

Minutes of the Meeting of the Board of Trustees
University of Kentucky
Friday, October 21, 2016

The Board of Trustees of the University of Kentucky met on Friday, October 21, 2016, in the Board Room on the 18th floor of Patterson Office Tower.

A. Meeting Opened

E. Britt Brockman, chair of the Board of Trustees, called the meeting to order at 10:31 a.m. Chair Brockman asked Trustee Kelly Holland, secretary of the Board, to call the roll.

B. Roll Call

The following members of the Board of Trustees answered the call of the roll: C. B. Akins, Sr., Jennifer Y. Barber, Claude A. “Skip” Berry, III, Lee X. Blonder, James H. Booth, William C. Britton, E. Britt Brockman, Michael A. Christian, Kelly Knight Craft, Angela L. Edwards, Cammie DeShields Grant, Robert Grossman, David V. Hawpe, Kelly Sullivan Holland, David Melanson, Rowan Reid, C. Frank Shoop, Robert Vance, and Barbara Young. Trustees Mark P. Bryant and Carol Martin “Bill” Gatton were not in attendance.

Secretary Holland announced that a quorum was present.

The University administration was represented by President Eli Capilouto, Provost Tim Tracy, Executive Vice President for Health Affairs Michael Karpf, Executive Vice President for Finance and Administration Eric Monday, and General Counsel William Thro.

The University faculty was represented by Chair of the University Senate Council, Katherine McCormick, and the University staff was represented by Chair of the Staff Senate, Troy Martin.

Guests and members of the news media were also in attendance.

C. Approval of the Minutes and Consent Item

Chair Brockman called attention to the minutes from the meeting on September 9, 2016, and PR 2, Personnel Actions. Trustee Britton moved approval of the minutes and PR 2 and Trustee Akins seconded the motion. Chair Brockman called for the vote and it passed without dissent. (See Minutes and PR 2 on the Board of Trustees website, www.uky.edu/Trustees, under agenda.)

D. Chairs Report

Chair Brockman reported that there were no petitions to address the Board since the last meeting.

E. Honorary Degree Recipient (PR 3)

President Capilouto stated that PR 3 was the recommendation that the Board of Trustees approve awarding honorary degrees to Donald R. and Mira S. Ball as approved and recommended by the University Faculty.

Trustee Christian moved approval of PR 3. It was seconded by Trustee Shoop and it passed without dissent. (See PR 3 on the Board of Trustees website, www.uky.edu/Trustees, under agenda.)

F. Appointment of Dean of the College of Pharmacy (PR 4)

President Capilouto stated that PR 4 was the recommendation that the Board of Trustees approve the appointment of R. Kiplin Guy as the Dean of the College of Pharmacy, effective October 1, 2016.

Provost Tracy stated that as the former Dean of the College of Pharmacy, it was indeed a pleasure for him to introduce Dr. Guy as the next Dean. Dr. Guy was most recently Chair of the Department of Chemical Biology and Therapeutics at St. Jude Children's Research Hospital. He received a Bachelor of Arts in Chemistry from Reed College in Portland, Oregon, and a Ph.D. in Organic Chemistry from The Scripps Research Institute in La Jolla, California. In addition, he completed a postdoctoral fellowship in Cellular Biology at the University of Texas Southwestern Medical Center in Dallas.

Provost Tracy continued that Dr. Guy began his academic career at the University of California San Francisco where he earned the rank of Full Professor and served as Director of the Bay Area Screening Center and Executive Director of the Center for Chemical Diversity. He was then recruited by St. Jude Children's Research Hospital where he created the Department of Chemical Biology and Therapeutics and held the Robert J. Ulrich Endowed Chair.

Dr. Guy's research focus is chemical biology, preclinical drug discovery, and development for neglected diseases, especially those that affect children. Much of his work has focused on pediatric cancers and malaria. In recent years, he has led the team that discovered and developed a new drug candidate for malaria that is currently in Phase 1 trials. The Chemical Biology and Therapeutics group, built and led by Dr. Guy, has collaboratively repurposed drugs for clinical trials for ependymoma, leukemias, medulloblastoma, and other pediatric cancers.

Provost Tracy welcomed Dr. Guy and asked him to come forward and share a few words with the Board.

Dr. Guy thanked the Board for the opportunity and shared his excitement to lead the College of Pharmacy. In his first three weeks at the College, he has been appreciative of the extraordinary family of skilled educators, practitioners, researchers, and trainees.

Dr. Guy's plan for the College is to work on identifying its real strengths, focusing on those strengths with clear, measurable goals, "working lean", and stewarding the College's resources to

make Kentucky internationally recognized as the leader in Pharmacy. His personal goals coming in as Dean are to guide the College to becoming world-leading in innovation of education, the discovery of new therapies, and delivering world-class care.

Trustee Young moved approval of PR 4. Trustee Vance seconded the motion and it passed without dissent. (See PR 4 on the Board of Trustees website, www.uky.edu/Trustees, under agenda.)

H. Construct Baseball Facility Capital Project (PR 5)

President Capilouto stated that PR 5 was the recommendation that the Board of Trustees approve the initiation of the Construct Baseball Facility Capital Project and introduced Executive Vice President for Finance and Administration (EVPFA) Dr. Eric Monday and UK Athletics Director (AD) Mitch Barnhart to provide more detail regarding this project.

AD Barnhart recognized and welcomed longtime baseball head coach Keith Madison and new head coach Nick Mingione. The Board gave both a round of applause.

AD Barnhart continued that in planning with President Capilouto regarding the needs of the University and UK Athletics a few years ago, it became clear that there were areas of opportunity for both academic and athletic student-centered space. With the renovated Commonwealth Stadium, new training center, and softball/soccer complex, the area on Alumni Drive is becoming an athletic village.

EVPFA Monday reviewed the increase in residential hall beds in the central and south/southeast area of campus. This increase contributes to a greater need for recreation space and transportation/parking needs for UK students.

EVPFA Monday and AD Barnhart detailed the plans for baseball, including the relocation of the soccer practice fields (PR 6), a new tennis complex on the vacated baseball complex site, new campus recreational fields, a band practice field, and future parking opportunities for the spaces on south campus. The total scope of the baseball project is \$49,000,000, which includes the \$4,000,000 design phase. \$42,000,000 is private funds raised by UK Athletics and the remaining \$7,000,000 would be funded from an internal loan, which would be repaid by the Department of Intercollegiate Athletics over a period not to exceed 10 years, and will include interest charges pursuant to the University's Debt Policy.

Trustee Berry moved approval of PR 5 and it was seconded by Trustee Christian. Trustee Akins asked for additional information on what the movement of the baseball stadium and adjacent fields does to alleviate the noise for the adjacent neighborhoods. AD Barnhart reiterated that this would indeed alleviate noise and disturbances from that area and improve the relationship with the neighborhood.

Chair Brockman asked for the vote and it passed without dissent. (See PR 5 on the Board of Trustees website, www.uky.edu/Trustees, under agenda.)

I. Relocate/Upgrade Athletics Playing Field Capital Project (Soccer Practice Field) (PR 6)

President Capilouto stated that PR 6 is the recommendation that the Board of Trustees approve the initiation of the Relocate/Upgrade Athletics Playing Field Capital Project (Soccer Practice Field).

