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To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing (topic of the comment)

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As I'm sure you've been told many times in this hearing, the changes to Title IX procedures spearheaded by Betsy DeVos are shockingly harmful to victims, to justice and to the integrity of the process. There is one set of provisions in particular, however, that I feel I am uniquely qualified to address, and that is the actual hearing process.

My career* has been spent prosecuting sex crimes first as a trial lawyer and then as bureau chief of one of the first special victims units in a NYC DA's office. After publication of a well-received book about my experiences, I taught and lectured (eventually specializing in campus sexual assault response) before I returned to sex crimes prosecution.

I have tried more than a hundred jury trials and supervised thousands more of them. I have been before some of the worst, most prejudiced judges and juries (as well as some of the best.) I have tried cases where the defense attorney literally wound up before the ethics committee as a result of his trial conduct. None of that can compare to the gross injustice inevitable in the so-called "due process" that Betsy DeVos has devised.

For example, the new procedures call for live hearings and cross-examination by (undefined) "representatives." Cross-examination assumes relatively equally skilled opposing counsel fighting it out before an impartial jurist. As a practicality, I've had plenty of trials where my hardest battle was trying to force a weak judge to protect a victim from improper cross examination. But no matter how sleazy opposing counsel, or how ignorant or seeped in rape culture the fact-finder, there were limits: criminal procedure law; the rules of evidence; appellate rights. I could get pretrial rulings on the most sensitive issues like the victim's prior sexual history. I could object at trial to any harassment of the witness. I could ask that the jury be excused if the attorney arguments might prejudice them. I could ask for court breaks if my witness was too distressed. I knew that neither the other attorney nor the judge was unfettered: most judges don't want to be reversed on appeal; most defense attorneys worry that if they are too harsh to a victim the jury will hold it against them.

Not a single one of those protections is available to a victim testifying in a Betsy DeVos hearing.

When I prepare rape victims to testify, I routinely tell them that cross examination is not the worst part. I assure them that cross examination is "just words" and that they have already stood up to much worse. I assure them that I will do everything I can to protect them. I tell them candidly that the worst part of testifying is that – being asked all those questions – at some point they won't just be remembering what happened, they will be reliving it. Then I try to give them

the tools to get past that moment.

A victim in a Betsy DeVos hearing has no specially trained sex crimes prosecutor on her side. She has no rules of evidence to define the boundaries of cross examination. She has no judge to a “representative of the accused” from getting out of control. She has no therapist who will recognize the mental health emergency if she re-experiences the trauma while she is testifying. She doesn’t even have the security provisions of a criminal court room to physically protect her from the accused when she testifies. She is entirely vulnerable and alone. And she is subjected to all this for no gain whatsoever. Her misery will not advance the fact-finding process in any way. In the name of decency, you must reverse these rules.

*My experiences are documented in two books, currently available as “Sex Crimes: Then and Now” at https://www.amazon.com/Sex-Crimes-Prosecuting-Confronting-Collaborators-ebook/dp/B01FTBDKJM?ie=UTF8&keywords=alice%20vachss&qid=1463609083&ref=sr_1_4&sr=8-4

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