

Sexual Assault On Campus

A Frustrating Search for Justice

A culture of secrecy surrounds higher education's handling of sexual assault cases



THE CENTER FOR
PUBLIC INTEGRITY

Investigative Journalism in the Public Interest

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Go online for more about sexual assaults on campus including video interviews, audio clips, supporting documents and related stories at: http://www.publicintegrity.org/investigations/campus_assault

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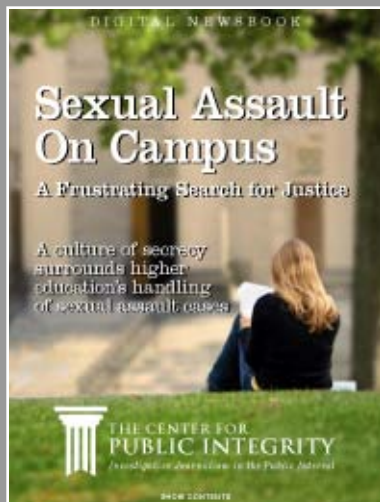
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About the Project

Starting in February 2009, the Center for Public Integrity fielded a team of reporters to lift the curtain on how colleges and universities respond to reports of sexual assault.

Reporters Kristen Lombardi and Kristin Jones began by surveying crisis services programs and clinics on or near college campuses across the country; 152 of these facilities completed the survey. The Center's team then interviewed nearly 50 current and former college students who say they were raped or sexually assaulted by other students and, in some cases, professors. The journalists also interviewed students accused of sexual assault, as well as dozens of student affairs administrators, judicial hearing officers, victim advocates, sexual assault scholars, and lawyers.

Three federal laws that govern the way colleges and universities respond to sexual assault complaints became a topic of intense focus: Title IX, the Clery Act, and the Family Educational Rights and Privacy Act, or FERPA. Through a Freedom of Information Act request, the Center compiled a database of 10 years' worth of complaints filed with the U.S. Department of Education against colleges and universities for allegedly violating Title IX, which bans sex discrimination in federally funded education. The Center culled documents from lawsuits filed against schools for alleged Title IX violations, and built a second database of complaints filed with the Education Department against schools for allegedly violating the Clery Act, which requires that schools provide key rights to

victims, and that they collect and retain statistics of crimes occurring on or near their campuses.

FERPA, which protects the privacy of student education records, complicated reporting of these stories. As a practical matter, the law required that the Center obtain disclosure or privacy waivers from students in order to conduct interviews with school administrators about their cases or file successful Freedom of Information Act requests to gain access to documents related to those cases.

The Campus Assault project is generously supported by grants from the Dart Society, the John S. and James L. Knight Foundation, and the NoVo Foundation. Support for this and other Center for Public Integrity projects is provided by the Carnegie Corporation of New York, the Ford Foundation, Greenlight Capital LLC Employees, the John D. and Catherine T. MacArthur Foundation, the Open Society Institute, the Park Foundation, the Rockefeller Brothers Fund, and many other generous institutional and individual donors.

About the Survey

The Center for Public Integrity conducted a survey of on-campus and off-campus crisis clinics and programs that service students, faculty, and staff at four-year public universities. The Center took a stratified random sample of those clinics and programs so that universities in all regions of the United States were represented. The Center received responses from August 2008 through April 2009, and conducted follow-up interviews of survey respondents from May 2009 to July 2009. Of the 260 clinics and programs in the sample, 152 completed the survey for a 58 percent response rate. Respondents were asked, among many questions, how many student sexual assault cases they serviced in the past year.

To compare their answers to official numbers, the Center analyzed Education Department university crime data, which campuses are required to report under the Clery Act. The Center acquired its copy of the data from the National Institute for Computer-Assisted Reporting.

For the analysis, the Center computed a five-year average of sexual assaults for universities whose on-campus and nearby off-campus clinics and

programs responded to the survey. The years 2002-2006 were used as these represented the most recent final numbers. Universities can change their initial reports as they learn more about crime on their campuses, meaning the 2007-2008 numbers were still subject to change when the analysis was done. A five-year average was used to smooth out any years with exceptionally high or low incidents. Finally, those averages were compared to the most recent numbers reported by the clinics and programs that service those campuses.

About the Center

The Center for Public Integrity is a nonprofit, nonpartisan, and independent digital news organization specializing in original investigative journalism and research on significant public policy issues.

Since 1990, the Washington, D.C.-based Center has released more than 475 investigative reports and 17 books to provide greater transparency and accountability for government and other institutions. It has received the prestigious George Polk Award and more than 32 other national journalism awards and 18 finalist nominations from national organizations, including PEN USA, Investigative Reporters and Editors, Society of Environmental Journalists, Overseas Press Club, and National Press Foundation.

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A Litany of Barriers... A Culture of Secrecy

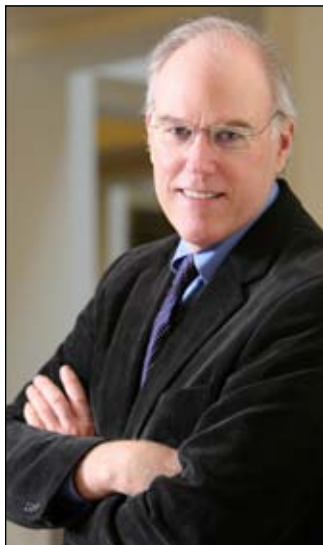
SEXUAL ASSAULT VICTIMS BEING RE-VICTIMIZED ON CAMPUSES
ACROSS THE COUNTRY

Commentary by Bill Buzenberg

Executive Director of the Center for Public Integrity

HUNDREDS of thousands of American teenagers enter college every year and soon find themselves jumping head first into a world of classes, friends, extracurricular clubs and activities, and a host of other lifestyle changes that come with living far from home.

While college can be a stressful time for all students, it can quickly morph into a nightmare for those students who become victims of sexual assault. One out of five female students can expect to be assaulted, according to a Justice Department



study, though colleges themselves tend not to make such statistics clear to all.

Over the course of a year-long investigation, the Center for Public Integrity found that students who have been the victim of sexual assaults on campus face a depressing litany of barriers that often assure their silence and leave their alleged assailants largely unpunished.

The majority of students who are sexually assaulted on campus remain silent. According to another national study, 95 percent of victims do not end up reporting the incident

to the police. Many victims do not report because they blame themselves, sometimes because drugs or alcohol was involved, or they do not identify what happened as sexual assault. Friends frequently do not know how to respond, and colleges

do not bother to teach them.

Institutional obstacles only serve to compound the problem.

Victims who find the courage to pursue justice and closure via university judicial proceedings must maneuver

through a system shrouded in secrecy where they encounter mysterious disciplinary proceedings, closed-mouthed school administrations, and off-the-record negotiations. Rather than guidance and support, these victims encounter closed-door meetings and stern words about never telling anyone. Through every step of the process, victims are faced with a litany of barriers that put justice even further out of reach.

Victims' advocates say that these institutional barriers have become the norm at universities nationwide,

and are a telling sign of schools' priorities. By silencing victims and turning judicial hearings into something like kangaroo courts, colleges prioritize their own reputations over victims' safety and support and turn their campuses into hostile environments for victims of sexual assault.

The Center for Public Integrity's study demonstrates how these trends affect real women: nearly fifty percent of the students we interviewed claimed that they unsuccessfully sought criminal charges, and instead had to seek justice in closed, school-run proceedings that led to either light penalties or no punishment at all for their alleged assailants. Nearly a third said that administrators discouraged them from pursuing rape complaints. Eleven students reported experiencing extreme confidentiality edicts, sometimes followed by threats of punishment if they were to disclose any information about their case.

The stories of these students make this much clear: as if being a victim of sexual assault isn't difficult enough, it becomes even more traumatic when survivors' schools become barriers to justice. Unfortunately, these judicial proceedings often do little more than re-victimize an already vulnerable student. ■

Key Findings

THE CENTER'S INVESTIGATION FOUND THAT EXISTING PROCESSES HAVE LITTLE TRANSPARENCY OR ACCOUNTABILITY

KATHRYN RUSSELL said it happened in her on-campus apartment. For Megan Wright, the venue was a residence hall. According to a report funded by the Department of Justice, roughly one in five women who attend college will become the victim of a rape or an attempted rape by the time she graduates. But official data from the schools themselves doesn't begin to reflect the scope of the problem. And student victims face a depressing litany of barriers that often either assure their silence or leave them feeling victimized a second time, according to a 12-month investigation by the Center for Public Integrity.

The probe reveals that students found “responsible” for alleged sexual assaults on campuses often face little or no punishment, while their victims' lives are frequently turned upside down. Many times, victims drop out of school, while students found culpable go on to graduate. Administrators believe the sanctions administered by the college

judicial system are a thoughtful and effective way to hold abusive students accountable, but the Center's investigation has discovered that “responsible” findings rarely lead to tough punishment like expulsion—even in cases involving alleged repeat offenders.

Research shows that repeat offenders actually account for a significant number of sexual assaults on campus, contrary to what those who adjudicate these cases on college campuses believe. Experts say authorities are often slow to realize they have such “undetected rapists” in their midst.

Critics question whether faculty, staff, and students should even adjudicate what amounts to a felony crime. But these internal campus proceedings grow from two federal laws, known as Title IX and the Clery Act, which require schools to respond to claims of sexual assault on campus and to offer key rights to victims.

The Education Department en-

forces both laws, yet its Office for Civil Rights rarely investigates allegations of botched school proceedings by students, largely because students don't realize they have a right to complain. When cases do go forward, the civil rights office rarely rules against schools, the Center's probe has found, and virtually never

Institutional barriers compound the problem of silence, and few actually make it to a campus hearing.

issues sanctions against institutions.

Many student victims don't report incidents at all, because they blame themselves, or don't identify what happened as sexual assault. Local

criminal justice authorities regularly shy away from such cases, because they are "he said, she said" disputes sometimes clouded by drugs or alcohol. That frequently leaves students to deal with campus judiciary processes so shrouded in secrecy that they can remain mysterious even to their participants.

Institutional barriers compound the problem of silence, and few actually make it to a campus hearing. Those who do come forward, though, can encounter secret disci-

plinary proceedings, closed-mouth school administrations, and off-the-record negotiations. At times, school policies and practices can lead students to drop complaints, or submit to gag orders—a practice deemed illegal by the Education Department. Administrators believe the existing processes provide a fair and effective way to deal with ultra-sensitive allegations, but the Center's investigation has found that these processes have little transparency or accountability.

The Center interviewed 50 experts familiar with the college disciplinary process—student affairs administrators, conduct hearing officers, assault services directors, and victim advocates. The inquiry included a review of records in select cases, and examinations of 10 years' worth of complaints filed against institutions with the Education Department under Title IX and the Clery Act, as well as a survey of 152 crisis services programs and clinics on or near college campuses. The Center also interviewed 33 women who reported being sexually assaulted by other students. ■

UNDERSTANDING THE LAW ►►

UNDERSTANDING THE LAW

Title IX of the Education Amendments of 1972

Passed by Congress in 1972, Title IX is the civil rights law that requires gender equity for males and females in every educational program or activity that receives federal funding. Title IX applies not just to K-12 schools, but to institutions of higher education as well. Title IX is familiar to most people as it applies to sports, but athletics is but one of 10 key areas addressed by the law. Under Title IX, discrimination on the basis of sex also encompasses sexual harassment, sexual assault, and rape.

If a college or university is aware of, but ignores sexual harassment or assault in its programs or activities, it may be held liable under the law. A school can be held responsible in court whether the harassment is committed by faculty or staff, or by another student. In some cases, the school may be required to pay the victim monetary damages.

As an alternative to suing in civil court, student victims can also ask the Education Department's Office for Civil Rights to investigate a school's response to sexual assault. The Office for Civil Rights has issued a 2001 guidance document covering harassment of students by school employees, other students, and third parties. The office mandates schools take "prompt and effective action to end harassment and prevent its recurrence."

Since its passage 35 years ago, Title IX has been amended three times, and has been the subject of a variety of reviews, Supreme Court cases, and political protest actions.

The Family Educational Rights and Privacy Act (FERPA)

In November 1974, Congress passed FERPA, as it's known, which protects the privacy of a student's educational records. The law

grants three, basic rights to parents of minor-aged students and students aged 18 and older: the right to access educational records; to challenge the records' contents; and to have control over disclosure of "personally identifiable information" in the records. FERPA applies to all schools receiving federal funds.

FERPA is also known as the "Buckley Amendment," after its principal sponsor, Senator James Buckley, of New York, who offered it as an amendment on the Senate floor. Congress has modified FERPA nine times over the past 35 years; its most significant amendments have come from the 1990 passage of the Clery Act (see below).

Interpretation of the law has long proven controversial. Congress never defined what constitutes an education record, so some schools have applied its provisions to cover pretty much any document that names a student — sparking charges that schools are using a broad reading of FERPA to conceal embarrassing information from the public. College administrators argue that FERPA requires closed disciplinary proceedings in a variety of matters, including allegations of sexual assault. But in promulgating its regulations, the Education Department has said that FERPA does not prevent an institution from opening disciplinary proceedings to the public, *per se*. Despite that declaration, confusion still exists over how colleges should apply the provisions of FERPA.

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)

The Clery Act became law in November 1990. It grew out of the grisly rape and murder, in April 1986, of Jeanne Clery, 19, a freshman at Lehigh University. She was killed by a fellow student who had entered her campus dormitory through a door that had been propped open.

Throughout the late 1980s, Clery's parents led a crusade to enact the original Campus Security Act, in Pennsylvania — the state law upon which the federal version would be based — after discovering that Lehigh students hadn't been told about 38 violent crimes occurring on campus in the three years before their daughter's death.

The Clery Act requires all colleges and universities that participate in federal financial aid programs to collect, retain, and disclose information about crime on or near their campuses. The Education Department monitors compliance, and can impose penalties, up to \$27,500 for each violation, against institutions. The department can also suspend institutions from participating in federal student financial aid programs — an almost unprecedented action. In its 19-year history, the law has proven notoriously difficult for college administrators to decipher and uphold partly because of the vague definitions of crimes and partly because of the large universe of school officials who must be polled when gathering annual statistics. Confusion has been compounded by a lack of clear guidance from the Education Department over the years. Not until 2005 — nearly 15 years after the law was enacted—did the department publish its Clery Act handbook explaining all the unique reporting provisions.

In 1992, the act was amended to include certain basic rights that schools must provide survivors of sexual assaults on campus, particularly student-on-student assaults. Those provisions are known as the Campus Sexual Assault Victims' Bill of Rights, and stipulate these five guarantees: schools must give the alleged victim and the alleged assailant equal opportunity for witnesses in disciplinary proceedings; and equal notification of the outcome of such proceedings; they must notify alleged victims of counseling services; of their options to go to local police; and of their options for changing classes and dormitory assignments in order to avoid their alleged assailants. ■

Sexual Assault on Campus Shrouded in Secrecy

HIGH RATES OF RAPE, CLOSED HEARINGS, AND CONFUSING LAWS

By **Kristen Lombardi**

Published Online | December 1, 2009

THREE HOURS into deliberations by the University of Virginia's Sexual Assault Board, UVA junior Kathryn Russell sat with her mother in a closet-like room in sprawling Peabody Hall. Down the corridor, two professors and two students were deciding her fate. Russell was replaying in her mind, endlessly, details of her allegations of rape when, she remembers, Shamim Sisson, the board chair, stepped into the room and delivered the order: *You can't talk about the verdict to anyone.*

That stern admonition was a reminder of the silence Russell had been keeping since, she says, she struggled to break free from a fellow student's grip in her dorm. That's the account she gave local authorities, who declined to prosecute. And that's what, in May 2004, she told the UVA Sexual Assault Board, whose

decision she'd considered "my last resort."

Russell stands among the tiny minority of students who have pursued rape complaints in the college judicial system — 33 at UVA, a school of 21,057 students, since 1998. She became well-versed in the confidential nature of the process as described in the school's 2004 written procedures. Deans repeated the blanket stipulation to her "ad nauseam," she says, throughout her three-month proceeding. The school later defended its mandatory confidentiality policy before the U.S. Department of Education even while softening the language.

Relating the gag order back in the room, Sisson, Russell says, provided a strong incentive to keep quiet: *If you talk of the verdict, you'll face disciplinary charges.*

At the time, the exchange didn't

faze Russell, who says she did as told in an effort to get justice. But five years later, she's come to see the school's old confidentiality policy as emblematic of just how far colleges and universities will go to keep secret cases of alleged sexual assault. And a recent ruling by the Education Department against UVA for a policy "inconsistent with the letter and spirit" of the law has resulted in significant changes there.

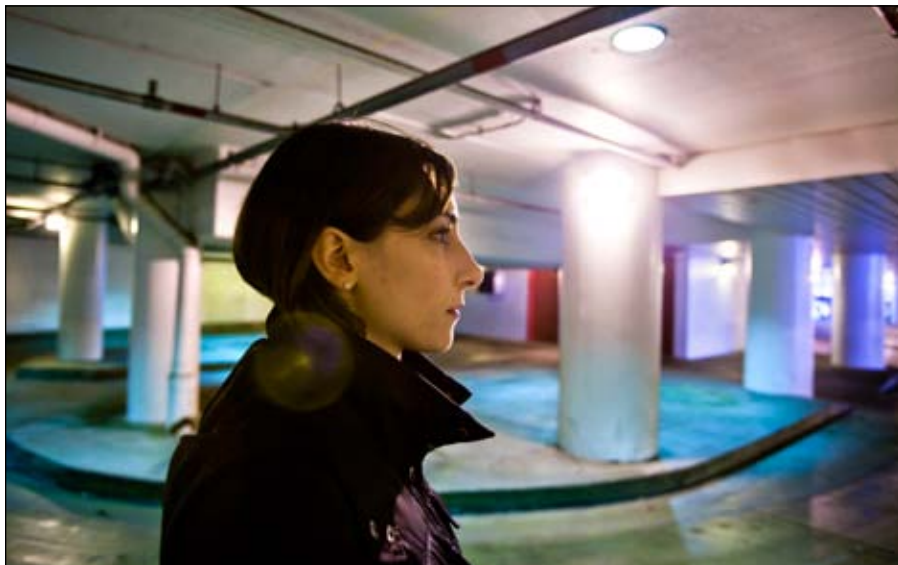
SILENT VICTIMS, SECRETIVE ADMINISTRATORS

But an array of practices at UVA and college campuses elsewhere continues to shroud the college judicial system in controversy. Indeed, a nine-month investigation by the Center for Public Integrity has found that a thick blanket of secrecy still envelops cases involving allegations of sexual assault on campus. One national study reports that roughly one in five women who attend college will become the victim of a rape or an attempted rape by the time she graduates. But while the vast majority of students who are sexually assaulted remain silent — just over 95 percent, according to a study funded by the research arm of the U.S. Justice Department — those who come

forward can encounter mystifying disciplinary proceedings, secretive school administrations, and off-the-record negotiations. At times, policies lead to dropped complaints and, in cases like Russell's, gag orders later found to be illegal. Many college administrators believe the existing processes provide a fair and effective way to deal with ultrasensitive allegations, but alleged victims say these processes leave them feeling like victims a second time.

The Center has interviewed 48 experts familiar with the disciplinary process — student affairs administrators, conduct hearing officers, assault services directors, victim advocates — as well as 33 female students who have reported being raped by other students. The inquiry has included a review of records in select cases, and examinations of 10 years worth of complaints filed against institutions with the U.S. Education Department under Title IX and the Clery Act — two laws requiring schools to respond to assault claims and to offer key rights to alleged victims. The Center has also surveyed 152 crisis-services programs and clinics on or near college campuses nationwide over the past year.

Just over half the students inter-



Former University of Virginia student Kathryn Russell reported to campus officials that she was raped by a fellow student in her on-campus apartment in February 2004. (Credit: Jim Lo Scalzo)

viewed by the Center have reported they unsuccessfully sought criminal charges and instead had to seek justice in closed, school-run administrative proceedings that led either to academic penalties or no punishment at all for their alleged assailants, leaving them feeling betrayed by a process they say has little transparency or accountability. Some of those students, including Russell, said they were ordered to keep quiet about the proceedings and

threatened with punishment if they did not. Still other students said administrators discouraged them from pursuing rape complaints. Survey respondents indicated similar problems with the closed procedures on campuses.

Undoubtedly, another law, the Family Educational Rights and Privacy Act, complicates the issue. FERPA forbids schools from divulging students' educational records, including disciplinary records. Ad-

ministrators believe it binds them to silence on case details, but others aren't so sure. Under FERPA, colleges can release names of students found "responsible" for committing violent acts. But "we don't," concedes Rick Olshak, associate dean of students at Illinois State University, "and I don't know anyone who does, frankly." Victim advocates contend that colleges use the law as a smokescreen to cover up campus crimes.

"Most institutions have a strong interest in keeping sexual assaults as quiet as possible," says David Lisak, an associate professor at the University of Massachusetts-Boston, who has trained college administrators on combating sexual violence. Typically, Lisak notes, administrators view campus sexual assault as "a very negative piece of publicity," tarnishing institutional reputations, and heightening fears among tuition-paying parents and students for whom colleges are aggressively competing.

