

HEARING BEFORE THE SENATE COMMITTEE ON HEALTH,
EDUCATION, LABOR, AND PENSIONS
“REAUTHORIZING HEA: ADDRESSING CAMPUS SEXUAL ASSAULT AND
ENSURING STUDENT SAFETY AND RIGHTS”

OPENING STATEMENT OF PATRICIA M. HAMILL, ESQUIRE, CONRAD O’BRIEN P.C.¹

APRIL 2, 2019, 10 A.M.

Thank you Mr. Chairman and Ranking Member Murray and members of the Committee. And, thank you for inviting me to testify on this important matter. My name is Patricia Hamill. As Chairman Alexander stated, I am a partner at the Philadelphia law firm of Conrad O’Brien where I head up the firm’s nationwide Title IX, Due Process and Campus Discipline practice. I hope my experience, which I will share with you today, will assist this Committee in addressing student safety and student rights in the context of campus sexual assault.

I believe I bring a unique perspective to these issues. I am a feminist, married to a woman, graduate of a women’s college and a mother of two teenage sons and a daughter currently in college. So it may surprise you that in the past six years, I have devoted a large portion of my law practice to representing more than one hundred students, mostly though not exclusively men, accused of various levels of sexual misconduct. This is not a partisan issue. It is a fundamental principle of our democracy that all persons are entitled to a fair hearing.

I first want to point out that many campus procedures are an effort to correct for decades of failure to take claims of sexual assault seriously. Let me be clear.

¹ Patricia Hamill is a partner at the Philadelphia law firm Conrad O’Brien, P.C., and Chair of the firm’s nationwide Title IX, Due Process and Campus Discipline practice. She represents college students and academic professionals in disciplinary proceedings and related litigation. Patricia is a frequent speaker on Title IX litigation and related issues to audiences including Title IX coordinators, advocacy groups, and attorneys. Patricia is also a commercial litigator who represents clients in white-collar and internal investigations, and is a member of the firm’s three-person Executive Committee.

Sexual assault on college campuses is a serious problem. But the corrective to past or present inadequate responses to sexual assault is not to presume that accused people are guilty, deprive them of the ability to defend themselves, and punish them without a full consideration of the facts. I am concerned by the national polarization on this issue, and by the apparent assumption by many that measures to give accused people – usually men – a fair hearing are a strike against justice for women.

What is often missing from the public discourse is an understanding that misconduct occurs on a spectrum, and often there are plausible competing narratives and no independent witnesses or corroborating evidence. In my written testimony, I outline how complex these cases can be, and how difficult it can be to determine exactly what happened.

Let me give you a sense of a typical scenario. A young man, 18 or 19 years old, calls us. He's at a college. He went to a party, had a few beers, and had a sexual encounter with a young woman. Both were tipsy, maybe even drunk, but not incapacitated. He thought the encounter was mutual and fully consensual. After the encounter the two had a few friendly interactions but did not hook up again. Days, months or even years later he is notified by the Title IX office that he has been accused of sexual assault. If a lot of time has passed he may not remember the encounter very well, but he is someone who takes consent seriously, and is certain it was consensual. He is ostracized and afraid no one will listen to him. He is certain that the system already assumes he is guilty and will suffer lasting consequences -- that he will be kicked out of school and will be permanently and widely branded.

I can assure you that this is not as a rare situation as some would have you believe.

This Committee is in a position to ensure fair processes for all parties which include adequate support services, thorough and fair investigation, procedures for informal resolution and, if a formal hearing is required, that both parties get to fully present their positions and both are fairly questioned, respectfully and thoroughly

I want to address a critical component of this process.

Much opposition has been expressed about live hearings and direct questioning, but they are critical to a fair process.

They allow decisionmakers to get as clear an understanding as possible of what occurred, from everyone's perspective.

They allow advocates for each party to thoroughly and respectfully explore people's memory and credibility.

Crossexam by written questions does not allow for a true exploration of these situations. There's no dialogue, no flow, no opportunity to follow up.

Mr. Chairman, I do understand the emotional distress and "chilling effect" direct questioning can have, but that is the case for both parties. And, if we are to ensure a fair process, every reasonable effort to get at the truth must be pursued. There's too much at stake to do anything less.

Conclusion

I want to stress that, though my focus here today has been drawn from my representation of male students, I have represented women too, both complainants and respondents. While the erosion of due process protections in campus disciplinary proceedings has so far primarily impacted men, it is leading to injustice and insecurity for everyone. In my written testimony I reflect on some recent cases in which women have been the accused.

I believe *both* complainants and respondents have a right to be heard. *Neither* has a right to be automatically believed. If we want fair processes for ourselves and our loved ones, we must support fair processes across the board. Thank you.

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