, or have them worry about, is what might happen on a
2 university campus.

3 So I look forward to hearing what you folks have to
4 say. And I think as I came in people were talking about
5 solutions. Claire was talking about solutions, and that is
6 what I would like to hear about.

7 So, thank you.

8 Senator McCaskill. I am also very pleased the
9 Department of Justice could join us today because it is
10 important for the public to understand the Department's role
11 in enforcing Title IX. I think for too long the enforcement
12 process has been shrouded in mystery, and we really need
13 more accountability and transparency if we are going to
14 ensure that colleges and universities understand their
15 responsibilities and are in compliance with Title IX.

16 I want to give a few more ground rules for today's
17 discussion. I know the Department of Justice has some
18 ongoing investigative work that they are doing, and to
19 protect that process, Ms. Jocelyn Samuels cannot answer
20 questions about ongoing cases, hypothetical fact patterns or
21 speculate about the applicability of policies to particular
22 situations.

23 I know that Ms. Samuels would like to take a moment to
24 introduce herself and provide some background on the
25 Department of Justice work on this issue.

1 I am so pleased that she is here today. This is
2 extraordinary that she is participating, along with all of
3 you, in a way that we can be collaborative and cooperative,
4 and it will really signifies how serious this Administration
5 and particularly the professionals of the Department of
6 Justice--how much they care about this issue.

7 So, thank you so much, Ms. Samuels, for being here
8 today. And why don't you take a few minutes to speak to the
9 group, and then we can continue?

10 Ms. Samuels. Well, thank you so much, Senator. I am
11 so pleased to be here today with you and with Senator Tester
12 and with my co-panelists. I am so grateful to both of you
13 for your commitment to this incredibly important issue and
14 to all of you at the table for your commitment to doing
15 something to really address the pervasive and horrible
16 problem of sexual assault on campuses.

17 As Senator McCaskill said, today I am not able to
18 address individual fact patterns or hypotheticals because we
19 want to ensure that we are able to conduct investigations of
20 complaints and cases with the kind of independence that we
21 need in order to be able to ensure respecting the court
22 system, but I am delighted to be here today to talk
23 generally about this problem and to answer whatever
24 questions I can.

25 I do not think I need to tell any of you that sexual

1 violence is a form of discrimination. It refers to physical
2 acts that are perpetrated against a person's will or where a
3 person is incapable of consent. It can include rape, sexual
4 assault, sexual battery, sexual abuse and sexual coercion.
5 I use the term, sexual assault, to refer to all of those.

6 They are obviously a safety issue, but importantly, for
7 the Department of Justice and the Department of Education,
8 they are also a civil rights issue. And we have tools that
9 we are committed to using to the utmost extent in order to
10 ensure that people's civil rights are protected on the
11 Nation's campuses.

12 We enforce a variety of statutes that have relevance to
13 the issue of sexual assault. One, of course, is Title IX of
14 the Education Amendments of 1972, which we enforce in
15 conjunction with the Department of Education and other
16 agencies that fund institutions of higher education.

17 We also enforce Title IV of the Civil Rights of 1964,
18 which bans, among other things, sex discrimination by public
19 schools and public institutions of higher education.

20 In addition, we enforce Section 14141 of the Violent
21 Crime Control Act and the Safe Streets Act, and those two
22 statutes enable us to take a holistic approach to addressing
23 sexual assault because it gives us jurisdiction over sex
24 discrimination by law enforcement agencies.

25 And, as Senator Tester knows, we worked very

1 cooperatively with both the University of Montana at
2 Missoula, the Office of Public Safety there, and the
3 Missoula Police Department to enter into agreements to
4 address the handling of sexual assault complaints by
5 students and by members of the Missoula community, using all
6 of these statutes.

7 And I think our hope is that those agreements will be a
8 model for other universities around the country to be able
9 to adopt the kind of proactive steps that are necessary to
10 really address these problems; so, just a word on what those
11 proactive steps are and the provisions of our agreements
12 with the university and the law enforcement entities in
13 Montana.

14 One thing is a requirement that universities have clear
15 and accessible policies that comply with the law. It is
16 critical that students know their rights and that students,
17 faculty, staff and everyone on campus know their
18 responsibilities when it comes to dealing with sexual
19 assault.

20 Without inclusive policies, too often schools treat
21 victims of, for example, same-sex sexual assault or dating
22 violence as if they are all the same, perpetuating
23 stereotypes that sexual assault is only perpetrated by men
24 against women or that it is necessarily a product of
25 stranger rape. It is neither of those things, and schools

1 need to have the kinds of culturally inclusive policies that
2 enable them to deal with each individual case on campus.

3 They have to broadly disseminate these policies so that
4 people are aware of them. The best written policies in the
5 world are not worth very much if students do not know where
6 to go when they have a concern.

7 That is something that the University of Montana has
8 now done very well. When we did our investigation, we
9 discovered that they had eight different policies that
10 referred to sexual assault and sexual harassment in various
11 capacities, and it just was not clear where students were
12 supposed to go or what the processes the university was
13 supposed to follow were. Pursuant to the agreement, they
14 have now created a policy that provides for a uniform and
15 clearly disseminated way to address sexual assault.

16 Training is also critical for school officials, for
17 students, for anyone involved in the investigative or
18 disciplinary process. People really need to know how to
19 understand, how to investigate a complaint of sexual
20 assault, how to treat victims with sensitivity and respect,
21 and what kinds of remedies they need to institute when they
22 find that sexual assault has, in fact, occurred. In
23 Montana, our agreement calls for training campus law
24 enforcement on investigative techniques.

25 Our Office of Violence Against Women--and Deputy

1 Director Allison Randall is here with me today--does
2 extensive amounts of technical assistance to campuses across
3 the country, which includes training on various ways to
4 address sexual assault, domestic violence, stalking and
5 other forms of sexual misconduct.

6 Ensuring a prompt and effective response to complaints
7 is a critical part of an effective way to deal with sexual
8 assault. We look at how campus law enforcement and campus
9 officials respond to complaints of sexual assault, how they
10 treat the victims and how they treat the perpetrators as
11 well.

12 Again, at the Office of Violence Against Women, the
13 Violence Against Women Act provides for programs that
14 provide for training for sexual assault response teams, for
15 sexual assault nurse examiners, for training law enforcement
16 on trauma and the special investigative techniques that they
17 need to take with people who have been subjected to this
18 invasive and truly horrible form of assault. And, again, I
19 am happy to talk more about those programs.

20 Finally, if they find sexual assault, universities need
21 to take effective corrective action. That means stopping
22 the assault, preventing it from occurring again and
23 remedying the impact of that assault, whether it is on the
24 individual victim or on the campus community as a whole.

25 Individual relief can include enabling students to

1 change their course schedule, retake classes without
2 penalty, additional time to prepare for exams, expunging
3 grades that were reduced by the trauma that they were
4 suffering.

5 Institutional and campuswide responses can include
6 improving training, changing policies, increasing monitoring
7 of spots on campus where sexual assault has occurred,
8 ensuring that everyone on campus knows their rights and
9 their responsibilities with regard to addressing sexual
10 assault.

11 Just two other things that I wanted to mention that we
12 do:

13 One is that in addition to working directly with
14 universities we file amicus briefs in Federal court to
15 address the legal standards that apply to sexual assault,
16 and I think those have been effective in shaping the way in
17 which the law has been applied.

18 We also work very closely, as you know, with the Office
19 for Civil Rights at the Department of Education, both on
20 investigations and enforcement actions and on development of
21 policy guidance, and anticipate that we will continue to do
22 so.

23 In closing, I just want to, again, thank you so much
24 for the opportunity to appear. Thank you for your
25 commitment to this issue. I really look forward to today's

1 discussion and know that together we can really come up with
2 effective solutions to this ongoing problem.

3 Senator McCaskill. Thank you, Ms. Samuels. We really
4 appreciate you being here.

5 Senator Blumenthal has joined us. He is someone who
6 has worked in this area. He has already had a series of
7 roundtables in his state, similar to what we are doing but
8 all on different Connecticut campuses. And he and I are
9 working closely, developing legislation going forward.

10 And would you like to make a few comments, Senator
11 Blumenthal, before we begin the discussion?

12 OPENING STATEMENT OF SENATOR BLUMENTHAL

13 Senator Blumenthal. Just to thank you, Senator
14 McCaskill, for your leadership on this issue and for
15 convening the series of roundtables that we are having, and
16 thank you to every one of you for being here today.

17 I am a number of questions. I am going to wait until
18 we finish with some of the statements.

19 But thank you for all your great work on this issue and
20 coming together in this way. I think we have the tremendous
21 opportunity and huge potential to really achieve some
22 lasting and vitally needed progress in this area.

23 So thank you for all your great work and thank you
24 again.

25 Senator McCaskill. Thank you, Senator.

1 Why don't we go around the table? And let's start over
2 here with Katie, and we will go clockwise, and if you would
3 identify yourself and where you are from and take a moment
4 to explain your involvement in this issue and in what
5 capacity you serve.

6 Ms. Eichele. Sure. My name is Katie Eichele, and I am
7 the Director of The Aurora Center for Advocacy and Education
8 at the University of Minnesota, and that is our sexual
9 assault, relationship violence and stalking program on our
10 campus.

11 I also have seven years of being a judicial officer-
12 investigator for the university, and so I have that unique
13 perspective of being a student conduct officer examining and
14 writing policy and investigating cases and now in more of an
15 advocacy work and so working with our campuses to cinch up
16 both policies and prevention efforts.

17 Senator McCaskill. To be clear, Katie, when you were
18 an investigator, were you investigating Title IX complaints?

19 Ms. Eichele. I was not necessarily investigating Title
20 IX complaints.

21 Ms. Noble-Triplett. Good afternoon, I am Deborah
22 Noble-Triplett from the University of Missouri System, and I
23 am here today leading a task force from our President, Tim
24 Wolfe, who is very passionate about this topic and would
25 like to ensure not only that our four campuses in our system

1 are campuses that are safe and have the appropriate
2 communication of policies, the appropriate prevention
3 programs and the appropriate training but also that we have
4 a culture of respect.

5 And driving much of the work of the task force that was
6 formed in February for our university is an effort to
7 evaluate all of our policies, all of our practices and all
8 of our investigatory practices as it relates to both mental
9 health issues, which we know can either be onset from the
10 trauma of a sexual assault, but also to look at what we do
11 for not only victims but those who are alleged perpetrators
12 to ensure due process.

13 So we have been extensive in our efforts and are
14 looking to become exemplars of best practice in the months
15 and days to come.

16 Ms. Hedgepeth. Hi. Thank you for having me.

17 I am Anne Hedgepeth, the Government Relations Manager
18 at the American Association of University Women.

19 AAUW is a national organization with over 170,000
20 members and supporters, 1,000 branches and 800 college and
21 university partners across the country.

22 In addition to the advocacy work that we do, including
23 on issues like Title IX, campus safety, access to higher
24 education, we also support women who are pursuing higher
25 education by giving out about \$4 million in fellowships and

1 grants every year, training and working with women student
2 leaders on college campuses, and also conducting research on
3 topics like harassment and violence on campus.

4 Senator McCaskill. Thank you.

5 Ms. Samuels. I am Jocelyn Samuels. I am the Acting
6 Assistant Attorney General for the Civil Rights Division,
7 and I wonder if I could just introduce my colleagues who are
8 here with me.

9 Senator McCaskill. Please. Please do.

10 Ms. Samuels. Dan Goldberg is with the Office of
11 Legislative Affairs. Allison Randall, I previously
12 introduced, is with the Office of Violence Against Women.
13 And Becky Monroe is also in the Civil Rights Division.

14 Thank you.

15 Ms. Bolger. I, first, want to say thank you so much
16 for having me here and for your leadership on this issue.
17 It means so much to survivors to see you take this on.

18 My name is Dana Bolger. I am a very recent Amherst
19 College graduate and founding co-director of Know Your IX,
20 which is a grassroots, student-led campaign to educate
21 students about their civil right under Title IX to an
22 education free from sexual violence and harassment.

23 Mr. Kelly. Hi, there. My name is John Kelly. I am a
24 rising senior at Tufts University, and I am a special
25 projects organizer for Know Your IX alongside Dana.

1 I recently finished up a stint on the Violence Against
2 Women Act Negotiated Rulemaking Committee through the
3 Department of Education with Cat here.

4 And I am a trained rape crisis counselor for the State
5 of Massachusetts.

6 Ms. Riley. Hi. My name is Cat Riley. I am the Title
7 IX Coordinator for the University of Texas Medical Branch in
8 Galveston Island.

9 I have been working with student conduct, sexual
10 assault cases, hearing those for about nine years now. I
11 have worked at five different institutions.

12 A new career was really born in April of 2011, and that
13 is the Title IX Coordinator, and my role became that at that
14 time. We have been pursuing the educational pieces,
15 training, victim advocacy--all of those issues--in each of
16 the schools that I have been at. So we are trying to be
17 very inclusive in that process.

18 Ms. Aldrich. I am horrible at technology. I will just
19 say this right now; it is going to be difficult.

20 I am Lindy Aldrich. I am the Deputy Director of the
21 victim Rights Law Center.

22 I bring a unique perspective to this. We are a legal
23 aid provider in Massachusetts, and we have a second office
24 in Oregon. We serve over 400 victims of rape and sexual
25 assault a year, and we specialize only in rape and sexual

1 assault. We are generalist lawyers, but given that the
2 population is so young for this crime, education became a
3 massive part of our practice.

4 I am the managing attorney as well. So I hear almost
5 every case that comes through our doors.

6 What we realize after 11 years of being open is that we
7 have a huge amount of education knowledge because we work
8 with victims in the disciplinary hearings, we ask for
9 accommodations, and then we file Title IX OCR complaints.

10 So what we found is that instead of sitting on,
11 basically, our strategies, we could go out and teach them.

12 So, for the last four or five years, we have been going
13 out and working with campuses. We also work very closely
14 with the Office of Violence against women. We teach with
15 the Mississippi Coalition Against Sexual Assault. We do a
16 lot of work with them in working with campus grantees.

17 And I also do consultations with schools all over the
18 country. So I bring kind of a varied experience in not only
19 just education but the training on the higher ed side as
20 well.

21 Senator McCaskill. Great. Well, I have got far more
22 questions than we have time, but I also want everyone to
23 feel very comfortable jumping in. This is a discussion.
24 This is not a formal hearing. So, please, contribute when
25 you have got something to say.