College administrators bristle at the idea they're shielding rapes. But they admit they've wrestled with confidentiality in campus assault proceedings because of FERPA and the Clery Act. Confusion over the laws has reinforced what critics

see as a culture of silence that casts doubt on the credibility of the process. "People will think we're running star chambers," says Don Gehring, founder of the Association for Student Conduct Administration, referring to secret, arbitrary courts in old England. "And that's what's happening now."

KATHRYN RUSSELL'S ALLEGATIONS

Russell first approached the UVA administration in February 2004. UVA is required by Title IX regulations to respond "promptly and equitably" when a student alleges sexual assault — investigating the claim and taking action to eliminate harm. Most institutions, including UVA, list "sexual assault" or "sexual misconduct" as prohibited acts in their official standards of conduct — allegations of which automatically trigger internal disciplinary processes.

A petite, perky student who counted herself "a nerd," Russell reported that she had been raped on February 13 by a fellow junior whom she'd gotten to know through a class and a club the year before. On a campus prone to what UVA assault-services director Claire Kaplan calls "a culture of silence around

sexual assault,” administrators say they have strived to encourage reporting. “We try to make it clear that UVA ... has zero tolerance for sexual offenders,” says Patricia Lampkin, vice president for student affairs, “and that students need to report all assaults.” In 2004, Russell became one of eight to recount an alleged rape in a UVA dorm.

Eight days after filing an incident report; after telling UVA police she had “unwanted sexual contact”; after informing UVA doctors of “worsening pain” from allegedly forced sex, Russell found herself repeating the story to Penny Rue, then dean of students. The dean gave Russell a 12-page document, entitled “UNIVERSITY OF VIRGINIA PROCEDURES FOR SEXUAL ASSAULT CASES,” which outlined options for adjudicating complaints. It included this language:

Confidentiality of the hearings process is of great importance to all involved. Identity of the reporting or accused student and any formal discipline resulting from the hearing may not be publicly disclosed...

Rue didn’t dwell on the policy at first. Instead, Russell remembers the dean doing what many victim advocates say is common: discouraging her from pursuing a hearing.

Rue, Russell charges, recommended mediation — an equally shrouded process in which, according to the UVA procedures, “all verbal statements ... must remain confidential,” including “offers of apologies and concessions.”

“I didn’t want to talk to him,” recalls Russell, of her alleged assailant, so mediation seemed out of the question. She would later initiate her complaint in a March 19 e-mail to Rue.

In ensuing days, the dean would informally “confront” Russell’s alleged assailant, who claimed he’d had consensual sex with Russell. In his March 30, 2004, statement to UVA administrators, the accused student portrayed Russell as a willing flirt at a bar who turned sexual aggressor in her dorm, and who repeatedly “grabbed my genitals and wanted me not to leave.” The individual in question did not respond to multiple calls, e-mails, and letters from the Center seeking comment.

Rue now works as vice chancellor of student affairs at the University of California, San Diego. In an August 2005 letter addressed to UVA’s associate general counsel, obtained by the Center for Public Integrity, Rue confirmed meeting Russell and handing her the school’s written pro-

cedures. The dean said she'd been careful to lay out all the options. "I let her know that it was her decision whether to pursue charges," Rue wrote in the letter, "and that the University would support her either way." Rue declined to discuss Russell's case with the Center, as did other former and current UVA officials familiar with it, despite a waiver from Russell granting permission for them to do so.

INFORMAL PROCEEDINGS COMMON

Days before filing her complaint, Russell learned that the local district attorney wouldn't press criminal charges — a typical outcome. Experts say the reasons are simple: Most cases involving campus rape allegations come down to he-said-she-said accounts of sexual acts that clearly occurred; they lack independent corroboration like physical evidence or eyewitness testimony. At times, alcohol and drugs play such a central role, students can't remember details. Given all this, says Gary Pavela, who ran judicial programs at the University of Maryland, College Park, "A prosecutor says, 'I'm not going to take this to a jury.'" Often, the only ven-

ues in which to resolve these cases are on campus.

Internal disciplinary panels, like the UVA Sexual Assault Board, exist in various forms on most campuses. But they're not the only way schools handle rape allegations. For decades, informal proceedings run by an administrator have represented the most common method to adjudicate disciplinary matters. Typically, an administrator meets with both students, separately, in an attempt to resolve a complaint. Occasionally, they "mediate" the incident. Officials find such adjudication appealing in uncontested situations. If a dean elicits a confession, says Olshak, of Illinois State, who headed the student conduct association in 2001, "We'll be able to resolve the complaint quickly, easily, and without the confrontation of a judicial hearing." Resolution, as in formal hearings, can mean expulsion, suspension, probation, or another academic penalty, like an assigned research paper. By all accounts, informal processes take place almost as frequently as formal ones; at UVA, for example, the administration has held 16 hearings since 1998, as compared to 10 informal meetings.

And these proceedings can turn

out positively for student victims. In January 2005, Carrie Ressler, then a junior at Concordia University, near Chicago, reported being raped by a football player after attending a party in his dorm. On January 19, within hours of the alleged assault, the police arrested the student athlete; by October, he'd pled guilty to battery for "knowingly [making] physical contact of an insulting nature," court records show.

At Concordia, Ressler's report landed on the desk of Dean of Students Jeffrey Hynes. The morning of the arrest, the dean summoned her to his office. "He told me he'd be telling the perpetrator he needed to leave by choice," she remembers Hynes saying. "If not, he'd be expelled." Within days, the athlete had left Concordia. Hynes declined to comment on Ressler's case.

"The dean acted in my interests," Ressler says. She recognizes, though, that the informal adjudication served the university's interests, too. "I got the sense from the dean that the school wanted to keep this case hush-hush."

Many victim advocates share Ressler's opinion on this. Often, these victim advocates charge, informal proceedings serve to sweep campus assaults under the rug. Both

the Justice Department and the Education Department explicitly say in guidance documents that schools should not encourage mediation in sexual assault cases. Yet Katherine Lawson, an attorney at the Victim Rights Law Center, in Boston, says she's heard one local administrator boast they haven't held a full sexual assault hearing in years. "This meant to us that they had managed to pressure students to drop a complaint, mediate, or take some lesser administrative route," she explains, which kept cases quiet. At times, these proceedings even leave the victim advocates in the dark. Says one crisis-services coordinator at a Massachusetts university, "I don't have any idea what goes on in those little [deans'] meetings."

COLLEGE HEARINGS: LITTLE TRANSPARENCY

More formal proceedings are sometimes no less shrouded. College disciplinary hearings, unlike courts, lack the trappings of transparency — campus spectators. Advocates can't attend unless serving as "advisers" to students. Only integral participants like board members or administrators have any clue when a hearing occurs. "They're secret *because* they're

closed,” says S. Daniel Carter, of Security on Campus Inc., a watchdog group.

Administrators see it differently, arguing that there are important distinctions between “secrecy” and “privacy.” They can’t open up internal proceedings — formal or informal — because that would amount to granting access to private educational records, which FERPA prohibits, they say. But that doesn’t mean they’re operating in secret. “Not providing private information to the rest of the world is respecting confidentiality and respecting FERPA as a law,” says Mary Beth Mackin, assistant dean of student life at the University of Wisconsin-Whitewater. And while proceedings remain hidden to outsiders, administrators maintain they’re conducted so students feel they’re as open as possible.

Lisa Simpson would probably disagree. Her allegations of rape at the University of Colorado at Boulder blew open a scandal of sexual assault allegations against football players and recruits in 2004; three years later, her Title IX lawsuit brought against CU ended in a \$2.85 million settlement in her favor. Yet she found CU’s judicial process a mystery. In December 2001, Simpson, then a CU sophomore, alleged she was raped by five

football players and recruits during a beer-soaked party. They claimed she was a willing participant. Within days, Simpson’s rape report made its way to CU’s judicial affairs director, Matthew Lopez-Phillips. During a meeting in his office, she recalls him relaying how a panel of students, faculty, and staff would adjudicate. At the time, CU’s official conduct code stated that alleged victims would generally be expected to participate in the process by “providing testimony at the formal hearing of the accused,” among other things.

But Simpson never appeared before a panel. No panelist interviewed her about the report, or the victim impact statement she filed. Even after her five-year legal battle against CU over its response to her case — a battle that sparked a broader investigation, as well as systematic reform — she has no idea what transpired before the panel, or if it actually even existed. CU documents obtained by the Center show one accused student underwent a formal hearing as a result of Simpson’s report; three others had informal, administrative proceedings. But some CU documents on the panel remain sealed by protective order, and only one includes a list of 17 possible panelists. Court records have revealed the identity of

only one panelist. “For all I know,” Simpson says, “it could have been a panel of athletic coaches.”

Lopez-Phillips, who now works at Sonoma State University, did not respond to several calls and e-mails from the Center. Meanwhile, the sole panelist named in court records, Carlos Garcia, who directs CU’s student center, declined to comment, citing “confidential” board sessions.

ADJUDICATING THE RUSSELL CASE

Russell’s proceedings before the UVA Sexual Assault Board commenced on May 10, 2004. According to the hearing transcript, Sisson, the board chair and senior associate dean, said: “All parties are reminded these proceedings are confidential ...”

It had become a familiar refrain for Russell. Before Russell filed her complaint, UVA deans spelled out the policy. In a March 1 e-mail, Rue told Russell:

It is perfectly okay to discuss the events that occurred with anyone you trust, but the fact that they are subject to a judicial proceeding through the university must be kept entirely confidential.

Reminders followed — in e-mails

and letters stamped “CONFIDENTIAL.” By the time the hearing occurred, Russell had heard the stipulation so often she refused to share documents with her mother. Over nine hours, as family and friends waited outside, the four-member board sat in a secured conference room, listening to testimony. Russell and the alleged assailant agreed on initial details — they ran into each other at a bar; he ended up at her dorm; she offered him an air mattress to sleep. But they painted different pictures of what transpired next. The man, Russell said, grabbed her from behind, ignored her pleas to stop, and “used [me] for his sexual need.” Russell, the man countered, “tacitly agreed to have sex,” demanding a condom, and never saying no. “Not all my actions would in a day-to-day situation be considered kosher,” he wrote in his April 23, 2004 defense. “But none of my actions broached or even swept near the arena of rape.”

Sisson repeated the confidentiality admonition 11 times during the hearing, according to the transcript. By its end, she relayed a directive that would wipe away much of the hearing record. “Leave all of your materials,” she told participants, “so these materials are shredded.”

Russell’s mother, Susan, who had

created a website criticizing UVA's response to campus rape allegations, claims Sisson admonished her, too, threatening to bring Kathryn up on disciplinary charges if the hearing verdict was posted on the site.

In a brief phone call with the Center, Sisson, now retired, described the proceedings as “entirely confidential at the time,” and “a complicated set of circumstances.” She said, “I approached my work and every one of these cases with the greatest professional integrity.” Asked if she warned Russell not to talk or threatened disciplinary charges, she replied, “I cannot comment on specifics.”

GOING AFTER GAG ORDERS

UVA administrators insist the confidentiality policy laid out in the school's 2004 written procedures was never meant to muzzle students, although they recognize students could “over interpret” its language. Nor was it official practice to warn them to keep quiet — or else. “There was no quid pro quo here that I know,” says Nicole Eramo, current chair of the UVA Sexual Assault Board. “That was just not part of our policy.” The actual written policy suggests otherwise — both old and new procedures state punishable actions “may

include... violations of the rules of confidentiality.” But administrators stress students have never gotten in trouble for telling their stories.

Instead, they blame their former policy on a longstanding confusion within higher education over the scope of FERPA in sexual assault proceedings. For decades, college administrators had operated under the assumption that FERPA protects all disciplinary proceedings — until the Clery Act passed in 1992. The Clery Act makes it mandatory for schools to notify alleged victims of hearing results. Understanding how FERPA intersects with Clery — two laws seemingly at odds—has been, in Eramo's words, “difficult for administrators.”

That confusion, according to Carter, who heads public policy at Security on Campus Inc. has caused a proliferation of disturbing practices. Some schools have threatened alleged victims with expulsion for disclosing verdicts. Others have barred them from viewing their proceeding records. Still others have required confidentiality pacts — all citing FERPA. The Education Department found that institutions had even kept alleged victims in the dark. In September 2005, the department fined Miami University of Ohio \$27,500 for

breaking a promise to regulators to provide accurate written information about hearing results to student victims, as it had done to accused students. Earlier that year, in June, the department determined that California State University, East Bay, had violated Title IX by not notifying alleged victims of the outcomes of sexual harassment investigations — requiring the school fix its policy under a resolution agreement.

By October 2002, Carter had petitioned the Department of Education about these sorts of practices. Alleged victims should be allowed to disclose not just the hearing results, he said, but also names of accused students and any sanctions. In March 2003, he filed a separate complaint against Georgetown University, which had been using gag orders in its proceedings. Like UVA, the Georgetown administration restricted students from divulging outcomes. Unlike UVA, it refused to release those outcomes unless students signed confidentiality agreements. Carter saw the pacts as clear violations of the Clery Act, which provides that “both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.”

In July 2004, the department

agreed, issuing a ruling against Georgetown for its “impermissible non-disclosure agreement for Clery Act purposes.” It ruled that Clery grants alleged victims a right to their proceeding outcomes, without restrictions, despite FERPA. Its final determination letter, dated July 16, required Georgetown to “discontinue its use of non-disclosure agreements.”

Carter then went after illegal gag orders elsewhere — like one presented to Alpha Morin at the University of Central Florida. Now a former student, Morin found the school’s process “very hidden to me” after filing a rape complaint against a scholarship athlete. In January 2005, the then-freshman learned she could only participate in the hearing before UCF’s Student Conduct Board as a “witness” to her alleged assault. Save for her 20-minute testimony, the board banned her from the room. Later, she learned she could only receive the verdict by signing a confidentiality agreement.

Morin went public with her predicament in the campus newspaper, prompting Carter of Security on Campus Inc. to send a cautionary e-mail to UCF President John Hitt, warning that UCF’s policy sounded illegal. Four days later, UCF sent Morin a

copy of the verdict, with no written facts attached. Carter managed to nullify verbal gag orders at schools including the College of William and Mary, among others, though he and administrators agree that written gag orders have always been pretty rare.

A RULING AGAINST UVA

Kathryn Russell didn't think much about her school's policy until things went badly. At the hearing, board members asked questions making her wonder about their training — “Did it occur to you to perhaps leave the room?” “Why not just shut the door [on him]?” Sources familiar with the UVA board's training describe it as extensive; in 2004, the school required members to undergo a day of preparation featuring a videotape and reading materials, as well as sessions with outside experts on campus sexual assault. One previous board member describes Russell's panelists as open-minded and thoughtful. But the panel also judged her complaint using a “clear and convincing” evidence standard, which the Education Department ruled, in one 2004 case, is higher than Title IX authorizes — and which victim advocates argue is illegal.

In the end, the student Russell accused was found “not responsible” for sexual assault. The board instead slapped him with a verbal reprimand. “We ... believe that you used very bad judgment,” Sisson declared. The case resulted in one of nine “not-responsible” verdicts the UVA board has handed down over the past decade, as compared to seven responsible ones.

“You can have a bad sexual experience but not be sexually assaulted under the university's definition and standard of evidence,” says the prior UVA board member.

Russell saw it differently. “It was just a charade,” she said.

In light of all those warnings about confidentiality, Russell thought she could tell no one what happened. But in November 2004, her mother filed a complaint against UVA with the Education Department, alleging violations under the Clery Act. It centered on the verbal threats of punishment, as did a second complaint filed on behalf of another former UVA student, Annie Hylton. Hylton told the Center she had feared repercussions from UVA for going public in the local press that same month, even though her hearing dated to 2002.

“That's one reason I decided to go public,” she relays. “If they were

keeping me quiet, who else were they trying to keep quiet?"

In its official response, according to case records and a written statement from the Education Department, UVA argued it wasn't violating Clery so much as upholding FERPA and limiting what it termed "improper re-disclosures." Officials contended they could enforce the confidentiality policy through "pre-conditions" like a verbal commitment. While defending its policy, UVA was also reviewing the 2004 procedures. By March 2005, UVA administrators had submitted to the department a revamped policy that would soften the language and eliminate specific secrecy requirements. The new policy says the university "neither encourages nor discourages further disclosure."

In November 2008, however, the Education Department determined the school had violated the Clery Act. In a letter to UVA President John Casteen, it stated "the University cannot require an accuser to agree to abide by its non-disclosure policy, in writing or otherwise." The November 3, 2008 letter added:

It is ... clear that several UVA students were persuaded that failure to adhere to the confidentiality policy could have resulted in serious con-

sequences ranging from disciplinary action to not being granted a hearing before the Sexual Assault Board in the first place.

The department's UVA decision has made it clear that alleged student victims are no longer required to keep quiet about their hearing results. This year, in fact, the Education Department has amended its FERPA regulations to specify as much. The new regulations have thus effectively ended confidentiality requirements for hearing *results* on college campuses. But they have left open questions about broader secrecy requirements to *participate* in the college judicial process — even on the UVA campus.

DISCRETION OR LACK OF ACCOUNTABILITY?

Inside the stately, red-brick Rotunda at UVA, administrators say the Education Department's decision represents the byproduct of a confused legal environment. And they assert that the school had already changed its confidentiality policy by the time the department issued its ruling. Unlike before, they say, the school's current procedures make plain that students can divulge their proceeding results, including accused students' names

and any sanctions. The school has also taken steps to improve the process: it has bolstered investigations of rape allegations; improved training for the assault board; and added a lesser charge of “sexual misconduct” to its standards of conduct. Susan Davis, assistant vice president for student affairs, says UVA has “struck a good balance now.” Indeed, deans elsewhere have touted the current UVA procedures as a national model.

But procedures at many schools, including UVA, still stipulate a confidential process — in formal hearings, and in informal mediations. For instance, UVA administrators still caution students not to discuss their proceedings during the process. Today’s written procedures still specify that all proceeding “documents, testimony, or other evidence ... may not be disclosed.” Read the actual policy, and the only confidentiality language that has changed is the stipulation that students can divulge their proceeding results. But even that comes with a warning to, as the procedures state, “consult with legal counsel before doing so.” To critics, the silencing effect of the old confidentiality rules still holds. But to UVA deans — and their colleagues elsewhere — there is legitimacy to ensuring a closed process as it unfolds. Some

officials, such as UVA’s Lampkin, insist a confidential procedure encourages reluctant alleged victims to come forward in the first place — a sentiment reinforced by some survey respondents. Others consider it crucial to ensure rights of accused students. Still others argue there is no need for outsiders to know details of campus rape proceedings because schools are deciding if a student’s conduct violated institutional rules — not criminal laws.

“I’ve yet to hear students say they want a public process,” says Davis.

“It’s a balance between figuring out how to give students a safe space,” Lampkin adds, “and having an environment where both the accuser and accused will come forward.”

But critics say that attitude fails to acknowledge a fundamental flaw in the college judicial system: Without outside scrutiny, it lacks accountability. “The reason for disclosure and public oversight is that we can’t allow educational institutions to police themselves,” observes Mark Goodman, former head of the Student Press Law Center, which has pushed for more transparency. He, like many critics, believes the institutional reliance on confidentiality does more to protect the image of colleges than the anonymity of students. “I have

a fundamental disagreement with schools over the notion that justice can be reached in secrecy,” he says.

CONTROVERSY OVER MEDIATION

Not without unintended consequences, at least. In November 2003, Mallory Shear-Heyman, then a sophomore at Bucknell University in Pennsylvania, underwent a confidential mediation after reporting being raped in her dorm by a fellow student. Mediations became popular in disciplinary matters involving sexual assault earlier in the decade, and remain common today — despite controversy. In 2001, the Education Department deemed mediations improper partly because they carry no punishment. And while mediation is generally considered effective for resolving interpersonal conflicts, the department — and many critics — argue that it falls short in instances of sexual violence. The reason: an intimidating element exists between victims and their assailants because, like other serious assault, sexual assault is a violent act “In some cases,” the department states in its guidance document, referring to sexual assault cases, “mediation will not be appropriate even on a voluntary basis.”

But Bucknell administrators defend their use of the practice, which they now call “voluntary facilitated dialogue,” precisely because it only occurs at the request of an accusing student, with the willing participation of an accused student. Any power imbalance, they argue, is evened out by the presence of two administrators — one male, one female — guiding the conversation and assuring a comfortable setting. “Our students have really been key spokespeople for indicating they want some sort of option to have this dialogue,” says Kari Conrad, judicial administrator for sexual misconduct. “We feel confident in keeping this process as a responsible response.”

Shear-Heyman remembers Bucknell officials portraying the off-the-record session as an attractive way to confront the accused student, “as if it were the best option ever.” Confidentiality, they relayed, would allow for more open and honest discussion. She was presented with a waiver, which specified that “information first disclosed during mediation may not be used in any subsequent internal University proceeding.”