Trustee Shoop moved approval of PR 6. It was seconded by Trustee Edwards and it passed without dissent. (See PR 6 on the Board of Trustees website, www.uky.edu/Trustees, under agenda.)

J. Gifts from Joseph W. Craft, III and Naming of University Facility: Football Training Facility (PR 7)

President Capilouto stated that PR 7 is the recommendation that the Board of Trustees accept gifts totaling \$4,790,000 from Joseph W. Craft, III, and approve the official naming of the new football training facility at the University of Kentucky as the “Joe Craft Football Training Facility”.

Mr. Craft has generously supported several University academic and athletic projects, including Kentucky Children’s Hospital, College of Engineering, College of Medicine, College of Law, and the Department of Intercollegiate Athletics.

Trustee Vance moved approval of PR 7. It was seconded by Trustee Britton and it passed with 18 affirmative votes and one abstention from Kelly Knight Craft. (See PR 7 on the Board of Trustees website, www.uky.edu/Trustees, under agenda.)

K. Establishment of the John H. Schnatter Institute for the Student of Free Enterprise (PR 8)

President Capilouto stated that PR 8 is the recommendation that the Board of Trustees approve the establishment of the John H. Schnatter Institute for the Student of Free Enterprise in the Gatton College of Business and Economics.

President Capilouto introduced Provost Tracy, who in turn introduced Dean David Blackwell of the Gatton College of Business and Economics to share with the Board the process of the establishment of the Institute.

Dean Blackwell began by reviewing with the Board their December 2015 acceptance/approval of a gift of \$10,000,000, \$6,000,000 from the John H. Schnatter Family Foundation and \$4,000,000 from the Charles Koch Foundation, to establish the John H. Schnatter Institute for the Study of Free Enterprise. The Institute would continue a number of activities that have been underway in the Gatton College for the last ten years and, in the case of some faculty members, for as long as 30 years. Dean Blackwell remarked that it was the excellence of the work of these faculty members that enabled the College to attract this funding.

The funding would be used to hire five faculty members: three tenure-track faculty members in the Department of Economics, one tenure-track faculty member in the Department of Finance and Quantitative Methods, and one lecturer in Entrepreneurship. These faculty members would be hired under the College's normal faculty hiring practices and housed in academic departments, not the Institute.

Dean Blackwell continued that other activities the Institute would engage in include sponsoring outside speakers, supporting reading groups for students and undergraduate research, awarding research grants to faculty, and awarding doctoral fellowships. These types of activities have been held in the Gatton College for at least ten years using funds from other donors.

After the Board's acceptance of the gifts, Dean Blackwell detailed the process of conversations with the entire faculty of the Gatton College. Beginning in the early Spring of 2016, he stated there were open, candid, and transparent discussions of all of the issues surrounding the establishment of the Institute and all donor agreements and the proposal was made available for review. Overall, 78% of the faculty supported the Institute, as did the Gatton Faculty Council, and the external Dean's Advisory Council. The University Senate this fall voted in favor of the academic merits with a two-thirds majority.

Dean Blackwell continued that the non-academic merits or administrative structure and funding source were not endorsed by the University Senate. Most of the opposition concerned the gift source and the protection of academic integrity and academic freedom. Dean Blackwell stated that he was careful in negotiating the agreement to protect the faculty's ability to do their research without any undue influence from external forces and no donor influences as regards to hiring.

Dean Blackwell stated that another area of the University Senate's concern was the financial sustainability and nature of the funding. He was confident of Gatton College faculty being successful with the activities of the Institute and attracting additional grant funds, but understood the concerns that the grant might end. In consultation with the Provost, the College would absorb the faculty positions and would support any doctoral students to their normal program conclusion. The Institute will be operated like other multidisciplinary research centers on campus. It was agreed that at the halfway point of the Foundation support (September 2019), there would be a review by the University Senate in collaboration with the Provost, of the program's progress in scholarship and its mandate to safeguard academic freedom.

Trustee Young asked for further clarification of "administrative structure." Dean Blackwell stated his understanding of this element of a proposed center is financial support and oversight for a center to accomplish its mission. Both of these elements have faculty oversight, including the appointment of a Director, and the Institute reports to the Dean.

Trustee Booth moved approval of PR 8 and it was seconded by Trustee Britton. Chair Brockman opened the floor for discussion.

Trustee Blonder stated she is a voting member of the Senate Council and the University Senate. She voted "yes" on the academic content and "no" in the meetings on the organizational structure and funding and wanted to share with the Board her concerns and the reasons why she and

perhaps other Senators voted this way as well. She noted that:

“two items in the grant agreement wording that were of concern to me and to others in the Senate, and the first is the mission statement wording. So the mission statement is, ‘To discover and understand aspects of free enterprise that promote the well-being of society.’ So as stated by several faculty members and the Senate, including myself, this mission statement has the potential to discourage a critical focus on free enterprise that encourages both positive and negative. That, combined with the fact that it's written in the agreement, another quote, ‘Subject to terms of the agreement, the donor agrees to make a charitable grant of funds to the University and the University agrees to accept and use such funds solely to support the Institute's programs and to advance the Institute's mission.’

One of the concerns of -- almost half of the Economics Department voted against the proposal, and we were told in the Senate meeting that one of the concerns was how narrowly this mission -- the vision would be interpreted. If ‘well-being’ is interpreted narrowly by the Foundation (grant funding institute), it could potentially constrain academic freedom or influence the direction of research. That's a problem because the donor has also written in the agreement that they can pull funding after 30 days notice. At any time during this process, the donor can say, ‘We're pulling the funding.’ And annually the University reports to the donor and the donor has an option at that point to review the funding.

The fact that there's a 30-day pull-out clause and a non-neutral mission statement is of concern. Now, what I'm expressing here, which is a concern about constraining academic freedom and direction of faculty research based on this ‘well-being’ and the 30-day pull-out clause, this is a worst-case scenario. We don't know that this would happen, but it's legally possible according to the agreement that we signed.”

Trustee Blonder continued:

“I want to say also that the agreement that Dean Blackwell and the University negotiated is probably the best agreement out there. The Chronicle of Higher Education recently reported on a case of Western Carolina University where they went back to their faculty to get more input and renegotiated the agreement, and they ended up with what we have now.

This is a good agreement as these agreements go, but these are the objections that were expressed and that I have. Now, if the agreement could be renegotiated to contain a neutral mission statement without ‘well-being’ and to eliminate or modify the 30-day pull-out clause, then I would be in favor of this. But as it stands now, I intend to vote no.’

Trustee Grossman offered:

“Lee (Trustee Blonder) and I agree on many things, but this is one thing where we have a disagreement. What she described I think was an accurate portrayal of many of the concerns of some of the faculty. I'm also on the Senate Council, although I'm a nonvoting member there. I'm a voting member of the Senate (University), and I voted in favor of both the academic organization and the administrative structure and funding.

The reason I did it was, first of all, in terms of the mission statement, I don't believe that a mission statement is really going to influence the desire of the faculty to discover the truth to the best of their ability and to do research to the best of their ability. I believe that they have sufficient integrity that if they find out that there's some particular aspect of free enterprise that has a detrimental effect on society, that they will publish that. There are plenty of examples of them (faculty) publishing research into failures of capitalism as well as successes of capitalism in the past, and I think they will continue to do so in the future. This is not a controversial statement that any economic system has successes and failures.”