1 The worst thing that could happen is for us to finish a
2 couple of hours of this and you walk out of this room,
3 saying, boy, they need to know this.

4 We are here to listen and learn and not to pontificate.

5 So I will start with a few questions, and then I will
6 turn it over to my colleagues to ask some questions, but you
7 should feel comfortable asking each other questions also
8 along the way as long as we are respectful that Ms. Samuels
9 probably cannot answer a lot of them that you may want to
10 ask her about specific cases or specific hypotheticals.

11 Let's start with what institutions are doing now. What
12 I have been surprised about--and I really got into the weeds
13 on this--is how different every campus is in how they are
14 handling this issue and that there does not--now I know
15 there was, I think, a very comprehensive set of guidance
16 besides the two Dear Colleague letters that have come out
17 from Justice.

18 The Q&A that came out at the end of April, I thought,
19 was remarkable in terms of how comprehensive it was. To me,
20 it gave a lot of guidance on a lot of different topics.

21 But what I want to try to drill down on today is what
22 are the things that we should legislate about how
23 institutions are handling this and what are the things we
24 should avoid legislating on because not every problem lends
25 itself to a legislative solution.

1 Sometimes we have universities checking too many boxes.
2 Meanwhile, they are not really getting at the essence of the
3 problem, which is how much do students know and do we have
4 counselors and is there a safe access point and have we
5 figured out public safety versus confidentiality, and
6 obviously, there is a stress there that we have got to
7 manage.

8 So let me start first with this; is 60 days right now--
9 universities have 60 days to complete an investigation. Is
10 that long enough? Do we need to look at the 60 day time
11 limit on an investigation in any way?

12 Ms. Riley. I would be glad to speak to that.

13 Sixty days in terms of the hard work of the
14 investigation is adequate. I have done cases that involve
15 45 men and 60 women and was able to facilitate all within 60
16 days.

17 One challenge that is presented is if you are at a
18 system school it depends on who the respondent is how far up
19 the ladder it needs to go. Can it be handled at your
20 particular school? Does it need to go to general counsel at
21 the higher level, and then how much longer that takes?

22 So that is a bit of a challenge.

23 In terms of the investigation itself, I have never had
24 a problem with the 60 days.

25 Senator McCaskill. Anybody else have input on the 60-

1 day requirement?

2 Ms. Hedgepeth. I would add that while 60 days, I
3 think, is potentially adequate, one of the things we often
4 hear is that there is confusion as to when the investigation
5 has ended, when things have moved on to maybe a next step in
6 a process.

7 And a best practice, something that I think has been
8 made clear in guidance, is to communicate that with everyone
9 involved. But, at the end of the day, 60 days can feel like
10 90 or 180 if the communication lines are not open about the
11 way the investigation has proceeded and what stage that
12 process is in.

13 You know, I think that goes beyond your initial
14 question, but I do want to emphasize clarity around what
15 step in the process you are in can really impact what the 60
16 days means and looks like to a student involved in the
17 process.

18 Senator McCaskill. Is there anything that any of you
19 believe that universities need guidance on now that they do
20 not have if they bother to look for it?

21 Mr. Kelly. So I think that a huge thing that I have
22 seen at a number of different schools, in my experiences and
23 in my own personal experiences, is a failure of schools to
24 recognize the form that same-sex sexual violence and sexual
25 violence in the queer community takes and just how rampant

1 that is.

2 You know, if you look at statistics, it is over 50
3 percent of trans people are survivors of sexual violence;
4 over 40 percent of bisexual women or survivors are 10 times
5 more likely to be assaulted if you are a man who identifies
6 as gay than if you are identified as straight.

7 And in DOJ's recent Q&A, for the first time, it was
8 really exciting to see sexual violence as being acknowledge
9 as something that happens in the queer community and
10 something that needs to be handled more adequately, but the
11 unfortunate reality is that right now there is not a lot of
12 guidance over how those policies can be the most inclusive.

13 And so I think that when we are talking about how
14 schools can come up with policies that are truly gender-
15 neutral, come up with policies that would be able to
16 correctly adjudicate a same-sex sexual assault between two
17 women or between two men, I think that that is something
18 that more guidance ought to be really, really helpful.

19 Ms. Samuels. I wonder if I--oh, I am sorry, Anne.

20 Ms. Hedgepeth. You should go ahead.

21 Ms. Samuels. All right, just a couple of things.

22 The first is I would love to claim credit for the Q&A
23 that just came out and for the prior policies. Those
24 actually were drafted by the Department of Education, and we
25 consulted on them and had a lot of input. But I think they

1 deserve the credit for the release of them although we
2 certainly agree with the inclusivity point and with many of
3 the others in there.

4 The one thing I would say about legislation just
5 globally is I do think that there is a value to uniform
6 standards.

7 But what we believe is that universities have to engage
8 in a process that is their own, with their communities, with
9 their stakeholders, to address the kinds of campuses that
10 they are, the kinds of communities that they are in, the
11 nature of the problems that they find.

12 And that is why, for example, I think it is very
13 difficult to have a model sexual harassment and assault
14 policy that works for every institution because not only
15 does it not take account of the particular needs of a
16 campus, but it is also by virtue of the process of engaging
17 that I think university officials can learn what needs to be
18 done and really ensure credibility and buy-in at the end of
19 the day.

20 Ms. Hedgepeth. And I would love to build on.
21 Actually, that is a great segue into what I was going to
22 say--is that I think maybe model policies are not the space
23 we need to fill, but some checklists and some protocols,
24 have been, I think, well received.

25 As a part of the notalone.gov launch, there are some

1 newer resources that are a little more hands-on. The FAQ
2 was incredible. I think it is useful. I think it is
3 detailed. I hope schools are reading it because it really
4 distills some things.

5 But it came along with a confidentiality protocol. I
6 think there is going to be a model MOU or some suggestions
7 on how to develop one with your local law enforcement and
8 local service providers.

9 Those are tools that when provided on a national level,
10 I think, make a big difference to administrators. I think
11 students feel empowered when they can take that to their
12 administrators for the dialogue. But, at the end of the
13 day, getting that information to schools is key.

14 And I think we probably have some good actors at the
15 table, but we also know that, for example, we have not
16 collected the names of Title IX coordinators on a national
17 level, I think, until this is going to start happening this
18 coming year.

19 How are we getting this information to school is a big
20 question for me, and I really hope that we can figure out if
21 we are going to develop some of these things and talk about
22 what would be the right things to develop that we also talk
23 about how we get that information to schools to use.

24 Senator McCaskill. You know, it is incredible to me
25 that we require K through 12 to report the Title IX

1 coordinator to DOE but not colleges and universities.

2 Shouldn't we require colleges and universities to report the
3 name of their Title IX coordinator?

4 Shouldn't that be something at a minimum we should
5 require? Is there any disagreement about that?

6 Lindy?

7 Ms. Aldrich. Yes. No, there is no--I absolutely
8 agree. I think it is really important, especially with our
9 victim work--is that many of our clients have no
10 understanding of where they are supposed to go. I think
11 communicating out is number one, I want to say.

12 I think policies are a massive piece of the problem
13 right now. There is a lot of cutting and pasting going on
14 at school, and they are not necessarily taking a really
15 strong and deep invested look at who they are and the things
16 that they hold sacred. What does their institution say, and
17 what are their value systems, and how are they going to
18 infuse that into their policies?

19 I would also like to make a push as well for sexual
20 assault response teams or coordinated community response
21 teams. I go out and train a lot of schools, and I get a lot
22 of blank stares when I talk about that--a lot of, well, we
23 have two people on campus who do that.

24 There should be 22 people on campus who do that.

25 And I want to--helping them to understand the benefit

1 of having a multidisciplinary approach to this problem, that
2 yes, it is sometimes hard to figure out whose lines begin
3 and end where, but that if we do not have that discussion
4 and start kind of getting those initial arguments and
5 discomfort out of the way we cannot build a stronger
6 institution towards facing these issues.

7 So I definitely think that telling victims who the
8 Title IX coordinator is, having a better policy and creating
9 larger teams to do those and enforce them is huge.

10 Ms. Eichele. I would agree with that team approach
11 simply because you can write as many policies as you can and
12 then when they are tested there are a lot of complexities to
13 various sexual assault cases that come forward.

14 And so having those meetings, having those
15 conversations of: Here is a case study. How would this
16 individual or these partners come together and work through
17 this process? And then where are the gaps in our policy or
18 protocol? But also, then having it written down because
19 staffing transitions.

20 People learn more and more things, and to have that
21 preservation of this is what this office would do, this is
22 what this department would do, helps to provide that
23 longevity for that procedure.

24 Senator McCaskill. Let me ask my colleagues to jump in
25 here. I could go on forever without including you, and I do

1 not want to do that.

2 Senator Tester. It is okay.

3 I guess this kind of dovetails on just what we have
4 been talking about. Jocelyn, you have done work in Montana.
5 I feel pretty good about the work that was done and the
6 joint effort moving forward there.

7 Were there gaps that you needed things for Congress to
8 do to make your job more timely or to get to the point?

9 Ms. Samuels. So one of the things that we were able to
10 do in Montana that we are not able to do in all cases was to
11 launch a Title IX compliance review of our own.

12 Our Title IX jurisdiction can come about in multiple
13 ways, but the only way that we can initiate at Title IX
14 investigation if we directly fund a university. So Title IX
15 effectively follows Federal funding.

16 And so we had authority under Title IV of the Civil
17 Rights Act of 1964 to investigate public universities on our
18 own and to initiative enforcement proceedings there.

19 But under Title IX, if we do not fund the institution,
20 then either we await a referral from the Department of
21 Education or we intervene if there is a private lawsuit.

22 So that is one thing about Montana that actually
23 enabled us to proceed more holistically and in the absence
24 even of an individual complaint, which I think was very
25 useful.

1 The university, as you know, was exceptionally
2 cooperative, and we were very grateful for the president's
3 interest in becoming a model campus and in taking the steps
4 necessary to ensure an adequate response to sexual assault.
5 We, similarly, had very good and cooperative relationships
6 with the head of the Office of Public Safety and with the
7 Missoula Police Department.

8 Senator Tester. Okay. So let's assume that people are
9 not cooperative. Do you have the tools to still be able to
10 do your job if they are not cooperative?

11 Ms. Samuels. So one thing that we do not have the
12 authority to do if we cannot bring a Title IX investigation
13 ourselves is to require universities to provide documents or
14 witnesses.

15 Now we have found that many universities are interested
16 in resolving the problems on their campuses and they are
17 either unaware or do not know how to fix them.

18 But in situations where universities do not want to
19 cooperate, if we are proceeding exclusively under Title IV
20 and not under Title IX, then we do not have any kind of
21 civil investigative demand authority or ability to insist on
22 their providing the information that we need.

23 Senator McCaskill. What percentage of the college and
24 university campuses in the country get Federal funding?

25 Ms. Samuels. Oh, virtually all of them.

1 Senator McCaskill. So then you can start Title IXs in
2 all of those?

3 Ms. Samuels. No, no. It is only if the Department of
4 Justice funds them directly.

5 Senator McCaskill. Oh.

6 Ms. Samuels. So the Department of Education can start
7 Title IX investigations in any university because all
8 universities get Department of Education funds. Many of
9 them--

10 Senator Blumenthal. Is that something we can change,
11 do you think?

12 Ms. Samuels. Well, you know, Title IX can be enforced
13 by every funding agency.

14 So, for example, if universities get money from the
15 Department of Energy, and many do, the Department of Energy
16 would have the authority to mount a compliance review.

17 If they get funding from the Department of Agriculture,
18 the Department of Agriculture would have that authority.

19 But because the Department of Justice--we do fund some
20 universities, but it is not as uniform or as universal as
21 for some other agencies.

22 Senator Tester. Yes, it does.

23 If the Department of Agriculture performs an
24 investigation and wants you to do it, can they request you?

25 Ms. Samuels. Well, we do have coordination authority

1 under Title IX, and in that capacity we give advice to other
2 Federal agencies that have Title IX enforcement authority,
3 to make sure that they are applying uniform standards and
4 understand what the requirements of Title IX mean.

5 Senator McCaskill. But how does this work practically,
6 though? I do not understand.

7 So let's say that there is a--you know, something
8 happens on a campus, and someone comes forward and--you
9 know. I mean, how does the Department of Agriculture even
10 know that the thing had happened?

11 I mean, how would there--I mean, how--it seems to me
12 having one Federal agency responsible for follow-up and
13 potential action under Title IX makes a lot more sense.

14 I mean, I cannot imagine the Department of Energy or
15 the Department of Agriculture has the capacity, the
16 wherewithal or, frankly, would even know that there had been
17 anything that had occurred on campus.

18 Ms. Samuels. So individuals can--every Federal funding
19 agency has an Office for Civil Rights and has a complaint
20 procedure by which individuals who feel that their rights
21 have been violated, whether it is under Title IX or Title VI
22 or the Rehabilitation Act, can go to file complaints.

23 One thing you may be interested in is a number of years
24 ago, maybe 2007 or 2008, Senator Wyden included in the
25 appropriations bill for various science-funding agencies the

1 requirement that they undertake a certain number of
2 compliance reviews of the application of Title IX to the
3 STEM disciplines in higher education.

4 And the Department of Justice provided extensive
5 coordinating authority to NASA, the Department of Energy and
6 a couple of the other science-funding agencies so that they
7 could jointly look at the ways in which STEM departments
8 treated women both on the faculty and in the student body.

9 Senator Tester. And you said in your opening statement
10 you guys do research, conduct research. In your research,
11 are any of your arrows pointed towards the DOJ's lack of
12 ability to--that is a question.

13 I think if there is a violation, by the way, the
14 Department of Agriculture not only probably would not
15 recognize it, not to speak ill about those folks since I am
16 in that business--

17 Senator McCaskill. You are a farmer.

18 Senator Tester. --but the truth is that the Department
19 of Justice gets your attention a lot more on these kinds of
20 issues.

21 Ms. Hedgepeth. I would love to speak to that briefly.

22 Senator Tester. Yes.

23 Ms. Hedgepeth. The idea that Title IX covers so many
24 things under the umbrella of sex discrimination in education
25 is what is really important to remember here--is that we see

1 the interaction with, I think, DOJ and DOE when we are
2 talking about sexual harassment and sexual violence. But,
3 really, the example of having NSF or whoever is providing
4 that funding look into equity in the programs they are
5 funding really is their purview. I think we all would
6 agree, that is, it makes sense for them to be looking at
7 those grants.