But Shear-Heyman wouldn't grasp the waiver's implications until the accused student, she says, impli-

cated himself. Bucknell records show the student apologized to her in instant messages, admitting “b/c you got hurt, yes,” what had occurred was rape. She says he repeated the admissions before the two deans who participated in the mediation — Gerald Commerford and Amy Badal. The waiver did not prevent Shear-Heyman from pursuing outside remedies. But the deans, she says, gave her the strong impression

that she couldn’t use what had occurred in the session — on or off campus. When she later considered pursuing criminal charges, she says, the deans claimed not to remember the accused student’s alleged admissions.

Both Commerford and Badal told the Center they don’t remember details from Shear-Heyman’s mediation, including possible incriminating statements. And they claim not to recall her later asking them to corroborate such statements. “I



Believing that her alleged perpetrator’s admissions in mediation were off limits, Mallory Shear-Heyman did not immediately try to pursue criminal charges. (Credit: Jim Lo Scalzo.)

don’t recall any such scenario,” says Badal.

Bucknell administrators insist it is standard practice to inform participants verbally and in writing that pursuing mediation won’t preclude them from filing charges — on or off campus. Commerford describes himself and Badal as “sticklers about following the protocol.” “I cannot speak for Mallory and her interpretations,” he adds, “but I can tell you that we followed the protocol to a T.”

One former Bucknell employee

familiar with Shear-Heyman's mediation finds the practice "a problem because alleged assailants can say whatever they want without any repercussions" — a criticism voiced by many victim advocates. Bucknell University officials confirm that they wouldn't take action against an accused student who apologizes or confesses in mediation unless the victim were to file charges first — something that Shear-Heyman found pretty pointless. "After I'd realized how much I got screwed with the confidentiality," she says, "I didn't want to pursue anything further with the university." The former employee adds, "I absolutely think the practice serves the interest of the university, not the victims."

As for Russell, her life unraveled in the years after her proceeding at UVA. She lost weight, moved home, and divorced herself from friends. For years, she would find herself replaying in her mind, endlessly, details of her proceeding. She's long struggled to reconcile the fact that what she endured in pursuing a complaint had been for naught. Nothing had happened to her alleged assailant. "He was barely inconvenienced by having to attend the hearing," she says. Three years ago, Russell filed a civil lawsuit against him in Circuit

Court for the City of Charlottesville, laying out her story in a complaint. The suit was never served on the man and eventually was dismissed at Russell's request, because, she says, she could not afford an attorney. The injustice of seeing her alleged assailant go unpunished has been, in her words, "the worst thing imaginable."

More recently, Russell discovered that the same student faced a second rape complaint at UVA. In April 2005, nearly a year after Russell's hearing, Rebekah Hay, then a UVA junior, filed that complaint, which ended up before two assault boards because the accused appealed — the first board returned a verdict against him; the second did not. Hay remembers Dean Rue addressing the suspect's history when she had filed her complaint. "She said to me, 'I'm sorry to see this name come up again,'" Hay recalls.

UVA administrators — and the alleged assailant — have stayed silent on the specifics of this complaint. Hay has never spoken publicly about her UVA case — until now. After all, the confidentiality of those proceedings was emphasized at UVA, she says, "and repeated and repeated and repeated again." ■

Staff Writer Kristin Jones contributed to this article.

Barriers Curb Reporting On Campus Sexual Assault

LACK OF RESPONSE DISCOURAGES VICTIMS OF RAPE, OTHER CRIMES

By Kristin Jones

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BURIED IN THE PAGES of the 2006 student handbook for Dominican College, a small Catholic institution in the northern suburbs of New York City, were five dense paragraphs about what would happen if a student reported a rape.

The college would investigate. That much is required by law. Evidence would be collected and preserved. And if the alleged rapist were another student, campus disciplinary proceedings would ensue, allowing both sides to speak before a hearing board.

The policy was tested in May 2006, with Megan Wright, 19, a freshman from New Jersey. After drinking heavily with others in a friend's dorm room, she woke up in pain on a Sunday morning, with blood in her underwear. On Monday, she elbowed through a lunchtime rush of students to the glass office of director of resi-

dence life Carlyle Hicks to report that she had been raped by a man — or men — she could not identify.

But Wright found cold comfort in Hicks' response.

"He didn't seem to have a clue," says Wright's mother Cynthia McGrath, who attended the meeting. Hicks didn't mention a word about a campus disciplinary process, says McGrath, or even ask if the shy redhead was okay. "Just a lack of concern, like he couldn't be bothered."

McGrath describes the meeting as the first of many discouraging encounters with Dominican College as Wright sought some sort of action from the school against the fellow students she suspected of gang-raping her. By late summer, Wright had withdrawn from Dominican and enrolled in a local community college to avoid running into her alleged attackers. By late fall, the police in-

vestigation had dead-ended. And on a Saturday afternoon in December, Wright kissed her mother on the cheek, went upstairs, and suffocated herself with a plastic bag.

McGrath is now suing Dominican College administrators, including Hicks, saying they refused to investigate or take Wright's complaint seriously. "All I wanted from the school was to know that she was going to be safe, that these guys were not going to be on the campus," says McGrath.

Administrators at Dominican College, including Hicks, would not comment for this story; their lawyer Philip Semprevivo cited pending litigation. But Semprevivo denied McGrath's allegations and said the College is "aggressively defending" itself in court.

"No conduct [of Dominican College] has been alleged which is in any way shocking or extreme," the school has previously argued in a motion to dismiss the lawsuit. However, in late November, a judge denied the college's motion.

A DISAPPOINTING RESPONSE

For many college students who allege they've been raped each year, disappointment may indeed be the norm. One national study funded by

the Justice Department found that one in five women who attend college will become the victim of a rape or an attempted rape by the time she graduates. But students reporting sexual assault routinely say they face a host of institutional barriers in pursuing the on-campus remedies meant to keep colleges and universities safe, according to a nine-month investigation by the Center for Public Integrity. The result, say experts, is a widespread feeling that justice isn't being served, and may not even be worth pursuing.

In conducting its probe, the Center interviewed 48 experts familiar with the college disciplinary process — lawyers, student affairs administrators, conduct hearing officers, assault services directors, and victim advocates. The inquiry included a review of hundreds of pages of records in select cases, and examinations of 10 years worth of complaints filed against institutions with the Education Department under Title IX and the Clery Act, as well as a survey of 152 crisis services programs and clinics on or near college campuses. The Center also interviewed 33 women who reported being sexually assaulted by other students. Sexual assault includes not only rape, but also a variety of sexual offenses.

Crisis counselors and service providers who work with college students described barriers as overt as a dean expressing disbelief. These counselors cited institutional barriers on campus more often than any other factor as a discouragement to students pursuing complaints of sexual assault, according to a Center survey of 152 on- and off-campus centers that provide direct services to victims.

Lawyers pointed out failures as subtle as an institution's neglecting to provide access to a professional victim's advocate to guide students through a complicated and intimidating process. Students cited fears that their friends would get in trouble for drinking or drug use, or that their names would not be kept confidential. Many alleged victims told the Center they had encountered roadblocks from their schools. Of those students who said they'd met discouragement, most transferred or withdrew from their schools, while their alleged attackers were almost uniformly unpunished.

Some of the most fundamental obstacles to students pursuing sexual assault complaints are also illegal, say lawyers. Colleges and universities may be flouting federal laws like Title IX, which bans sex discrimina-

tion in education, and the Clery Act, which is intended to document campus crime. (*See Overview for more on the laws that govern how colleges and universities respond to sexual assault.*) These laws require that institutions investigate and take action to end sexual assault, and mandate policies for addressing complaints on campus.

Together with the personal and social barriers to reporting — some of them unique to college — these institutional hurdles help explain the silence that often envelops sexual assault on campus. College students report sexual assault even less often than the general public does, a 2000 Justice Department-funded report found. That report concluded that more than 95 percent of students who are sexually assaulted remain silent.

Mike Segawa, president of the national organization Student Affairs Administrators in Higher Education (NASPA), says most colleges and universities want to be “responsive and supportive” to students reporting sexual assaults. He says schools are also acting to address perceived roadblocks.

But for rape survivors who believe that their college stood in the way of pursuing a sexual assault

complaint, the experience of dealing with the school can be traumatizing. “They feel like someone they trusted their lives with has betrayed them,” says S. Daniel Carter, director of public policy at the college safety advocacy group Security On Campus Inc. “It’s as life-altering — if not more so — than the rape or sexual assault itself.”

FEELINGS OF SELF-DOUBT

Wright’s memory first failed her, then it tortured her.

“Drinking in a dorm room w/ people I know,” Wright wrote in her report to the residence life office. “I then do not remember what happen [sic] after 1:00 am. I do remember a little of the incident. I then went to the hospital the next morning w/ [her friend] Kelly Rocco b/c I knew that I was raped.”

All she remembered of the incident was being in a dorm bed, terrified, trying to tell a man she didn’t know to get off of her. The blood in her underwear, and the pain, told her the rest.

Before a college woman who has been sexually assaulted even gets to a dean’s door, she often has to get past herself — her own self-blame, or her own memory lapses, experts say.

Less than half of college women who are raped identify it as rape, even privately, to judge from the sample in the Justice Department report. In Center interviews, many alleged victims described intense doubt about what had happened. It conflicted with what they thought they knew about violent rape — a stereotypical image of a stranger in the bushes with a knife. The alleged assailants were, in some cases, people they considered friends. They described trying to push it to the back of their minds, just wanting to get on with their lives. Or they blamed themselves for drinking too much, or for failing to protect themselves.

Wright was by no means immune to self-doubt. But she did something that experts say is crucial. She told a supportive friend first.

“She kept saying, ‘It’s all my fault, I let this happen,’” says Kelly Rocco, who was an 18-year-old freshman when Wright pulled her out of the dorm hallway to tell her she had been raped.

Rocco drove Wright to White Plains Hospital, stayed with her for hours while nurses administered a rape kit and forensic exam, and took her out to eat. But Rocco admits that her first reaction was disbelief.

“I was trying to find questions to

prove her wrong,” says Rocco, “because I was like, this doesn’t happen.”

A LACK OF SUPPORT

Colleges rarely spend much time educating students on how to respond appropriately to a friend who has been sexually victimized, according to a follow-up Justice Department-funded report in 2002. It found that almost 60 percent of schools provided no response training at all to students. And when they did, they often directed it toward students who were residence hall advisers or security officers rather than the general student population. (Rocco says she received no rape awareness or response education during freshman orientation; Dominican College’s lawyer says both she and Wright did.)

Away from their parents from the first time, female college students tend to rely on the structure of a close-knit residence hall, a sports team, or a sorority; their friends’ response is crucial. To complicate matters, say on-campus advocates, accused and accuser may be separated by just a few degrees.

“If they do go forward and make a report, do they lose that group because of the so-called problems they are creating?” says Roberta Gibbons,

a victim’s advocate on the Twin Cities campus of the University of Minnesota, describing the concerns of students she encounters. “Or are they going to split that group?”

When Christine Carter met this dilemma as a transfer student at Towson University in Baltimore, she chose to tell the group that a newcomer — a friend of a friend — had reached into her pants while she was sleeping. To her utter mortification, they laughed and said she must have imagined it.

“I was the butt of my friends’ jokes,” said Carter. “Before we’d go out, my friends would say, ‘Oh Christine, don’t drink too much. You’ll sexually assault yourself.’”

They stopped laughing at her only when the same man did it again, Carter said, to another friend in the group. This time, Carter reported to police that she had been assaulted, and says she encouraged her friend to do the same. The man agreed to serve probation on assault charges but did not plead guilty, according to Maryland court records.

As for Wright, she didn’t even know whether she was accusing friends or strangers at first. Her family would accuse both, in the end. Their lawsuit alleges that Terrell Hill, a Dominican College student whom



Christine Carter said her friends mocked her for nearly a year until her alleged assailant was accused of doing the same thing to another member of their social circle. (Credit: Jim lo Scalzo)

she knew, was one of two men who physically led her from her dorm room to an all-male floor. There, the school's hallway surveillance camera catches two Dominican College students, Isaiah Lynch and Richard Fegins, along with Fegins' visiting cousin Kenneth Thorne — none of them friends of Wright's — going in and out of the room, according to documents obtained from the Orangetown, NY, Police Department. The lawsuit alleges that all three raped her, and adds the detail from

the surveillance video that they were snatching high-fives from onlookers as they went. At one point, Fegins emerged from the room holding up a sign that read "I WANT TO HAVE SEX," signed Megan Wright — an artifact the school gave to police, along with part of the video, and information about the students in it.

Hill says that he has been unfairly accused for being in the "wrong place and wrong time." He strongly denies the family's allegations that he conspired in Wright's assault.

She was a friend, he says: “My friends — and our friends — know that I’m not that kind of person.”

Like Hill, the other three were never charged with a crime, and through their lawyers, they declined to comment for this story. In court documents, they deny raping Wright. Lynch told police that he was in the dorm room surfing the Web. He says he left when he saw Wright kissing Thorne. When he returned, he says, she was putting her shirt back on. He denies having any sexual contact with her. Police dropped the investigation — and the Rockland County District Attorney declined to prosecute — after a handwriting expert said that Wright’s signature was on the sign, and her sexual assault examination showed no trace of sperm. Nonetheless, a nurse’s notation says that her vagina was visibly cut, swollen, and red.

Wright broke down when she first saw the video, according to Orangetown police department notes. Her mother says it showed her things Wright hadn’t known, and that she began having flashbacks.

CAMPUS JUDICIARY PROCESS

At the center of many schools’ stated policy of responding to sexual as-

sault is some form of disciplinary or judicial hearing process, like the one Dominican describes in its handbook. The Campus Assault Victims’ Bill of Rights, a 1992 amendment to the Clery Act, mandates that schools publish policies for preventing and addressing sexual assault, including “procedures for on-campus disciplinary action.”

Schools don’t always comply. Justice Department reviews in response to 26 complaints in the past decade found that four institutions — Eastern Michigan University, St Mary’s College (Indiana), Clemson University, and Salem International University (West Virginia) — violated the Clery Act by failing to have or disclose policies for sex offenses. Several other on- and off-campus service providers surveyed by the Center reported that their local colleges had no policy for adjudicating sexual assault on campus.

Victims’ advocates say these formalized disciplinary procedures serve as a vehicle for colleges to remove suspected predators from their campuses, and have different standards than a criminal justice system that rarely prosecutes rape. A failure to have disciplinary procedures in place constitutes a fundamental barrier to justice on campus,

advocates say.

Even so, students are unlikely to get as far as a campus hearing, even at apparently well-intentioned colleges.

Each year the Justice Department's Office on Violence Against Women awards grants to colleges to combat on-campus stalking and sexual and domestic violence against women. Many schools use this money to boost reporting and improve adjudication of rape on campus, to mixed results. During fall 2008, the most recent semi-annual reporting period available, 26 institutions whose progress reports the Justice Department provided to the Center reported only 25 sexual assault cases that resulted in any finding in a campus disciplinary proceeding. Another 16 were dismissed before they ever reached that point, with more than half of the dismissals at the victim's own request. The schools had a combined female student population of about 270,000 the previous year. By way of comparison, if that Justice Department-funded study was correct, an estimated 6,450 of these students were actually sexually victimized during that six-month period.

The reports give little clue as to why so few on-campus resolutions were reached. But students inter-

viewed by the Center described encountering processes that seemed intimidating, unsympathetic, or unlikely to result in punishment for the accused students. Anna Babler, a former student at Arizona State University, says a judicial affairs administrator in 2008 urged her to "speak up" against a fraternity with a history of rape reports, without assuring that her name would be kept confidential, or telling her precisely how the campus process would work. (An ASU representative said that privacy rules prevented it from commenting on specific cases, but that it takes sexual assault reports seriously.) Mary Chico, a former student at Miami University in Ohio, describes meeting with a school official in 2001 who made her feel that she was at fault by asking her questions like what she was wearing when she was assaulted. Chico believes a dean pushed her to take a medical leave from the school, accusations the school has dismissed as "baseless."

Carter, of Security On Campus Inc., said that colleges and universities dissipate students' confidence in their adjudication systems by failing to coordinate between offices, or by failing to provide access to a single, well-trained point person who can lead them through the pro-

cess. “The most pervasive problem for students victimized by sexual assault on campuses,” he says, “is a lack of support structures for victims to come forward.”

Title IX, the anti-discrimination statute, is best known for its application to women’s sports, but the regulations implementing it require grievance procedures that provide for “prompt and equitable resolution of student and employee complaints.” The law leaves room for interpretation, and in 2001 the Education Department’s Office for Civil Rights issued additional guidance. If a school knows — or even if it should know — of possible sexual harassment, including assault, it must take “immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again.” It is also this guidance that mentions that schools must designate a coordinator for Title IX responsibilities — the point person Carter describes.

A school’s failures to comply with Title IX can place daunting obstacles in the paths of students who wish to pursue disciplinary proceedings. A

measure of the problem came in the Center’s review of 214 investigations in the past decade by the Education Department’s Office for Civil Rights into suspected Title IX violations involving sex discrimination in admissions or grading, as well as cases of harassment and assault. The Center found 16 cases involving allegations of perceived institutional barriers to pursuing sexual assault complaints. According to its own published guidelines, the Office for Civil Rights avoids finding schools in violation of the statute when it can find a way to cooperate with schools to fix problems, but it found institutions with no coordinator, no clear policy for handling sexual assault complaints, or alleged victims who were not informed of their right to pursue disciplinary complaints.

The roadblocks to campus justice, however, are often more subtle than that, says Diane Rosenfeld, a Harvard law professor who specializes in Title IX law. They can come in the form of a dean’s apparently innocuous suggestion to get counseling, or take a semester off, rather than risking a campus judicial process that won’t succeed.

“As I see it,” she says, “that’s a way of silencing victims and keeping these cases quiet.”

TROUBLING TALE AT SUNY NEW PALTZ

In December 2007, Elizabeth Ryan, who was finishing up her first semester on the New Paltz campus of the State University of New York, was summoned to speak to the Dean dean of Students students in the austere Haggerty Administration Building. The dean's office had just learned she filed a police report alleging that she was raped by another freshman at an off-campus fraternity house. (Elizabeth Ryan is not her real name; she has asked to use a pseudonym to protect her privacy.)

Ryan says she immediately knew that what had happened to her was rape. The nurse who administered the rape kit, and others who heard her story, seemed shocked, Ryan recalls, by the trauma that she conveyed, and by the bruises on her breasts. But when she told the story to the dean, a veteran student affairs administrator named Linda Eaton, it was Ryan's turn to be shocked. One of her options was to "do nothing," she says the dean told her.

Even now, Ryan, 20, has a hard time rationalizing that response. "If I wanted to do nothing, I would have kept my mouth shut," she says. "I wouldn't have gone to my RA,

or to the campus police, or to the New Paltz police, or to the hospital. I wouldn't have said a word to anybody right from the start," she says. "It was insulting. This guy had just raped me ... and that's her answer?"

Insulting or not, the dean's response — which Eaton does not dispute — may have been illegal, say lawyers familiar with Title IX. "You never say your option is to do nothing, because the institution doesn't have the option of doing nothing," says Kate Clifford, a partner in the law firm Schuster & Clifford, LLP, which provides training to universities on compliance with the anti-discrimination law.

Investigation is the school's first responsibility, regardless of whether a student demands it, or whether police are conducting a criminal investigation, according to the 2001 Office for Civil Rights guidance.

The dean went on to list other options, each no more satisfying to Ryan. Dean Eaton could bring the alleged attacker into her office, to let him know that what he had done was wrong. Or the two freshmen could participate in a mediation.

Though not illegal, mediation for resolving sexual assault cases is strongly discouraged in official recommendations from the Justice

and Education Departments. Eaton denies pushing mediation, citing school statistics showing that no student has chosen to resolve a sexual assault case through mediation in the past decade. But the Education Department's Office for Civil Rights guidance calls it inappropriate "even on a voluntary basis."

"You never, ever, ever have any kind of mediation in sexual assault cases," says Clifford, echoing what counselors, advocates, and lawyers told the Center repeatedly, explaining that mediation presumes an equality of power that is missing in domestic and sexual violence cases.

Ryan felt discouraged from pursuing the two options she most wanted — campus judicial proceedings and criminal charges. "She made everything I'd wanted to do seem ... like a hassle," she says, referring to Eaton, and recalling that the dean cautioned her that campus hearings would be difficult for her, and that they would have to wait until the following semester, after winter break. The dean told her to take time to think about it, and come back again the next day.

Instead, Ryan canceled their meeting and withdrew from SUNY, convinced that her school would not help her.

"How could you not want some-

one who did this off your campus?" asks Ryan. "Why would she be pushing mediation, pushing me to do nothing? It finally dawned on me that this was about protecting the school's image."

In an interview with the Center, Dean Eaton said she gave Ryan the same standard list of available options she gives to all alleged victims. The dean did not remember the student saying she wanted a campus hearing.

"Part of not re-victimizing the victim is to lay out all of the options that are available to them," says Eaton, who adds that she could not have predicted Ryan's response. By giving options, "you're giving them the power and the choice to make a decision in terms of what they would like to do."

