Conflicted Colleges: Why American Universities Have Not Effectively Addressed the Campus Sexual Assault Crisis

It is estimated that between 20-25% of women are sexually assaulted during college, making college the most statistically dangerous period of a woman’s life (Fisher et al, 10). This high risk rate is not a new phenomenon; research indicates that the number of assaulted college women every year has not changed significantly since the 1980s (Banyard et al 438). The prevalence of sexual assault remains unchanged despite the creation of new Department of Education policies that require universities to take a more proactive role in preventing and investigating sexual assaults on campus. In the 1980s, the Department of Education began to interpret Title IX, the equal opportunity law, to extend to protecting students who had been sexual assaulted. In 2011, the Department clarified its position through the “Dear Colleague” letter, which explained that universities have an affirmative obligation to proactively combat, report, and investigate sexual assault on their campuses (Ali 4). This letter clearly laid out higher expectations for universities than had been previously articulated (Interview with Belinda Vazquez, Title IX Coordinator). Because the university provides the setting, the means, and the participants to perpetrate sexual assault, it is an important intermediary actor in any student sexual assault, and it is thus held responsible for the effective investigation of such sexual assaults.

However, the increased responsibility placed on universities has not decreased the frequency of sexual assault as had been hoped. I claim that universities have not taken
effective action because of their inherent conflicts of interest. Universities face conflicts of interest on two important fronts: concerns about public relations and perpetrators. These two concerns often lead universities to avoid supporting or pursuing sexual assault complaints. In light of these factors, it is an understandably rational choice for universities to avoid creating effective sexual assault disciplinary procedures. To change the way university sexual assault policies are created and enforced, some entity would have to apply enough pressure on universities to reverse the factors that currently incentivize ineffective sexual assault policies. I argue that federal law and universities have failed to protect the human rights of students who have survived a sexual assault, and the only way to reverse this unfortunate pattern is to use human rights non-profit organizations to change the direction of pressure on U.S. colleges in favor of helping sexual assault survivors and punishing their perpetrators.

In this paper, I will be using the University of Chicago as a case study for a nationwide problem of ineffective sexual assault policies. While the University of Chicago is certainly not among the worst violators of Title IX, there are sufficient problems with its policies and procedures to find strong examples for my argument. I interviewed a convenience sample of five anonymous survivors of sexual assault who were assaulted on campus by other students, as well as two university officials who work on sexual assault issues.

Public Relations

An important conflict of interest that a university faces in disclosing information about student sexual assaults and policies arises from the simultaneous need to craft a
positive public image for the university. All university offices and employees ultimately report to the President of the university, who is generally highly concerned with the national and international public perception of the reputation of the university. Universities have a strong incentive to deal with sexual assault as quietly and privately as possible so it does not enter the public eye, even if this silence can be detrimental to the human rights of the survivors of sexual assaults.

Accurate public data on the prevalence of sexual assault is crucial for destigmatizing the issue. Universities have the resources to provide those statistics, but they choose not to. Sexual assault is widely considered to be one of the most underreported crimes in the United States, so gathering accurate data on how many assaults are happening in a community is best done through anonymous surveys. While most universities have conducted surveys of their students’ health and sexual assault history, unfortunately they have not made that data public. This winter, Princeton University’s student newspaper obtained a leaked copy of a student survey from 2008 that found that 1 in 6 women at Princeton had been raped (Neel). The administration refused to release the report for 5 years, and when it was made public, an official said that they had not wanted to draw unwanted attention to Princeton for something that was a national problem (Brodsky, Nov. 2013). These attitudes are not uncommon, and they demonstrate the inherent conflict that comes with putting the burden of investigating sexual assault on the same entity that is also in charge of its public image. Similarly, the University of Chicago also has data on unreported sexual assaults that it has decided not to release. Last year, the University of Chicago conducted a survey of student health through random sampling for the National College Health Assessment, which included questions about sexual assault
and unwanted sexual contact. The University has not released that data and would not release it to me upon request (Interview with Kelly Hogan Stewart, Director of Health Promotion and Wellness).