8 And so in this situation, that coordination role with
9 DOJ is incredibly valuable to identify what this
10 discrimination would look like, how they can proceed. But,
11 really, it is NSF who is identifying that their grant is
12 supposed to be reaching these students or these professors,
13 whomever, in these fields, and we are not providing these
14 opportunities to women.

15 And so I think bringing it back to the sexual violence
16 and sexual harassment question is really what we want to
17 talk about here, and that, I think, is whether this
18 interaction with DOJ could be more or whether that
19 coordination is already happening either on the schools that
20 are getting the funding from DOJ or on a regular basis
21 because DOE is asking for it and whether that has enhanced
22 the process or whether that is a problem.

23 And so I think we always call for compliance and
24 compliance reviews when it comes to equity in education, in
25 STEM and everything.

1 And when we talk about harassment, really, the role of
2 DOJ and DOE is key.

3 Senator Blumenthal. You know, if I may--

4 Senator McCaskill. Go ahead.

5 Senator Blumenthal. --I would like to come back to
6 something that Senator McCaskill said at the very outset
7 about the diversity of approaches and responses.

8 As she mentioned, I held roundtables around our State.
9 You know, a couple of hours long, not quite as formal as
10 this by the end of it, many more people, survivors as well
11 as administration officials, law enforcement, the gamut of
12 people who are affected.

13 And what I found is around our State--it is a small
14 state. We have some very good educational institutions.
15 There is a breadth of responses, both in the form and the
16 energy and the substance that is devoted, often depending on
17 the commitment at the very top of the organization--the
18 commitment and awareness. You know, once there is
19 awareness, there tends to be more commitment.

20 But there is so much going on these days in university
21 administration that it tends to focus when there is an
22 incident or when somebody convenes a roundtable.

23 So I am going back to one of the responses. Maybe you
24 gave it, Ms. Hedgepeth or maybe Ms. Samuels, that a sort of
25 model sexual assault policy or set of protocols was not a

1 good idea. Maybe I misunderstood.

2 And I agree with you. The process is important. The
3 university working, or college working, through and with a
4 community and getting to the end result is important, but
5 you want them to get to an end result.

6 And so my question is, shouldn't there be some kind of
7 set of standards, a protocol, an expectation, for what kinds
8 of services are going to be offered, what kinds of advice is
9 going to be given? You know.

10 And I want to ask also about legal services issues.

11 But isn't that a good idea, to have some kind of
12 policy, protocol, set of expectations about what is going to
13 be in effect?

14 Ms. Samuels. So maybe I could just start by saying I
15 do not think model policies are inherently bad ideas.

16 What I do think is critical is having each university
17 engage with its own community to develop the policies that
18 are going to work for that community. So what I think we do
19 not want is universities just cutting and pasting from some
20 boilerplate that works in one place but would not be
21 applicable there.

22 One of the things that was included in the materials
23 put out by the President's task force on sexual assault is a
24 checklist of the elements of a sexual assault policy that
25 every university should have.

1 In addition, as Anne noted, there was model language
2 for confidentiality, which is an issue that has generated a
3 lot of attention and concern because we want to both protect
4 the confidentiality for victims who need that while ensuring
5 that universities are able to effectively respond when
6 assault occurs.

7 I think that there will be additional language emerging
8 from the task force and MOUs with rape crisis centers or
9 with law enforcement entities.

10 So I do think that there are places where models can be
11 very useful, but we do want to ensure that each university
12 takes this seriously and really customizes whatever is out
13 there to its own situation.

14 Senator Blumenthal. Can you give us three or five
15 models for what you found to be effective?

16 And maybe you cannot do it in this setting just because
17 it would take too long, but you know, if there are some
18 model approaches, depending on the size and the makeup of
19 the college or university, maybe you can describe them
20 briefly now.

21 Ms. Samuels. Sure. You know, one of our hopes is that
22 our agreement with the University of Montana will serve as a
23 template for other universities.

24 So, for example, it--and in conjunction with our
25 findings letters, which describe some of the ways in which

1 we thought that Montana could do a better job of protecting
2 its students in the ways that it was falling short of Title
3 IX requirements.

4 So, for example, as I mentioned earlier, there was a
5 profusion of policies--the school disciplinary policy, the
6 EEO policy that applied to employees, the conduct policy for
7 students--that all address sexual harassment in some measure
8 and created a real confusion about where students should go
9 for the different kinds of problems that they might
10 encounter.

11 So one of the things that Montana has done is to create
12 a unified set of policies that make clear what the process
13 is.

14 Another thing that a lot of our consent decrees and
15 agreements with schools provide for is engaging an expert
16 consultant because there are people who know what works on
17 campuses, who have had lots of experience in helping schools
18 to structure policies, in providing training materials, in
19 conducting the training, and ensuring that they have an
20 advisor for whom this is not the first time and who can
21 provide that expertise is very important.

22 Montana is also a grantee of the Office of Violence
23 Against Women, and that grant comes along with technical
24 assistance that can enable them to mount a kind of holistic
25 response on campus.

1 Another thing that I think is quite important is data
2 collection and reporting because a university can only get a
3 sense of whether it has a problem by keeping track of the
4 problems and the complaints and the reports that it
5 receives. Reporting, to us, in cases in which we have
6 agreements, also enables us to do any kind of follow-up,
7 work with them to ensure the provisions of our agreement are
8 being respected.

9 Senator Blumenthal. Aren't they required to do that
10 under present law?

11 Ms. Samuels. The Clery Act--

12 Senator Blumenthal. Yes.

13 Ms. Samuels. --requires them to report campus crimes.

14 And one of the things that there has been a fair amount
15 of discussion about is what is the overlap between Clery and
16 Title IX, and I think the two do not fit together exactly,
17 precisely.

18 Senator Blumenthal. And let me just ask--

19 Senator McCaskill. I would love it--let me just jump
20 in here.

21 Senator Blumenthal. Sure.

22 Senator McCaskill. I would love it if you would help
23 us with language that would unify the requirements on
24 reporting of Title IX and the Clery Act. That would be a
25 great thing we could do to clarify that data collection in a

1 way that--because when we have this overlap that does not
2 fit well, then when it does not work they say, well, we were
3 following the Clery Act, or no, we were following Title IX,
4 and you have an ability to avoid accountability for failure
5 for accurate data.

6 So I would love some--any advice from both you and the
7 Department of Education about how we could put those two
8 together in a way that would make sense in the statute.

9 Go ahead. Sorry.

10 Senator Blumenthal. Great idea. Or, anyone else who
11 has ideas about that.

12 One of the suggestions that we have been tossing around
13 is changing the penalty structure to make it more effective,
14 more realistic, more practical. Do you have any thoughts,
15 or does anyone else have any thoughts, about that--the
16 penalty structure under Title IX--so it is not sort of all
17 or nothing, or is draconian, and can be adapted to the
18 circumstances of a particular situation?

19 Ms. Aldrich. Here I go with the technology.

20 One of the concerns I have about the penalty structure,
21 which--I will be honest. As a victim's attorney I think it
22 feels good to us. I like the idea.

23 The problem is that I have worked with so many
24 different schools, and I think a penalty structure would
25 affect some schools just an enormous difference from other

1 much larger, more affluent schools.

2 And so my concern is that it would be the goal of where
3 are we going with the penalty structure and how would we be
4 able to really get the desired effect of what that penalty
5 is supposed to do.

6 I think there are some schools that just have so much
7 money and so many resources that, frankly, those penalties
8 would be kind of like swatting gnats. I just do not think
9 that they would really effect change on that campus.

10 On other schools, though, it could be incredibly
11 damaging and would obviously get someone's attention.

12 I do not want to throw the baby out with the bath water
13 here, but at the same time I am not sure that it gets us to
14 exactly where we need it to be.

15 Ms. Hedgepeth. I would love to add that, you know,
16 there probably value, right, in having a bigger stick here,
17 and one of the bigger sticks might be to be able to ramp up
18 the enforcement efforts that are happening.

19 We have noticed that, with the public attention that
20 comes along with being either under a compliance review or
21 investigation, schools often do want to work with the
22 Department of Education. That process may also need some
23 changes, but at the end of the day, if we could do more of
24 that, more proactive compliance reviews, more enforcement
25 activities, I think that we might also find the systemic

1 change we are looking for without necessarily changing the
2 penalties or while also changing the penalties.

3 And so I do want to bring us back to the fact that we
4 have a law on the books, and schools are not--or, many
5 schools are not--even complying with it as it is, and I am
6 interested in how we could find out where those schools are
7 and what we can do about it.

8 The VAW amendments to Clery, for example, will require
9 schools to disclose the standard of evidence they are using
10 on campus. We will now know if schools are not using the
11 preponderance of the evidence standard, and we could do
12 something about that.

13 So I want to think also--

14 Senator McCaskill. Should we legislate that?

15 Ms. Hedgepeth. I think it is important to remember it
16 is the law of the land. It is in guidance right now through
17 Title IX.

18 Senator McCaskill. But that is not the law. That is
19 guidance.

20 Ms. Hedgepeth. Well, it

21 Senator McCaskill. I will not ask Ms. Samuels to
22 comment, but I will tell you this--that there are some hard-
23 headed folks. I will not look at John Tester when I say
24 that.

25 But there are some hard-headed folks that would say

1 guidance from the Federal Government is not necessarily very
2 persuasive if they want to follow a different path.

3 I mean, we need to codify if it we want it to be
4 enforceable.

5 Ms. Hedgepeth. I agree with you and especially if we
6 want it to last forever, right, and not change with
7 administrations.

8 I do not want schools to get the message--they are
9 accountable to the Department of Education or the Department
10 of Justice if they are not using that standard as it is. So
11 I do not want us to lose sight of that fact.

12 But, at the end of the day, anything to make sure that
13 it remains the standard sounds like a great idea.

14 Senator McCaskill. Well--and here is the problem with
15 it, and we have gone round and round with this because we
16 are struggling with this.

17 I know that the Department of Justice and the
18 Department of Education carry a big stick, and I know that
19 when they are responding to a complaint there is always
20 media attention that goes with that. So the university
21 campuses are under a great deal of pressure to rise to the
22 occasion and show the community that they are going to do
23 the right thing, that they are going to try to fix the
24 problems that have been pointed out and that that
25 cooperative nature of that is good.

1 At the end of the day, though, if someone decides not
2 to cooperate, it is unlikely that we are going to pull all
3 of the Federal funding that that school gets because it
4 punishes way too many innocent young people. I mean, that
5 is just not something that ultimately is realistic.

6 I mean, I said in the last roundtable it was like me
7 saying to my kids, if you do that again, I will never speak
8 to you again. Well, they kind of knew I did not really mean
9 that. They knew that I would want to speak to them again
10 probably within the next half-hour to yell at them about
11 something else they were doing.

12 So I struggle with how we can--and how can we get at
13 all these university and college campuses that are not being
14 investigated by the Department of Justice because there has
15 not been a complaint come forward or there has not been
16 anything that has brought them to the attention of the
17 Department of Education or the Department of Justice?

18 How do we begin to impact change on the thousands of
19 campuses out there that, you know, the Title IX coordinator
20 that is named does not even know they have been named or,
21 even worse, they do not even have a Title IX coordinator?

22 I mean, shouldn't we be focused on something that we
23 can do that is simple, slightly punitive, for something less
24 than refusal to reach a cooperative agreement with DOJ on
25 something that is large and comprehensive that reaches to so

1 many nooks and crannies like the agreement with the
2 University of Montana and the other police agencies
3 involved?

4 I mean, that is kind of where I think we need to be
5 going if we can figure out a way to do it that is not going
6 to be draconian on small universities and meaningful to
7 larger universities?

8 Mr. Kelly. Yeah. I mean, I think that something that
9 has been coming up more and more as more students have been
10 filing Title IX complaints is the goal is not the full
11 removal of Federal funds. You know.

12 That is a huge thing that is going to negatively impact
13 students, and the students that it is going to negatively
14 impact include survivors. And so that is not really
15 anything that people are looking to have accomplished.

16 However, you know, something that I think FSA, through
17 their Clery compliance division, has been doing really,
18 really well is levying fines that send the message that the
19 school is out of compliance. It is letting everyone know,
20 using sort of the bully pulpit, to acknowledge that a school
21 is out of compliance, to acknowledge that a school is doing
22 something wrong, without doing it in a way that damages the
23 students' experiences at that university, who are there
24 right then.

25 And I think that that is something that we could talk

1 about--this idea of intermediate sanctions--as a way to
2 indicate that schools are out of compliance, to indicate
3 that these are schools that keep messing up, that these are
4 schools that are messing up historically, I mean.

5 So I come from Tufts University, which has had 4 Title
6 IX complaints in the past 10 years. Three of them indicated
7 the exact same administrators, who are still employed there
8 today. Those were the administrators who victimized me
9 personally in my process, and I know of students that they
10 have victimized since my time.

11 And these are people who are being referenced in
12 multiple Title IX complaints, who are still there, enforcing
13 Title IX.

14 And so we need to be talking about: What do we do when
15 schools are not following their voluntary resolution
16 agreements? What are we doing when schools are having
17 multiple complaints filed against them?

18 There are a lot of schools that have had none filed
19 against them, but then there are also these problem
20 institutions out there.

21 And, you know, we need to be talking about--you know,
22 we cannot remove all Federal funding. There needs to be a
23 way, though, for the Federal Government to acknowledge this
24 school is not doing a good job, and that is when schools
25 change.

1 You know, since Tufts was in the news, they started,
2 you know, really reaffirming the need to change their
3 policy. Students have been calling for it for a lot longer,
4 but unfortunately, sometimes it needs sort of the Federal
5 Government sort of stamp of approval that the students were
6 right in some ways and that survivors were right.

7 And I think that that can be a really powerful tool but
8 no so much the removal of all Federal funds by any means.

9 Senator Blumenthal. This is really an important
10 challenge because I have not had as much experience making
11 laws as the folks at this table, but I have tried to enforce
12 them over the years. And making a statute enforceable is a
13 real art, you know, and part of it depends on crafting a
14 penalty that is realistic and enforceable.

15 And my sense is that we still have work to do on the
16 penalties under Title IX, first, because the penalty hits
17 the students more than anyone else, it is right now very
18 draconian, and for all those reasons probably will not be
19 enforced.