Eaton seemed unaware that Title IX obligated an investigation into sexual assault reports, and said she had not been trained on the legislation. The school's director of media relations, Eric Gullickson, stresses that the school was in compliance with Title IX, and says that coordination was left to the associate athletic director because "[o]ur work with Title IX has been with respect to athletic participation by women."

New Paltz maintains that faculty

and staff did what they could to keep Ryan safe, by issuing a no-contact order between the two students and directing her to counseling, and could do nothing else without her participation and her continued attendance at the school. Eaton vigorously denies the contention that the school was more concerned with its own reputation than with a student's well-being.

"I get every single police report that's initiated on this campus. I contact students. I reach out to them," says Eaton. "I feel as though if I had an alternative motive, I wouldn't have reached out to her."

Few of the roughly 8,000 students at SUNY New Paltz have admitted an interest in pursuing disciplinary proceedings in sex offenses, according to statistics the school provided to the Center. Since 1998, only six students have reported a sexual assault to the office responsible for initiating those proceedings. Of those, three cases resulted in a campus hearing. Just one punishment has resulted from a sexual assault case — an expulsion in 2002.

From the Justice Department-funded study, a college the size of SUNY New Paltz could estimate that more than 1,700 of its female students were victims of rape or attempted rape in that 11-year period.

OVERCOMING PERCEPTIONS, FIGHTING ROADBLOCKS

Segawa, president of the student affairs administrators group, and dean of students at the University of Puget Sound, says that college and university administrators are increasingly aware of perceived roadblocks for students reporting rape and are doing what they can to address them.

"Most institutions want to be very responsive and supportive, but there may be reasons that perception exists," he says.

Segawa suggested that a lack of visibility of the available resources and ignorance of the avenues available for students accounts for some of that perception. He disputes the idea that it is in the interest of the school to keep barriers in place in order to keep rape statistics from going up. Puget Sound often reports zero sex offenses, an "absurd, very low number" he has trouble explaining to parents. "The reality is we know it isn't zero, but we don't have another number we can give them."

Colleges and universities' efforts to produce more accurate numbers also can backfire.

Char Kopchick, assistant dean of students at Ohio University, says that her university's efforts at in-

creasing sexual assault reporting rates several years ago achieved just the opposite effect. The university put in place a mandatory reporting requirement — meaning that all faculty and staff were obligated to report a sexual assault to police, unless they were counselors or health care providers specifically bound by privacy rules. As a result, Kopchick says, students stopped showing up.

“Now they know there’s going to be an investigation,” she says. “What we find with a lot of survivors, they’re not ready for that. ... Sometimes it takes a person six months before they’re willing to go forward. Sometimes they never want to do anything.”

Carter, the public policy director of Security On Campus Inc., cautions schools against tipping the balance too far toward either ignoring victims’ wishes by pushing them to take action, or, conversely, blithely assuming a victim would not wish to move forward with campus disciplinary charges without giving her all the information needed to make a decision.

“If victims know they’ll be supported and believed, they’ll come forward,” Carter says. He points to successes at places like Harvard, where a coordinated effort to improve response to rape victims following a

2003 investigation of alleged Title IX violations resulted in a distinct rise in rape reports. “If they want counseling or to pursue disciplinary action or criminal charges and the school supports them, they’ll do it,” he adds.

STRUGGLING WITH THE AFTERMATH

Elizabeth Ryan, who now lives back at home with her mother, still struggles with panic attacks, and has had a hard time regaining her footing since leaving SUNY New Paltz.

Her alleged attacker, meanwhile, is back in New Paltz living the life of a typical college student. Visited by a reporter one Thursday last fall, he was just getting out of bed at 3 p.m. to make himself bacon. To this day, he says, he has never told his parents or his frat brothers that New Paltz town police questioned him about the reported rape. The investigation is still officially open, but inactive. Detective David Dugatkin, who was assigned to the case, says that after speaking to both alleged victim and perpetrator, there were enough “ambiguities” about the issue of consent that he referred the case to the District Attorney’s office rather than making an immediate arrest. Ryan did not pursue it. Kevin Harp, the

Ulster County assistant district attorney who spoke with Ryan, said he invited her to meet with him, but that he never heard back from her. He says he presented her a realistic account of the steps involved if she decided to pursue charges, and said he did nothing to discourage her.

The accused student firmly maintains that sex was consensual, adding that he kissed Ryan goodbye at the end of the night. He thinks the cops believed him. “At first I was nervous and scared, because nothing like that had ever happened to me before,” he says. “But after I was questioned by the police, nobody ever contacted me about it again, and that was it.” His only gripe, he says, is with the school. He believes it was unfair of SUNY New Paltz to issue him a no-contact order forbidding him from entering the dorm where Ryan lived. After all, nobody from the school ever bothered to ask him what happened.

That’s a complaint his accuser shares.

In Megan Wright’s case, it appeared initially that the school would investigate. Dean John Prescott met her within half an hour, was polite, asked questions, and suggested that Wright receive counseling. He said that someone from the school would watch the surveillance video, leav-

ing the impression that he would take action.

As they walked out of the office and peered into a sea of young male faces, Wright’s mother remembers thinking, “Is it you? Is it you?”

But the lawsuit contends that instead of investigating, the school left the case entirely in the hands of a local police detective, a Title IX violation. The family alleges that the detective, James Nawoichyk, a part-time instructor at Dominican College, was “hopelessly conflicted,” and failed to conduct a thorough investigation. The police log shows that before closing the investigation around the time of Wright’s death, the detective did not question Fegins or Thorne, who had hired lawyers, or inspect the dorm room where the alleged rape had taken place.

Nawoichyk declined to comment because of the pending lawsuit against Dominican, but Orangetown Police Chief Kevin Nulty has told a local newspaper, *The Journal News*, “The department stands behind the officer and the integrity of the investigation.”

Never once in four meetings Wright’s mother had with Dean Prescott over the summer did the dean mention the possibility of the sort of on-campus judicial proceed-

ings outlined in the handbook and required by law.

Unable to get any comfort from her school, or assurance that she would be safe from the alleged attackers, Wright did not return to the college in the fall. On her last visit, says McGrath, her daughter tried to see the college president, but was told she was unavailable. “They were making her feel like she wasn’t worth it — the police, the school. The people that you think you’re going to be able to turn to, to make things right,” says McGrath.

The lawyer for Dominican College, Semprevivo, says without elaborating that contrary to the allegations laid out in the complaint, the school did investigate. He says the school cannot comment on disciplinary action against students, because of privacy concerns. Certainly, Wright was never asked to testify in any hearing. Rocco, Wright’s friend, says no one from the school asked her any questions. Hill, the student accused by Wright’s family of conspiring in the incident, says he was never questioned or disciplined by the school. He returned to the school the following fall before dropping out for financial reasons.

The other two Dominican College students withdrew, too, for reasons that are unclear. One of them,

Lynch, transferred to Ramapo College, where he plays on the basketball team.

In June 2008, the New York Office of the Attorney General, after an investigation initiated at the urging of the family’s powerhouse lawyer Gloria Allred, fined Dominican College \$20,000 for fraudulently underreporting crime statistics. Among other things, the school had failed to take appropriate account of Wright’s rape report. As part of a settlement, the college agreed to appoint a Title IX coordinator.

By the time she learned that criminal charges would probably not pan out, the light had left Wright’s eyes, her mother says. She had stopped singing around the house and goofing off like she used to. In the modest home where her daughter lived and died, McGrath sits beneath an outsize photo of Wright as a baby, and beside others of her in a prom dress, and as a kid — photos she talks to before bed.

“No wonder why so many girls don’t come forward. They see what happens. They see,” says McGrath, “how they are attacked all over again.” ■

Staff writer Kristen Lombardi contributed to this article.

Campus Sexual Assault Statistics Don't Add Up

TROUBLING DISCREPANCIES IN CLERY ACT NUMBERS

By Kristen Lombardi and Kristin Jones

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A **SEXUAL ASSAULT** prevention program documented 46 sexual assaults at West Virginia University in a recent academic year. But those 46 incidents didn't show up in the university's annual security report.

A counseling and victim advocacy program at the University of Iowa served 62 students, faculty, and staff who reported being raped or almost raped in the last fiscal year. Those incidents didn't show up, either.

A victim advocate program at Florida State University compiled statistics on 57 sexual offenses both on and off campus in 2008. Only a fraction of those incidents appeared in the school's official crime statistics.

Across the higher education community, such discrepancies are not unusual. A nine-month investigation by The Center for Public

Integrity has found that limitations and loopholes in the federal mandatory campus crime reporting law, known as the Clery Act, are causing systematic problems in accurately documenting the total numbers of campus-related sexual assaults. The most troubling of these loopholes involves broadly applied reporting exemptions for counselors who may be covered by confidentiality protections. Confusion over definitions of sexual offenses, as well as the law's comprehensive reporting provisions, have created additional problems. "When you talk to 10 different institutions," explains Marlon Lynch, president of the International Association of Campus Law Enforcement Administrators, "you almost find 10 different ways of reporting under the law."

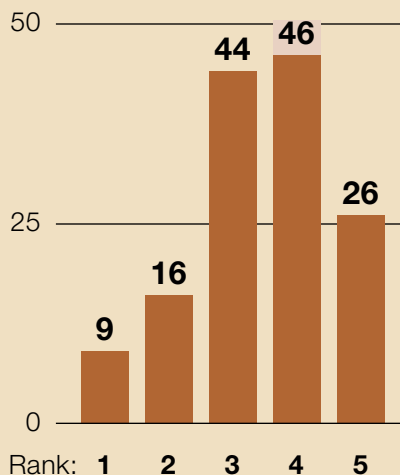
Available data suggest that, on many campuses, far more sexual of-

fenses are occurring than are reflected in the official Clery numbers. A Center survey of 152 crisis-services programs and clinics on or near college campuses requested incident numbers over the past year: 58 facilities responded with hard statistics. Clery totals from higher education institutions are theoretically supposed to include information from such service providers, but confusion remains over exactly who must report. A comparison of the survey data with the schools' previous five-year average of official Clery totals shows that the clinic numbers are considerably higher, suggesting a systematic problem with Clery data collection.

Responses to the Center's survey found that 49 out of those 58 crisis-services programs and clinics recorded higher reports of sexual offenses in a recent one-year period than the average yearly figure submitted by their schools in Clery statistics from 2002 to 2006 — the last five years for which full Clery data are available. At Florida State University, for instance, those 57 sexual assaults logged by the victim advocacy program are more than double the university's average 26 sexual offenses recorded from 2002 to 2006.

Clinics Rate Their Campuses

The Center asked both on- and off-campus clinics and other crisis programs to rank their experience, on a scale of one to five (one is poor; five is excellent), how they would evaluate the response of their local college(s) to student sex-assault victims. The average ranking of the 141 responding clinics was 3.5.



Some of the discrepancies are explainable. Many clinics record higher statistics because they serve a broader clientele than the schools' student populations or because some of the incidents occurred elsewhere — particularly off campus. And crisis counselors say they routinely document reports from students who were sexually assaulted on spring break, raped in high school, or molested as children — none of which fall under Clery reporting requirements. But many survey respondents affirmed assertions from critics that colleges and universities are ducking bad publicity by exploiting weaknesses in the Clery Act and ignoring their clinic numbers, thus keeping official statistics low.

“Clery, in our minds, doesn't do what it was intended to do,” says Mary Friedrichs of the Office of Victim Assistance at the University of Colorado at Boulder. The 42 sexual assaults documented by her program in one recent year didn't appear in the university's Clery data because, as certified counselors with confidentiality exemptions, her staff doesn't report them to the campus police. By comparison, CU recorded an average of 14 sexual offenses from 2002 to 2006. Echoing

many victim advocates, Friedrichs adds, “We don't think it [the official data] tells a story that is understandable.”

CLERY CONFUSION

The Clery Act requires some 7,500 colleges and universities — nearly 4,000 of which are four-year public and private institutions — to disclose statistics about crime on or near their campuses in annual security reports. Many provisions have evolved since the law passed 19 years ago, but what hasn't changed is Clery's requirement that schools poll a wide range of “campus security authorities” when gathering data. That designation includes a broad array of campus programs, departments, and centers, such as student health centers, women's centers, and even counseling centers. The designation also applies to officials who supervise students — deans, coaches, housing directors, judicial affairs officers, to name a few. Experts on the law say that any center or program set up by an institution to respond to crime victims and to serve their needs should be designated a campus security authority, requiring Clery reporting. Only licensed mental-health and pastoral

counselors are explicitly exempt from Clery reporting requirements.

In theory, those stipulations should make for comprehensive crime reporting. At the University of Iowa, a compliance team, led by the public safety department, collects documentation from non-police campus authorities and compiles statistics. According to Associate Dean of Students Tom Baker, who oversaw the process for years, the university distributes an e-mail letter seeking key details on sexual assaults and other crimes reported to campus authorities in a half-dozen offices and programs, including the school's sexual misconduct response coordinator. The law requires schools to solicit information from local police departments, and Iowa's team contacts four of them.

But the data gathering isn't always meticulous. In fact, a 2002 study funded by the U.S. Department of Justice found that "only 36.5 percent of schools reported crime statistics in a manner that was fully consistent with the Clery Act." A Center examination of 10 years worth of complaints filed against institutions under Clery shows that the most common problem is that schools are not properly

collecting data. Some submit only reports from law-enforcement officials. In August 2004, Yale University became the subject of a complaint after it was discovered to be doing just that. Five years later, the U.S. Department of Education has yet to finish its review; a department spokesperson declined to comment on the pending inquiry. Evidently, though, the complaint has sparked some changes. Peter Parker, who heads Yale's sexual harassment grievance board, began forwarding sexual assault data to the school's official Clery reporter in 2007. "Before that," he confirms, "nobody had asked us to compile our reports."

Other schools submit inaccurate sexual assault statistics — in some cases inadvertently; in others cases, intentionally. Nearly half of the 25 Clery complaint investigations conducted by the Education Department over the past decade determined that schools were omitting sexual offenses collected by some sources or failing to report them at all. In October 2007, the department fined LaSalle University, in Philadelphia, \$110,000 for not reporting 28 crimes, including a small number of sexual assaults. (The university appealed the decision and then settled

for \$87,500, without admitting it was at fault.) In April 2005, Salem International University, in West Virginia, agreed to pay the department \$200,000 in fines after never reporting a sexual offense in its Clery reports, even though the school itself had documented such offenses.

There's also been misclassification of sexual assaults. Schools can wrongly categorize reports of acquaintance rape or fondling as "non-forcible" sexual offenses — a definition that should only apply to incest and statutory rape. Five of the 25 Clery audits found schools were miscoding forcible rapes as non-forcible instead. In June 2008, Eastern Michigan University agreed to pay the department \$350,000 — the largest Clery fine ever — for a host of violations, including miscoding rapes. In February 2002, officials determined that Mount Saint Mary College, in New York, had incorrectly reported two sexual offenses as non-forcible; the school had to correct the error. The problem has grown so prevalent that the department now calls schools whenever they submit even one report of a non-forcible sexual offense.

"I don't know anyone who's read the definitions [who] can claim there are any non-forcible sex offenses on

campuses," says David Bergeron of the department's Office of Postsecondary Education, which monitors Clery compliance. Still, 27 colleges reported one or two non-forcible sex offenses in their 2006 Clery data.

School officials and watchdog groups agree that colleges have improved Clery reporting over the past two decades. Dolores Stafford, police chief at George Washington University and a national expert on the Clery Act, has trained campus police officers and administrators on the law since the late 1990s, and has seen what she calls "a sea change" in attitudes, which she attributes to improved training and guidance from the Education Department. These days, she says, "There are less intentional and egregious violators." Department audits still reveal schools getting in trouble over their data, she explains, "but not a whole lot of areas where people are purposely underreporting or over-reporting."

ARE THE NUMBERS BELIEVABLE?

Indeed, today's issues may be subtler than that. Rape generally ranks among the most underreported of all crime statistics, experts say. But critics point out that the huge

percentage of schools reporting no incidents whatsoever indicates a serious problem with Clery data collection. In 2006, in fact, 3,068 four-year colleges and universities — 77 percent — reported zero sexual offenses. Another 501 reported just one or two.

All those miniscule totals look like red flags to watchdog organizations. “Find any school with a zero, and you’ll find problems with Clery reporting,” asserts Margaret Jakobson, a victims’ advocate who’s testified before Congress about issues with Clery compliance. In the late ’90s, Jakobson, along with Security on Campus, a watchdog group, filed some of the earliest Clery Act complaints after identifying students who had reported being raped on campuses touting zeros.

“It strains believability to think that those numbers could actually be true,” says Mark Goodman, former director of the Student Press Law Center, which has long lobbied to close Clery loopholes. He, like many critics, suspects that some schools are intentionally misinterpreting their obligations under Clery and weeding out reports in order to protect their reputations as safe campuses.

But Lynch, of the law enforce-

ment administrators, and other campus police chiefs believe all those zeros most likely reflect something else: Most rape victims don’t report the crime in the first place. The 2002 Justice Department-funded study has actually pegged the number of college women who report their rapes to campus police or other officials at just under five percent. It could be that some schools with low sexual assault statistics don’t do a good job at encouraging student victims to come forward. Or it could be that some do — and still end up with zeros. After all, one limitation of the Clery Act is that statistics reflect “official” reports. In other words, a victim has to tell a campus security authority for a sexual assault to count.

“We get the feeling that people would prefer that we would report a lot of sexual assaults even if we were making it up,” observes Stafford, the George Washington chief, “but I can only report what I know.”

Another limitation of the Clery Act: it counts only those crimes occurring on or near campuses, and in school-affiliated buildings like fraternity houses. The initial thinking behind this narrow geographic focus was that off-campus crimes would inevitably be documented by

local police, experts say. But that means that Clery statistics don't include such settings as off-campus apartments, where most campus-related rapes are believed to take place. Last year, Jacqui Pequignot, who heads the victim advocate program at Florida State, recorded just nine sexual offenses on or near campus, as compared to 48 off campus. Pequignot, who estimates that 36,000 of FSU's 42,000 students live in apartments more than a block from the university, notes that critics often suspect misreporting whenever they don't see huge numbers of campus sexual assaults. "But sometimes," she says, "it's really just about the fact that the numbers are greater off campus."

SEE NO EVIL

Some schools ignore the reports of sexual assaults they do have. At the University of Iowa, alleged victims are instructed to contact the Rape Victim Advocacy Program for medical and counseling services. Housed on campus, the advocacy program records all calls, and categorizes incidents on or off campus. But these numbers don't appear in the university's security report, confirms associate counsel

Rob Porter, because certified counselors make up the staff — and they have that privacy exemption. Instead, the school explains in a report footnote that the advocacy program has its own statistics.

And that's more than what some schools do with counselors' reports. At Texas Tech University, counselors don't track the details of an alleged assault — its time, its location — needed for Clery reporting purposes. Jack Floyd, who compiles the Clery data, says counselors are encouraged to forward information about sexual assaults and other crimes to campus police. But, he affirms, "Nobody has returned a report form since I've been here," beginning in 2001.

"Confidentiality inhibits our requirement to do so," says Eileen Nathan, of the Texas Tech counseling center, explaining why the staff do not submit reports.

In fact, some counselors believe the fine print of the Clery Act encourages them not to report. Under the law, licensed therapists and pastoral counselors are the only campus employees excluded from reporting requirements. Schools can still use aggregate information — minus names and other identifying information — on sexual assaults from

counseling centers, experts say. And interviews with survey respondents reveal that some colleges designate a center staffer as a campus authority for Clery purposes. Others offer a blanket exemption to the entire counseling staff, however, fueling criticisms that administrators are merely exploiting a loophole to keep official statistics low. Even Education Department officials suggest as much.

“Some institutions may try to stretch that [counselor] privilege,” Bergeron says.

One of the schools that has faced controversy on that front is West Virginia University. Deb Beazley is the sexual assault prevention educator at WVU; she is not a licensed counselor. Beazley helps alleged victims navigate services and heads the countywide sexual assault response team that services the campus. She maintains what she calls a “universal reporting system” of incidents culled from her records, as well as from university faculty and staff. She classifies the anonymous, third-party reports based on incident date, time, and location, either on or off campus. She even records the birth date of alleged victims to avoid double-counting. By all accounts, she compiles numbers in a way that

would satisfy Clery requirements. But they don’t end up in official data, as per school policy, even though West Virginia counts rape reports forwarded to campus police by non-police campus authorities.

“It’s important to understand that, by definition, what Deb is collecting is survey data,” explains Bob Roberts, police chief at West Virginia University, “and we do not take survey data because it is anonymous.”

Roberts is not a stranger to Clery reporting disputes; in March 2004, West Virginia became the subject of a Clery Act complaint after three whistleblower police officers alleged that the university was mis-coding crimes. Last September, the Education Department found some problems with the way the university had dealt with sexual assaults — misclassifying forcible and non-forcible offenses, and failing to include sexual assault reports. In its response to the department’s preliminary findings, dated October 30, 2008, the university admitted the errors and outlined recent steps to bolster its record-keeping. But counting Beazley’s anonymous reports isn’t among the improvements.