Trustee Grossman continued:

“The 30-day withdrawal, from what I understand, first of all, Dean Blackwell said that these institutes have never cut off funding in other locations; and second of all, the purpose of this, and it was verbally confirmed by a representative of the Schnatter Institute, but the purpose of this clause simply meant that if the University misused the funds, for example, use the Schnatter Institute funds to build a new baseball stadium, that those are the circumstances where they would pull funding, or if the Schnatter Foundation had a dramatic reversal in its financial status so they didn't have the money to donate.

So those are the purposes, and these kinds of clauses are in all the agreements, I understand, the University signs with foundations. The only reason this one has come to light is simply because of the controversial nature of some of the donors, so these things did not concern me at all. I think, especially with the review of the Institute in two years and then presumably after that in the regular cycle, we will have plenty of opportunities to keep a close eye on the academic integrity of the institution.

Dr. Blackwell and Dr. Tracy have made multiple reassurances that if there's any whiff of undue influence at all on the academic integrity of the Institute, that we will kindly decline any further donations. And so I am confident there are plenty of safeguards in the organization of this Institute that I am perfectly comfortable voting in favor of it.”

Trustee Akins asked about the process selection of the Director. Provost Tracy stated that Dean Blackwell would consult with the Gatton College faculty, then recommend a director to the

Provost. The Provost then would accept or reject that recommendation. Assuming acceptance of such, it would move to the approval of the Board of Trustees.

Trustee Shoop made a motion to call for the vote. PR 8 passed with 18 affirmative votes and one negative vote from Trustee Blonder. (See PR 8 on the Board of Trustees website, www.uky.edu/Trustees, under agenda.)

L. Item for Discussion – Title IX

Chair Brockman began:

“In 2011, the federal government sent a ‘Dear Colleague’ letter to all universities which redefined the institutions' obligations with respect to allegations of sexual assault by one member of the university community upon another member of the university community.

In 2014, the Campus Save Act further refined and expanded these requirements, particularly with respect to support of survivors, the disciplinary process, and training. Essentially, the ‘Dear Colleague’ letter and the 2014 Campus Save Act requires the university to stop the assault, mitigate the effects of the assault, and ensure the behavior is not repeated. This is an essential part of ensuring that the survivor has an educational environment free from discrimination. This is a value of equality.

At the same time, because we are a public institution, the Constitution requires us to provide due process to any individual accused of sexual assault. A student cannot be expelled or a tenured professor fired simply because the person has been accused of sexual assault. This is the value of freedom and due process.

As a university, we are entrusted with the safety of our people. To that end, the University of Kentucky has made considerable investment in personnel and technology to fulfill this commitment. This moral obligation comes not only in the form of security personnel but also in the resources, policies, support staff, safe spaces, and privacy for victims seeking help. As a public university, we too must respect the twin values of equality and freedom, which requires a careful coordination of activities and respect for the rights of everyone.

This afternoon, experts in this area and from our campus are joining us to continue an important dialogue which began at our last board meeting.

President Capilouto explained that a panel of experts had been assembled to lead the discussion. The first guest, Dr. Peter Lake, joined the meeting via videoconference. President Capilouto stated that Professor Lake is the Charles A. Dana Chair and Director of the Center for Higher Education Law and Policy at Stetson University College of Law. Earning both his bachelor's degree and his juris doctorate from Harvard University, Professor Lake is a legal scholar in torts, higher education law and policy, insurance and jurisprudence, and has won several awards

for his teaching and scholarship. He is an internationally recognized expert on higher education law and policy and co-author of "The Rights and Responsibilities of the Modern University." He has authored numerous law review articles and other publications and has been quoted or referred to in the New York Times, The Wall Street Journal, USA Today, Chicago Sun Times, Chronicle of Higher Education, and various reported legal decisions including the Supreme Courts of Virginia and Florida. Professor Lake is a highly sought-after speaker and futurist, particularly in the field of higher education law and policy, having spoken at several hundred international, national, regional, and local meetings. Professor Lake has served on several boards, including the Board of the Editors of the Journal of College and University Law, the Center for Academic Integrity, and the Review Board for the U.S. Department of Education's Higher Education Center. Most recently, Professor Lake served on the roundtable for the development of the "Student Mental Health and the Law: A Resource for Institutions of Higher Education" published by the JED Foundation.

President Capilouto continued that additional panel members included, General Counsel William Thro, UK Deputy Title IX Coordinator and Compliance Officer Martha Alexander, and Ashley Rouster, Intervention Program Coordinator at the UK's Violence Intervention and Prevention (VIP) Center.

Via videoconference, Professor Lake shared he was pleased to be joining the Board for this discussion. He stated he wanted to begin by giving the Board a "glimpse of where I think we may be heading with this down the road, some of the challenges and opportunities that I think Title IX presents."

"When I met with my Title IX team as Title IX Coordinator at Stetson (University), we started with the basic mission of Title IX, which is to reduce or eliminate sex discrimination and its impacts on educational opportunity, and often we got caught in very difficult ethical questions. Often we're at the center of controversy, polarizing opinions, et cetera. I would always try to bring the team back to that central mission statement: Why are we here? We're here to combat sex discrimination and its impact. It often broke the logjams, and I've often found people were very inspired to that mission, even if they weren't always inspired to the technical/legal requirements that were coming from the courts and OCR (Office of Civil Rights).

From a leadership perspective, I would encourage you to keep the institution's eye on [inaudible] and make that mission a critical point to work with. There's been a focus since 2011 on reducing sexual violence, and there's no question that OCR sent us looking to reduce sexual violence and its impacts. But of course let's keep in mind that Title IX has not stopped impacting other forms of discrimination as well and they have been reminding us of that too. So although sexual violence prevention is dominant in some of the guidance since 2011, it's certainly not the only thing that we're doing. I think it's also important to claim Title IX in the larger picture, to realize that we're not just going through a Title IX revolution on campuses, but we really entered a major period that I sometimes call 'compliance university,' where the federal government is entering a much more

active phase of compliance mandates than ever before. In some ways Title IX is tip of the spear, but when you look at it more broadly, you'll see the federal government intervening across a variety of different conventions. I think one of the messages, and I heard it delivered just as I came into the meeting, is that it's very critical to respect all civil rights, not just Title IX.

But one of the great challenges, I think, for a public and a private institution is to make sure that we're not overly focused on just one particular civil right metric coming from the federal government, but we have to balance all of them at a state and federal level. And that leads to, I think, probably the central challenge of leadership today is Title IX right now is incredibly complex, and so the complexity alone is a challenge. The detail and intensity of regulatory effort has really been almost overwhelming. I find most folks really struggle to keep up with the sheer complexity of Title IX guidance. It's also very dynamic, so it seems like every day is a new day in Title IX. I pick up the newspapers every week and, surprise, here we go this direction; surprise, here we go that. When I was Title IX Coordinator, the 2015 guidance dropped. I was reporting to my provost at the time, and the new guidance said that I needed to report to my president. So I had to wake up in the morning and say, how do I manage that? My job description took a change because I took a missive from OCR. This is the world we live in, constant change. Frankly, I think the complexity and the dynamism are very bewildering to a lot of folks in the community. They have trouble keeping up with what's happening, the speed of the change that's coming, and then it's easy to lose the mission in the details in some cases. Those are very controversial, and it's not hard to see the controversy; in fact, increasingly I think there's polarization across various issues with Title IX. So you also, from a leadership perspective, are dealing with something that's very complex, very dynamic, and very controversial.