When university administrators have access to important data on sexual assault frequency in their student body and decide not to make that information public, the culture of secrecy surrounding sexual assault continues undisturbed. If a human rights organization chose to tackle this problem, it could gather and publish accurate data on student sexual assaults on a particular campus without facing a conflict of interest. A non-profit organization could easily distribute a survey to the student body and share their results in order to motivate a more informed public conversation about the precise nature of the sexual assault problem on a particular campus.

While anonymous survey data is often kept secret, data on officially reported sexual assaults is required by federal law to be disclosed annually. The Jeanne Clery Act, passed by Congress in 1990, requires all colleges and universities that receive federal financial aid to collect and disclose annual information online about crimes on or near their campuses ("Sexual Assault on Campus“ 13). The Clery Act seeks to provide more public information about crime on university campuses, especially violent crime. On its surface, the Clery Act appears to be quite powerful at combating the fear universities have of disclosing any information about sexual assaults on their campuses. It requires every university to publish statistics on all instances of reported crime on its campus, making each university’s individual report unlikely to stand out as newsworthy.

However, upon closer examination, it becomes clear that the Clery Act has failed to meaningfully improve the publication of accurate sexual assault statistics. Schools
simply report numbers that do not portray a realistic picture of sexual assault on campus, and the publications have little impact. Many universities report zero forcible sex offenses each year. These universities are often heralded as “success stories” for “preventing sexual assault”, but it is much more likely that sexual assault have occurred and they have merely prevented them from being accurately reported.

While the Clery Act sought to push universities to overcome their reluctance to disclose any information about sexual assaults on their campuses, universities have merely managed to print inaccurate information. This information is very difficult to verify, because every person in the reporting and disciplinary process is a university employee, who knows that official reports of sexual assault hurt the university’s public image. If human rights organizations instead took charge of compiling sexual assault reports, they could present more accurate findings. Some universities create an independent quasi-non-profit “Women’s Center,” staffed with rape crisis advocates and activists with a human rights background. If students are able to go through the Women’s Center in order to report a sexual assault, they can not only get the best and most unbiased advice about their options, but also official counts on sex offenses can be tallied by a more impartial source.

When universities are required to publicize the number of officially reported sexual assaults, they are incentivized to create a system that discourages reporting. Universities have tried a variety of “sieving” mechanisms to prevent sexual assault survivors from appearing before disciplinary committees. In 2001, Harvard changed its sexual assault policy to require “sufficient independent corroboration” to pursue a complaint of sexual assault, which outraged many students who thought that the word of
a survivor should be sufficient to merit an investigation (Murphy 1007-8). In an
egregious incident at the University of Southern California, a sexual assault survivor was
told that campus police had “determined that no rape occurred in her case because her
alleged assailant did not orgasm” (Kingkade). All of these policies are in clear violation
of the Department of Education’s interpretation of Title IX, which states that “every
complainant has the right to present his or her case. This includes the right to adequate,
reliable, and impartial investigation of complaints, the right to have an equal opportunity
to present witnesses and other evidence, and the right to the same appeal processes, for
both parties“ (“Know Your Rights”). If a case is not allowed to go to the disciplinary
committee, it becomes impossible for the survivor to receive the rights that they are
guaranteed under federal law. Human rights advocates could work to investigate school
policies that aim to “sieve” cases away from disciplinary action, and instead apply public
pressure on schools to fully investigate every allegation of sexual assault.

The successes of the Clery Act have sometimes been brought about by the
Department of Education, but more often they have been motivated by outside non-
profits. The Department of Education is officially responsible for monitoring compliance
with the Clery Act to ensure that reported information is accurate. The Department has
occasionally used this power, such as when it uncovered four sex crimes that Yale did not
report in 2001 and 2002 and fined them $165,000 for the violations (Shaw). However,
many more of the successes related to the Clery Act can be attributed to a non-profit, the
Clery Center for Security on Campus. After the parents of rape and murder victim Jeanne
Clery successfully lobbied Congress to pass the Clery Act, they founded this non-profit to
follow up on their efforts. The Clery Center offers training for university officials who
work on sexual assault, lobbies for new legislation that builds on the Clery Act, and advocates for sexual assault survivors (“Our Mission”). The Clery Center demonstrates the potential for human rights organizations to educate universities and support sexual assault survivors.