“You have to compare apples to apples,” contends Roberts, who now trains campus officials around the

state on the finer points of the Clery Act, “and other campuses I know of are not reporting anonymous data.”

Yet some schools clearly are — Florida State, for one. Experts say colleges should count numbers from any campus program set up for victims to report crimes and seek services. Stafford, the George Washington chief, collects statistics from her university’s response team, its counseling center, and its health center in order to “give people a full picture of what’s happening on the campus.” Still, she stresses that schools ignoring these numbers are not necessarily violating the law.

“It is not clear in the [Education Department’s Clery Act] handbook or in the law ... that victim advocates and sexual assault services coordinators are required to report,” she says. “It’s a big weakness right now.”

And one not likely to change any time soon. According to Bergeron, the Education Department has to allow some room for schools to interpret who actually constitutes a campus security authority; after all, it has to regulate everything from a for-profit technical school to a four-year university. He doubts it’s possible to write a department regulation answering “every question in

every circumstance that everyone on a campus would ever encounter,” he adds.

But there’s little doubt that the differing interpretations of the law are sowing confusion — with one school submitting sexual assault statistics beyond what’s required and another the bare minimum. Ultimately, these loopholes, coupled with the law’s limitations, can render Clery data almost meaningless. Victim advocates point out that the schools they believe are reporting the most accurate sexual assault numbers — the 10 percent who reported three or more rapes in 2006 — now have to compete with all those schools touting zeros.

“It’s almost like UMass gets penalized for doing it correctly,” notes Rebecca Lockwood, who heads rape crisis services at the University of Massachusetts Amherst, where her program numbers are gathered for Clery purposes. In 2006, UMass Amherst ranked among just 61 schools, or 1.5 percent, documenting campus sexual assaults in the double digits. As Lockwood sees it, “I’d like to see the schools that report zero be held accountable.” ■

Reporting Fellow Claritza Jimenez contributed to this article.

A Lack of Consequences For Sexual Assault

STUDENTS FOUND “RESPONSIBLE” FACE MODEST PENALTIES, WHILE VICTIMS ARE TRAUMATIZED

By Kristen Lombardi

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In my opinion ... IU not only harbors rapists, but also completely disregards, ignores, and fails women.

INDIANA UNIVERSITY freshman Margaux J. unleashed these fiery words in May 2006 after a campus judicial proceeding on her allegations of rape. It wasn't that the two administrators running the proceeding panel didn't believe her. In fact, they did. The panel found the student she accused was “responsible” for “sexual contact with another person without consent.” School administrators rank the disciplinary charge among the most serious at IU.

It was the penalty that left Margaux sputtering with rage. The panel recommended suspending her alleged assailant only for the follow-

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www.publicintegrity.org/investigations/campus_assault

Margaux J. reflects on the process experienced by victims of sexual assault.

ing semester — a summer semester, during which he was unlikely to attend school anyway.

Hearing the decision, she rushed back to her dorm to pen a letter to IU deans, back to the scene where, she says, her alleged assailant raped her while she passed in and out of consciousness from intoxication. Livid over the penalty, Margaux fired off a three-page letter to IU deans, urging a review. In it, she painted the 60-day

suspension as a sign of just how casually colleges and universities treat cases of alleged sexual assault. She pleaded for harsher punishment.

Margaux (whose last name is withheld at her request) would eventually get her wish — but only after her parents badgered the university to revise its penalty. And only after she left Bloomington, Indiana, for good.

DISAPPOINTING CONSEQUENCES

A year-long investigation by the Center for Public Integrity demonstrates that the outcome in Margaux's case is far from unusual. The Center interviewed 50 experts familiar with the campus disciplinary process, as well as 33 female students who have reported being sexually assaulted by other students. The inquiry included a review of records in select cases; a survey of 152 crisis services programs and clinics on or near college campuses; and an examination of 10 years of complaints filed against institutions with the U.S. Education Department under Title IX and the Clery Act. The probe reveals that students deemed "responsible" for alleged sexual assaults on college

campuses can face little or no consequence for their acts. Yet their victims' lives are frequently turned upside down. For them, the trauma of assault can be compounded by a lack of institutional support, and even disciplinary action. Many times, victims drop out of school, while their alleged attackers graduate. Administrators believe the sanctions commonly issued in the college judicial system provide a thoughtful and effective way to hold culpable students accountable, but victims and advocates say the punishment rarely fits the crime.

Additional data suggests that, on many campuses, abusive students face little more than slaps on the wrist. The Center has examined what is apparently the only database on sexual assault proceedings at institutions of higher education nationwide. Maintained by the U.S. Justice Department's Office on Violence Against Women, it includes information on about 130 colleges and universities receiving federal funds to combat sexual violence from 2003-2008, the most recent year available. Though limited in scope, the database offers a window into sanctioning by school administrations. It shows that colleges seldom expel men who are found

“responsible” for sexual assault; indeed, these schools permanently kicked out only 10 to 25 percent of such students.

Just more than half the 33 students interviewed by the Center said their alleged assailants were found responsible for sexual assault in school-run proceedings. But only four of those student victims said the findings led to expulsion of their alleged attackers — two of them after repeat sexual offenses. The rest of those victims said discipline amounted to lesser sanctions, ranging from suspension for a year to social probation and academic penalties, leaving them feeling doubly assaulted. An examination of Title IX complaints filed against institutions with the Education Department revealed similar patterns: Eight students whose complaints stem from reported acts of “sexual assault,” “rape,” and “sexual misconduct” objected to the school’s punishment of their alleged perpetrators. All but one of these eight complaints involved lesser sanctions than expulsion and three ended in no punishment after responsible students appealed. Survey respondents reinforced the belief that schools fail to hold abusive students accountable. One re-

spondent summed up the sentiment this way:

Judicial hearings almost NEVER result in suspension, let alone expulsion. ... Alleged perpetrators still remain on campus, in fraternities, and on sports teams.

By contrast, some students, including Margaux, reported dropping out because of what they considered lenient discipline for their alleged perpetrators, whom they feared seeing on campus. Others said their alleged attackers violated school-imposed sanctions, often with little repercussion.

College administrators stress that the sanctioning in disciplinary matters reflects the mission of higher education. Proceedings aren’t meant to punish students, but rather to teach them. “We’d like to think that we can always educate and hold accountable the student,” says Pamela Freeman, associate dean of students at Indiana University. IU officials defended suspending Margaux’s alleged attacker as, in effect, a teachable moment, according to interviews with the Center and documents from a federal investigation into the school’s handling of the case.

But victim advocates question this notion. “There’s no evidence to

suggest that a college campus can rehabilitate a sex offender,” says Brett Sokolow, of the National Center on Higher Education Risk Management, which consults schools on sexual assault policies. “So why are we even taking that chance?”

MARGAUX’S CASE

Margaux, a reserved cellist whose black curls frame moon-shaped cheeks, had doubts about the process even as her informal proceeding took place on May 4, 2006. She reported being raped on April 6 by a fellow freshman who lived on her co-ed floor. Within days, she filed a report with IU police; then, a complaint with IU residence staff. Now, she sat in an office with a school advocate, testifying by speaker phone. Nearby, the alleged assailant — a taciturn, stocky athlete who had seen IU’s disciplinary process before — faced a two-member panel in a separate conference room, his father beside him.

Panel members — a residence coordinator and a judicial affairs administrator — presented the complaint to the accused student, who one of them later described in records from the federal inquiry as “dismissive, stating ‘whatever.’” To

this day, the student, who spoke with the Center on condition of anonymity, maintains that “Margaux and I had consensual sex.”

Over two hours, in testimony before the panel, some details emerged clearly: Margaux and the alleged assailant agreed they encountered each other in the hall after a late night, drinking; she was crying, searching for her keys, when he offered help; he opened her door. But they gave conflicting accounts of what happened next. The accused claimed Margaux invited him into her room and readily “hooked up.” She countered he followed her inside and ignored her efforts to resist. “I began passing out,” she wrote in her official statement, “and when I would come to again he would still be on top of me.”

The proceeding devolved into what IU officials, in the federal documents, called “a shouting match.” The student’s father interrupted testimony, despite IU rules prohibiting “advisors” to speak, intimating the two had a one-night stand, “saying that kids were being kids.”

Ultimately, they agreed on a key detail: Margaux had been intoxicated. That stipulation became the deciding factor for the panel. “That means he

knew she was incapable of consent,” says Andrew Chadwick, the top administrator on the panel who then worked at IU’s Office of Student Ethics and Anti-Harassment, “yet he went ahead and had sex with her.”

The student now disputes this fact, telling the Center, “She seemed fine to me, not drunk.” His father, who admits speaking out at the proceeding, says alcohol use should have cast doubt on Margaux’s credibility.

The proceeding outcome would be muddied by the intermingling of several disparate terms. Panel members found the student responsible for what Chadwick, according to the federal records, described as “sexual assault (power differential).” The so-called differential: she was clearly drunk and essentially powerless; he, while drinking, was not. Yet at the proceeding, as one of the panel members later described it, the finding was “sexual misconduct.” Officially, the charge was “sexual contact.” Chadwick, now on leave from IU and working as a student affairs consultant, attributes this discrepancy to a lack of evidence that physical violence had occurred. “At IU,” he adds, “we considered this charge just as severe as sexual assault.”

Margaux saw it differently, referring to legal statutes: “Apparently, at

Indiana, it’s not rape when you have sex with someone who cannot give consent.”

A COLLEGE JUDICIAL PROCESS, NOT A COURT

Administrators stress that the college judicial system is, as IU’s Freeman, who heads the Office of Student Ethics, says, “not the same thing as a court of law.” Unlike criminal courts, which enforce rape statutes, college proceedings enforce “conduct codes” that list prohibited acts like “sexual assault” or “sexual contact.” Their hearing boards operate under different procedural rules and evidence standards. Even their mission differs from the criminal justice system: Verdicts are educational, not punitive, opportunities. Alleged student victims may expect punishment from campus proceedings, says Jerry Price, vice chancellor for student affairs at Chapman University, in California, “but there is nothing in our mission about justice.”

Critics say the college system is ill-equipped to handle sexual assault cases. Schools may designate an “investigator” to assess a complaint’s merit. But they cannot subpoena records and witnesses to sort out con-

flicting testimony. Many train hearing boards on policies for adjudicating alleged assaults, but those sessions can only begin to address complexities. “Why would we expect university judicial boards to handle [difficult cases] right?” asks David Lisak, of the University of Massachusetts-Boston, who has trained administrators on combating sexual violence.

Many administrators agree they would rather the criminal justice system take on cases involving campus rape allegations — if only it would. Prosecutors often shy away from such cases because they are “he said, she said” disputes absent definitive evidence.

But if determining guilt is difficult, college administrators say, so is the sanctioning process. As much as 75 to 90 percent of total disciplinary actions doled out by schools that report statistics to the Justice Department’s Office on Violence Against Women amounted to minor sanctions, although it’s unclear from the data what the nature of the “sexual assault” offenses were. Among those modest sanctions: reprimands, counseling, suspensions, and community service. The most common sanctioning reflected what the data calls “other” restrictions — alcohol treatment, for example, or social proba-

tion. Interviews and records in these cases show that other minor penalties include orders that perpetrators write a letter of apology, or make a presentation to a campus advocacy group, or write a research paper on sexual violence. Administrators note that they sometimes issue multiple sanctions. For instance, they may require a no-contact order, a housing ban, *and* classes on sexual consent. By contrast, the database shows that colleges rarely expel culpable students in these cases — even though the Justice Department encourages its campus grant recipients to train judicial panels to hand down “appropriate sanctions, such as expulsion.”

“I find that absolutely outrageous,” says Colby Bruno, managing attorney at the Victim Rights Law Center, in Boston, referring to such sanctions. Bruno, who represents alleged victims in these proceedings, has routinely seen responsible students slapped with deferred suspensions, probations, even no penalties at all. “I don’t understand in what crazy universe rape or sexual assault doesn’t warrant expulsion,” she adds.

Administrators say such information can be misleading. Typically, an official considers several factors in sanctioning: the student’s disciplinary record, the institutional precedent,

and the violation. Yet this last element can cover everything from fondling to forced penetration. Not every sexual offense deserves the harshest penalty, they argue; not every culpable student is a hardened criminal. “There’s not a one-size-fits-all in these cases,” contends Rick Olshak, associate dean of students at Illinois State University. He says schools are more likely to expel in cases involving penetration without consent, and clear intent. “It’s the cases in the middle” — involving miscommunication and mutual intoxication — “that are more difficult and that will result in less than expulsion,” Olshak adds.

At times, though, even seemingly stringent sanctions can amount to little. In December 2007, Ariel Brown, then a junior at Bowdoin College, reported being raped by a baseball player in her dorm after an alcohol-soaked party. Two months later, the Bowdoin Sexual Assault and Misconduct Board deemed the student responsible for “the charge of Sexual Assault,” case records show. For Brown, it was little consolation: A school investigation had already dismissed her allegations of forced anal sex, making the finding solely for “an act of oral sex.” (Ariel Brown is a pseudonym to protect her identity.)

During her proceeding, Brown

ONLINE: AUDIO CLIPS

Ariel Brown describes the punishment assessed against her alleged assailant after Bowdoin found him responsible for “the charge of sexual assault.” The punishment consisted mainly of “non-academic suspension.”

www.publicintegrity.org/investigations/campus_assault

requested that the alleged assailant be suspended. Instead, he received “non-academic suspension” — in effect, social probation. Records show he was “removed from campus for all non-academic pursuits” — no housing, no activities. But Brown later learned Tim Foster, Bowdoin’s dean of students, had made an exception: The athlete could attend home baseball games. Brown’s mother — a Bowdoin alumnae — remembers complaining to Foster, who relayed that the student had been in his office, crying, because of the penalty. He was allowed to march in the May 2008 graduation; according to records, though, his diploma was held for a year. Foster declined to comment on Brown’s case, except to stress that “this matter did not involve any finding of rape.” The ac-

cused did not respond to several e-mails and phone calls seeking comment.

“To allow someone who’s been found responsible for sexual assault to continue to attend such an elite school is just awful,” seethes Brown, who transferred to Wellesley College.

LENIENCY IN EXCHANGE FOR REMORSE

In Margaux’s case, explanations of the sanction by the panel’s top administrator, Chadwick, did nothing to temper her outrage. The official, she remembers, painted a contrite portrait of the alleged assailant, relaying that he had, as one official later put it to the federal investigator, “showed remorse and admitted that he had an alcohol problem.”

In an e-mail to the IU deans who oversee the judicial process, including Freeman, Chadwick cited this “break” as reason for limiting the suspension to the summer. “Through his self-discovery today,” the administrator wrote, “I believe he still has hope.” Chadwick and the residence coordinator, Molly Holmes, had intended to suspend the student until January 2007, but lessened the term, as Holmes stated in the federal records, “because of

the perpetrator’s change in heart.”

Holmes, who now works at Northern Illinois University, declined to discuss Margaux’s case. Chadwick, though, confirms that the alleged attacker’s turnaround from initially combative to a “what have I done?” moment” gave them pause. “In student affairs parlance, he’s had a critical moment in his life,” Chadwick says. He defends their sanction as “appropriate,” since they also issued a no-contact order, and mandated alcohol classes and counseling. Earlier, the student had been banned from the dorm. “Those are pretty serious sanctions for an 18- or 19-year-old person,” he adds.

The alleged perpetrator, for his part, recalls panel members pressuring him to confess to Margaux’s account of the incident, “pushing me into a corner.” Chadwick, he claims, wanted him to admit to having a drinking problem, though he says he doesn’t. He relented because, in his words, “I saw where they were going.” He suggests that he was unlikely to go to summer school anyway.

By then, the student was well known to IU disciplinary officials. The university had deemed him responsible for two other previous violations — drinking alcohol in his dorm, and punching another

student in a fight also investigated by campus police for criminal battery charges. Meanwhile, another IU dorm resident sent an e-mail to Margaux informally accusing the same alleged perpetrator of sexual assault. The woman claimed the accused “has come into my room on two occasions and forced himself upon me” and she offered, in the e-mail to Margaux, to “back you up.”

After her proceeding, Margaux sat in her dorm, penning that irate letter to IU deans. Documents show she had objected to Chadwick that the suspension was “not severe enough.” That her alleged attacker would be allowed to return in the fall left her feeling “as if my assault had been swept under the rug,” Margaux recalls. But in her view, it also seemed to ignore his record — and the alleged attempted assault. The second woman’s e-mail message had made its way to Chadwick, who did not factor her claims into sanctioning because, he says, “it hadn’t been a formal case.”

Hearing the decision, Margaux’s parents immediately pressed the university for expulsion. Her father, Michael, repeatedly contacted Richard McKaig, IU’s dean of students, and urged the dean to do “the right thing.” He forwarded his daugh-

ter’s letter to IU’s board of trustees, along with his own incensed letter. His wife, Eva — an IU alumna, along with nine of her relatives — called the governor’s office, as well as state and federal politicians. “That IU would give a slap on the wrist and a suspension is outrageous,” Eva says. “People go to jail for these crimes in the real world.”

Days later, IU’s McKaig informed Margaux that he had extended the suspension for another two semesters. Her alleged assailant could return to campus in May 2007 — two years before her scheduled graduation. In the federal records, McKaig, who has recently retired, stated that he did not believe “a one-summer suspension was sufficient in this instance.” IU told federal investigators that it did not receive Margaux’s letter until after McKaig had made his decision. McKaig did not respond to several calls and e-mails from the Center seeking comment.

By the time Margaux received the news, though, she had already decided to drop out.

PHILOSOPHY IS ‘NOT TO EXPEL’

To IU deans — and their colleagues elsewhere — the outcome in Margaux’s case shows the college pro-

cess works; it ended in what Freeman calls “a very strong sanction.” Expulsion at many schools, including IU, seems anathema. For instance, IU officials have expelled only one of 12 students found responsible for alleged sexual assaults in the past four years, as compared to seven suspensions and four probationations or reprimands. “Our basic philosophy is not to expel,” confirms Freeman. The university will kick out a student believed to be a threat, she says, yet “that does not mean that every single person found responsible for sexual assault gets expelled. They’re not all predators.”

But critics say that attitude fails to recognize a disturbing reality about campus rape: Many incidents go beyond “miscommunication” among two drunk students — a common characterization among school officials — to predatory acts. Lisak, the U-Mass professor, has studied what he terms “undetected rapists” on college campuses. His research suggests that over half of student rapists are likely repeat offenders who rape an average of six times. Yet administrators, Lisak observes, “think of serial rapists as the guy who wears a ski mask and jumps out of the bushes.”

“Schools that overlook this paradigm are failing their female stu-

dents,” charges Bruno, of the Victim Rights Law Center, referring to Lisak’s research. “Giving someone a deferred suspension is like giving someone *carte blanche* to do it again.”

Some victim advocates argue that anything less than expulsion — or a years-long suspension — violates the Title IX federal law banning sex discrimination in education. Under Title IX, schools must meet three requirements if they find a sexual assault has occurred: end a so-called “hostile environment”; prevent its future occurrence; and restore victims’ lives. “None of that says you have to educate the offender,” says Sokolow, of the Higher Education Risk Management Center. And when punishment fails to fulfill these obligations, adds Sokolow, who trains schools on the law, “That has the potential to violate Title IX.”

Administrators note that the law does not require expulsion in sexual assault cases or specify any punishment. For them, the practice of combining penalties makes for effective and legal sanctioning without jeopardizing the educational mission. But lawyers contend that colleges and universities are missing the broader legal point: By not punishing culpable students, schools are

setting up student victims for years of anguish because they have to encounter their alleged assailants over and over.

“It’s really a question of entitlement to education,” says Diane Rosenfeld, a Harvard law professor who specializes in Title IX. Often, she notes, student victims become deprived of this legal guarantee because they choose to leave school rather than have to face their alleged attackers, even accidentally. “Expulsion should be a given under Title IX,” Rosenfeld adds. She, like many critics, wonders how leaving an alleged perpetrator on campus would *not* perpetuate a hostile environment.

Certainly, the lives of alleged victims are upended. In April 2006, Angela Tezak, a former student at Pennsylvania State University, participated in an informal proceeding after reporting being raped in an off-campus apartment by a fellow student. At the time, she struggled with depression, and lived in fear of seeing her alleged attacker, rarely leaving her apartment. “What he did really devastated me,” Tezak confides.

Her proceeding proved equally devastating. Tezak expected the alleged assailant to face serious consequences after Penn State admin-

istrators found him responsible for “nonconsensual oral sex” and “non-consensual intercourse.” She remembers Joe Puzycki, assistant vice president for student affairs, calling to inform her that the accused had, as records show, “accepted responsibility.” But Tezak also learned that the school intended to sanction the student, a senior, simply by delaying his degree for a year, in what Penn State records describe as “temporary expulsion.” Days later, Tezak ingested “a big handful” of sleeping pills, landing in the hospital for five days. Penn State records show she never attended a final meeting with Puzycki because of her hospital stay. Tezak says administrators never gave her a chance to request or appeal the sanction. She ended up dropping out, and eventually transferred.