If that weren't enough, the plate tectonics of Title IX tell me that earthquakes are coming, and yet it's not entirely clear when they're going to strike and what the impact will be. We live in a time of tremendous uncertainty as to what the future of all of this looks like. I see the courts and Congress and the regulators coming at this maybe from different perspectives. There are members of Congress that would like to take Title IX one direction; others, a different direction. Courts are beginning to chime in, but we don't really have a large set of court cases that give us the clearest mandates that we need to know what we are supposed to do. And of course, the regulators seem to be very active; and of course, we have an election coming around the corner, which could change things as well. So when you think of this complex leadership challenge that you-all have, I want to make sure you understand I empathize with this. You're leading your institution at a time of tremendous complexity, a time of controversial and polarizing opinions about the future of Title IX, a very dynamic situation where new guidance and rulings are literally coming out every day. And then there are fundamental tectonic issues at play, not the least of which are due process issues, which I know you have been concerned about, academic freedom, administrative autonomy.

At the basis of all of this is something perhaps even more fundamental. The founding fathers of the United States did not contemplate such a heavy role for the central federal government in the regulation of higher education. I see any number of issues eventually winding their way up to the United States Supreme Court, testing a variety of issues, not just due process but academic freedom, First Amendment issues, and even the role of the federal government in higher education.

I wish I could be clearer about the outcomes, but the truth is we don't really know what the future will bring, other than the potential at any given day we could see a fundamental shift in policy or direction coming from the courts, Congress, or even the regulators themselves as administrations change.

How do you work with that type of situation? Well, it's tempting to get pulled into the trench warfare of operational management over grievance and discipline systems, and those are important, but what I'd like to make sure that we focus on is that Title IX actually has perhaps a slightly different objective than simply creating college courts, which of course that has been one of the big features of this is the creation of a quasi-judicial body on campuses to deal largely with acquaintance rape and sexual violence. They've actually given us guidance in four distinct areas of operation, each of which are important, one of which might actually be the most important and sometimes it's lost in the controversy.

So if I could, just to take a minute, and introduce you to the four corners model, this may guide your decision-making on how you allocate resources and approach issues that arise in your environment. In one dimension, OCR has asked us to have the proper organization and management structures in place, and this includes having a properly situated and supportive Title IX coordinator with sufficient resources and personnel for the job. It also involves extensive training requirements. I'll just say this, and I can say it again and again, OCR has really hammered the need for populations -- specific and general population training in Title IX. Just recently, Wesley College received a resolution agreement that went into this in almost excruciating detail. It reinforces what we've seen from OCR over the last four years.

In another area of operation, OCR has really focused on grievance systems, investigation, and discipline, essentially prosecuting offenders of sexual violence, crimes, et cetera. This has brought in a lot of lawyers. And so the field -- you probably have noticed this. Of course, I'm the worst offender because I'm a law professor, so I should train lawyers; I'm not just a lawyer. A lot of us have come into this deal police trained, prosecutorially trained, litigators, and have brought the message of how to improve and tinker with grievance and discipline systems. Of course, this is very important because, as OCR just told us recently in its Wesley resolution -- we sort of knew this all along -- we have to respect the rights of respondents, along with the rights of survivors or victims. So due process is not insignificant; it's not thrown out the door simply because Title IX has arrived.

These are important areas of focus, although I will say, one thing that startled me when I ran my Title IX system at Stetson, is how often individuals wanted something other than grievance discipline systems. They wanted different kinds of responses, and this goes back to the mission of Title IX. Where we see sex discrimination, Title IX asks us to respond, to respond appropriately. Sometimes the proper response is grievance and discipline, but often the responses that people will want come from a different polarity.

That leads into the third area of operation. The third area is providing support and assistance to impacted individuals. Actually many people are impacted by Title IX, independent of a grievance system or in some cases parallel to it. So I often had survivors or victims who wanted class schedule issues to be managed. They wanted counseling resources. They wanted help with local law enforcement. They weren't necessarily looking to file a grievance or go through a legal process of a particular kind. Respondents need assistance too, and I will say that a lot of institutions are exploring and developing more helpful resources for respondents who are going through our system to make sure that they're treated fairly as well. And then there's the vast sea of individuals who are impacted by sex discrimination, but it may not be the primary grievance in a process that we have. What about the roommates who are up all night helping someone who's been sexually assaulted? OCR has put a lot of emphasis in providing services to people who have been impacted independent of, sometimes parallel to, the grievance processes; and this, of course, is not to be overlooked.

Finally, in the fourth corner, OCR really is trying to shoot for culture of change. They talk a lot about culture and climate management and how to move forward to create a culture that reduces or eliminates sex discrimination. I wonder sometimes, and I'm wondering with you, perhaps, will having college courts actually achieve the mission of reducing or eliminating sex discrimination on its own? And I don't think the verdict is in yet as to whether or not this is going to be substantially impactful on its own to change the issues related to Title IX on college campuses. I would invite you to consider that perhaps educational solutions may be much more powerful than legalistic solutions; and at least, at the very least, they complement those types of solutions. Right from the very beginning with the Yale resolution process, OCR pointed out how Yale used its world-class educational resources to address culture and climate. They have continued to tell us again and again that they want us to be able to survey our climate, to understand what's happening on campus, and to engage in proactive efforts to create a culture that continues to reduce or eliminate sex discrimination. That is the future of Title IX. I think in 2025 we are likely to see campuses with much more full-blown educational interventions and just perhaps a little bit less emphasis on legalistic interventions and legalistic grievance systems.

It would be really sad if, in the process of coming into compliance, we let our educational mission suffer. I do worry sometimes that the impact of Compliance University and particularly Title IX regulation may lure us to create

perfect machines of discipline and grievance but in the process pushing people away from why we come to campus in the first place. I'm a deep believer in that educational solutions may be more impactful than legalistic ones. Right now we've seen the power of bystander intervention training. The University of Central Missouri is using an enrollment management technique that's showing unbelievably promising results of victims of sexual violence. I think there's opportunity here, and I'd like you to think about, in this perhaps dark moment before the dawn, that the light in the tunnel on Title IX is to not allow ourselves to be too overly focused on just one area of Title IX operation but begin to imagine how we can recreate a culture where a lot of the issues that lead to grievance begin to dissipate and possibly even disappear. It may sound a little utopian, but we're already seeing campuses moving in that direction and having success in that way. I even imagine a time where Title IX work becomes more resource-positive.

Underlying all of this is where we started, which is I think perhaps the most important message of all, is that if we sacrifice one civil rights metric for another, it will become self-defeating. These civil rights laws, from due process to Title VI, Title VII, et cetera, mutually work together and need to work together. We can't abandon one for the other. And finding that mix, I think, is the central leadership challenge of institutions such as yours in this day and age; it's how do we find that proper balance and make sure all rights are respected, all civil rights metrics are taken forward. And perhaps even beneath all of this is respect for the rule of law, which concerns me a little bit in our society. I think as our students watch what we do, one of the things they're watching and learning is how the rule of law evolves in a time of complexity and controversy and dynamism and how we operate to meet those challenges. It would then be very sad to disrespect one set of legal principles for the benefit of another. I wonder what kind of lessons that would leave for the students of today as they leave our institutions and go forward.