20 It would be nice to have a statute that is self-
21 enforcing, and really this ought to be an area where it
22 should be because the universities ought to be eager to be
23 complying with the standards and expectations that Title IX
24 creates.

25 So I would appreciate your continuing to think.

1 And Senator McCaskill is right. You know, speaking for
2 myself. I have been wrestling with this issue. You know,
3 maybe we cut the university president's compensation by
4 half.

5 You know, just joking, out there, but not really. You
6 know.

7 [Laughter.]

8 Senator McCaskill. How do we impose the penalty so it
9 says to people who are in charge, you know, you really need
10 to take this issue seriously.

11 Most university heads, I hope--I believe--do now. But
12 how do we get their attention in a world where there are a
13 lot of competing issues for their attention?

14 Senator Tester. I think--and you guys tell me this.

15 I mean, I think there are worse things than monetary
16 penalties. I think if you start messing with the
17 institution's reputation they come around pretty fast. And
18 I will tell you that was a huge driver, I think.

19 And I was not in--I was not even close to what you guys
20 were doing in your job. I think it was a huge driver and
21 that we want to fix it so it does not ruin our reputation.

22 And I think they did a great job working with you to
23 come up with solutions.

24 And so, if there was some way to advertise it.

25 Senator Blumenthal. Name and shame, you know, carries

1 a lot of weight. There was a reason why colonials put
2 people in stocks for a day or two.

3 But, you know, maybe there are other--I agree with you
4 that that can have an impact, and the naming of 55
5 institutions under investigation certainly got a lot of
6 attention.

7 But if you can think more about this issue and make
8 some suggestions to us, that would be very welcome.

9 Ms. Samuels. I mean, one thing to note is we obviously
10 have the authority to sue institutions that are out of
11 compliance either by filing a Title IV lawsuit on a
12 complaint that we have gotten or based on a referral from
13 the Department of Education or by intervening in a private
14 sector lawsuit. And we have a range of remedies that we
15 seek.

16 In addition, of course, individuals can file lawsuits
17 and seek damages. The liability standard that the Supreme
18 Court has set for obtaining damages is a very stringent one.

19 Senator McCaskill. Yes, I wanted to ask you about
20 that. That was the actual knowledge, deliberate
21 indifference, and the one that really kills me is the
22 student has to show harassment was severe, pervasive and
23 objectively offensive.

24 It seems to me that is ripe for some legislation.

25 I mean, does it have to be severe and pervasive?

1 Isn't severe enough?

2 Isn't pervasive enough?

3 But the notion that is has to be all three--I mean, it
4 really--you know.

5 It just seems to me that the private right of action
6 has been so severely limited by that Supreme Court decision
7 that it should be something--I mean, maybe this is something
8 you could speak to, Lindy, about the ability of students to
9 bring a private right of action with these severe
10 limitations that the Supreme Court language has imposed upon
11 them.

12 Ms. Aldrich. I agree.

13 I think one of the biggest issues we have had--and we
14 have not had one client in our 11 years actually pursue a
15 private right of action under Title IX because of--

16 Senator McCaskill. And how many clients have you
17 represented?

18 Ms. Aldrich. I mean, we represent 400 a year. So that
19 is thousands over the course of 11 years.

20 I would say our education work is about 20 percent of
21 our work.

22 Senator McCaskill. So, essentially, there is no
23 private right of action.

24 Ms. Aldrich. No, because I think--

25 Senator Blumenthal. That is very telling.

1 Ms. Aldrich. It is unfortunate, I think, in many ways
2 because of the fact that many of our clients--I think we
3 also have to take an idea of who we are talking about. We
4 are typically talking about an 18 or 19-year-old who is
5 brand new to a community, who is in crisis or is having some
6 kind of trauma, and now we are expecting them to get to a
7 certain person of a certain level who has actual knowledge.

8 In many cases, especially if it is a tenured faculty
9 member who is committing the harassment or if this is an
10 athletics players, I mean, the ability to get to the right
11 person--

12 Senator McCaskill. Right.

13 Ms. Aldrich. --being a victim in crisis, and to let
14 them know.

15 I mean, there have been a number of cases in which
16 numerous people have come forward. They have gone to
17 supervisors, public safety. They have gone to various
18 people. And then the courts have found it is just not
19 enough.

20 I just think it is just not going to happen that you
21 are going to get an 18-year-old who is going to get to a
22 vice chancellor, who is going to get to the dean of a
23 college, to report their rape. I just think it is not
24 likely, and I think that standard is a little devoid from
25 reality.

1 Senator McCaskill. So it seems that this could be an
2 area that we could work on legislatively, to codify what is
3 required for a private cause of action. You know,
4 obviously, there would have to be evidentiary requirements,
5 but it seems that the actual knowledge thing is--that is
6 really tough, and the pervasive and serious.

7 Senator Blumenthal. The active knowledge and
8 deliberate indifference of a pervasive problem.

9 Ms. Aldrich. That is the next piece. So there is
10 actual knowledge, which most of our clients cannot even get
11 to. We cannot even make the actual knowledge unless they
12 have gotten to us first and us knowing what the standard is.

13 The second piece is that the school acted, you know,
14 deliberately indifferent, and oftentimes any action--the
15 courts have seen any action as not indifferent.

16 Senator McCaskill. Couldn't we impute actual knowledge
17 if the Title IX coordinator has it?

18 Ms. Aldrich. I am actually--I do not know.

19 Senator McCaskill. I mean, it seems to me it is not
20 hard for a university president to review what reports have
21 come to the Title IX coordinator, right?

22 I think that is something we ought to look at.

23 Senator Blumenthal. Yes, definitely.

24 Ms. Samuels. So I would just make two points.

25 The first is that when we are seeking injunctive

1 relief, which is to say changes to policies and procedures
2 but not damages, we, at the Department of Justice and the
3 Department of Education, apply a different standard--

4 Senator McCaskill. Right.

5 Ms. Samuels. --than the damages one.

6 And so we will hold universities accountable if they
7 either knew or should have known.

8 Senator McCaskill. Right.

9 Ms. Samuels. So that is the imputed knowledge.

10 And, if they failed to take reasonable steps to
11 effectively address the problem--so that addresses the
12 deliberate indifference end.

13 Senator Blumenthal. And why shouldn't that be the
14 standard or something like it for private right of action?

15 Ms. Samuels. So the other thing I would note is that
16 in 2008 there was legislation introduced. Senator Kennedy,
17 I believe, was the lead sponsor, and there were a number of
18 co-sponsors of this bill which included modifications to the
19 liability standard for sexual harassment in colleges.

20 And I do not believe that that bill ever was the
21 subject of a hearing. Maybe you remember, Anne. But there
22 is legislative language that was introduced at that time
23 that would address what the co-sponsors thought was too
24 demanding a standard for damages purposes.

25 Senator McCaskill. Let's take a look at that.

1 Senator Blumenthal. Yes.

2 Senator McCaskill. Well, what about the statute of
3 limitations for filing complaints?

4 Is 180 days--I am looking at almost a student now, not
5 a student, but almost a student and still a student.

6 Is 180 days realistic for a student under these
7 circumstances to file a complaint?

8 Ms. Bolger. I think that often students do not know
9 that they have the right to file a complaint. They do not
10 know what Title IX is. They do not know that it provides
11 them remedies at their school. And so when their schools
12 mistreat them, they often go home, take time off, do not
13 realize what has happened, and by the time they speak to an
14 attorney the 180 days has passed.

15 Senator McCaskill. What do you think?

16 Ms. Aldrich. Yes, we often have to make a claim that
17 the last known date of discriminatory practice was past the
18 typical 180 days from the date of the assault.

19 So we are making an argument that a year later, when
20 they tried to engage with the system, that there was a
21 discriminatory practice that was engaged at that point, and
22 that is when--so we are having to make that argument.

23 I mean, I think there is something to say that the
24 Department of Education would say that as long as you can
25 make that argument. We have not been turned down in terms

1 of our ability to make that argument that even though we are
2 beyond the date of 180 past the assault.

3 Senator McCaskill. But it seems like we should not
4 have to do legal gymnastics.

5 Ms. Aldrich. Yeah. I mean, it would be helpful.

6 Mr. Kelly. I also think it is important to sort of
7 couch that in a student schedule. So 180 days is a
8 semester.

9 Senator McCaskill. Right.

10 Mr. Kelly. And so that means that you have one
11 semester, basically, to decide whether or not you want to
12 file a complaint like that, which is, you know, in a
13 student's life not that long at all.

14 Then if we are looking at something that happens in a
15 student's first semester, which is common--it often happens
16 in the earliest days of one's college education--they then
17 have until the end of their freshman year perhaps to file a
18 Title IX complaint. And, if they do not, then they have the
19 next three years possibly living with their assailant on the
20 same campus.

21 You know, we can be looking at really some horrible
22 circumstances coming out of just missing a deadline. You
23 know.

24 And oftentimes, again, I think that Dana makes a really
25 good point, that people do not notice until things have

1 passed.

2 And it also makes it difficult to show oftentimes the
3 pattern of behavior of a university. You know, there are
4 ways around that if there are complaints that come later,
5 that feature the same players.

6 But even still, you know, it is something that a
7 student should not have to be thinking about. Right? That
8 should not be their worry.

9 The worry should not be, okay, well, I have, you know,
10 a semester to decide whether or not I file.

11 That should not be, you know, yet another hoop that a
12 survivor has to continue to jump through in order to just
13 receive their educational rights.

14 Ms. Samuels. One thing I would add to this--and it is
15 just information to share with your students, your
16 colleagues.

17 Under Title IV, which is the law that the Department of
18 Justice enforces, that applies to public universities, there
19 is no statute of limitations. So that would not be helpful
20 for students at Amherst or Tufts, but it would be helpful
21 potentially for students at Minnesota or Missouri or Texas
22 because those are campuses over which we would have
23 jurisdiction.

24 Senator McCaskill. But, once again, this is a great
25 example of how complex this area is. How much time you have

1 to file a complaint should not have anything to do with
2 where you are attending school.

3 You know, there should not be, I do not believe--there
4 is no rational public policy as to why a student at Tufts
5 would have one semester and a student at the University of
6 Missouri could take a year or a year and a half and maybe
7 not even come forward until contacted by somebody that works
8 in a job like Katie's job, to say, listen, I know you did
9 not want to come forward when you talked to us a year and a
10 half ago, but we have had another woman come forward who had
11 the exact same thing happen to her.

12 And you should not be precluded from being able to file
13 that complaint because you happen to be at a private
14 university, right? Does anybody disagree with that?

15 Let's work on that.

16 Ms. Riley. I think that is a good idea, too, sir.

17 Senator Blumenthal. What were you going to say?

18 Ms. Noble-Triplett. I was going to say I think one of
19 the challenges as we listen to this conversation--a student
20 does not know Title IX. A student does not know Title IV.

21 A student knows that something devastating has happened
22 to them, and it is incumbent upon the universities to be
23 sure that our students are informed.

24 I do not even know that students know their civil
25 rights were violated. I do not know that they have that

1 level of knowledge coming in, particularly freshmen. And so
2 we have a responsibility for education and a responsibility
3 to make sure that we are accountable.

4 So as I hear what you are really struggling with, which
5 is where to properly legislate to help us, one of the things
6 that we have to do and we have to be equipped to do is to
7 hold ourselves accountable.

8 And I think that there has been enough evidence that
9 across the Nation there are some that are not doing such a
10 great job. But I think most people, both at the higher
11 level administration where I sit as well as those who are
12 closer to students and student affairs and in our crisis
13 centers, certainly want to do the right thing.

14 And so as you think about moving forward with whatever
15 you may propose to fill legislative gaps, there needs to be
16 some opportunity for accountability to be built within
17 because, otherwise, you get a compliance culture, and I am
18 not sure that is what we want.

19 Senator McCaskill. No, that is not what we want. We
20 do not want somebody at the university in charge of making
21 sure every box is checked.

22 Ms. Noble-Triplett. No.

23 Senator Blumenthal. Coming back to the legal services
24 issue, to what extent do you think there are opportunities
25 and a need to expand the legal services that are available?

1 Ms. Aldrich. I think there is a huge expansion that is
2 needed. Oftentimes, when we talk about these cases in the
3 disciplinary context, so just within kind of Title IX's
4 prompt and equitable standards, we talk about how the
5 accused student has, or should have, the right to counsel,
6 and we almost never have the conversation about the victim's
7 or the complainant's right to have counsel.

8 And it is not to say that schools are in any way not
9 allowing that. I think most schools have kind of come to
10 the realization that both parties should be able to have
11 counsel.

12 Unfortunately, there is only one Victim Rights Law
13 Center, and we are desperately trying to replicate, but at
14 the same time we are look for other attorneys to take on
15 this quest with us.

16 One of the things I want to talk about from earlier
17 that leads directly back to this is that we are very
18 familiar with our Boston Regional OCR office. We know many
19 of the players there. We have submitted many OCR complaints
20 over the years.

21 When I get calls--I am a technical assistance provider
22 for OVW. I get calls from legal assistants to victim's
23 attorneys all over the country, and they tell me, I am going
24 to file with this office or what can I expect from this OCR
25 office. I do not have many answers.

1 I do not know that there is a kind of watchdog public
2 oversight of these offices, and I would like to see more
3 transparency from the Office of Civil Rights--the Department
4 of Education's Office of Civil Rights--to know more about
5 how they are deciding violations.

6 I would like to see more transparency not only in just
7 the 55 that were named. I would like to know when other
8 complaints are filed.

9 And I would love to--you know, eventually, I would love
10 to kind of see a national center that is able to watch over
11 kind of where these are going and have some kind of
12 consequence or understanding of where all of these 12
13 regional offices are going because I think that makes a
14 difference, especially to these attorneys.

15 I can tell them what my experience is, but I cannot
16 help with that particular office, and I am not sure that
17 they are consistent with each other in terms of how they are
18 determining.

19 Senator McCaskill. So maybe an IG. Maybe we should--
20 or GAO, to look at the--maybe we need a study by GAO to look
21 at OCR offices around the country. DOE OCR offices, right?

22 This would be Department of Education folks everywhere.

23 Ms. Samuels. Right. We do not have regional offices.

24 We have 25 attorneys who do this work. They are all
25 here.

1 Senator McCaskill. Right. So to actually analyze what
2 are the different policies that are going on--I mean, I know
3 we have done that in a lot of other agencies where we have
4 looked and found that the way they were handling things--and
5 I just know GSA, for example, was a good example.