The alleged assailant, for his part, remembers several meetings with Puzycki, who, he says in an e-mail, “coerced me against my will to sign a document accepting sanctions even though I’m 100 percent innocent.” The administrator, he claims, explained that he could appeal Tezak’s complaint—which he calls “baseless and wholly untrue”—yet portrayed a formal hearing as futile, and virtually guaranteed to end in

permanent expulsion. Rather than face such a prospect, the accused says, he chose to “negotiate lesser sanctions.” He offered to do counseling, for instance, in exchange for being able to walk in his May 2006 convocation.

“The way I saw it,” he relays, “I was between a rock and a hard place and my choice was, ‘Which is the two lesser evils?’” Puzycki, he claims, told him the temporary expulsion would appear as “a black mark” on his transcript for up to five years. It has not prevented him from landing several jobs since.

Puzycki declined to discuss Tezak’s case, referring a list of questions to Peggy Lorah, director of Penn State’s Center for Women Students. Lorah, who served as Tezak’s advocate, insists the university followed standard procedures, including that final meeting with alleged victims to approve punishment. Told that records show otherwise, Lorah replied: “The actions that were taken were in accord with what the victim wanted at that time.”

AN APPEAL TO THE EDUCATION DEPARTMENT

Margaux still bristles over what she calls a “false sense of justice.” She

had been “an emotional wreck,” battling nightmares, barely sleeping. Friends of her alleged assailant harassed her in the dorm. “I was having all this trouble,” she recalls, “and here he got suspended.” Things would get worse when IU officials took disciplinary action against her. Weeks after her proceeding, Holmes, the panel’s residence coordinator, sent Margaux a letter charging her with alleged alcohol violations for hosting dorm guests who had been drinking. The accusation turned out to be unwarranted; a roommate had forged Margaux’s name on guest passes. By July, IU deans had dismissed the charge.

That summer, in June 2006, Margaux and her parents filed a complaint against IU with the Education Department, alleging violations under Title IX. It centered on the campus punishment. The family argued that IU had “failed to properly discipline” Margaux’s alleged attacker and, thus, had “fostered a hostile environment.” Later, they filed another complaint saying the university’s charge of alcohol violations amounted to “retaliation” against Margaux.

In its official response, according to case records, IU stressed that panel members handed down “sanction recommendations only,”

and that Dean McKaig had the final say. “Should the Dean decide that the recommendation of his judicial officers is inappropriate for any reason, the Dean will make the final decision,” stated IU’s response to the department. “That is what happened in this case.” Officials dismissed the retaliation claim as an innocent, albeit insensitive, mistake. “I don’t think we did anything wrong,” replies Freeman today. Last April, the Education Department essentially agreed, concluding there was “insufficient evidence” IU violated Title IX. Asked about sanctioning in sexual assault proceedings, Russlynn Ali, the department’s assistant secretary for civil rights, promised the Education Department will issue new guidance for schools, including “remedies ... that comport with the spirit and intent of Title IX.”

Margaux and her parents viewed the complaints as their last hope for accountability in her case. Indeed, her alleged assailant has not returned to IU — he calls the year-long suspension “too severe,” although he never filed an appeal. But the campus sanction would become the least of his worries. Not long after dropping out, Margaux learned that local prosecutors would not seek criminal charges for her rape report.

Instead, they used her allegations as leverage to reach a plea bargain agreement with her alleged perpetrator in the pending felony battery case. He accepted a deal guaranteeing he would not face charges for sexual assault, served six months’ house arrest for pleading guilty to misdemeanor battery, and paid restitution to the IU student whose jaw he had broken. His probation expired in January 2009.

In the June 26, 2006 plea agreement, prosecutors promised to “file no charges against the defendant based on any information known to or received by the State,” including “allegations by Margaux J. ... of improper sexual activity.” He now attends DePaul University, seemingly unimpeded by the “permanent disciplinary record” on his transcript that IU’s Freeman says came from the suspension in Margaux’s case.

Now, all Margaux has left is that punishment handed down in her IU proceeding — or, as she puts it, the “kangaroo trial with a kangaroo sanction.” ■

AN UNCOMMON OUTCOME AT HOLY CROSS ►►

AN UNCOMMON OUTCOME AT HOLY CROSS

By Kristin Jones

The way Melandy saw it, there wasn't enough room for both of them.

The College of the Holy Cross has fewer than 3,000 students. Months after she says she was raped by another student, Jordan, in a men's bathroom on campus, Melandy feared running into him on the paths of the Worcester, Mass. college, at parties, and at the dining hall where he worked. The sight of him would make her shake, cry, and lose her appetite.

"I was tired of having to change my whole life," said Melandy, a slight, soft-spoken psychology major. (She asked that only her first name be used to protect her privacy; Jordan is a pseudonym.)

So when she undertook the often painful process of filing disciplinary charges against the other student, Melandy knew that one of two things would happen. Either he would be expelled, or she would leave the school.

In the end, it was his life that would be upended. The college hearing board found Jordan responsible for the school's most serious charge of "sexual misconduct" — sex without consent — in December 2008. The school dismissed him immediately, revoking his full-tuition scholarship and derailing his academic career and plan to study in Europe, he says. He went back to his native Jamaica, feeling betrayed by his former friend, and "traumatized," his mother says, by the knowledge that college officials did not believe him.

Expulsion rarely results from college disciplinary actions in sexual assault cases, making the Holy Cross case a notable exception. In

interviews the Center for Public Integrity conducted with 33 students who reported being sexually assaulted by another student, four said their alleged attackers were expelled — two of them only after multiple accusations of sexual misconduct. It was far more common for the alleged victim to drop out or transfer, while the accused student remained on campus.

“The school had a policy, they enforced the policy, they found her credible and they expelled the guy.”

— Colby Bruno

Melandy credits her faith in God, among other things, for the outcome in her case. But she also relied heavily on the school’s unusually detailed sexual assault policy and its comprehensive set of procedures for responding to sexual assault.

In preparing her testimony, she frequently consulted a peer advocate at the school, as well as Colby Bruno, an attorney at the Boston-based Victim Rights Law Center. And both Melandy and the accused student cite the role of the college’s public safety officers as key players in the case

outcome — particularly their description of the dark bathroom where the incident occurred. That image seemed to resonate, Melandy recalls, with the hearing board members.

“The school had a policy, they enforced the policy, they found her credible and they expelled the guy,” said Bruno, who advised Melandy free of charge. She added that the outcome was unusual even among other cases she had seen at Holy Cross. “That’s the way it should work.”

College administrators sometimes cite the difficulty of acquaintance rape accusations as a reason that so few disciplinary hearings result in tough penalties. But this case was every bit as complex as many other college rape reports: The two students were friends, they were drinking, and the victim waited months to tell the col-

lege. It happened on a night in May 2008 when they were hanging out in a group. She says she was a virgin, was drunk for the first time, and was too unaware to resist when he led her, she says, to a public bathroom for the purpose of raping her — locking the door and turning off the light behind them. He says he was also drunk, that she never said no, and that she seemed upset only that he had a girlfriend. It wasn't until the fall semester that she reported the alleged assault to Holy Cross public safety officers at the urging of a counselor. There was no rape kit performed, and no obvious physical injuries.

At many other schools, similar reports were ignored or dismissed for lack of evidence. Instead, Melandy's case ended up before a Holy Cross hearing board.

Brett Sokolow, a well-known consultant to college administrators, was commissioned to help Holy Cross overhaul its sexual assault policy a decade ago. He recommends that schools frame sexual assault as an offense without consent, rather than an offense against the will of the victim. The difference, he says, shifts the responsibility from the victim having to prove refusal to consent, and requires the initiator of the sexual activity to demonstrate that consent was given. He recommends too, that colleges be specific about what constitutes incapacitation by alcohol, a common factor in college rape cases.

“Holy Cross is one of the schools that gets it right, as far as I’m concerned.”

— Brett Sokolow

“Holy Cross is one of the schools that gets it right, as far as I’m concerned,” Sokolow says, noting in particular the college’s thoroughness in implementing its own policy. It trained residence hall staff, public safety officers, faculty, and anyone else who might come in contact with victims. Members of campus judicial panels also

receive about three hours of training on sexual assault, according to the dean of student conduct.

In preparing her testimony against Jordan, Melandy highlighted the parts of the policy that seemed to back her up:

[I]t is the responsibility of the initiator ... to make sure that he/she has the consent from his/her partner(s).

Holy Cross proved to be an exception; the two public safety officers — trained in sexual assault investigation — testified about what they found.

Consent may never be given ... by one who is incapacitated as a result of alcohol.

Silence ... may not ... be taken to imply consent.

Too uncomfortable to tell a professor about the accusation against him, Jordan did not bring a faculty advisor to the hearing in mid-December 2008. On the other side of a partition, Melandy sat beside a trusted statistics professor, as well as the dean of student conduct and two public safety officers. A male friend of Melandy's told the campus panel that he could see how intoxicated she was on the night in question.

Colleges are obligated to conduct their own investigations into sexual assault reports. But they often don't. Here, again, Holy Cross proved to be an exception; the two public safety officers — trained in sexual assault investigation — testified about what they found. Jordan had said the bathroom was not that dark, but the officers said that with the light switched off, it would have been pitch black. Their testimony also differed from his on the size of the bathroom.

"At that point, I said, OK, wow, I know I'm going to lose," said Jordan.

Holy Cross did not provide records of the outcomes in previous sexual assault cases. Bruno, the victim rights attorney, said

that other cases she had seen at Holy Cross resulted in findings of “not responsible.” An administrator said expulsion was the most common outcome when students are found responsible for rape, reflecting a philosophy that the school has an obligation to protect its community.

“I think there’s certain conduct on a college campus that’s just not acceptable,” says Paul Irish, dean of student conduct and community standards. “And if someone does it, they can’t be a community member any more. Period.”

After the hearing, Jordan finished his finals and packed his bags, leaving behind what he couldn’t fit in two suitcases.

He believes it was unfair that the school exacted such a punishment without giving him the due process that a criminal trial would have afforded. “The whole process is fundamentally flawed,” and “ridiculous,” says Jordan, now a law student in Kingston. In a letter to

“I think there’s certain conduct on a college campus that’s just not acceptable,”

— Paul Irish

the Holy Cross president, he appealed the board’s decision, saying that Melandy initiated the sexual contact. The appeal was denied.

The school defends its process, saying that attendance at Holy Cross is a privilege, not a right.

The campus panel’s decision to expel Jordan brought Melandy to tears — of joy and relief, this time. A year later, she was preparing to graduate from Holy Cross, and studying for the GRE.

“I guess you never really forget — not just the rape, but you don’t forget the process, either,” she says. “But I feel like I’m at peace right now, and that’s what I wanted.”

Staff writer Kristen Lombardi and reporting fellow Claritza Jiménez contributed to this article.

Lax Enforcement of Title IX In Sexual Assault Cases

FEEBLE WATCHDOG LEAVES STUDENTS AT RISK, CRITICS SAY

By Kristin Jones

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IT TOOK NINE MONTHS in 2005 and 2006 for the University of Wisconsin at Madison to contemplate, then reject filing disciplinary charges against a crew team member accused of rape.

Enough time for the accused student to start his fourth year at the university, compete in another rowing season, and glide into another spring as a celebrated college athlete.

Enough time, too, for an enraged encounter with his accuser, Laura Dunn, at a fraternity party. “He started threatening me,” said Dunn. “When he hit the wall, he used his whole forearm, and just slammed within inches of my head.”

The university said a police investigation and the alleged victim’s objections to one of her investigating officers accounted for the delay. The criminal investigation, too, ended without charges against the accused

student, who said Dunn willingly participated in sexual activity.

Unsatisfied with the school’s response, Dunn hoped to find an ally in the U.S. Department of Education’s Office for Civil Rights. The office, referred to as OCR, enforces a federal law requiring “prompt and equitable” action in response to reports like Dunn’s. The statute is intended to protect students’ right to an education without the hostility of sexual harassment or assault. But in a decision that left her feeling betrayed again, the enforcement agency said it found “insufficient evidence” that the University of Wisconsin had been less than prompt.

The university’s explanation for taking nine months was “reasonable” and it took “interim steps” including a no-contact order “to protect and prevent harassment” of Dunn, OCR found. The school ultimately cited a

lack of eyewitnesses and the role of alcohol in deciding not to file disciplinary charges against the accused student.

“I really expected for an organization that puts civil rights in their name to understand,” said Dunn. “It was pretty devastating.”

OCR is the primary office overseeing colleges’ response to rape and other forms of sexual assault, but in reality, it does not investigate many cases like Dunn’s. Too few students know they have the right to complain, say advocates for alleged assault victims. A Freedom of Information Act request filed with the Department of Education yielded at least 24 fully resolved investigations between 1998 and 2008 into allegations that colleges and universities botched sexual assault cases. That’s about two a year, on average. And violations of Title IX were found in just five cases in 11 years. None of the schools were punished, however — even when OCR found that colleges had acted indifferently or even retaliated against students who reported that they had been raped or otherwise sexually assaulted on campus.

OCR officials have said punishing schools is unnecessary and impractical; an ultimate potential penalty of rescinding federal funds is enough

to scare schools straight with a few well-placed words. By law, OCR has few tools for intermediate sanctions; it can’t issue fines, for instance. It can refer cases to the Justice Department for litigation, but hasn’t needed to, officials have said, because schools naturally fall into line once they are investigated. But critics see it differently. They say OCR’s enforcement of how schools handle Title IX cases involving alleged sexual assaults is overly friendly, which ultimately lets colleges — and rapists — off the hook.

The Office does not routinely make public its investigations into colleges and universities accused of mishandling sexual assault reports. Through a FOIA request, the Center for Public Integrity received the results of 210 Title IX campus sex discrimination investigations, which included allegations of other forms of sexual harassment, like inappropriate comments or touching by professors, and grade discrimination, as well as sexual assault. The Department of Education provided findings only for cases in which investigations and any follow-up monitoring were complete.

Russlynn Ali, who was appointed last year to head OCR, painted its modest enforcement history as a

remnant of policies pushed by the Bush administration, and said that the Obama administration would be more aggressive in enforcing Title IX in sexual assault cases.

“I certainly can’t speak to the decisions made in the past,” said Ali. “I can, though, commit to you that where universities or school systems don’t comply with civil rights laws, where they are unwilling to look to find a resolution ... we will use all of the tools at our disposal including referring to Justice or withholding federal funds or going to adjudication to ensure that women are free from sexual violence.”

Critics contend that until now, the message to college administrators has been a starkly different one.

“A smart and savvy attorney tells them, ‘You don’t have to do jack squat,’ ” said Sarah Dunne, legal director of the American Civil Liberties Union in Washington state, and a former attorney for the Civil Rights Division of the Department of Justice. “‘They’re not going to go after you.’ ”

A LITTLE-KNOWN APPLICATION OF A FAMILIAR LAW

Laura Dunn was a rower, too, during her freshman year at the University of Wisconsin. She left the next year

after the alleged rape by two teammates, she said, made the already-slender athlete lose weight and sleep. But even as her crew career fell apart, she didn’t report anything to campus authorities for more than a year. Many so-called acquaintance rape victims are slow to identify what happened as assault despite profound personal consequences, and Dunn says she was one of them.

At the root of Dunn’s OCR case was anger at the way the university responded to her report. Her teammates assaulted her, she said, while she drifted in and out of consciousness after drinking heavily at a crew party in April 2004. (The second alleged attacker had already graduated by July 2005, when she reported the assault.) The two accused men, who did not respond to the Center’s calls for comment, told a campus police investigator that she was flirting with them, and initiated a sexual threesome.

The first student affairs dean assigned to look into her report left the job; the second one was reassigned after Dunn expressed concerns about her methods. It wasn’t until April 2006 that Assistant Dean of Student Affairs Suzanne Jones, the third investigating officer, made the final decision not to pursue disciplinary charges against the remaining stu-

dent. She never formally interviewed either of the two men, or read the police file in the case before deciding not to take any action against the fourth-year athlete, according to OCR's investigation.

Jones said "she was not pursuing the matter because there were no eyewitnesses other than [the three students involved]," according to a letter documenting OCR's findings. She added that the two students still attending the university "were not clear on what happened ... and that alcohol played a part in their lack of clarity."

When contacted by the Center, Jones declined to say more than "a lot of it is totally incorrect." She would not clarify what she meant.

To Dunn, it seemed that the school had just run down the clock on her case, waiting until the end of the year to drop it without a thorough investigation.

Seeing no other avenue for recourse, Dunn took her story to a local newspaper. That was how S. Daniel Carter, public policy director of Security On Campus, Inc., a safety advocacy organization, learned of the incident, and he e-mailed Dunn about her rights.

Title IX was passed in 1972 to prohibit discrimination based on sex in federally funded educational activi-

ties, and in 1980 was put under the oversight of the newly created Education Department's Office for Civil Rights. The law is widely associated with disputes over gender equality in athletics. It makes no mention of sexual assault. But its regulations call for grievance procedures providing "prompt and equitable resolution of student and employee complaints" of discrimination on the basis of sex.

A 1999 Supreme Court decision established that a school could be held liable under Title IX for failing to address student-on-student sexual harassment, including assault. The decision underscored the rights of students who believed that their rape reports had been mishandled, causing them to drop out of school or otherwise miss out on educational opportunities.

But little has been done to make students aware that they have these rights, say advocates. The option to file a federal civil rights complaint after a college allegedly fumbles a rape report, said Carter, "is not widely known among the victims. It is also not known among rape crisis advocates, and it is also not known by lawyers." And the window of 180 days OCR gives students to file a complaint often passes before they find out about it.

As a result, the number of investigations into sexual assault-related cases is “shockingly low” said Diane Rosenfeld, who teaches a class on Title IX at Harvard Law School, especially considering the hefty estimated percentage of female students — one in five, according to a Justice Department-funded study — whose college educations are disrupted by rape or attempted rape.

Still, OCR investigations have catalyzed policy changes on several campuses, including some directly related to Title IX’s requirement that colleges be “prompt” in responding to sexual assault — Dunn’s major complaint.

In 2006, OCR’s New York office found that the Metropolitan College of New York violated Title IX’s requirement for “prompt” resolution because of a one-month delay in investigating a rape report. In 2004 and 2007, other regional offices cited Oklahoma State University and Temple University, respectively, for failing to designate any time frame for investigation of sexual assault.

All agreed to overhaul their policies to comply with Title IX. Temple University also promised to provide counseling and other services to the student who had complained.

Dunn filed her complaint with the

Chicago regional office in August 2006. The office initially declined to investigate, saying it wasn’t within OCR’s jurisdiction because the alleged rape took place off campus. She appealed with the help of Security On Campus, Inc.

“UW ... acted with deliberate indifference,” wrote former Security On Campus, Inc. legal advocate Alice Purple. “The harassment that Ms. Dunn was forced to undergo was so severe, pervasive and objectively offensive that it deprived her of educational benefits by forcing her to quit the crew team and causing her grades to fall.”

When the regional office finally agreed in March 2007 to take up the complaint, Dunn was optimistic that OCR would agree with her. After all, nine months was equivalent to an entire academic year: How could that possibly be prompt?

FEW VIOLATIONS

But a review of 11 years’ of completed OCR investigations shows findings of violations to be the exception rather than the rule in cases alleging mishandling of sexual assault reports.

Some of OCR’s findings paint a portrait of college processes gone badly awry, with what seem to be

devastating consequences for alleged victims. But no Title IX violations are identified. In 2003 for example, OCR's Boston office found it "troubling" that Boston University had distributed a press packet with information about an alleged rape victim, noting that she was fined for "disorderly conduct" and drinking alcohol on the night she was allegedly raped. But OCR stopped short of calling the school's actions retaliatory.

Even the few Title IX violations OCR found in sexual assault cases did not bring penalties. Instead, they prompted written agreements from colleges to change their ways, or occasionally to provide additional services to an alleged victim.

For instance, the Washington, D.C. office of OCR found that Christian Brothers University had committed a litany of errors in responding to a student who reported a rape, from initially dismissing the case simply because the accused student denied it, to refusing to investigate the alleged victim's reports that she was being harassed on campus. OCR asked that the university make a number of policy changes, and stop its apparent retaliation against the alleged victim. But there was no punishment for its mistakes.

This is partly because OCR, by

regulation, has few tools for punishment short of stripping a college of funding. The lack of available penalties isn't lost on the office itself; in its 2000 strategic plan, OCR identified a long-term goal of developing "proposals for remedial powers other than complete de-funding of recipients." Ten years later, its enforcement method has remained the same; it works with colleges to find a resolution to grievances.

Ali, who now heads OCR, said she believes it has sufficient powers — positive as well as punitive — to enforce Title IX.

"Historically, and we are seeing it now, universities come to the table ready to do something about this," she said. OCR wants to expand remedies beyond the procedural ones favored by the last administration, Ali said, adding she would work with colleges to come up with solutions that might include new student orientation activities, expanded counseling, and additional collaboration between faculty, staff and students to eradicate sexual violence.

"Where there is recalcitrance," she added, and a school refuses to collaborate with OCR or make the changes it has agreed to, "we will aggressively enforce."