I hope this message has been helpful to you. I just want to hit the key points here. I, again, empathize with the leadership challenges that you have. I don't think there's any point in trying to pretend that we don't live in a dynamic, complex, controversial time with enormous tectonics underlying. We have to prepare our populations for change and dynamism to come. I don't think this will go on forever, but I do think it could go on for quite some time. I would hope that, from an institutional level, that you'd make sure that the four corners of compliance are respected equally, that energy is put into all four areas of organization: grievance, discipline, impacted individual assistance, and culture work. My message consistently has been, and this is what brought me to this work, is that I think an educational solution is far more powerful and more promising in the long run than becoming overly focused on the legalistic creation of a college court. Who knows? The Supreme Court may tell us such a thing is unconstitutional. But we'll still have hard Title IX work to do. “

President Capilouto introduced Martha Alexander, Deputy Title IX Coordinator and Compliance Officer at the University of Kentucky. Prior to joining the University, Ms. Alexander served as the Assistant Director of the Office of Equity and Inclusion as the Deputy Title IX Coordinator at Eastern Kentucky University. While in private practice, Ms. Alexander litigated civil rights discrimination cases, advised clients regarding employment matters, and provided guidance to clients on a variety of issues affecting higher education institutions.

Ms. Alexander thanked the Board for the opportunity to share an overview of UK's Title IX policy. She began that:

“the Office of Institutional Equity and Equal Opportunity, actually is responsible for all – for taking care of all forms of discrimination and harassment on our campus; we do that through our Policy Administrative Regulation 6:1. The policy that I work the most closely with is Administrative Regulation 6:2, and that's a special carve out from Administrative Regulation 6:1. AR 6:2 deals with very specific forms of severe sexual harassment, the types that are actually covered by the focus of Title IX at this point. 6:2 covers sexual assault, dating violence, domestic violence, sexual exploitation, and stalking.

We cover all of those things, and there are very specific ways that I investigate things. First, we do this with a clear division of authority. My office is unbiased. My job is only to investigate complaints that come in. Ashley, (Ms. Rouster Rigby) who you will hear from in a second, deals with supporting impacted students, particularly survivors. Anything that respondents need, I work with them to get that done.

When a report comes in, and we get reports from numerous people on campus, typically (they are) mandatory reporters. Everybody on campus is a responsible employee or a mandatory reporter, and what that means is if a student or faculty or staff member discloses something that would be anything that falls within 6:2 (Administrative Regulation), they need to let us know immediately. The reason for that is these people are determined to have been -- have the authority to take care of the situation. That puts the University on notice, and that's when our responsibilities under Title IX start to run. Some of these regulations that Mr. Lake talked about have placed very specific time frames on our ability to respond. The big one is 60 days. So once the University is on notice, OCR has told us that they expect us to be finished with our investigation and adjudication process 60 days later. That's why whenever I'm training mandatory reporters and responsible employees, I let them know how important it is that I find out immediately when they know something.

When I find out that something happened, I reach out to the complaining party. I do that through an e-mail, and it's a pretty nonthreatening e-mail that says basically, 'We've received a report that you might have experienced something; please come talk to me.' It sets out your rights under the policy, and it directs them to Ashley as a confidential resource and provides a list of University resources.

Sometimes I hear back from them immediately; sometimes I never hear back from them. The point is that they're aware of the resources, and I continue to reach out three more times to them. If after that third time I haven't heard back, I assume they don't want to talk to me, and I send them a letter that says, 'Okay. I get it; you don't want to talk to me. That's fine.' And I reiterate they can go to Ashley. I reiterate that they have resources, and I make them aware of their rights under Title IX, which includes the right to come forward and file a complaint at any time.

That means somebody could experience something in their freshman year and not want to come talk to me about it until their senior year, and that's fine. Under Title IX that's fine, but it does limit our ability to respond. That's why we do encourage people to come forward and reveal it and talk to us as soon as possible. If we've gotten into a situation where somebody does want to come forward and make a complaint, then we start an actual investigation, full-blown. That includes talking to the complainant; it includes notifying the respondent. The respondent gets a notification the same way as the complainant. The difference between their e-mail and the complainant's e-mail is that respondents are notified of their rights under the process as well, and it lets them know that they need to schedule an appointment with me within ten days. That's just to keep things moving along, lets them know they have the right to have an attorney with them if they want to, among other things, and it also provides them with a list of the resources on campus.

Now, the thought process behind all of this is that we want people to be able to continue their education as uninterrupted as possible. This process is a very drawn-out process, and it is difficult for all parties involved. We're aware of that, so we try to make it as easy as possible. Once I've talked to the complainant and the respondent, I talk to their witnesses. I look at any documents that they might have, and these days people have a lot of documents. We see a lot of social media postings. We see a lot of text messages, phone logs, those sorts of things. We review all of that, and at the end of it, we make a determination that if, more likely than not, something happened; if it is, then we send it to the hearing board.

If it goes to a hearing board, the Title IX Coordinator –at UK, it is Patty Bender -- takes a look at my investigative report. She talks to me; she talks to our other investigator; and she makes a recommendation based on AR (Administrative Regulations) Policy. On page 21 of that 22-page policy, there's a grid of recommended sanctions. The Title IX Coordinator considers everything that she's read. She considers those recommended sanctions, and at that point she presents the respondent with a recommended sanction. This is our informal resolution process. Through this process the respondent can accept the recommendation and decide that we're not going to go to a hearing. If that happens, the process is over. If it doesn't happen, we move to a hearing.

At this point, this is when my role ends in the process. I can talk you through it because I know the process, but from here on out, I don't really have anything to do with it because I'm the investigator and I don't want to taint the hearing body.

The hearing panel is made up of 21 members. We have hearing officers as well; we have three of them. These are people who are not affiliated with my office and only loosely affiliated with the University. All hearing officers are attorneys; they are retired judges, retired law professors, practicing attorneys. They're well-versed in the law, and they're well-versed in running hearings. The hearing officers randomly select three members of this 21-member pool, and those become our hearing panel.

Our prehearing process is substantive. It starts six days out from the hearing. At that point, all parties have to have their prehearing filings in. These are names of witnesses, names of support people that are going to attend the hearing with them. They can have up to two. They include any evidence that they want to present at the hearing and anything else they might deem relevant. A lot of these things are accommodations to attend the hearing. Our process and Title IX in general specifically says that both complainant and respondent can attend in any way that is best for them. So that can mean sitting in the same room with somebody. It can mean being in a different room and video conferencing in. It can mean being in the same room with a screen. Everybody has different needs, and we can accommodate those, we just have to know what they are. So all of that is included in this prehearing filing that goes six days before the hearing.

The hearing officer reviews all that, determines what is relevant, and then we put together a hearing file. The hearing file consists of my investigative report, which is a very thorough document. It includes a record of every person I talk to, including witnesses, complainant, respondent, every interaction I had with them, and usually every single document that they provided me. The idea of this is that they're going to be able to look at this document and make a decision based on that document without ever having to talk to me. That is what I'm thinking of when I'm writing this document. Now, I actually do talk to the hearing panel; I'm one of the witnesses. But the idea is that, if they needed to, they could look at the investigative report, know what we did during the investigation without having to talk to somebody. All of that goes in the hearing packet. Anything that the hearing officers determine relevant from those prehearing submissions goes into the hearing packet. We provide that to the parties and the hearing board three days before the hearing.