Universities have strong incentives to limit knowledge about sexual assaults on their campuses, and they have influenced Department of Education policies to make this concealment even easier. The Department of Education’s Office of Civil Rights (OCR), which investigates Title IX violations, has taken steps to make information about universities who violate Title IX harder to access. Whenever a Title IX complaint is filed against a university, OCR launches a formal investigation and one must write a “letter of finding” (Bonnette). For much of OCR’s history, these letters were published and easily available to the public. In 1993, OCR changed its procedures to allow enforcement offices to decide whether to publicly issue a formal letter of finding (Bonnette). These letters are technically a matter of public record, but can only be obtained by submitting a detailed Freedom of Information Act request. I am still waiting on the results of a request I submitted in early November. OCR no longer publishes their letters of finding because universities requested that investigations not be made public if the university promises to improve its policies that violated Title IX. This allows each university to quietly resolve its problem, but prevents other universities to learn best practices from the mistake. Free and available documentation of every case of a Title IX violation investigated by OCR would be invaluable in helping survivors and activists to assess which university policies comply with federal law and which do not. If human rights organizations were actively involved in this issue, they could apply pressure on OCR to publicize those letters of
finding. When student activists asked Department officials to revisit the policy, they were told that it would take too long to scan the documents (Brodsky, July 2013). A more influential and well-respected human rights non-profit organization could more effectively push back against red tape to make information more easily accessible.

Perpetrators

The conflicts of interest universities face also extend to their dealings with the alleged perpetrators of sexual assault. When the survivor and the accused are both students at the university, the administration is put into the awkward position of having to defend the interests of both individuals. At the University of North Carolina last year, a sexual assault survivor spoke out about her assault after a disciplinary hearing and was accused of violating the school’s honor code for creating a “threatening and intimidating environment” for the perpetrator of her assault (Blackshaw). At most universities, once the disciplinary process begins, each student is assisted by a different dean, but both deans ultimately report to the university and represent its interests. It would be inconceivable in the United States criminal court system for the prosecutor and the defense attorney to report to the same supervisor and department. The closest analogy to this system that currently exists is the sexual assault policy of the United States Department of Defense, in which sexual assaults committed within the military are reviewed by military supervisors. This policy is currently under harsh scrutiny in Congress for violating the rights of sexual assault survivors (New York Times Editorial Board).
The need to protect all participants while they coexist within the same university leads to extreme secrecy that makes the process less effective. Most college disciplinary committee hearings are closed-door, and participants are not allowed to discuss the proceedings with anyone or even tell anyone that they went through a disciplinary committee hearing. Lack of clarity about what exactly happens in a disciplinary committee hearing can dissuade survivors from actively pursuing this option. Information about disciplinary hearings, including the kinds of questions that will be asked and who the members of the committee are, is closely guarded. Four of the five survivors I interviewed said that they felt the disciplinary process was unclear and difficult to navigate. Additionally, when the University of Chicago resident advisors asked for more details about what goes on during disciplinary committee hearings during their sexual assault training, they were told by the Title IX coordinator that they should just read the Student Manual, despite the fact that the student manual contains very vague references to the process of the disciplinary committee hearing (RA interview). Lack of information about disciplinary hearings makes survivors less likely to fully understand this option and hinders their ability to make an informed decision about whether pursuing a hearing would be helpful to them. If sufficient information is not freely available, survivors are more likely to not report the assault to avoid the risks completely, benefitting the perpetrator who will not be held accountable. Human rights organizations could apply pressure on universities to clarify their sexual assault procedures. In addition, ideally one representative of a human rights organization could attend each hearing to monitor the fairness of the proceedings.
The need to protect both students in a secretive process leads to a system in which school administrators have undue discretion. At the University of Chicago, the Dean of Students has the power to decide whether an alleged sexual assault complaint will go before the disciplinary committee. The Chicago Maroon wrote an editorial on this issue last year, arguing that the “exact role of the Dean of Students … remains ambiguous, and he or she possesses an inordinate amount of power in being able to decide, at personal discretion, whether a complaint should be dealt with in the disciplinary process” (Maroon Editorial Board). This step would make sense if either there were a multitude of frivolous accusations of sexual assault reported each year, or if there were even a multitude of any accusations of sexual assault reported each year. Neither is the case. With only 8 forcible sex offenses reported last year to the University, and in light of the fact that not every survivor is interested in appearing before the disciplinary committee, there could hardly be a deluge of potential cases that must be sorted through (“Crime Information and Statistics”). It is fundamentally unreasonable that the Dean is not required to provide any explanation for why a case is not being referred to the disciplinary committee, creating opaque standards and leaving unclear what elements were lacking for the assault to be worthy of future university time and consideration.