6 We had--you know, the western region was a little off
7 the tracks in terms of their annual conferences, and it was
8 not something that was really a huge problem in the other
9 regions, and nobody had ever really looked to see how the
10 different--I mean, that might be a really good way to get at
11 that as an initial step.

12 Ms. Aldrich. And I will say--I mean, I am incredibly
13 hopeful that everything is consistent. At this point,
14 though, it is very difficult for me to kind of work with
15 these other attorneys and kind of help them without that
16 knowledge.

17 Senator McCaskill. Right. So is there any reason we
18 cannot list these schools all the time?

19 I know we did it this one time. It is kind of hard to
20 figure out why it is good to do it once and it is not good
21 to do it on an ongoing basis.

22 Does anybody have a problem with the schools that are
23 being investigated, for that to be transparent all the time?

24 Mr. Kelly. Well, so one thing that can be a little
25 worrisome is depending on the size of the school. Just

1 simply the fact that a school is under investigation may be
2 identifying information, and that may be enough to have
3 members of the community know who the survivor is, which I
4 think everything that we are doing has to be couched in this
5 idea of survivor-centric; so, making sure that we are
6 returning as much agency as possible to the survivors of
7 sexual violence.

8 But, you know, if an investigation is ongoing, there is
9 a right to know, right?

10 And the fact of the matter is it is oftentimes been
11 falling on the shoulders of survivors to be coming forward--
12 to be coming forward and naming their schools.

13 I mean, the reason why the Department of Ed finally did
14 this list is because we were talking about it. We had been
15 talking about the schools that we were filing complaints
16 against. We were talking about the schools that were being
17 investigated not because Ed was saying anything but because
18 students were publically filing complaints.

19 And that is not a burden that should be falling on
20 students, and so a way to fix that problem is to have a
21 constantly updated list of schools that are under
22 investigation.

23 Ms. Hedgepeth. I would like to add to that that I am
24 all for having this information be public, but one of the
25 things that is interesting in this dynamic is the only list

1 that came forward, right, are the investigations under the
2 sexual violence ones.

3 The Department of Education's Office of Civil Rights
4 obviously handles several civil rights statutes, and even
5 under Title IX they are investigating for other reasons,
6 too.

7 I think this is a good conversation, but it does get
8 more complex and time-consuming if we are talking about
9 releasing all the schools under--are we talking about all
10 the statutes, or is it only the sexual violence ones we
11 think are important? That is what we need to talk about and
12 figure out how we can support that happening because it
13 takes time and energy to do it.

14 And I know that there is some desire and commitment to
15 make it happen. I think a lot of us would like to see it
16 happen. But navigating that beyond just sexual violence is
17 something to talk about, too.

18 Ms. Noble-Triplett. The other piece is that, you know,
19 from a person who is trying to help the President really
20 wrestle with this and really think about how do we do this
21 and do this well, we struggle to try to find who is doing
22 what well across the country, and that is not easy to find.

23 So, while I understand there is large capital in going
24 public if there is a mishap or if there is an environment
25 that is problematic, I would love to see those institutions

1 that have demonstrated sustainable evidence-based results
2 from doing things well.

3 Senator McCaskill. That is a great point.

4 Senator Blumenthal. Yes. Well, that was what I was
5 trying to get at.

6 Senator McCaskill. That needs to be public, too.

7 Senator Blumenthal. I was sort of trying to get at--
8 you have stated it much better than I did--when I was asking
9 Ms. Samuels about what models you would pick to tell us what
10 works well, but I think you have put it much better.

11 But in the idea of investigation, you know, typically,
12 if you are doing a criminal investigation, you do not
13 confirm or deny. So I understand that part of it.

14 But, on the other hand, your point is that confirming
15 an investigation would also confirm the name of a survivor.
16 Is that the objection that you raised?

17 Mr. Kelly. Again, this is sort of contingent on where
18 it is happening, and we have seen that a lot of the people
19 going public are from larger schools. And investigations--
20 you know, if you go down the list, you know, there are
21 schools like Arizona State, things like that that are much
22 larger.

23 But then there are also schools that are having
24 internal investigations that are, you know, local schools,
25 that are community colleges, that are cosmetology schools--

1 things like that that have much smaller enrollments.

2 And so, you know--I just--one thing that worries me is
3 making sort of a blanket statement that every single
4 investigation, as soon as it is launched, will be made
5 public. Just if a school is so small that it is going to be
6 an identifying characteristic, just to name the school is
7 something that I think we should just be cognizant of,
8 moving forward, but I do think it is, you know, so important
9 to keep naming the schools that are being investigated.

10 Ms. Bolger. While we are on the subject of
11 transparency, I think it is important that we also talk
12 about openness and transparency for individual complainants.
13 We have heard from lots of complainants who have no idea
14 about the status of their investigations, who have had open
15 investigations with the OCR for four or five years and are
16 not aware of the status of that investigation.

17 So I think to the extent that we can facilitate that
18 communication between these OCR regional offices and
19 complainants, that would be very helpful.

20 Mr. Kelly. Yeah. And sort of another area that has
21 recently been expanded on is OCR's investigations have now
22 sort of taken a more broad approach to investigating campus
23 climates, which is a really good thing. So now you are not
24 only looking at, let's say, one instance of sexual violence
25 and the way it was mishandled by the school, but OCR is then

1 going in and interviewing other people who have gone through
2 the process and coming up with other issues that are coming
3 out.

4 This happened at Tufts, for example. I did not file a
5 Title IX complaint, but I was interviewed by OCR when it
6 came time for their investigation, and that factored into
7 their final decisions.

8 However, the students that are being interviewed sort
9 of in that intermediate, who are not filing the complaints,
10 are not often being entitled to the same rights and results
11 that are being afforded to those who have filed the
12 complaints.

13 And so, for example, if I get interviewed and I, you
14 know, show that, say, my grades dropped very heavily when my
15 assailant was on campus and in the semester surrounding my
16 sexual assault, I am not given the grade remittance that may
17 be a part of a voluntary resolution agreement that the
18 student has with someone else.

19 Or, if another student has to take summer classes and
20 did not file the Title IX complaint and is interviewed by
21 OCR, OCR knows that that student had to take summer classes.
22 That costs money. They are not necessary going to be
23 receiving the financial reimbursement that someone who files
24 an OCR complaint will.

25 Senator McCaskill. But the problem is, as somebody who

1 wants us to get to the point that we are providing victim
2 services at the point of access that are so robust that they
3 have access to not just mental health help but advocacy
4 help, that they realize that coming forward is important.

5 I mean, I understand all of us have great respect
6 around the piece of confidentiality and that this has to be
7 victim-centric in terms of that decision. But if we are
8 going to provide the exact same remedies to someone who has
9 not come forward to someone who has, then we are going to
10 really work against people being willing to come forward.

11 And, if we do not get people to come forward, we are
12 never going to hold these folks accountable that did this.

13 I mean, ultimately, at the end of all of this, there is
14 somebody who has committed a felony.

15 Senator Blumenthal. And they are likely to commit it
16 again.

17 Senator McCaskill. And they are likely to commit it
18 again.

19 Ms. Hedgepeth. Accommodations under Title IX, though,
20 are available regardless of whether you decide to go through
21 the adjudication disciplinary proceeding.

22 Senator McCaskill. And you are saying that they are
23 not applied fairly even though they should be getting the
24 same.

25 Mr. Kelly. Yeah. What I am saying is basically if one

1 student files a Title IX complaint because of grievances in
2 their investigation, in their individual investigation, OCR
3 is then going in and interviewing other students who were
4 sexually assaulted on that campus and went through those
5 same proceedings and faced the same barriers and faced the
6 same harassment from administrators.

7 Senator McCaskill. I see what you are saying. Okay,
8 now I understand.

9 Mr. Kelly. And so those students who have reported in
10 this case--

11 Senator McCaskill. I see what you are saying.

12 Mr. Kelly. --are not receiving the same.

13 Senator McCaskill. I misunderstood the point you were
14 making.

15 Mr. Kelly. Yeah.

16 Senator McCaskill. Okay.

17 Ms. Noble-Triplett. I think the guidance is fairly
18 clear that that is not--I mean, what you just described is
19 out of compliance.

20 And so I am not--I mean here--I am not to judge another
21 institution sitting here, but certainly I feel like we are
22 very clear that if a student informs an appropriate person,
23 who is responsible at our institution, of a sexual violence
24 or sexual harassment, they are entitled to some remedy both
25 in the interim and then once all decisions have been had,

1 whether there is a formal process or not.

2 Mr. Kelly. Tufts was found out of compliance. So.

3 Ms. Noble-Triplett. Okay. I just want to be clear
4 that that is a noncompliance issue more than anything.

5 Ms. Aldrich. Yeah, the new FAQ, I think, is very clear
6 that what you are illustrating would definitely have been--
7 well, I guess it depends on who you told, but I think it is
8 fairly clear they should have given you some interim relief.

9 Mr. Kelly. Oh, yeah, yeah. I more mean when OCR comes
10 in, and in an OCR sort of voluntary resolution agreement
11 oftentimes there are remedies that come up, such as grade
12 remittance and things like that, that a student who may not
13 have filed an OCR complaint but went through the school
14 judicial process will not be entitled to.

15 Senator McCaskill. I get what you are saying.

16 So, okay, a couple of things that TI think we need to
17 talk about. One is resources, which I want to discuss with
18 you, Ms. Samuels, but the other is the whole
19 confidentiality.

20 And this is not for our guest from the Department of
21 Justice because she cannot comment on hypotheticals, but I
22 want to give Deborah and Katie a hypothetical, and I would
23 like Cat to weigh in and Lindy to weigh in and Dana and
24 John, if you would like.

25 The RA in a dorm gets an e-mail from someone that she

1 does not recognize the e-mail address. It does not disclose
2 who the person is. But attached to the e-mail is a video,
3 and the video shows someone in her dorm, passed out, being
4 sexually assaulted by two or three young men.

5 She recognizes the person in the video. She goes to
6 the person in the video, and the person in the video, the
7 victim, the survivor, says, I do not want you to do
8 anything. It is none of your business. I do not want to
9 talk about it. You should delete the video and forget that
10 you ever saw it.

11 Now I have read the Q&A on confidentiality and safety
12 on campus. What should that RA do with that video, if
13 anything?

14 Ms. Eichele. So for most staff members, particularly
15 housing student staff, it is written in their contract or
16 their job expectations that they are not a confidential
17 person to report different things, that that individual,
18 that staff member, does have to report up.

19 But they should also be transparent to that person that
20 is directly involved, that: I am a reporting party. Thus,
21 here is what is going to be happening with this information,
22 and you have these rights as a victim-survivor.

23 And so it is recognized that various staff members and
24 faculty on campus who may hold that responsibility need to
25 be up-front about it.

1 And the RA did receive that kind of information from
2 someone because someone felt it was important to share and
3 to do something about that.

4 On the flip-side, though, then the staff member is also
5 referring that victim-survivor to an agency or resource that
6 can be completely confidential, that that individual can
7 disclose more or know more in depth what their rights are.

8 Senator McCaskill. Okay. So everybody agree that the
9 RA has to report the video?

10 Ms. Hedgepeth. Well, the school has to decide up front
11 whether RAs are reporting the video or not.

12 Senator McCaskill. Should the schools be required to
13 have the RA report the video under those circumstances?

14 Should we require schools to make that video a report
15 to the university administration?

16 They do not have to now. Should we require it?

17 Ms. Riley. I think in terms of the safety for the
18 community, if we are not putting that information forward
19 more broadly, we cannot address the safety for perhaps the
20 next victims.

21 So, yes, I would think so.

22 Senator McCaskill. Should that RA be required to
23 report that, Dana and John?

24 Mr. Kelly. Well, so on the one hand, RAs are
25 oftentimes, but not in all cases, paid employees of the

1 school. And so then they are taking on a responsibility,
2 and alongside that comes ideas of mandated reporting. And
3 so on that side, sort of university employees do have to
4 adhere to mandated reporting sort of measures, and then that
5 way the RA would have to report.

6 At the same time, I think there need to be--just
7 because an RA has to report something happened does not mean
8 that an investigation has to go on.

9 Senator McCaskill. That is my next question.

10 Do we agree the report has to be made?

11 Senator Blumenthal. Yes. Why would they not?

12 I mean, they are not there by accident. They are not
13 students. They are agents of the university.

14 They are in positions of trust. They have a
15 responsibility to advise and protect students. Why would
16 they not be?

17 Ms. Eichele. I will jump in here because if we make
18 that a statute--RAs are notorious for holding multiple hats
19 and leadership roles, and so if an RA chooses to also be a
20 sexual assault crisis counselor or advocate, there is a
21 contending statute where they are not required to report
22 that kind of information and must not report that kind of
23 information. So that is one of the complexities of if we
24 were to require student staff housing to report that
25 information where it might conflict.

1 Ms. Noble-Triplett. So I think the University of
2 Missouri might be the odd one out. That is a mandatory
3 reporter for us.

4 And one of the things that we are looking at right now--
5 --because we have all employees as mandatory reporters except
6 for those that are exempted because of other protections--
7 HIPAA, for example, and the like. We are looking for who
8 should be a set of confidential reporters are considering
9 that as a task force, as a recommendation to our leadership.

10 But at this point, because it is just like you
11 described, not only do we want to be aware of it, but we
12 want to make sure that we have the opportunities to inform
13 the victim not only of all the resources available to help
14 him or her in their crisis and trauma but also making sure
15 that rights are protected and the opportunity to proceed
16 with any kind of other investigatory processes are there.

17 So it is absolutely at our institution a requirement
18 that they report.

19 Senator McCaskill. And once it is reported, I assume
20 it is reported to the university administration. Does the
21 university administration then have any duty to report this
22 to university police for investigation or to criminal
23 justice authorities for investigation--the local municipal
24 police department for investigation? Is there any duty to
25 do that?

1 Ms. Hedgepeth. I mean, I would like to speak really
2 quickly about the fact that there are tools available to
3 schools even if they were not reporting, even if an RA in
4 that situation did not report personally identifying
5 information, which is an option. You can classify RAs that
6 way under the FAQ that came out from the Department of
7 Education.

8 Even if you were just counting the statistic under
9 Clery, the FAQ makes it very clear that there are things
10 that you can do on campus about that incident, about the
11 culture, about systemic change, that do not have to do with
12 this mandatory reporting that might violate the
13 confidentiality, violate the privacy, cause problems that we
14 are raising here by mandating or legislating the issue.