I should also say that the parties actually have the right to contest any of the hearing board members. If they think that somebody is biased, they can tell us that and the hearing officer will determine whether or not the hearing panel member should serve. That's why we have such a large pool, so that we can draw other people. We also select alternate members of the hearing board for every hearing; so if somebody gets sick, we have an alternate to stand in.

The makeup of the hearing board is 21 members, and we have a number of faculty members on there and a number of staff members. There are no students.

This hearing panel, per OCR guidance, cannot include students; so that's why it's only faculty and staff. We always welcome more people. So, weirdly, this is not a hearing panel where there is a waiting list. If you know somebody, let them know that we would love to have them. So once we've gone through this hearing process, getting everything ready, at the actual hearing there are three parties. There's the respondent, the person who is accused. The respondent can bring with them up to two support people. One or both of those people can be an attorney if they want; it's whoever they feel most comfortable being there. We have the complainant. The complainant can also have up to two support people of their choosing. One can be an attorney; one cannot be. It doesn't matter, whatever they want. The third party is the University complainant. This is for students. This is somebody from the Dean of Students Office who represents the University. Their job is to present the case on behalf of the University. If we are talking about this in terms of, like, a criminal court analog, they would be the prosecutor. They just put everything forward that we've collected during the investigation. Any additional evidence that they might have, they put it forward to the hearing panel.

The way the hearings kind of work is they start with the hearing officer calling everything to order. The hearing officer's role in this is really to be sort of like a judge. The hearing officer runs the hearing and determines the order of admissibility of evidence. The University complainant starts first. They present all of their witnesses. Then the respondent gets to present all of his/her witnesses, and then the hearing panel goes into deliberation. The important thing to note here -- couple of important things, actually -- the first is that the respondent and the complainant can cross-examine each other but they cannot do that directly. They submit questions to the hearing officer, who asks the questions that are relevant of the parties on the other party's behalf. Second thing is the standard of evidence that we use here. We use the preponderance of evidence standard; that just means more likely than not; that means about 50.1 percent. So that is very different than what you typically think of when we're talking about sexual assault and criminal activity, and the reason for that is very simple. These are not criminal activities. What we're talking about are violations of the University policy on civil rights, so we use a civil standard.

The hearing board goes into deliberations, and they come back with a finding of responsible or not. If the finding is 'not responsible,' then we move on. Case is closed. If the finding is 'responsible,' then they go directly into a sanctioning hearing. What this looks like is pretty much the same as the other hearing. The University complainant at that point presents a recommended sanction to the board. They also present any sort of disciplinary record that the respondent might have, and both the complainant and the respondent have the opportunity to present an impact statement; a statement of how this specific thing is going to impact their ability to continue at the University. The hearing board then goes back into deliberations, determines the appropriate sanction, come out, tell the complainant and respondent, and both parties get this in writing within seven days. That's the end of the hearing process.

Now there's a couple of things I want to emphasize; the first being training. When it comes to training of the people on this hearing board, the hearing panel and the hearing officers, we do pretty intensive training on a regular basis. We just did a refresher training that was three hours long, and that includes anything about our policies that might have changed. We go through all the procedures, and then we talk a little bit about sexual violence in general and how it impacts different parties. We also train both parties, both the hearing panel and the hearing officer, on the types of things we do to help the parties get through this process. And we do that because, as an investigator, I usually put into place a no-contact order. These are mutual, and the goal is to maintain the status quo during the investigation process and through the hearing process. We always tell the hearing panel members that because I don't want them to see that and think that we've determined that one person is responsible or not before the hearing. We also talk about all of the accommodations we can do for living (arrangements.) But we do just a lot of different accommodations for a lot of different reasons, and we make sure the hearing panel is aware of that so they don't prejudge based on that.

The final item I want to touch on is the separation of responsibilities within this process. There's me; I'm doing investigations. Once the investigation is finished, I'm done until I actually present at the hearing as a witness. There's Ashley. Her job is with the student. She has nothing to do with my investigation process at all. We have the Title IX Coordinator. She steps in to actually make sure the hearing gets going the way it should go, and she has not much to do with the investigation process. And then we have the University complainant. They also are not affiliated with my office or students, that is, by the Dean of Students Office. If we're talking about faculty or staff, it's going to be somebody in the legal office. It's a very clear division. The hearing panel knows nothing about the case until they get the hearing packet, so they're also not involved. Hearing officer, not involved. The point of all of this is to ensure that not just one person is making this decision. If we make a decision of responsibility, we want it to be clear that we provided that person with a fair process.”

Trustee Young asked that if it is determined that an assault rises to the level of criminal assault, at what point is it handed off to the police? Ms. Alexander stated that part of the initial outreach to a complainant is to advise that they always have the right to file a complaint with the police. UK's procedures, per OCR regulations, require an investigation regardless if the police do or do not. UK's investigation and adjudication process is completely parallel. It is the complainant's decision whether or not a police complaint is filed. It is a difficult process and it has a huge impact on both survivors and respondents. UK wants to make sure that they have the ability to do that. The Office of Institutional Equity and Equal Opportunity office is also responsible for the Clery reports. If something occurs on campus, UK files a report to inform the police for statistical purposes, but the Office is not required to actually instigate a criminal investigation.

Trustee Blonder stated that the American Association of University Professors (AAUP) published a white paper on Title IX and recommended “clear and convincing evidence as the standard”, not “preponderance.” She asked what other universities are doing, if across the board, they are using preponderance? Ms. Alexander and General Counsel Thro stated it is almost totally “preponderance of the evidence”. General Counsel Thro offered that what is “essential to “preponderance of the evidence” is that everyone have access to all inculpatory and exculpatory evidence”

Trustee Grossman asked Dr. Lake for his comments on the AAUP white paper.

Dr. Lake responded:

“It's actually not the only document that's been prepared by professors challenging fundamental positions that OCR has taken. The place I would start is I do think OCR may have made a slight tactical and political error by not including professors as profoundly in the initial drafting process. A lot of lawyers and other folks chimed in with OCR in various points when they were developing their guidance, but the professors weren't included as much. It's part of what drew me into the field. I think there are a number of professorial types that are a little sore about that. They feel that they want their voices to be heard, so feel maybe it will take away academic prerogative. What Bill (General Counsel Thro) said about the clear and convincing standard is a hundred percent correct. The OCR has clearly mandated that standard for use in Title IX issues, and it has become ubiquitous for people to use it.

I actually think the real challenge with the ‘preponderance of the evidence’ standard is translating a legal standard, which I understand as a lawyer in court, for use with civilians when they are operating an acquaintance rape court on campus under Title IX. What you'll find is that a lot of folks really struggle to try to figure out what does this actually mean when we're operationalizing it on a college campus for educators as opposed to using that standard in court. I'll be very specific about this. One of the things we're seeing a lot of under that standard is that hearing panels or single investigators are coming up with a result that I call a ‘push’ where they say there isn't sufficient evidence one way or another to make a determination of either someone didn't do it or they did do it. Functionally that's what happened at FSU (Florida State University) with Jameis Winston, and that particular result is uniquely unsatisfying to everyone because both the respondents and the complainants complain that they didn't get the result they wanted. Then there is a sense that OCR wonders if a system that results in a tie, a split, where there's no ability to make a decision, is that actually meeting the necessities of Title IX intervention?