Critics say that by going easy on

colleges, OCR has traditionally failed victims of sexual assault.

“Schools are routinely not up to snuff and face very little action from the federal government to change their ways,” said Security on Campus’s Carter. “You want enough enforcement so that schools are pressured to take sexual assault and rape more seriously. They don’t now.”

Carter believes that it is up to Congress to ask OCR to strictly enforce Title IX. Other advocates said that the office already has the tools it needs to address sexual assault. It can refer cases for litigation by the Justice Department, for instance. But it never has.

“They have this power and they’re not using it,” said Rosenfeld, the Harvard law professor. She believes Title IX is vital to ensuring gender equity in education, and has been inadequately enforced in sexual assault cases. “Rescinding federal funds is a huge stick that OCR could use against schools, and instead they use this very soft approach.”

Former OCR officials countered that investigations themselves are onerous and costly for colleges, providing a strong incentive to avoid them. The office works most effectively through positive means like educational seminars and conferenc-

es, they said, and by working quietly with schools once investigations are initiated.

C. Todd Jones, a high-level official at OCR for more than four years of President George W. Bush’s administration, said that when pushing colleges to change their policies, taking an adversarial stance could be counter-productive.

“One of the ways to avoid being stonewalled is to act collaboratively with [schools],” said Jones, who served as OCR’s deputy assistant secretary for enforcement, among other roles. “To work with them, to say, ‘Yes, your change is a good thing.’”

Rosenfeld calls that position “irresponsible law enforcement,” likening it to a cop who avoids making an arrest for fear of what the person in handcuffs may think.

Critics said that OCR’s preference for working behind the scenes takes away yet another stick.

“When a school doesn’t fear getting sanctions, it fears embarrassment or shame,” said victims rights lawyer Wendy Murphy. But schools don’t fear anything from OCR, she said. “They don’t write their rulings as if there’s even shame to be had.”

Murphy filed a complaint against Harvard in 2002 that led to a change in its sexual assault policy, but there

was no finding of a violation by OCR — a result she said sent the wrong message to other administrators. “If you were a school,” she asked. “Why would you treat a victim fairly?”

A MONTHS-LONG PROCESS

The University of Wisconsin at Madison did not grant interviews with any of the administrators involved in investigating or responding to Dunn’s civil rights complaint.

Kevin Helmkamp, the current associate dean of students, was the only university staff member who was made available for an interview — but not about the case. He bristled at the idea sometimes espoused by advocates that simply being investigated by OCR was an indication that the school had done something wrong. “OCR’s letter to the university identified no required changes to our process nor any wrongdoing on the university’s part,” he added in an e-mail.

Indeed, the OCR letter finds that the nine-month process was justified.

First, a criminal investigation stood in the way, the letter notes. A university dean told OCR that “it was not unusual ... to delay their interviews when a student also elected to file a criminal complaint.” OCR ac-

cepted that answer, though its own guidance, issued in the waning days of the Clinton administration, stated that “police investigations or reports ... do not relieve the school of its duty to respond promptly and effectively.”

In this case, a campus police detective asked to do the initial interview with the alleged attacker still enrolled at the university — then took two months to do it. Another delay arose when the dean assigned by the university to investigate Dunn’s case was replaced twice — once after Dunn complained that the dean’s accusatory manner pushed her to tears and caused her to fail an exam. (The school disputed that, saying the dean was simply doing her job as an investigator.)

All the while, the alleged attacker, a religious and classical studies major, continued to row on the crew team that Dunn had felt forced to leave.

“My parents are Harvard attorneys,” Dunn said he told her at a November 2005 party. “You won’t win.”

The athlete’s aggression toward his alleged victim at that party led its hosts to discuss asking him to leave, one of them recalled years later. The accused student’s belligerence seemed to Dunn to clearly be

a reaction to her report. But OCR found that since Dunn had initiated the contact at that party (a point she disputes), there was “insufficient evidence to establish that the University subjected [her] to a sexually hostile environment.”

Dunn disputed many of the points made by university staff members — everything from dates she says they had wrong to conversations they may have misinterpreted or failed to mention. Her version of events, including promises from staff members that the investigation would soon conclude, appears to be corroborated by many of the e-mails she provided to the Center. But OCR consistently took the university’s word over hers.

Purple, the former Security On Campus, Inc. advocate who wrote Dunn’s appeal, said she was surprised by OCR’s findings in the case. The lengthy delay in investigating Dunn’s report, she added, seemed to be an obvious violation of Title IX requirements that schools respond in a reasonable timeframe. “I don’t think they were really justified in coming to that conclusion,” she said.

OCR’s sole concession to Dunn’s complaint was a determination that the University of Wisconsin had no established timeline for a prompt investigation, one of Title IX’s most

fundamental requirements. In a footnote on page 14 of its finding letter, OCR recommended a policy revision, and stated that it had provided the university with “technical assistance” in order to achieve it.

Technical assistance is OCR’s term for seminars, classes, conferences, private phone calls and other efforts intended to train educators on their civil rights responsibilities. These programs depend on the good will of university administrators. Even OCR critics agree that they can be an extremely effective tool.

But by OCR’s own account, technical assistance — along with its ability to investigate complaints — has taken a hit in the last decade, as the Office’s budget has been stretched.

In fiscal year 2009, OCR had 582 full-time staffers — fewer than at any time since its creation. And it received 6,364 complaints, an increase of 27 percent since 2002.

“OCR is challenged in its ability to execute its law enforcement activities,” said an administration budget request last year. Investigations were taking longer, it noted. And the Office’s “capacity to deliver technical assistance, which is labor intensive but the best means of preventing civil rights violations, is at risk.”

The Obama administration has

promised to give OCR a boost, and the president's fiscal year 2011 budget request calls for full-time staff to inch up to 614 by next year. "In recent years, this office has not been as aggressive as it should be," Secretary of Education Arne Duncan said in a speech in January. "But that is about to change."

Ali said her Office will direct more attention toward technical assistance and outreach to universities on the issue of sexual assault, despite a budget that remains tight.

Back at the University of Wisconsin at Madison, though, it is unclear whether the "technical assistance" referred to in OCR's letter ever took place.

To date, the university's policy makes no mention of any time frame for investigations — for good reason, Helmkamp said. "It is very difficult to predict how long it would take, particularly with complex cases," he said. "And we do want to be thorough."

Without instruction from OCR staffers, colleges depend more heavily on public guidance and on private consultants to decipher signals from court cases and OCR determinations. But critics say these signals are often confusing.

On Jan. 19, 2001, the last day of the Clinton administration, OCR is-

sued its most recent sexual harassment guidance, a single document with specific recommendations on how best to prevent and respond to sexual harassment and assault in educational settings. It is that guidance that says, for instance, police investigations do not relieve a school of its obligation to investigate.

But C. Todd Jones, the former Bush administration OCR official, said the guidance lacked an adequate public comment period and was shelved immediately after the 2001 inauguration. He called it "not more official than a brochure," citing "legal analysis errors" and "unsubstantiated conclusions." Practitioners in the field, though, said they were unaware the guidance was not in effect.

To Carter, the campus safety advocate, the ex-Bush administration official's statement confirms a long-held suspicion that OCR was not applying its own published guidance in its analysis of complaints. But it does nothing to clarify confusion over what OCR actually recommends.

"OCR does not tell the schools what's expected of them," said Carter. "There are not clear-cut instructions ... of exactly what they have to do in a sexual assault case. And that is essential."

The Office plans to issue new guid-

ance on schools' Title IX responsibilities as they relate to sexual violence, said Ali, in coming months.

SOMETHING TO FEAR: PRIVATE LAWSUITS

Colleges have another good reason to look to OCR for more guidance: Some courts have taken an increasingly aggressive stance against institutions which ignore acts of sexual violence on their campuses.

Since the Supreme Court's 1999 decision that schools could be held liable for sexual assault by students, a number of landmark cases filed by alleged victims have resulted in huge settlements.

In December 2007, the University of Colorado paid \$2.85 million to settle a high-profile lawsuit filed by two students who alleged they were raped by football players and recruits. The university's coaches and administrators were accused of facilitating a culture of sexual violence by athletes.

Baine Kerr, the lawyer who represented CU student Lisa Simpson in that case, took on Arizona State University in a similar case. In January 2009, the Arizona Board of Regents paid \$850,000 to settle the lawsuit.

Private lawsuits like these have

put colleges on notice in a way that government enforcement has not, say lawyers and scholars. "Whether or not schools care when the Office for Civil Rights calls," said Ariela Migdal, an attorney at the ACLU Women's Rights Project, which wrote an amicus brief in the CU case, "if I were a school administrator, I would care if someone like Baine Kerr were to call me."

Some argue that civil lawsuits have effectively negated the need for much government enforcement of Title IX in rape cases. "If a woman's been raped, and the allegation is that the university violated Title IX, there's no reason to spend your time filing an OCR complaint," said Jones, the former OCR official. "Go down to the federal courthouse, file a lawsuit and get money. Why waste your time with OCR?"

But advocates like Carter — who has helped students do both — vehemently disagree, arguing that the expense of lawsuits is simply not within the grasp of most students.

And Supreme Court decisions in the late 1990s set the bar for private action in a Title IX case at an explicitly higher level than in agency enforcement. To win damages in a private lawsuit, a student must prove that a college had actual knowledge of sexual harassment or assault, and

showed “deliberate indifference.”

That makes civil actions appropriate in only the most egregious situations — a case of a serial rapist who is known but ignored by a university, for instance, or a college that has no sexual assault policy at all.

“That’s a far cry from most cases, where there is some process, but it’s flawed,” says Carter.

A NEW ROLE FOR OCR?

OCR’s enforcement of Title IX in sexual assault cases has long been weak, say victim rights advocates. Some are hoping the Obama administration will encourage OCR to more forcefully take colleges and universities to task in cases like Dunn’s — a role Ali said her office is ready to adopt.

“Sadly, I have heard those same kinds of stories and anecdotes,” said Ali, when told of complaints that her office simply signs off on universities’ decisions. “What I can commit to as a newly appointed assistant secretary for civil rights is that we are a rubber stamp for no one.”

Calling sexual violence an “epidemic” in the nation’s schools, Ali said that the Department of Education would partner with other agencies to address it.

OCR is also working with its gener-

al counsel to make more of its investigations publicly accessible, Ali said, adding that it is now concluding two reviews into universities’ handling of sexual assault. OCR launched the two investigations during the Bush administration, she said, without an underlying complaint, and it plans to initiate more reviews in coming years. She said the office will also educate colleges on their responsibilities to give students the means to complain.

Dunn, for her part, didn’t even read OCR’s decision for months after she received it. It was enough to know the office had decided against her. Later, she read through it and marked all the times that the OCR investigator had, in her view, taken the school’s word over hers. The experience left Dunn, now a schoolteacher in Chicago, pessimistic about the prospects for future victims — at the University of Wisconsin and at other colleges.

“The message they are sending to victims,” Dunn said, “is that sexual assault is not something they take seriously.” ■

Staff writer Kristen Lombardi and reporting fellows Laura Dattaro and Claritza Jiménez contributed to this story.”

‘Undetected Rapists’ On Campus: a Troubling Plague of Repeat Offenders

A CHILLING CASE AT A FRIENDLY SCHOOL — SEXUAL ASSAULT
AT TEXAS A&M

By Jennifer Peebles and Kristen Lombardi

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COLLEGE STATION, Texas—
Elton Yarbrough was a young
man seemingly on his way up:
An economics major at Texas A&M
University; a member of the univer-
sity’s military cadet corps; a musi-
cian in the marching band; the pride
of little Palestine, Texas; and soon
to be an officer in the U.S. Air Force.

But police say he was also one
other thing: A serial rapist.

The one-time Texas A&M senior is
now sitting in a Texas prison until at
least 2015 for felony sexual assault.
Five women, including four female
A&M students, testified Yarbrough
raped or sexually assaulted them
between 2003 and 2006, although he

*Jennifer Peebles is a reporter with
Texas Watchdog.*



**Elton Yarbrough is serving an 18
year sentence in the Ferguson Unit
of the Texas Department of Criminal
Justice, shown above in January
2010, after he was convicted of
sexual assault in 2006. (Credit:
Jennifer Peebles/Texas Watchdog)**

was only tried on one assault charge. Yarbrough says he is innocent.

Yarbrough is one of six alleged serial offenders at colleges across the country the Center for Public Integrity found during its year-long investigation of sexual assault on college campuses. The six were accused of assaulting multiple women in court

Records show that Texas A&M administrators were not aware of Elton Yarbrough's arrest on a sexual assault charge until more than a week after it had happened or that he was possibly a repeat rapist.

records, campus records or other public documents. However, students who reported being raped by fellow students told the Center of at least five other men whom they suspected of, or had heard of, assaulting other women. Those men probably look a lot like Yarbrough did to Texas A&M administrators and to his fellow students: A promising young student with an outstanding resume of achievements. As one of his accusers would later write in a statement read at a university judicial proceeding, "If you cannot trust another student with a record which ap-

pears as impeccable as Elton's, then who can we really trust in life?"

The number of serial offenders did not surprise psychologist David Lisak, a University of Massachusetts-Boston expert on campus sexual assault.

"This is the norm," said Lisak, who co-authored a 2002 study of nearly 1,900 college men published in the academic journal *Violence and Victims*. "The vast majority of rapes are perpetrated by serial offenders who, on average, have six victims. So, this is who's doing it."

Yarbrough's story, and those of the women who accused him, share several commonalities with cases of other alleged repeat rapists. For example, records show that Texas A&M, the nation's seventh-largest university, was slow to realize it had a possible repeat rapist on campus. Administrators were not aware of Yarbrough's arrest on a sexual assault charge until more than a week after it had happened and by then police considered him a suspect in another attack months earlier. Once those women came forward, the university eventually became aware of two other women who said they had been assaulted by him. One told the Center for Public Integrity that she had reported the assault a year before to A&M's student health center

and, after getting little support from the university, transferred to another school.

Likewise, all five women testified the assaults occurred after they had been drinking heavily, which blurred their memories. And the university responded by pitting one victim against Yarbrough in a he said, she said “student life conduct” hearing that was surrounded in secrecy and left both the woman and Yarbrough disappointed with the procedure and its outcome.

But Yarbrough’s tale — and the fact that he’s now in prison — also bucks a trend. The Center’s research, and Lisak’s as well, shows that many prosecutors are hesitant to deal with campus sexual assault cases. Police and prosecutors in the middle-sized city of College Station, Texas, charged Yarbrough, put him on trial, and convinced a jury to sentence him to 18 years in prison, of which he must serve at least nine.

SHOCK AT TEXAS A&M

With 48,000-plus students on the campus near College Station, outsiders might think a school the size of Texas A&M would be impersonal and unwelcoming.

But this is a place where the of-

ficial university greeting is “Howdy,” and every A&M student — still called an “Aggie” even though the “A&M” no longer stands for “Agricultural and Mechanical” — is famously required to swear to the code of honor: “Aggies do not lie, cheat, or steal, nor do they tolerate those who do.” Aggies have a reputation for being community-minded. And once you’re an Aggie, you’re always an Aggie. Fallen Aggies are remembered each year at an event called the Aggie Muster that is observed around the world by groups of former students. Included in the “roll call” at the 2000 Muster were the names of the dozen students killed the previous November in the collapse of a giant bonfire tower built of logs.

Despite that welcoming culture, sexual violence does occur. Twenty-two “forcible sex offenses” were reported at A&M in the three-year period ending with the 2007-08 academic year, according to the university’s most recent annual campus security report. Still, the Aggieland community was shocked by news reports that an A&M student — and a senior member of the cadet Corps — was arrested in early December 2004 and charged with raping another student.

By the time it was over, there

would be a total of five women, all testifying they were assaulted by Yarbrough in the same circumstances: After drinking heavily, each said she passed out or fell asleep and woke to find Yarbrough having sex with her or touching her sexually.

“He would pick the most intoxicated female, whether he’d be at a bar or at a party,” recalled Lt. Brandy Norris, the lead investigator on the case for College Station police. “He’s a serial rapist. He was smart enough to know he didn’t have to hide in the bushes and grab them as they were walking by.”

Yarbrough disagreed. “I don’t believe it. I know for a fact it’s not true,” he said in an interview at Ferguson Unit, a Texas prison about two hours north of Houston. “My family knows it’s not true. My friends know it’s not true.”

An Irish foreign exchange student, the first woman to accuse Yarbrough by name, had been a friend of a friend of his. The two had chatted on what police would call “The Facebook” and played pool together at a local nightspot. During the 2004 Thanksgiving break at her off-campus apartment, she and her roommate couldn’t get Yarbrough to take the hint to go home after a night of drinking and they all lay

down to sleep in the same bed.

The exchange student testified she woke up to find him on top of her, having sex with her. She screamed and demanded he leave, and he did. Her roommate called 911, and at the prompting of police, she called Yarbrough two days later and confronted her assailant on the phone — while police recorded the conversation.

Some excerpts from the tape that were read to the jury:

Victim: “I was passed out, Elton, and you knew it. I don’t care if you were drunk. I was out cold. Why would you do that? Had you planned it, or was it just something that came to you spontaneously? What?”

Yarbrough: “No, I didn’t plan it. I don’t know. I don’t know what happened.”

Victim: “Why did you do it?”

Yarbrough: “I don’t know why ... Look, I’m sorry.”

Victim: “You made me feel so sick, so violated, so helpless ...”

Yarbrough: “I don’t really — I don’t even know what to say. It was my fault. It’s no excuse but I was drunk. Sorry for making you feel that way.”

The tape became a key piece of evidence that helped put Yarbrough

in prison. And news of his arrest would lead three other women to testify that Yarbrough had assaulted them prior to the foreign exchange student.

OTHER ALLEGED VICTIMS SPEAK OUT

One of the three women was a hometown friend of Yarbrough's from Palestine who followed him to A&M. They had sex once during her college freshman year while she was drunk. She told jurors that on another occasion, one night before playing drinking games together in his dorm over the 2003 Thanksgiving break, she said she told him she did not want to have sex with him. She passed out, she would later testify, and when she came to, she found him assaulting her.

The next day, she recalled for the Center for Public Integrity, she went to the A&M student health center. "When I went and I did my rape kit, the lady said, 'Well, were you drunk?' — like, 'It's your fault because you were drinking.' It made me feel bad. She gave me a pamphlet, and she said, 'You can go talk to a counselor on campus about this.'"

That was the last she heard from Texas A&M about it, she said. Mean-

while, she told only three people about what happened. Her grades dropped because of it, and she left A&M and later graduated from another university. "I haven't been able to really trust anybody since then," she said.

Another woman who would testify against Yarbrough was a high school pal of one of his friends. She had just arrived on campus for her freshman year in 2004. After getting "extremely drunk" on Long Island iced teas at Hurricane Harry's in College Station, she later testified, she passed out at Yarbrough's off-campus fraternity house, Chi Phi, and awoke to find him performing oral sex on her.

A month later, according to trial testimony, he raped another woman at the fraternity house. She was a friend of the girlfriend of one of Yarbrough's fraternity brothers. After drinking "trash can punch" — traditionally made with pure grain alcohol — and beer, she testified that she laid down to sleep with friends in a common room. She woke up, she said, to find a dark-skinned man having sex with her.

"I said, 'Who are you?' And they" — her assailant — "stood up and they walked out of the room," the victim testified.

She later realized her panties and tampon were missing — and her friends said they found Yarbrough's cellphone, with its cracked display, where her attacker had lain. One of Yarbrough's fraternity brothers testified that Yarbrough showed off a pair of women's underwear the following morning.

The fifth, and last, woman to accuse him said she was raped after Yarbrough was charged with assault and was out of jail on bail. The woman was a co-worker of Yarbrough's at a local restaurant and attended a party at his apartment. She testified that after playing eight rounds of "beer pong," she passed out on a sofa and regained consciousness to find Yarbrough assaulting her.

"For a person like Elton, it appears that a university campus is like a playground, where he goes to parties or to bars and chooses his victim for the night," the foreign exchange student would say in a statement read on her behalf at the university judicial proceeding. "... He knew he could not have me with my consent, so for him I suppose it was enough to have me while I slept, just a limp body laying there, obviously a playground for him to satisfy his sick pleasures."

Yarbrough says the allegations

against him are untrue. Speaking with a reporter in the drafty prison interview room, he says he had consensual sex with four of the five women. In the case of the one whose underwear went missing, he said he wasn't in that part of the fraternity house that night.

"I was pretty promiscuous in college. I don't know too many people who weren't. I guess when you combine a lot of drinking and partying in college you're going to have a lot of" sex going on, he said.

And when people drink, their inhibitions are lowered — and, he said, sometimes they have sex with people with whom they wouldn't normally. "It's college. You walk around Northgate," he said, speaking of one of College Station's most popular bar areas, "you're going see a lot of drunk men and women. And then, at the end of the night, you're going to see a lot of drunk men and women going home together."

But he says he never forced anyone to have sex, and says the four women with whom he admits to having sex were willing participants. He recalled one having participated in foreplay before intercourse, and another came into his bedroom and initiated sex with him, he said. His childhood friend testifying he'd

raped her was “a big shock,” in particular, he said.