15 There are things around climate surveys, about changing
16 the atmosphere on campus, about rearranging events, thinking
17 about what you allow in dorms. There are so many things you
18 can do on campus that I do not know that schools are taking
19 advantage of all of the systemic changes.

20 To throw up our hands and say the solution is this
21 mandatory up the chain to law enforcement, I am not sure
22 that is a check or a balance on the things that schools
23 already have the tools to do because those outside actors
24 would not necessarily be requiring those kinds of changes
25 either.

1 And I just wanted to provide a voice to that.

2 Senator McCaskill. So what you are saying is that the
3 university Title IX gets this video, looks at it, and it is
4 very clear who the young woman is, and it is very clear who
5 the two or three young men are, and they can go take action
6 against the two or three young men and kick them off campus?

7 Ms. Hedgepeth. The Title IX coordinator can. That is
8 pretty clear.

9 With the RA, you have the opportunity--schools are
10 supposed to be up front about whether their RAs are supposed
11 to go to the Title IX coordinator or not in that situation.

12 Senator McCaskill. Now, if this is somebody who has
13 come to school before they are 18 and there is a statutory
14 crime that has been committed against a minor, do these
15 people just let these perpetrators go even though they have
16 got the evidence they need; they do not need the victim;
17 they have got the evidence they need, to convict someone?

18 Ms. Aldrich. I want to take one step back here.

19 So, in essence, when you have a video of that nature--
20 and I do think the confidentiality protocol and the FAQ
21 addresses this. What it essentially says is that if you
22 name the RA as a responsible employee then they must report.
23 So they are going to have to turn over that video under this
24 scenario.

25 If the victim--once that RA goes to speak to the victim

1 and the victim says I do not want to have anything to do
2 with this, that is essentially a request for
3 confidentiality. At that point, the Title IX coordinator
4 gets to weigh or balance an analysis of the victim's request
5 for confidentiality against campus safety risk, and there is
6 where that series of factors in the FAQ comes into play.

7 Senator McCaskill. Yes, but, Lindy, I read that. I
8 read that.

9 Ms. Aldrich. Yeah.

10 Senator McCaskill. I mean, I am a prosecutor. I am
11 reading this and going, are you kidding?

12 I mean, they are weighing whether or not they have got-
13 -you know.

14 And then it is exacerbated. Say the three guys are on
15 the football team. Right?

16 And so here are these university authorities. They
17 have got three young men, and they have video evidence of a
18 felony crime being committed, and they are weighing whether
19 or not they are going to do something about those
20 perpetrators?

21 Senator Blumenthal. Where they do not need the
22 cooperation of the survivor necessarily, where they have
23 enough evidence to take action and protect the public.

24 Senator McCaskill. Don't they have an obligation in
25 that?

1 Senator Blumenthal. Protect the public.

2 Mr. Kelly. There are a couple of things I would like
3 to say.

4 Senator McCaskill. Go ahead.

5 Mr. Kelly. First off, you know, no case is an open-
6 and-shut case for sexual violence. The unfortunate reality
7 is--

8 Senator McCaskill. Oh, I have had a few.

9 Mr. Kelly. Yes. Well, of course, and there are. But
10 there is a 2 to 3 percent success rate, that 2 to 3 percent
11 of rapists ever spend a day in jail.

12 And those are just unreported numbers, and so the
13 numbers are actually much lower.

14 And those are numbers that are exacerbated by
15 historical oppressions and groups that have been having
16 historically really poor interactions with the criminal
17 justice system, specifically, people of color and queer
18 people.

19 And I think that, you know, when an individual is
20 required to report something that happens to their Title IX,
21 that is one thing. You know, schools have mandated
22 reporting, you know, rules, and that is completely
23 acceptable.

24 But when we are then talking about mandating a report
25 to the criminal justice, we are now taking it a step further

1 out of the hands of the survivor. And when someone is
2 sexually victimized, they lose complete agency in that
3 situation.

4 And so all steps that must be taken after it must be
5 done to return agency. That is something that is done in
6 rape crisis counseling. That is something that is seen as a
7 technique in all of these frameworks.

8 And so when you are having a survivor that has to not
9 only have a conversation with their RA about the fact that
10 the RA is a mandated reporter and reported it to their Title
11 IX coordinator, then probably a conversation with the Title
12 IX coordinator, and then on top of that have a conversation
13 with the criminal justice system, which historically has not
14 treated survivors well. That is really difficult. That is
15 really, really difficult.

16 And now we are seeing three huge events that have the
17 potentiality to be incredibly traumatizing, to be incredibly
18 triggering and have really serious mental health risks for
19 the survivor. So then we are actually talking about
20 endangering the welfare of the survivor by making them go
21 through really, really traumatizing processes without
22 returning any sense of agency to them.

23 And, to me, that is something that is--it cannot--that
24 cannot happen.

25 Ms. Aldrich. I think it is really hard. After having

1 done years of my own casework, I think it is really hard for
2 people to understand that victims often in that initial
3 stage, right after an assault--I like to call it pushing the
4 walls out. Literally, it is Maslow's hierarchy of needs.

5 Senator McCaskill. Right.

6 Ms. Aldrich. There is the safety piece. There is
7 food. There is shelter. If they cannot satisfy those basic
8 needs, victims oftentimes have no way of making much--like
9 more complex and complicated decisions like whether I am
10 going to pursue a civil rights violation, whether or not I
11 am going to pursue a criminal complaint.

12 And oftentimes they are not in a place where they can
13 actually make and understand the consequences and impact of
14 decisions at that early stage.

15 Why I feel so strongly about confidentiality is that
16 that allows the victim the opportunity--

17 Senator McCaskill. Time and space.

18 Ms. Aldrich. Time and space.

19 One of the things I found out recently is that the
20 military system has something very similar to what the FAQ
21 talks about in terms of restricted and unrestricted.

22 Senator McCaskill. Correct.

23 Ms. Aldrich. I would be curious to see whether or not
24 there are any kind of statistics within that that show if
25 victims went in the restricted lane first, if after a

1 certain amount of time they chose to go unrestricted and
2 then be more open and file more complaints. I do not know
3 that myself.

4 Senator McCaskill. Well, we are seeing a spike in
5 unrestricted, but that has been because we took the
6 incredible step that I would love to take throughout the
7 country, and that is now a victim at the point of report
8 gets their own lawyer.

9 Senator Blumenthal. That is why I would FAQ about--

10 Senator McCaskill. So that advice the victim is
11 getting at the moment of report has made a real difference.

12 Do not hold me to this, but I think the increase in
13 unrestricted reports since the special victims advocate was
14 put into place has jumped by 30 percent in just the last
15 year.

16 You know, I get--I understand. Believe me; I have had
17 victims that I have--all of us who have handled these cases
18 know how incredibly traumatic it is and how hard it is and
19 how many victims that I have struggled with keeping in the
20 process when we could get a conviction and they just could
21 not do it because of the mental health needs they had. And
22 you have to be very, very respectful of that.

23 I do not want to give the impression, but I also know
24 that for every case when perpetrators get away with it we
25 are creating more cases. And if we take the position that

1 the criminal justice system is historically bad to victims,
2 then we are giving up on making the criminal justice system
3 historically better for victims because it is--they are
4 intertwined.

5 And that is why at the next roundtable we are going to
6 spend most of our time on that.

7 Ms. Hedgepeth. I think that what you were saying about
8 the way that we interact with survivors at the moment of a
9 report to either of these buckets that we are talking about
10 is far more crucial--

11 Senator McCaskill. Right.

12 Ms. Hedgepeth. --than a mandatory requirement. That
13 is my opinion.

14 Senator McCaskill. I agree.

15 Ms. Hedgepeth. And I think that that is where a good
16 conversation lies because I do not know we are getting--
17 these are wonderfully trained university representatives
18 here. I do not know that that is the case at every school.

19 Senator McCaskill. Right.

20 Ms. Hedgepeth. This is really a path that could be a
21 game-changer, I think, for survivors on campus that does not
22 necessarily remove their agency.

23 Ms. Noble-Triplett. One of the things I just want to--
24 you said we could ask each other a question if that is okay.

25 Senator McCaskill. Sure.

1 Ms. Noble-Triplett. In that hypothetical that came up,
2 you know, as I was just writing a note, for us at the
3 university, we are considering an RA who gets that video to
4 then go directly to the Title IX coordinator who reports
5 directly then to the chancellor so that we have removed some
6 of the things that Cat described earlier in terms of getting
7 to the leadership.

8 And it is that Title IX coordinator that is the person
9 that goes to that student and not the RA--well-trained, able
10 to be able to provide a wealth of information about
11 resources and potentially bring crisis management people to
12 that person to help them through that trauma.

13 Does that make a difference then in the response that
14 you gave?

15 Senator McCaskill. As opposed to the RA going to her,
16 the RA immediately goes to the Title IX coordinator and the
17 Title IX coordinator approaches the young lady.

18 Ms. Noble-Triplett. And, again, I was just taking
19 advantage of the opportunity.

20 Senator McCaskill. Yes. No, no, I think it is a great
21 question.

22 Ms. Riley. I have seen it happen a couple of different
23 ways where the student ends up coming to me, the victim, as
24 a result of being outed, so to speak, or those that come to
25 me directly. However they get to me, they get to me, and I

1 am glad that we can move forward on investigating if that is
2 the appropriate route.

3 What I think is more challenging is leadership's
4 understanding of the role of the Title IX coordinator.
5 Where the position is housed, the realm of authority is
6 different everywhere. At one institution, I could report to
7 five people down. At another institution, I could report to
8 the number one person.

9 So I think there is a challenge with respect to
10 leadership's understanding of the role of the Title IX
11 coordinator and the level of authority; that is a challenge.

12 Mr. Kelly. Senator McCaskill, I just wanted to make a
13 quick point. You know, the criminal justice system does
14 need to be improved. And I think that that improvement, you
15 know, is very welcome, and I think that in a lot of ways
16 perhaps legislation may be the place for that.

17 But at the same time we do not want to have survivors
18 acting as guinea pigs for that system, right?

19 And the campus system has the ability to be more easily
20 manipulated. It has the ability to be more easily changed
21 and is a place where survivors have been feeling more
22 comfortable.

23 And I think that, you know, to say that the criminal
24 justice system needs to be improved and, therefore, we
25 cannot be sort of, I guess, shuttling people away from it or

1 giving students multiple options might be dangerous. Just
2 because it is a system has not been good, you do not want to
3 then say the only way to change it is to keep working with
4 it, and so then just send everyone there, if that makes
5 sense.

6 I mean, for example, I attempted to go to the police,
7 and I was a pretty open-and-shut case, I was told, and they
8 ceased investigating because it was a same-sex sexual
9 assault.

10 Senator McCaskill. Well, listen, there is no excuse
11 for that, and that is where, you know, there should be--
12 obviously, there is--I mean, believe me; I understand.

13 I mean, I am so old that I had cases that all the men
14 in my office said, we cannot take this case to trial because
15 the woman was on birth control; we cannot make a rape case
16 against somebody who is on birth control.

17 That is how old I am, but I watched. I watched rape
18 shield statutes get enacted. I watched victim advocates
19 being hired. I watched the Violence Against Women Act being
20 passed.

21 I watched grants going out where in most major
22 prosecutors' offices now there is an entire cadre of highly
23 trained people that work hand in hand with sex assault
24 victims day in and day out. And there are thousands of
25 prosecutors across this country that handle these cases with

1 skill, professionalism and a great deal of sensitivity to
2 how difficult it is for the victim.

3 So I am not discounting that there are still many
4 problems we have to address, but I cannot sit here and just
5 with a broad sweep say that criminal prosecution across this
6 country is ham-handed and ineffective and unprofessional in
7 terms of dealing with victims' needs because I personally
8 know that is not the case.

9 And I really know that while there are horror stories
10 across the country, how criminal justice has mishandled
11 cases, there are also many heroes across the country within
12 the criminal justice system that have done yeomen's work in
13 this area.

14 And I just think it is important to get that balance
15 out there, frankly, for victims to hear about that balance,
16 I mean, because I think so often victims hear the horror
17 stories and they do not realize that there are men and women
18 across this country that have dedicated their lives to
19 effectively prosecuting these kinds of crimes and to
20 protecting victims' rights in the process.

21 And I just think it is important that victims hear both
22 of that rather than, oh, you do not want to go there. You
23 know, do not go there. It is going to be terrible if you go
24 there.

25 And I am worried that too much of that is going on

1 right now, John.

2 Senator Blumenthal. And I think part of the
3 progression--and you have stated it very openly--is that
4 there are now victim's advocates in many of our courts and
5 increasingly in the military, which has, as you have said,
6 accounted for some of the increase in reporting.

7 And so, just as a general proposition, do folks here
8 disagree with the idea that we ought to have more victim's
9 advocate and maybe even require?

10 Mr. Kelly. So one idea that has come up that I have
11 had, which I think might be really helpful, is these victim-
12 witness advocates are really fantastic resources that a lot
13 of prosecutors' offices are using and DAs are using and
14 perhaps having every campus assigned a victim-witness
15 advocate liaison to that campus.

16 So that way if a student does decide that they want to
17 pursue the criminal justice system, there is an
18 individualized person who understands the student's--

19 Senator McCaskill. Right.

20 Mr. Kelly. --rights and needs, understands Title IX
21 and understands that campus's policies as well as the
22 criminal justice system.

23 So that way the student is then introduced to those
24 people who are so well-trained, the people who are doing the
25 amazing work, right off the bat in the criminal justice

1 system so if that is a route they choose to take they have
2 the best resources available.

3 Senator McCaskill. That is a great idea.

4 Well, let's talk about resources.

5 I am confused, and I know this is not asking about any
6 specific cases, or why or why not certain cases are taken up
7 by DOJ, but the pipeline of these cases and when you--I
8 mean, you have, I think, you said 25 lawyers that handle
9 this--25 lawyers for, I think we have 8,000 institutions.

10 I mean, it does not take anybody long to figure out
11 that you all are drinking from a fire hose in terms of the
12 work that is being presented to you.

13 So I am trying to figure out where these cases are
14 going that you are not handling and how are we prioritizing
15 them and what kind of urgency can we bring to this debate
16 about public resources that are desperately needed for
17 Department of Education, for Department of Justice and,
18 frankly, the grant funds. How many applications are we
19 getting?