I think pragmatically AAUP, because they don't necessarily have a lot of operational experience actually doing these systems, will probably revisit its initial white paper with some more depth to help develop the dialogue. But I do want to say one thing about Title IX I think is really critical, although we have to follow

the law, and you do live in a circuit as well where the law is particularly clear on due process, Title IX really wants us to chime in and challenge and discuss the underlying issue right from a technical or strategic level. I think it's incredibly important to foster a vibrant dialogue about every single aspect of Title IX, so I applaud what AAUP did, even though I think if I had drafted the document I probably would have done one different than what they did.”

President Capilouto introduced Ms. Ashley Rouster Rigby, the Intervention Program Coordinator at the University of Kentucky's VIP, or Violence Intervention and Prevention Center. Ms. Rigby has a decade of advocacy and activism work in the field of sexual and gender-based violence response, intervention, and prevention. She has been privileged to serve survivors and is an advocate of change in many different spaces in lots of different ways. An alumna of the University of Kentucky, she has found her home in working for change on the college campus and is most fulfilled when empowering others to create the world we want to see.

Ms. Rigby restated her name and title and began:

“I wanted to take a minute and talk a little bit about what it is that I do at VIP. I am the advocate here at UK. I provide direct support to individuals of the UK community who have been impacted by interpersonal violence. That includes things like sexual assault, sexual harassment, stalking, dating violence, domestic violence, intimate partner violence, and things like that. And when we say ‘impacted,’ it truly means anyone who's been impacted.

I certainly meet with a lot of those direct survivors who have experienced an incident of violence, but I'm also providing support to others who have been impacted by those instances as well, such as roommates, classmates, significant others, loved ones, professors, things like that.

What that looks like is that I'm not a licensed counselor or therapist. We have a wonderful counseling center here that we partner with and work really strategically with. But my role as an advocate is to help provide and explore options, to help people gain access to resources, and then to support someone throughout their journey in a way that is always centered in healing and recovery. I want to see individuals who have been impacted by violence be able to continue to be a Wildcat, be able to continue to have access to education here and in a way that leads to retention and ultimately graduation.

My role is to help survivors understand what are the reporting options available to them, whether it's the criminal process or our Title IX process on campus or sometimes other processes, depending on what kind of communities that they're involved in here at UK. I'm helping them to understand what that is. I'm helping to facilitate those reports. I'm sitting with them while they're making those reports and sitting with them in the immediate aftermath and what that looks like. I'm helping to be in all of the places that they may need to be. I'm helping them also

explore options as it relates to maybe medical advocacy and needs.

One of the big things that I do is supporting around what we refer to as 'remedies and accommodations.' Martha (Ms. Alexander) touched on that as well because that's a lot of where I will interact with Martha and her office. One of the primary ways that I'm actually able to get our survivors to a place where they're willing to meet with and talk with Martha so that our University is starting to get those reports in an official way that we're able to follow up on the campus climate. That, again, comes back to accommodations. I'm working with students to say, 'we want you to be able to continue to be academically and socially successful here at UK, and we recognize that you've experienced trauma and are operating from a place of crisis that may negatively impact your ability to be successful. What can we do in the immediate and looking to the future to ensure that you're going to continue to be able to have access to all the spaces you need in ways that address both your physical and emotional safety?' Things like that can include accommodations around classes...maybe getting some classes excused that someone may have missed in the 24 to 48 hours after experiencing an assault. Working with instructors to make accommodations, (for example) maybe somebody did get up the next day and take a test but they didn't perform at their best and we don't want that to have a negative compact on their academics.

Another service is possibly moving residence halls. Where Title IX is focused on campus, what I do with VIP is focus both on (campus) and off (campus). I have relationships with a lot of the off-campus housing complexes so that I'm able to work with them to move someone who may have experienced violence in their current apartment to another apartment in that complex. We're also working around safety planning, working with UKPD if necessary, helping to explore safe paths through campus. With the physical and emotional, helping to make sure that that individual is getting connected to all of the resources available to them, both on campus and in our community.

It (the process) looks really individual depending on each person. Depending on the support networks they have, depending on what's right for them in moving forward, but certainly making sure that they're able to continue to stay at UK in a way that works for them is one of my primary goals.

One of the unique things about advocates is that I'm one of the only people, really the only person, who can be in all of the spaces that that survivor is going to be in. I can literally meet someone at the hospital for a SANE (Sexual Assault Nurse Examiner) exam, go with them to make a police report, bring them back to campus and outreach to their instructors and their residence hall coordinator, and then walk them over to Martha's office to make a Title IX report. I'm often one of the only people who is able to see that entire comprehensive experience that our student is going through. I'm also able to connect those resources to help with the scheduling needs. It can be an overwhelming process. I'm kind of that person, when I'm working with someone, who's able to say, 'You know what; you don't need to worry

about that follow-up. I'm going to go ahead and take care of that, and I'll let you know when we're ready for step two.' That's kind of my role on campus.

The other piece that I just want to take a minute to recognize is that this is my third fall at UK in this role. I was a student here a while ago, ten plus years. It's been great to be back on campus, but this fall has been uniquely challenging and has looked significantly different than the past two falls that I've been here, specifically when it comes to both the reporting and walk-ins that we're getting at the VIP Center and what our survivors want to do and the concerns they have with doing that.

I'm talking about reporting, specifically. Because of a lot of the media attention that our process has gotten and the way that the media has chosen to report on that, unfortunately, we have seen a chilling effect. That is a pretty common term that many of you are probably familiar with. We've seen a decrease in the amount of walk-ins at the VIP Center, and that is of concern to us.

A lot of the decrease -- I was running some numbers to try to see kind of where does that fall. What we're missing is a lot of the students who typically come in and sit down with me and they're not able to name what it is that has happened to them. They don't sit down in front of me and say, 'Ashley, on Friday night I was sexually assaulted' They come in, and they say, 'I don't know if I should even be here. I don't know -- I don't want to take up resources. It's just that my friend told me I could come and talk to you, and something happened, and I can't sleep, and I didn't make it to class, and I'm scared to see this person.' Those are the people who are most at risk for not being successful, and those are the people that we're missing right now coming through our doors. The other piece of that is when survivors are sitting in front of me and I'm starting to talk with them about Martha, and like Martha mentioned, I'm a part of her outreach, and then I follow up with an individual e-mail to every single person that Title IX receives a report on. A lot of times we see these survivors reach back out to me because I'm confidential and I'm safe and, you know -- no offense, Martha -- slightly less threatening. My email gets to be a little bit more informal. I'm not in a suit; I'm so approachable. We see those survivors reach back out to me, and then I'm often able to explain, 'Here's who Martha is; let me vouch for her; let me vouch for this process in this office.' We are then able to facilitate the meeting with her.

I'm hitting a wall with survivors who are saying, 'Yeah, but it went public,' and, 'Yeah, I really need support from that office, and I really want the University to be aware of this so that if it does become a pattern that something can be done. But I'm too scared that going there is going to result in my parents finding out and my loved ones finding out and the people in my class being able to identify me because even though the names weren't there, I could identify that person.' I do want to take a minute and recognize that and to say that this semester, this fall, is looking different and as an advocate to vocalize that I'm concerned about that -- I'm worried about those students. We're still there to support them."