“Pretty much all of them said they were too drunk to remember the details of that night, but the only details they could remember were the details that were incriminating against me,” he observed. “They didn’t remember any of that other stuff that happened.”

As for why they might lie about it, he has some theories, he said. For one, they were white women who drunkenly had sex with a black man and may have regretted it the morning after. College Station, Texas, is still an overwhelmingly white town, and at least one of the women testified her parents had forbidden her from dating Yarbrough because of his race. The foreign exchange student’s father is an executive with a multinational company who, Yarbrough thinks, may have influence. And the system, he said, is just more inclined to believe the girl, and not the guy.

He also questioned why prosecutors only tried him on a single charge — assaulting the foreign exchange student. He was indicted on a charge of assaulting the restaurant co-worker but was never tried on it, and he was never charged criminally with assaulting any of the other three women.

“It seems that if I were the serial rapist they claim I am, they would have been trying me on everything they could possibly try me on, to get me as much time [in prison] as they could,” he said.

Prosecutors held on to the charge regarding the assault of the restaurant co-worker and would have sought to try Yarbrough on it if he had won a new trial during his recent appeal, said Danny Smith, the assistant district attorney who prosecuted the case. As for why they didn’t seek to prosecute him on charges of assaulting the other three women, Smith said they “went forward with the strongest” of the cases, that of the foreign exchange student.

‘UNDETECTED RAPISTS’

Repeat offenders may have struck several college campuses in recent years.

In one of the initial stories published as part of the Center for Public Integrity’s investigation, former University of Virginia student Kathryn Russell recounted that she was assaulted and that the university found her alleged assailant not responsible for sexual assault, issuing him a verbal reprimand for using bad judgment. The following

year, Russell recounted, she learned her alleged assailant was accused of raping another woman. For the second complaint, he was found responsible, but that finding was overturned after he appealed.

Russell has described additional alleged victims of the same man identifying themselves to her after she went public with her description of how the university offered her little support and shrouded the campus judicial process in secrecy.

In Ohio, a woman known publicly only as Jane Doe, who settled a lawsuit with Ohio State University in 2008, alleged in court records that the male student who raped her in her dorm had raped another female student less than three weeks earlier. According to the records, the previous victim had reported the assault to the university's residential staff, who punished the alleged attacker by merely moving him to a new dorm.

Ohio State found the male student responsible for Jane Doe's rape allegation and expelled him. He was then charged criminally with rape stemming from her allegations. He pleaded guilty in a plea bargain to misdemeanor assault. In interviews, the woman told the Center for Public Integrity that other alleged vic-

tims of the same man came forward after she began speaking out at rallies against rape and sexual violence. Jane Doe settled in 2008 for an undisclosed amount of money under a confidentiality agreement.

Interviews with student victims and reviews of records in select cases identified alleged repeat offenders at Indiana University, Towson University, and the University of Colorado at Boulder.

Research by Lisak, an associate professor of psychology at the University of Massachusetts at Boston, showed that 58 percent of male college students who admitted in a survey to actions that amounted to rape or attempted rape also reported having multiple victims. And those serial rapists committed 91 percent of the rapes reported by the survey group. Lisak and his collaborator, Brown University's Paul M. Miller, referred to the phenomenon as that of "undetected rapists."

In Yarbrough's case, the women who say they were his first two victims reported the assaults only after Yarbrough was charged with assaulting the foreign exchange student. His childhood friend from Palestine had transferred to another university by then; aside from telling three friends and the student health

center nurses, she kept the secret from even her parents..

“I was like, ‘I don’t want to get my friend in trouble,’” she recalled. “In retrospect, I know I should have said something to the police. I know that I should have gone forward — regardless of if he was my friend or not, no means no. It is what is. I’m older and I’m smarter now. But back then I was 18. I was young and dumb, I guess.”

Another woman testified that she didn’t tell police or the university for months about the assault because she had hoped to pursue a romantic relationship with a friend of Yarbrough.

Experts say it’s common for rape victims not to come forward because they feel fear or humiliation. The majority of rapes are never reported to law enforcement, Lisak and Miller wrote. One in five college women will become the victim of a rape or an attempted rape by the time she graduates, according to a study funded by the Justice Department.

The woman whose underwear went missing did call police in neighboring Bryan, Texas, where the fraternity house is located. Records show investigators there were working the case, and considered Yarbrough a suspect, when he was

arrested two months later on the charge of assaulting the foreign exchange student.

When campus rapes are reported to police, local prosecutors “aren’t doing a very aggressive job” prosecuting these cases, Lisak said. Alcohol is often involved. “Very often the prosecuting office drops the case because they feel that they can’t prove it, they can’t get a jury to convict. So the vast majority of these rapists never face a trial.”

Seated around a conference table in the Brazos County district attorney’s office in Bryan, just minutes from the Texas A&M campus, Norris, the lead investigator, and Smith, the assistant DA, were asked why they pursued criminal charges in the assault of the foreign exchange student.

Norris had an immediate answer: “The victim. She made a world of difference.”

Smith interjected: “The strength of the case. We also had the ‘sneaky tape’ [of the recorded phone conversation]. Part of it was, we actually had his own words. ... We still had him apologizing to her on a phone call.”

Norris continued: “It’s not easy to make a phone call to the person who’s just assaulted you and con-

front them. It's not an easy thing to do. ... She was just a very strong person who was able to do what needed to be done."

The prosecutor went on: "I have been presented with cases ... involving alcohol and allegations of sexual assault, where it's not necessarily that I don't believe that it happened, it's just that there's not enough proof. And this case was different in that regard — frankly, one, because the night that it happened was the night that she called police. Often time where we see things is days, if not weeks, later."

When they drew up the arrest warrant for Yarbrough, they suspected him of only one assault. Within days of his arrest on Dec. 1, 2004, Norris and a police detective in Bryan had compared notes and attributed three assaults to Yarbrough.

TEXAS A&M RESPONDS

After turning himself in on Dec. 1, Yarbrough was booked on a charge of assaulting the foreign exchange student, posted bond and was freed. Nine days went by, police records indicate, before the university learned of the criminal charge against him and banned him from the campus pending the outcome

of A&M's own internal judicial proceeding, known as a "Student Life Conduct Conference."

The available public records shed little light on how the university reached out to the exchange student and what services or support she was offered prior to the university's proceeding, held about six weeks after the assault. Ann Goodman, the A&M administrator who police records say represented the victim at the university's judicial hearing, and Carol Binzer, the university's current director of student life, declined to comment on the case, citing federal laws intended to keep private students' educational records. Texas A&M has cited the same law in denying requests for access to records of Yarbrough's case.

The campus proceeding at Cain Hall wasn't a court or a trial and the hearing panel was made up of three A&M administrators, including an assistant Corps commandant.

According to police records, Yarbrough described to the panel in detail fondling and penetrating the woman with his penis but said the sexual contact was consensual. He was allowed to directly question the woman, who was participating via conference call from overseas, and Yarbrough recalled one administra-

tor objecting to the detailed nature of the questions he posed to her. Yarbrough's lawyer was also present but could not ask questions.

Goodman, the A&M administrator -- who is trained in crisis management -- read the victim's statement out loud to the panel: "What probably hurts me the most ... is that I know I am not the only girl which he has preyed upon," the woman wrote. She denounced him as "a disgrace to the Corps and to Aggies as a whole," telling him, "You do not exemplify the Aggie spirit."

Yarbrough was found "responsible" for breaking three student conduct rules, including sexual assault and conduct unbecoming a Corps member: "The hearing panel felt that it was more likely than not the victim in the incident was not able to give consent to any intimate relationship during the incident, therefore, the student will be responsible for the charges pending." The panel suspended him for a year and assigned him 150 hours of community service, records show.

"Universities are not equipped to do an appropriate investigation of a rape case," Lisak said. "She says he did it and he says he didn't, and they throw up their hands and say, 'How are we supposed to figure this out?'"

Yarbrough described it in similar terms: "She told her story, I told my story, and whoever they believed, that's what they went with." He recalled being told that the standard for the university panel wasn't "guilt beyond a reasonable doubt" but the lighter "preponderance of evidence" benchmark. "If they believe her 51 percent and me 49 percent, I'm guilty."

The public record does not address how the university dealt with the other women once they came forward. One had already transferred to another school, but two were still students at A&M when Yarbrough went on trial in September 2006. Neither of those women responded to messages requesting interviews for this story. The foreign exchange student spoke to the Center for Public Integrity on background only, confirming much of what is in the public record.

After the arrest, Yarbrough's fraternity also held an internal meeting regarding the allegations that he had assaulted one of the women — the woman whose panties went missing — at the off-campus fraternity house. Evan Dews, a Chi Phi member who was friends with three of Yarbrough's victims, testified in court that he attended the chapter meeting and

didn't buy Yarbrough's alibi for the underwear he'd displayed the morning after the alleged attack.

Dews, now an A&M graduate working overseas in the construction industry, said via e-mail that the meeting led to Yarbrough being suspended by the fraternity and temporarily banned from the fraternity house pending the outcome of the criminal case against him.

At his criminal trial, Yarbrough's lawyer sought to persuade jurors that the foreign exchange student consented to the sex. He also tried to portray some of the victims as sexually active, if not promiscuous — by playing “strip pool” with male and female friends — and said they made poor choices by drinking too much and having premarital sex.

Jurors deliberated less than two hours before returning a guilty verdict. Court records show the jury asked the judge for, and received, a compact disc player so they could re-hear the audio recording of the phone conversation between Yarbrough and the exchange student.

He was sentenced to 18 years, of which he will have to serve at least nine. The Air Force cancelled its offer to commission him as an officer. The A&M chapter of Chi Phi expelled him permanently, Dews said,

although Yarbrough's name was still on the chapter website's “distinguished alumni” listing as of this month. Michael Azarian, executive director of Georgia-based Chi Phi's national office, said he believed Yarbrough was expelled from the A&M chapter, but that he remains a member of the national fraternity.

At Ferguson Unit, Yarbrough is now inmate No. 1397217. He rises by 6:30 each morning and is at work in the prison kitchen by 7 a.m., except for Tuesdays and Thursdays, which are his days off, and Fridays, when he attends business speech class. By 11:45 a.m. on weekdays, he's heading to a cabinetmaking class that lasts until 6 p.m.

Some friends and fellow Corps members shunned him, but other friendships have grown stronger while he's been in prison, Yarbrough said. His family has stood by him, including his mother, a veteran guard supervisor at another Texas prison. When he gets out, he dreams of obtaining a commercial truck driver's license or owning a small fleet of trucks. And he hopes to go back to A&M to complete his degree. ■

Kristin Jones, staff writer for the Center for Public Integrity, contributed to this story.



REPORTER'S TOOLKIT

Investigating Sexual Assault Cases on Your Campus

A PROJECT BY  THE CENTER FOR PUBLIC INTEGRITY



The Center for Public Integrity has reached some troubling conclusions about how certain institutions collect and report sexual assault statistics, and how sexual assault cases are adjudicated in campus judicial systems. As a student journalist, you are in a unique position to report on how your school deals with sexual assault allegations. Here's a guide to how you might proceed.

KNOWING THE LAW

• **The Family Education Rights and Privacy Act (FERPA)**

- Passed in November, 1974, FERPA is a federal law that protects the privacy of student education records. It applies to all schools receiving federal funds.
- The law grants three basic rights to parents of minor-aged students and students aged 18 and older:
 - i. the right to access educational records;
 - i. to challenge the records' contents;
 - i. to have control over disclosure of "personally identifiable information" in the records.
- Since Congress never defined what constitutes an education record, some schools have applied FERPA's provisions to cover pretty much any document that names a student.
- Some college administrators argue that FERPA requires closed disciplinary proceedings in a variety of matters, including allegations of sexual assault. In promulgating regulations, the Education Department has stated that "FERPA does not [per se] prevent an institution from opening disciplinary proceedings to the public," but confusion remains over how institu-

tions of higher learning should apply FERPA's provisions.

- More info: www.ed.gov/policy/gen/guid/fpco/ferpa/index.html

- **The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)**

- The Clery Act, passed in November 1990, requires that higher education institutions whose students receive federal financial aid collect and report crime data to the U.S. Department of Education.
- A 1992 amendment to the Clery Act established the Campus Sexual Assault Victims' Bill of Rights, requiring schools to provide certain basic rights to survivors of sexual assaults on campus, including:
 - i. Giving the alleged victim and the alleged assailant equal opportunity to have others present in disciplinary proceedings and equal notification of the outcome of such proceedings;
 - i. Notifying alleged victims of the availability of counseling services, and of their right to pursue remedies through local police;
 - i. Notifying alleged victims that

they have the option of changing classes and dormitory assignments in order to avoid their alleged assailants.

- More info: "The Handbook for Campus Crime Reporting"

- **Title IX of the Education Amendments of 1972 (Title IX)**

- Title IX is a civil rights law that prohibits sex-based discrimination in educational programs or activities at institutions that receive federal funding.
- Under Title IX, discrimination on the basis of sex can also encompass sexual harassment, sexual assault, and rape.
- If a college or university is aware of but ignores sexual harassment or assault in its programs or activities, it may be held liable under the law. A school can be held responsible in court whether the harassment is committed by faculty or staff, or by another student.
- The Education Department's 2001 guidance mandates that schools take "prompt and effective action to end [serious] harassment and prevent its occurrence."
- More info: www.ed.gov/about/offices/list/ocr/docs/interath.html

CLERY ACT BASICS

TO COMPLY WITH THE CLERY ACT, SCHOOLS ARE REQUIRED TO:

- **Publish and distribute a security report annually by October 1st that includes crime statistics for the past three years and summaries of campus security policies,**
- **Provide timely warnings to the campus community on crimes that pose a serious or continuing threat,**
- **Keep a public daily crime log, if the institution maintains a campus police or security department.**

CAMPUS SECURITY AUTHORITY:

- **The Clery Act defines a Campus Security Authority (CSA) as including any person or body with significant responsibility for student and campus activities, as well as campus police and security staff.**
- **CSAs are required to report allegations of crime to campus or local police even if the victim chooses not to file a report with law enforcement or press charges.**

- **The Clery Act exempts pastoral and professional counselors from acting as a CSA.**

EXAMPLES OF CLERY ACT VIOLATIONS:

- **Misclassifying crimes. For example, not properly differentiating between forcible rape and non-forcible rape as defined by the Clery Act;**
- **Changing crime statistics reported from one annual campus security report to a subsequent campus security report, in regard to the same year;**
- **Failure to collect crime reports from a Campus Security Authority such as a dean, athletic coach, or residence hall adviser.**

GETTING STARTED

A FEW FIRST STEPS AS YOU BEGIN YOUR REPORTING:

- **Look for the school's annual campus security report on the university website or request a print copy from the university.**
- **The U.S. Department of Education also maintains a database of Clery Act statistics provided by schools:**
<http://ope.ed.gov/security/>
 - Compare sexual assault numbers provided to the U.S. Department of Education against the numbers published in the school's annual security report. Sometimes the numbers are different and those differences are red flags for Clery Act violations.
- **Collect numbers for sexual assaults from on-campus and off-campus rape crisis centers and/or student counseling centers for the last three years.**
 - Compare those numbers to Clery Act statistics submitted to the Education Department, as well as those published in the annual campus security report.

- **Find out how Clery Act crime data is collected around campus.**
 - Compare the school's collection process against what it is required under the Clery Act.
- **File a Freedom of Information Act request with the U.S. Department of Education to see if the school has ever been the subject of a Clery Act complaint.**
 - If there is a complaint, who originated the complaint and why?
 - What was the Department's response to the Clery Act complaint? Findings? Conclusions?

FILING A FREEDOM OF INFORMATION ACT REQUEST (FOIA):

- **FOIA allows requests for public records, which may not otherwise be readily available. Some institutions are hesitant to offer easy access to records that are, in theory, public.**
- **A FOIA request to the U.S. Department of Education might be needed to obtain records of Clery Act complaints filed against a school.**

- A FOIA request would also come in handy to gain access to records of Clery Act investigations conducted by the U.S. Department of Education.
- Check out the open-records letter generator on the Student Press Law Center website for help on filing a FOIA request: www.splc.org/foiletter.asp

WHO TO TALK TO:

- The campus police department and the local police department, and the campus official in charge of putting together the annual campus security report.
- Campus Security Authorities such as a dean, athletic coach, or student activities coordinator.
- Advocates for sexual assault victims at on-campus health clinics and student counseling centers, nearby rape crisis centers, or an on-campus women's center.

IDENTIFYING SEXUAL ASSAULT VICTIMS TO TALK TO:

- Victim advocates might be willing to introduce you to alleged sexual assault victims.

- You could also consider sending an e-mail query on a widely read campus listserv explaining that you are looking to talk with students who've gone through sexual assault proceedings on campus.

FERPA – A POTENTIAL ROADBLOCK:

- Schools often incorrectly cite FERPA as a way to block access to judicial records on sexual assault cases involving a “responsible” finding.
- A campus official might refuse to turn over records on a sexual assault case by arguing that a student's identity must be protected. However, as long as the records do not identify a student the school should not use FERPA as a valid reason for turning down your records request.

INVESTIGATING COMPLAINTS

- **Under Title IX, sex-based discrimination can include sexual harassment, rape, and sexual assault.**
- **The U.S. Department of Education's Office for Civil Rights (OCR) monitors Title IX compliance: www.ed.gov/about/offices/list/ocr/index.html**
- **One way to approach victims who have filed a Title IX complaint with OCR or a Title IX lawsuit is to contact the attorneys who have represented them in their cases. Victim advocates are also a good source to identify students who have filed Title IX complaints with OCR.**

FIND OUT IF A TITLE IX COMPLAINT HAS BEEN FILED AGAINST ANY SCHOOL IN YOUR STATE:

- **For a fee, you could search court records online via PACER, the federal court system's website: www.pacer.psc.uscourts.gov**
- **You might also try searching for case information through your state court system's website. This is usually free.**
 - Key search terms: "Title IX," "sexual assault," "sexual harassment," "rape," and the name of your school.
- **File a FOIA request with OCR asking for any and all Title IX complaints involving schools in your state over a certain period of time.**

RESOURCE DIRECTORY

- **The Center for Public Integrity's series on Sexual Assault on Campus:** www.publicintegrity.org/investigations/campus_assault/
- **Investigative Reporters and Editors (IRE):** www.ire.org
 - Search the site for tip sheets and previous stories on campus sexual assault for ideas on how to do your own reporting. Also, a good resource on FOIA.
- **Student Press Law Center:** www.splc.org
 - SPLC has recently published a new edition of "Covering Campus Crime: A Handbook for Journalists."
 - SPLC's "Student Media Guide to the Clery Act" www.splc.org/legalresearch.asp?id=19
 - For help with filing FOIA requests, SPLC provides an open-records letter generator on its site: www.splc.org/foiletter.asp
 - Security on Campus: www.securityoncampus.org
- **Good sources for understanding how the Clery Act works and how schools can violate the law; also a valuable source for Title IX complaints and lawsuits filed against schools.**
 - Victim Rights Law Center often files Title IX complaints on behalf of students and represents them in proceedings: www.victimrights.org/
 - Dart Center for Journalism and Trauma: www.dartcenter.org/
- **Office of Postsecondary Education in the U. S. Department of Education**
 - Runs a database with Clery Act crime data reported by schools: <http://ope.ed.gov/security/>
- **The Office of Violence against Women Campus Grants Program:** www.ovw.usdoj.gov/
- **Office for Civil Rights at the U.S. Department of Education; monitors Title IX compliance:** www.ed.gov/about/offices/list/ocr/index.html
- **Handbook for Campus Crime Reporting Policy Regarding Sexual Assault Statistics:** www.ed.gov/admins/lead/safety/campus.html#handbook
- **International Association of Campus Law Enforcement Administrators:** www.iaclea.org/

- Good source for how campus security personnel are trained in regard to the Clery Act.
- **Campus Accountability Project:**
<http://safercampus.org/campus-accountability-project>
 - A project maintained by SAFER and V-Day, which houses a central database where students can enter information about the sexual assault policies at their schools:
www.safercampus.org/policies
- **Sexual assault activist groups on and off campus:**
 - SAFER (Students Active for Ending Rape): A nonprofit organization that focuses on student-led campaigns to reform college sexual assault policies.
www.safercampus.org/
 - V-Day: A resource for activism, fundraising and awareness about assaults both on and off campuses. www.vday.org
 - “Take Back the Night”:
www.takebackthenight.org
 - RAINN (Rape, Abuse & Incest National Network):
www.rainn.org
 - Men Can Stop Rape:
www.mencanstoprape.org
 - The Leila Grace Program:
www.leilagrace.org

Support the Center: Donate Today

The Center for Public Integrity would cease to exist if not for the generous support of individuals like you. Help keep transparency and accountability alive and thriving by becoming a new or recurring member to support investigations like *Sexual Assault on Campus*.

To make a recurring (monthly, quarterly, semi-annual, or annual) gift click here when you are online or visit <http://www.publicintegrity.org/>.

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