



June 20, 2014

The Honorable Claire McCaskill
Chairman, Financial & Contracting Oversight Subcommittee
Homeland Security & Governmental Affairs Committee
U.S. Senate
Washington, D.C. 20510

The Honorable Ron Johnson
Ranking Member, Financial & Contracting Oversight Subcommittee
Homeland Security & Governmental Affairs Committee
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Washington, D.C. 20510

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Re: Campus Sexual Assault: The Administrative Process and the Criminal Justice System (Roundtable)

Dear Chairman McCaskill and Ranking Member Johnson:

For nearly 100 years, the American Civil Liberties Union (ACLU) has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual's rights must be protected equally under the law.

On behalf of the ACLU, we commend the Subcommittee for convening this roundtable to discuss the manner in which the criminal justice system and the administrative process work together to ensure that justice is achieved for survivors and those accused of sexual assaults on our nation's campuses. We very much hope the committee will consider the recommendation offered below as it grapples with these important issues.

Civil Rights Obligations of Law Enforcement

Much of the discussion about sexual violence in schools has rightly focused on the schools' responses and compliance with Title IX. It is important to recognize, however, that the criminal justice system is another key player and is also governed by civil rights laws. In some cases, student survivors will report the violence to law enforcement authorities only to have their complaints treated with hostility and dismissal. Moreover, some survivors will be deterred from filing complaints because of this expectation and experience.

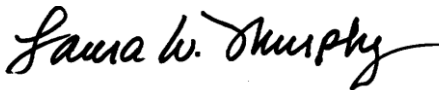
When police officers rely on gender stereotypes and bias in addressing sexual violence complaints, they deny victims equal protection under the law. The Department of Justice has exercised its authority under 42 U.S.C. § 14141 and § 3789d to reform how police departments in New Orleans, Puerto Rico, and Missoula, MT respond to complaints of sexual violence,¹ and in the case of Missoula, coordinated its investigation with the Department of Education to also examine the University of Montana's practices.² This work highlights that any examination of a school's response to sexual violence should also include the relevant law enforcement agencies, as all are important components to whether a student has equal access both to educational opportunity and the justice system.

DOJ Guidance Would Improve Law Enforcement Engagement

DOJ's work in this area would be amplified by issuing guidance that addresses the civil rights obligations of law enforcement agencies, including those responding to sexual assault on campus and at schools. Such guidance would address how sexual violence investigations should be conducted, supervision and oversight, classifying and tracking of complaints, and the training provided to officers. The guidance should also tackle issues that commonly arise when sexual violence occurs at school. For example, it should be clear that law enforcement should not dissuade victims from pursuing criminal justice charges by encouraging them to file complaints through school grievance or disciplinary procedures. Additionally, law enforcement should be aware that schools have independent legal obligations to respond to sexual assault and harassment, and thus schools are not bound by the findings of any criminal justice investigation. We urge members of the Committee to encourage DOJ to continue its work on these critical issues.

Thank you for the opportunity to offer our views. Please do not hesitate to call Vania Leveille at (202) 715-0806 should you have any questions or need additional information.

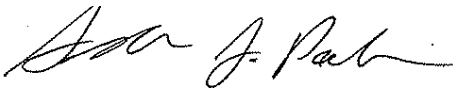
Sincerely,



Laura W. Murphy
Director
Washington Legislative Office



Vania Leveille
Senior Legislative Counsel



Sandra Park
Senior Staff Attorney, Women's Rights Project

¹ See U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE PUERTO RICO POLICE DEPARTMENT (2011), available at http://www.justice.gov/crt/about/spl/documents/prpd_letter.pdf; U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT (2011), available at http://www.justice.gov/crt/about/spl/nopd_report.pdf; U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE MISSOULA POLICE DEP'T (2013), available at http://www.justice.gov/crt/about/spl/documents/missoulapdfind_5-15-13.pdf; U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE UNIV. OF MONTANA'S OFFICE OF PUBLIC SAFETY (2013), available at http://www.justice.gov/crt/about/spl/documents/missoulafind_5-9-13.pdf.

² U.S. DEP'T OF JUSTICE ET AL., INVESTIGATION OF THE UNIV. OF MONTANA (2013), available at <http://www.justice.gov/opa/documents/um-ltr-findings.pdf>.

Cc: Members of the Financial & Contracting Oversight Subcommittee