20 And when you talked about the funding from DOJ to
21 Montana, for example, is that from the same pot of money as
22 the grants that go for domestic violence? Is that the same
23 pot of money, or is it specified separately?

24 Ms. Samuels. So I thank you for these questions, and I
25 am happy to answer them.

1 I wonder if I could just very briefly talk about the
2 topic that we just left because I do think that there are a
3 couple of things to note.

4 The first is that one of the panoply of tools that the
5 Justice Department has is that we have the jurisdiction and
6 the authority to investigate and address sex discrimination
7 in law enforcement. So that, of course, is part of what we
8 ended up doing with the Missoula Police Department and the
9 Office of Public Safety on campus, which we addressed under
10 our law enforcement responsibilities.

11 So, while that is done by a group of lawyers that is
12 also limited in size, there are tools to address patterns of
13 sex discrimination in the way in which law enforcement
14 responds to sexual assault.

15 But I think more globally. I think everyone at this
16 table undoubtedly shares the ultimate goal of increasing
17 reporting both to universities and, where criminal conduct
18 is involved, to law enforcement, increasing accountability
19 for perpetrators, increasing the protection of survivors,
20 increasing the opportunities for students to feel safe on
21 campus.

22 So my instinct is that the push-back that you are
23 hearing here is about how we best achieve that goal, and I
24 think thinking structurally about it--we do not want to do
25 things that will inadvertently decrease the amount of

1 reporting and the opportunity--

2 Senator McCaskill. Right.

3 Ms. Samuels. --for both universities and law
4 enforcement to weigh in.

5 So I think, John, this is what you were saying--that I
6 think OVW's experience and the experience of others in the
7 Justice Department is that supporting victims and making
8 sure that in the first instance they feel comfortable and
9 supported and that they can get the services that they need
10 on a confidential basis may be the key--

11 Senator McCaskill. Right.

12 Ms. Samuels. --ultimately, to increasing that kind of
13 reporting.

14 Anyway, on the resources front--and I will ask my
15 colleague, Allison Randall, to respond on the grant funding.

16 But with regard to civil rights enforcement, you know,
17 we do the best we can. We have, I think, extraordinarily
18 dedicated and competent attorneys. There actually, I think,
19 are fewer than 25. At last count, there were somewhere in
20 the neighborhood of 22 or 23.

21 We try to choose our cases wisely. We try to choose
22 those where we can have an impact on practices around the
23 country.

24 So, in working with the University of Montana, our hope
25 is that the progress that the university there has made will

1 not be restricted to that campus, that other universities
2 will look at the agreement that is posted on our web site,
3 will look at the guidance put out by the Department of
4 Education, will look at the amicus briefs we filed on legal
5 standards and use those materials to better understand their
6 own responsibilities and the ways in which they can
7 implement effective measures on their own campuses.

8 We have tried to do technical assistance. We have
9 coordinated with the Department of Education on releasing
10 guidance.

11 So, as I mentioned, we discussed the most recent set of
12 FAQs extensively as we did with the 2011 Dear Colleague
13 letter. There are a number of guidance documents not in
14 this context but in other contexts of education that we have
15 released jointly with them.

16 So, again, could we do more with more resources?
17 Absolutely.

18 Would we love to have more resources to do this work?
19 Yes.

20 Do we do absolutely the best we can, and is this a
21 priority for the Department? Absolutely, clearly, so.

22 And the final thing I would note is that the Civil
23 Rights Division is the enforcement arm of the Department,
24 but we do have offices across the Department that do this
25 work--the Office of Violence Against Women, the Office of

1 Victims of Crime, the National Institute of Justice, the
2 Bureau of Justice Statistics, the Office of Justice Programs
3 which also gives grants to law enforcement and others. And
4 all of those resources work together, and we are in
5 communication with people in all of those offices so that we
6 can bolster the work we are doing.

7 So we entered into an agreement with the University of
8 Montana. OVW ensured that they got a grant so that they
9 could fund some of the improvements that our agreement
10 called for.

11 But, Allison, do you want to add something about grant
12 funding?

13 Would that be all right?

14 Senator McCaskill. Sure.

15 Ms. Randall. I can say that we receive many, many more
16 applications than we can fund. That is an issue, of course,
17 across our office--that, generally, we fund about maybe 50
18 percent at the most of the applications we receive.

19 I have not gotten e-mailed the exact number for our
20 campus program, but we will provide that to you. But it is
21 very competitive, and we wish that we could fund all of the
22 campuses that are coming forward and seeking our assistance.

23 Senator McCaskill. Well, we would love the stats on
24 that--the money that you have and the breakdown of where it
25 is going, how many campuses are applying, how many campuses

1 are receiving. That would be really helpful to us because
2 one of the things we have talked about is more, and maybe
3 even some specific, grant programs.

4 For example, should a Title IX be required to have
5 training? Should a Title IX coordinator be required to have
6 training?

7 Should the people who are adjudicating these cases
8 administratively--should they be required to have training?

9 And, if we are going to require training, now some
10 universities, I would make the statement that they could
11 find ways to do this training without money from the Federal
12 Government, but many universities could not because--and all
13 universities are struggling. They have got costs that we
14 can all--all we have to do is look at tuition.

15 Senator Blumenthal. Maybe if penalties are imposed,
16 they ought to go into a dedicated fund for--

17 Senator McCaskill. Yes, that might be something we
18 could look at.

19 But we would love to get those statistics.

20 Ms. Randall. It looks like in FY '13 we had 127
21 applications, and we could make 28 awards, so a huge
22 disparity in the demand and what we are able to do.

23 And we would be happy to provide you many more,
24 additional statistics as follow-up.

25 Senator McCaskill. Well--and frankly, I am

1 disappointed there are only 128 applications. There is a
2 lot of colleges and universities, and if there is only 128
3 of them that are asking, that probably tells us that we have
4 got a lot of work to do.

5 Ms. Randall. Yeah. Since the inception of our campus
6 program, we funded 388 institutions, which certainly is a
7 drop in the bucket compared to the total number.

8 Senator McCaskill. Yes.

9 Mr. Kelly. Something that I would be curious to see is
10 which of the 55 schools and then the 5 more that were
11 recently added are in the 128 that applied, just to see if
12 these schools that are being investigated, the schools that
13 perhaps are not doing the best job at enforcing Title IX,
14 are trying to get that.

15 Senator McCaskill. We will be able to provide you that
16 information.

17 Ms. Hedgepeth. I do also know that there are a few
18 public stories of schools deciding not to apply for that
19 grant or stopping an application, and so I think those might
20 be something we can talk about another time.

21 Senator McCaskill. Because?

22 Ms. Hedgepeth. They were not interested in adhering to
23 all of the suggestions or requirements in the grant.

24 Senator Blumenthal. They were not interested in all of
25 the requirements?

1 Ms. Hedgepeth. Yeah. There are--it is a very--it is a
2 great grant. It has a lot of things that schools need to
3 proactively do and change on their campus, and that might
4 not be something a school has decided to undertake.

5 Senator McCaskill. Well, that is important to know.

6 One of the things--so if there is an OCR--if there is a
7 complaint about how a university has handled one of these
8 investigations and a regional office of Department of
9 Education Office of Civil Rights determines that it has
10 merit, can they then do penalties without referring it to
11 you?

12 I want to make sure I understand how this practically
13 works.

14 Ms. Samuels. I cannot speak for the Department of
15 Education, but my understanding about how it works is they
16 do an investigation. If they find a violation, they attempt
17 to negotiate a resolution agreement with the university that
18 will bring the university into compliance.

19 If they cannot negotiate such an agreement at that
20 point in time, they can refer it to us for litigation. So
21 we can get involved then.

22 If we have an independent complaint, either because we
23 fund the school, which means that--

24 Senator McCaskill. Right.

25 Ms. Samuels. --people can come to us under Title IX or

1 under Title IV, we often do these investigations jointly.

2 Senator McCaskill. Right. Okay.

3 But I guess what I am getting at is I need to figure
4 out how many complaints are out there where you are not
5 getting involved and nothing is happening.

6 In other words, when Education gets to the end of the
7 line, they will not cooperate, they cannot get anything
8 done, they cannot get some kind of voluntary resolution, and
9 for a number of reasons, maybe because you do not have any
10 evidence of more than one incident or you do not have the
11 severe enough situation because you cannot take them all,
12 you all do not take it, and then it just--I need to know how
13 many of those there are.

14 Ms. Samuels. Again, I cannot speak for the Department
15 of Education. I know that their Office for Civil Rights
16 shares the Department of Justice's commitment to addressing
17 this problem.

18 Senator McCaskill. Oh, I know they do. They have--I
19 mean both of you. I mean, I do not--there is no question
20 about commitment.

21 I am trying to--I think a lot of this is a resources
22 issues.

23 And I am not being critical of the kind of work you are
24 doing or how much of it you are doing. I need to be able to
25 show--we need to be able to show our colleagues this is the

1 body of work that needs to be done and this is what is
2 getting done because if we cannot demonstrate in this budget
3 environment a real need, then we are going to have
4 difficulty getting more resources.

5 And there is no doubt in my mind, if we are only giving
6 28 grants to college campuses to address this out of 8,000
7 college campuses, we obviously are nibbling at the edges
8 here.

9 Ms. Riley. Could I speak?

10 Senator Blumenthal. My guess is that the data will
11 show that we are nibbling at the edges or less.

12 Ms. Riley. I would like to speak to the parallel with
13 the need for more funding, for investigators and what not.
14 It is exactly the same thing in higher education. So we are
15 advocating for funds for our Title IX coordinators, for
16 resources, for marketing, our campaigns, et cetera. We are
17 trying to do the same thing--trying to provide training.

18 There are not enough Title IX coordinators to go
19 around. So, if you were to be in a job search as a Title IX
20 coordinator, you have lots of options. Schools are looking
21 for them. There are just not enough trained ones to go
22 around.

23 Senator McCaskill. And there is a tremendous
24 difference between a good Title IX coordinator and a not so
25 good Title IX coordinator.

1 Senator McCaskill. Somebody in the athletic department
2 that was given the clipboard.

3 Ms. Riley. Right, but I will go back and say there is
4 a definite parallel here to your work in attempting to come
5 up with the resources to do this well, and our institutions
6 are doing the same thing.

7 Senator McCaskill. Right.

8 Ms. Riley. We are trying to come up with the resources
9 to do it well.

10 Ms. Aldrich. I think in a lot of smaller schools the
11 bigger issue is that the Title IX coordinator is wearing--I
12 remember one time I did training, and she had like four or
13 five different times.

14 Senator McCaskill. Right.

15 Ms. Aldrich. And the more I added to the list of
16 things that really she needed to be working on, the more
17 concerned I became for her.

18 I think in some ways it is making sure there is a
19 commitment from the top-down that they are adequately given
20 the ability to do the job.

21 Senator McCaskill. Well, let us turn it to you all.
22 Is there something that we have not talked about?

23 We have hit resources and anonymous reporting. We have
24 hit private cause of action. We have hit mandatory
25 reporting.

1 Is there anything that we have not talked about today
2 that is on your list that we should know about?

3 Ms. Noble-Triplett. I have two pieces.

4 Were you going to say something?

5 Ms. Samuels. No, Dana was.

6 Ms. Noble-Triplett. Go ahead, Dana.

7 Ms. Bolger. Thank you.

8 I was just going to piggyback on that last conversation
9 about the need for more resources for OCR. I think that
10 often following the signing of these voluntary resolution
11 agreements there are not enough OCR folks to go around and
12 monitor these VRAs.

13 So I have heard from students where the same
14 administrators are still on campus. They are still
15 mistreating survivors, as John has spoken about, where OCR
16 in a voluntary resolution agreement has asked a school to do
17 more consent programming, but actually, what that looks like
18 on the ground is pie-baking contests. You know, steps that
19 are--

20 Senator McCaskill. Literally, pie-baking contests?

21 Ms. Bolger. Literally. I have spoken to a student at
22 her university following the signing of a voluntary
23 resolution agreement. There were pie-baking contests as
24 part of consent education and bringing people together.

25 But that is not really getting at the real issue, and

1 so I think that if we had more folks from OCR able to go
2 around and continue looking at schools after the signing of
3 VRAs we would see more results.

4 Senator McCaskill. That is a good point.

5 Ms. Noble-Triplett. There were two pieces. The
6 question that you asked, were there things--make sure we do
7 not leave anything left unsaid.

8 There has not been a lot of conversation about
9 prevention. And one of the things that we know is substance
10 abuse or alcohol usage is so closely correlated to some of
11 these instances that lead to incapacitation, and we are
12 really trying to figure--because, again, we are trying to
13 change culture.

14 So the prevention effort, I mean, there is a lot out
15 there on. And I know that the White House task force
16 mentions an effort to try to provide data.

17 I go back to if I am making a recommendation to our
18 president I want some evidence, some demonstrated success of
19 sustainability of those efforts.

20 And likewise, around sustainability, for training, I
21 have heard a number of different things today around
22 different Federal offices that provide resources on
23 training. I do not know that there is one place to go to
24 find all of those resources, and if there is a place, please
25 let me know. I do not know where that is.

1 I know that you can find different things looking in
2 different places, but you might miss something.

3 If there are resources put forward at a Federal level
4 for training, I would encourage a train-the-trainer model
5 because I do not know how that we would be able to sustain
6 it. Similar to what we do and what we are thinking about in
7 our institution is unless we can do this in-house at some
8 point in time and stand on our own two feet we will not have
9 a sustainable change. And so I would hope that same
10 conversation is happening at a national level.

11 Senator Blumenthal. You know, the point that you raise
12 about prevention--and that comes back to the Title IX
13 coordinator or the sexual assault prevention coordinator.

14 And it is not necessarily only at big schools because
15 in the roundtables I held I found that some of the schools
16 that devoted the most attention and the most resources were
17 smaller schools as well, and they devoted them not just to
18 responding, to hearing from survivors, but to reaching out
19 and proactively engaging in bystander intervention to stop
20 this stuff from happening.

21 It may well be that the hypothetical that Senator
22 McCaskill gave you of the deserted dormitory and the video
23 being taken occurs, but often there are people there who can
24 intervene.

25 And the programs that have been started in some of the

1 Connecticut schools for bystander intervention and to
2 prevent and change the culture, I think, are very important
3 as well, and there ought to be resources for those programs,
4 not just for the prosecutorial end of it.