General Counsel Thro summated for the Board that Dr. Lake,

“talked about four avenues or corners of Title IX. One is obviously change in THE culture. Previously you have heard about our experience with the Green Dot program where we are a national leader. You have also heard Diane Follingstad in the Center for Research on Violence Against Women. In the Campus Attitudes Toward Safety (CATS) survey, we have the most comprehensive survey of campus climate in the country. That is being used by other institutions, and we're trying to first understand the problems on our campus so that we may solve them.

Second, when these tragic events do happen, you've heard from Ms. Rigby and the VIP Center as to what we do and what we support.

Third, in terms of our grievance system, Ms. Alexander has explained how we seek to vindicate both the value of equality, making sure that the victim/survivor has an environment free from nondiscrimination (sic) but also the value of due process, ensuring that the accused person, or the respondent, receives the due process that he or she deserves.

Finally, all of this with respect to training, our Title IX Coordinator, Patty Bender, with Ms. Alexander, with Ms. Rigby, with others throughout, is training numerous people in terms of their responsibilities as mandatory reporters, what is and is not permissible for students. We speak to most of the athletic department, all of our student athletes, so that's what we're trying to do.”

Trustee Grossman asked how many advocates (like Ashley) UK had and what the caseload might be. Ms. Rigby stated that she was only advocate on UK's campus and currently, counting from the beginning of the Fall semester, she has 73 cases, which is down from last year.

Trustee Shoop asked Ms. Rigby how large was the issue of a victim not wanting the public to know or their identity known and is this a primary issue with victims?

Ms. Rigby stated that “it is one of the significant issues. One of the things that research has shown as well, is that when advocates are working with someone, it's very rare that on the first meeting they're at a place where they want to report to anyone. It's usually in working with an advocate and getting confident around what happens next and exploring those options that they then get to a place where they're ready to engage in some sort of formal process. One of their concerns is, if I tell anybody else, who's going to know? They worry about privacy, both for friends and family, but also for the student that they are accusing. A lot of times that person is also closely related to them socially. Also, a lot of times there can be a misconception that survivors are coming forward and their immediate concern is ‘I want that person to get in trouble’ or ‘I want that person to face consequences.’ But their primary motivation is ‘I don't want this to happen to anyone else and I want to feel safe again.’”

Trustee Blonder asked about a provision in AR 6:2, where a student would go to the University Appeals Board (UAB) and also the rationale for no student serving on the hearing panel. Ms. Alexander stated that AR 6:2 actually creates an appeals board that includes members of the

UAB, called the Sexual Misconduct Appeals Board. She stated that “within this appeals board, a ten-member panel including the Chair, there are people who serve on the UAB but have specialized training in addressing sexual misconduct cases. Once a case has gone through the hearing process, both parties have the right to appeal, and they appeal to this board. They have seven days, and in that seven days they can appeal on three grounds: due process, the sanction was not commensurate with the violation, and new evidence. These are the only three grounds that they can appeal on. Once they've appealed to that Board, the Chair, (currently Franklin Runge, Professor at the College of Law) notifies all the parties of the appeal. All parties have the right to submit information in response to that appeal. The Chair selects two other members of the board randomly, three members in total, and they consider the appeal and issue an opinion. All this happens pretty quickly. It's a tight time frame for appeal because we recognize that drawing this out makes it more difficult for all the students.”

In response to students serving on the Sexual Misconduct Appeals Court question, Ms. Alexander stated this is in response to OCR guidance that no students serve on hearing panels or any adjudication board.

General Counsel Thro reiterated the same process would apply to allegations about a staff member, a staff member sexually assaults a student, or a staff member sexually assaults another staff member, and also claims involving faculty members. Everyone in the University community undergoes the same investigative process, the same hearing process.

Trustee Reid asked that if the complainant was a staff member, are staff members allowed to be on the hearing board? Ms. Alexander and General Counsel Thro stated that staff or faculty members on the hearing or the appeals board are chosen at random by the Hearing Officer.

Trustee Shoop asked for further explanation regarding what was meant by “that it would be too late” if an incident happened to an individual as a freshman and they did not report until the student was a senior. Ms. Alexander stated that though there was no time limit on filing a report with the Title IX office, the longer an individual waited to report, the more difficult it would be to investigate the incident.

Ms. Rigby added: “one of the accommodations that we provide is that those accommodations are available to them for the duration of the time they are a member of our community. So if somebody does experience an assault in their first year, we recognize in particularly high-stress times, that can escalate crisis around those times. They may be a junior, and I may have seen them as a freshman, and they may come in and say, ‘I had something that has triggered this, brought it back up, and I'm in need of some academic support.’ That support is available to them, regardless of any sort of time frame. So they may go on to be a grad student and come back and see me, so that's another piece of that timing.”

Vice Chair Akins asked that if a student has a complaint, perhaps against a faculty or staff member, and there are faculty and staff serving on the Appeals Board, does the student feel comfortable that there is fairness with the process? Ms. Rigby stated “we certainly can't speak for every survivor to say that somebody may not have a concern around that. One of the things that's most important for survivors is that we have a clear process and that we follow that process. That's

what's most important for healing and recovery, and there's been a lot of research done to support that as well. In my experience, they're less concerned about necessarily who's serving on the appeals board.”

Ms. Alexander reiterated that individuals, with either the Hearing or Appeals Board, may challenge if they feel like there would be a conflict. For example, if there is a professor in the English Department accused and we have another professor in the English Department chosen to be on the hearing panel, the students could have the opportunity to challenge any sort of bias.”

Chair Brockman thanked the panel for their participation.

M. Closed Session

Chair Brockman announced that the Board of Trustees needed to go into closed session in order to discuss proposed or pending litigation. Vice Chair Akins moved that the Board go into closed session per KRS 61.8101 C, and that the session shall be for the discussion of proposed or pending litigation against or on behalf of the University. Trustee Vance seconded the motion and it passed without dissent.

Chair Brockman stated that only members of the Board would be permitted to attend or participate in the closed session of the Board. If the Board feels that there are other persons who have valuable input to the topic, such persons may be invited to participate, one at a time. Chair Brockman asked President Capilouto, General Counsel Thro, and the University's outside counsel to join the Board in closed session.

The Board went into closed session at 12:38 p.m.

N. Open Session

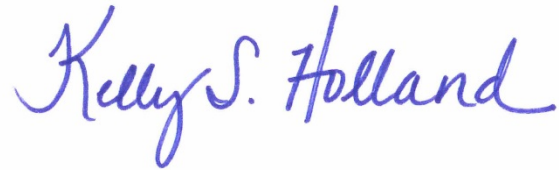
At 1:59 p.m. Chair Brockman stated that the closed session of the Board had concluded. No action was taken in closed session and the Board was back in open session.

Trustee Grant called attention to the booklet at each Trustee's place. *They Came Before: The Legacy of African-American Pioneers and Trailblazers at the University of Kentucky* was a book written in partnership with the UK Alumni Association. She pointed out that Trustee C. B. Akins, Sr., and Interim Vice President for Institutional Diversity Terry Allen were two of the honorees in the booklet.

O. Meeting Adjourned

Hearing no further business, the meeting was adjourned at 2:00 p.m.

Respectfully submitted,

A handwritten signature in blue ink that reads "Kelly S. Holland". The signature is written in a cursive style with a large initial "K" and "H".

Kelly Sullivan Holland
Secretary, Board of Trustees

(PR 1, PR 2, PR 3, PR 4, PR 5, PR 6, PR 7, PR 8, and PR 9 are official part of the Minutes of the meeting)