5 Mr. Kelly. I also think that it is important to note
6 that a good response is prevention.

7 There was a recent study done where it was shown that
8 if a school is setting a norm of expulsion for acts of
9 sexual violence it is actually a preventative measure and
10 people are less likely to commit sexual assault if they have
11 that looming over their heads.

12 Obviously, you know, we need to talk about larger
13 cultural shifts. You know, that only gets us--what? Two to
14 four years out? But even still, being able to sort of set
15 that as the norm at the national level has repercussions in
16 all sorts of prevention ways.

17 Senator Blumenthal. And that, by the way, is true, I
18 am sure.

19 But that comes back to the point that Senator McCaskill
20 was making about somebody who has committed a crime while
21 respecting the need for confidentiality. And I think some
22 of the comments here have been very, very important, on the
23 need for confidentiality.

24 But the reason to prosecute is--one of the reasons is
25 to deter. And expulsion may be one of the remedies, but

1 when a crime occurs, one of the reasons why prosecutors are
2 so vehement about going after it and vigorous is because
3 deterrence is an important value of prosecution.

4 Ms. Bolger. Respectfully, though, I think that as long
5 as we have a 2 percent conviction rate in this country we
6 are not deterring this crime.

7 Ms. Eichele. Because there is a different standard of
8 evidence between, you know, higher education's disciplinary
9 proceedings--

10 Senator McCaskill. Believe me; beyond a reasonable
11 doubt is hard.

12 Ms. Eichele. Yeah.

13 Senator McCaskill. Especially in consent cases.

14 But I do not know where the 2 percent figure comes from.

15 I will tell you this; I handled hundreds of these cases
16 myself, personally. I guarantee you my conviction rate was
17 much better than 2 percent, and I handled a lot of consent
18 cases.

19 And so I do not know what that is being judged from,
20 where that 2 percent figure is coming from, but I guarantee
21 you it is not accurate for professional prosecutors' offices
22 with trained sex crimes prosecutors. Their conviction rates
23 are much higher than 2 percent.

24 So I do not know where that number is coming from.

25 Ms. Aldrich. It is actually coming from a study called

1 the "Justice Gap" by Dr. Kim Lonsway and Joanne Archambault.

2 Essentially, where the 2 percent is coming from--the
3 statistics are if you have 100 rapes committed, 17 go to law
4 enforcement, 7 of those go to prosecution or trial, 3 are
5 actually convicted, and then 2 are incarcerated. So it is 2
6 percent out of the 100.

7 Senator Blumenthal. That is a very different number.

8 Ms. Aldrich. Yes. Sometimes it is used in different
9 ways, but that is where that number comes from--that study,
10 the "Justice Gap."

11 Senator Blumenthal. If you talk about 17 out of 100
12 reported--

13 Ms. Aldrich. Reported, correct.

14 Senator Blumenthal. And then 7 percent--

15 Ms. Aldrich. Go to trial, yeah. That is 7 of the 17
16 that come forward actually make it to trial.

17 Senator McCaskill. Well, what about guilty pleas?

18 Ms. Aldrich. That actually is--I do not know that that
19 is necessarily taken into it.

20 Senator McCaskill. It is the vast--I mean--

21 Ms. Aldrich. Are pled out.

22 Senator McCaskill. Yes.

23 Ms. Aldrich. Yeah.

24 Senator McCaskill. I mean, we got guilty pleas.

25 Ms. Aldrich. I am not sure.

1 That is the answer to where that statistic is coming
2 from.

3 Senator McCaskill. So I think it is important.

4 You know, prosecutors cannot be criticized for not
5 prosecuting cases that have never been reported.

6 They can be criticized for not aggressively prosecuting
7 cases and treating victims with respect when they do come
8 forward.

9 But we have got to do is we have got to provide the
10 kind of structure around this issue where victims have every
11 opportunity to make a decision, to decide for themselves
12 what they want to do and feel comfortable that they are
13 going to have support, good information and adequate
14 resources throughout the process. And, if we can do that,
15 then we are going to have a lot more than 17 that are going
16 to be reported out of 100 and we are going to have a lot
17 more convictions.

18 But the cases that are being reported, I guarantee you
19 the conviction rate is higher than 2 percent. So I think I
20 can speak for prosecutors across America.

21 Senator Blumenthal. Yes, I think that point is very
22 important.

23 Or, victims being able to pursue justice on their own--
24 the private right of action, I think, is something that we
25 need to explore.

1 Senator McCaskill. Right. Both of those things, yes.

2 Ms. Samuels. Just one thing I would add to the point
3 about prevention--it is clearly the right thing to do. It
4 also can be the legally required thing to do because if a
5 school has had an incident of sexual assault, one of the
6 things that Title IX requires is that it take the necessary
7 steps to ensure that that does not recur.

8 So that means that they have to do structural things to
9 identify the source of the problem. And if it is alcohol,
10 then they may need to have a greater law enforcement or
11 campus security presence at places where alcohol is going to
12 be present. They may need to mount bystander intervention
13 programs. They may need to work with their students or with
14 the heads of Greek life or others to discuss how to spot
15 problems before they emerge and what to do about them.

16 So I think it is a critical thing to do from the
17 outset, but it is also something that if a university falls
18 short it can add to its liability for subsequent incidents,
19 and that is something that I think can a university's
20 attention.

21 Senator McCaskill. Well--and frankly, probably very
22 few universities even know that that is part of the
23 potential repertoire that could be used against them in one
24 of these cases.

25 We talked when we had the meeting earlier. I think

1 part of the problem here is that I would doubt--I mean, I
2 know many university presidents may know something about the
3 University of Montana settlement, but probably more do not
4 know about it than do.

5 So it is one of those problems of how do we--if we just
6 do prevention as in response to your cases, unless we really
7 figure out a way to get you about four times as many lawyers
8 like immediately, we are probably not going to put the kind
9 of dent in this that we really want to put in it.

10 Ms. Eichele. Well, I think that is where you implement
11 that campus climate survey can be really helpful--

12 Senator McCaskill. I agree.

13 Ms. Eichele. --for prevention but also on an ongoing
14 end as well.

15 Senator McCaskill. Yes.

16 Ms. Riley. We would like to--

17 Senator McCaskill. We talked about that climate survey
18 in the last roundtable.

19 Ms. Riley. I am looking forward to that coming out.

20 I would like to propose another idea, and it was
21 suggested in a phone--when you were doing the phone calls.

22 Financial Aid has a web page for all the financial aid
23 officers in the country. They have a list serve. They
24 shoot out or push out a weekly e-mail every Saturday
25 morning. Their resolutions, their electronic announcements,

1 training calendar, et cetera, are all online for financial
2 aid officers.

3 Could there not be something for Title IX coordinators
4 as well that could have training components?

5 And another way to look at it is with the Federal
6 National Emergency System. For someone to be a first
7 responder, they have to have the NIMS certification every
8 year.

9 Title IX coordinators are often first responders.

10 So, if there were educational components, modules, that
11 could be done--there is module 100, 200, 300, whatever, for
12 the Federal National Emergency System that the participants
13 do to be certified.

14 Is there something available that could not be done for
15 our Title IX coordinators who want desperately to do this
16 well?

17 And there is not a single association for Title IX
18 coordinators. There are lots of associations addressing it.
19 Could there not be something patterned after the Financial
20 Aid offering?

21 Ms. Hedgepeth. I would add that there is even in
22 statute a program for technical assistance under Title IX
23 that has not been funded in several years--the Women's
24 Educational Equity Act. There is a vehicle to do this sort
25 of thing which would get resources flowing to these types of

1 programs. We could use them.

2 I think your suggestions are spot-on.

3 And we may want to write new ways to do it, but we also
4 are not always even taking advantage of the ways that we
5 already have.

6 Senator McCaskill. The technology piece of this ought
7 to make this communication piece--I mean having a Title IX
8 web page that bannered the University of Montana settlement
9 and every piece of it and all of that. I mean going
10 immediately to every Title IX officer in the country.

11 That is a terrific idea that we ought to be able to do
12 without--we have got to be careful we do not hire a
13 contractor and spend a lot of money on it, though. I think
14 we can do it without that.

15 Ms. Samuels. One thing that I think all of you are
16 aware is that the White House task force did create a web
17 site called notalone.gov--

18 Senator McCaskill. Right.

19 Ms. Samuels. --which does contain some of these
20 materials and I think will grow over time. So suggestions
21 about useful things and tools that could be put on that web
22 site would be very welcome.

23 Ms. Riley. And that is a good web site. I do not know
24 that it will specifically fit the needs to the extent that
25 we would like them to for the Title IX coordinator.

1 Ms. Noble-Triplett. I will piggyback on you, Cat, and
2 add one of the things that we are looking into is the
3 forensic investigator training that is available. What we
4 are learning is that it is inconsistent, from what we are
5 hearing across the country, of what would be considered to
6 be best in practice.

7 The other thing that I need to delve into more--I
8 learned on Friday--is I have been looking at some of those
9 training modules that happen for those investigators if we
10 were to have a cadre of them. There seems to be some
11 disconnect in implementation, like if we wanted to do
12 something that we could eventually train on our own.

13 And so in your next conversation, which I think this is
14 probably more appropriate when you get to that law
15 enforcement, I would be interested in maybe you delving into
16 more about the forensic investigators and the competencies
17 that are needed and, when they are well-trained, do they
18 ever fall short.

19 Senator McCaskill. Well, I will tell you that they do
20 fall short sometimes, even when they are well-trained. But
21 the training is the first key, and a vast majority of
22 professional law enforcement that gets the training does a
23 great job with it.

24 And I will tell you--and you are right; at the next
25 roundtable, we are going to deal with a lot of this in terms

1 of what kind of training that is law enforcement-based,
2 especially the forensic interview because that is the key.
3 The first interview that that Title IX coordinator has with
4 a victim, or whoever a university designates to have that
5 victim--how that interview is conducted is so important as
6 to what happens. It predicts outcomes so frequently. We
7 know this from looking at a lot of statistics.

8 And in Missouri, one of the places that they are doing
9 a masterful job of doing this kind of training for the
10 military is at Fort Leonard Wood. I am sure that you could
11 access their training down there. I am sure they would be
12 happy to accommodate you.

13 It just so happens I know about that because I am busy
14 trying to get all of the military to access this training,
15 and I think that they would make every effort to accommodate
16 training people that are not in the military. In fact, they
17 told me that when I visited them not even a month ago.

18 Ms. Noble-Triplett. Thank you.

19 Mr. Kelly. Something else that has been on my mind--
20 Senator Blumenthal earlier and Senator McCaskill, you as
21 well, were talking about sort of sanctions and intermediate
22 sanctions against schools and how we are not really looking
23 to remove all Federal funding but how we can come up with a
24 method of fining or something like that that is effective.

25 And one idea that has been tossed around is this idea

1 of having a sliding scale, and so then it is dependent on
2 the endowment of the university, how large of a fine it is,
3 and where that money goes could be towards these programs.

4 You know, Cat, I think you have a really good point,
5 that oftentimes universities do not have the funds
6 themselves or do not have that allocation down right now, to
7 have all the resources available.

8 So perhaps having a sliding scale so that when a school
9 is fined, not only are they being fined, perhaps some of the
10 fine is going to the Federal Government, going to DOJ, going
11 to Ed but also, internally, the allocation of money, the
12 allocation of resources to hiring a new position, to things
13 like that, to prevention efforts. I think that is a way to
14 make punishments, not only that a school is out of
15 compliance, that are efficient and effective, but also end
16 up sort of having a feedback into really positive things.

17 Senator McCaskill. Right. Anything else?

18 Ms. Riley. Yes, if I may. To give you an example of
19 why Title IX coordinators need as much help as possible, I
20 have been having coordinators call me from across the
21 country--Cat, how do we make sense of this all?

22 So in my limited--and with assistance, tried to come up
23 with a chart, a visual, with the intersection of Clery, the
24 Dear Colleague letter, the White House task force, the
25 Violence Against Women Act, Section 304, FERPA, and try to

1 come up with how does this all work and what are we supposed
2 to do for what.

3 So this is just an example of how in our field we are
4 attempting to get a good understanding of this. And if you
5 would like, I will pass this around.

6 Senator McCaskill. Yes, please. We want to have one
7 of those for the record.

8 [The information follows:]

9 / COMMITTEE INSERT

1 Senator McCaskill. And, Cat, if you could redraw that
2 diagram in a way that would make more sense, we are the ones
3 you need to tell us how to do it because we can change all
4 of this to make it more seamless and integrated so there is
5 not the conflicting and overlapping. And that is one of the
6 things we are trying to do here--is to make it less
7 complicated for the people on the front lines.

8 Ms. Riley. Okay. And, just for the record, this is
9 primarily Tony Lake's work from Miami.

10 Senator McCaskill. Great. Anybody else?

11 [No response.]

12 Senator McCaskill. Well, this has been terrific. This
13 is why I think roundtables are better than hearings. We
14 would not have gotten one-eighth of this information at a
15 hearing, right?

16 Senator Blumenthal. I think this has been great.

17 Thank you all.

18 Senator McCaskill. It has been really terrific. We
19 have gotten a lot of good information, and we have gotten a
20 lot of good ideas.

21 I think the more we do this the more we understand how
22 important it is that we all keep communicating with each
23 other. The stovepiping in this area is not ever going to
24 work. We all have to talk to one another, and we all have
25 to be sharing what we know and what we know needs to be

1 done.

2 So, please, this is open communication that will
3 continue. Feel free if you have other things that you think
4 we need to know about or if you have questions.

5 We are going to be working on this for a while. We
6 have one more roundtable. Then we will put the survey
7 results out, and then we will be looking to try to drop some
8 legislation probably sometime late this month.

9 I am thinking that we will probably drop legislation
10 with an eye on getting it through the Senate lickety-split,
11 right?

12 Senator Blumenthal. Right away.

13 Senator McCaskill. Yes.

14 Senator Blumenthal. Expedited. Fast-tracked.

15 Senator McCaskill. That part will be the hard part,
16 but we will have a piece of legislation that we will begin
17 working on within a few weeks. And we want to make sure
18 that we do not overlegislate. We want to make sure we
19 address all the problems we need to address.

20 So, thank you all for coming very much. I really
21 appreciate it.

22 Senator Blumenthal. Thank you.

23 [Whereupon, at 4:49 p.m., the Subcommittee was
24 adjourned.]