Serious errors of process have demonstrated that the administrators charged with protecting students are making ad hoc decisions based on other interests. One survivor at the University of Chicago reported her assault to the Dean’s office but was told that the Chairman of the Disciplinary Committee had decided that they would not consider her case (Interview D). Her assailant had exhibited violent behaviors toward her and in spite of a no-contact order, appeared in her dormitory lounge. The university only reversed its
decision after the student approached the Title IX coordinator about this dangerous situation. She was then told that her case would be proceeding to the disciplinary committee.

Students who were assaulted by an intimate partner face the worst difficulties in the system, and their perpetrators often face few consequences for their actions. Boyfriends and ex-boyfriends comprise an estimated 24% of assailants in college sexual assaults, but these cases are often the most difficult to prove before a disciplinary committee (Fisher & Sloan 69). In cases of intimate partner violence, the timeline of when an assault occurred may be hazy, and the survivor may have stayed with the partner due to fear or confusion about the assault. While researchers have carefully documented the prevalence of intimate partner violence and the unexpected ways that many survivors react after an assault, many officials involved in sexual policy implementation remain uneducated about the nuances of normal victim behaviors and misinterpret the significance of the survivor’s willingness to continue with the relationship after the alleged assault. They then attempt to reach a conclusion that protects the perpetrator, but ultimately further harm the victim. One of my interview subjects told the Dean of Students about her assault by her ex-boyfriend and the Dean chose to bring the two students together for an informal mediation because the Dean felt that this was a “dispute between students” (Interview A). This is a clear violation of the OCR’s official statement on Title IX, which states that “in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis” (Ali 8). This student’s problems were ultimately improved by the work of a dedicated pro bono lawyer at a local human rights non-profit (Interview A). She filed a Title IX complaint against the University and was
put in touch with resources for therapy. In this case, the participation of a human rights advocate helped to improve a difficult situation. In an ideal world, every survivor would have a human rights advocate ensuring their rights are not ignored.

Not everyone agrees that perpetrators have an unfair advantage in sexual assault disciplinary committee proceedings. Some law journals argue that the “preponderance of evidence” standard used in sexual assault hearings is an unfairly low burden of proof, considering the serious repercussions a student faces if he is found in violation of the university’s rules on sexual misconduct (Hendrix 619). Critics also argue that while the penalty of expulsion is not as significant as the penalty of imprisonment that criminal courts can impose, expulsion does constitute a taking of highly significant “property” of the accused, which cannot be justified without due process. Interestingly, the use of human rights advocates to reform the process could potentially improve the situation for the accused as well as the accusers. If an impartial observer attended all hearings with the purpose of upholding the human and legal rights of all individuals involved, both parties would benefit.

*The Consequences*

The current system of university sexual assault policies does not go far enough to prevent future sexual assaults. One of the major goals of the criminal justice system is to deter future crime by punishing criminals in a public manner. Current formulation of college sexual assault policies fail on both counts; sexual assaults rarely result in consequences for the perpetrator, and when they do, the consequences are hidden in secret disciplinary committee hearings and quiet transfers to other universities. As one
survivor explains, “culture [only] changes when there’s a cost to wrongdoing” (Sander). Right now, the cost of committing a sexual assault is small, because the likelihood of facing consequences for that assault is small.

Lenient sexual assault policies encourage the behavior of serial rapists. Once a perpetrator gets away with the first sexual assault, there is little cost to continuing to assault other students. In a study of the sexual behaviors of male college students, researchers found that of the students who had committed a rape, 63.3% had committed more than one rape (Lisak and Miller 78). One of my interviewees found out that her perpetrator had also assaulted another student at the University who had chosen not to go through the complicated disciplinary process (Interview D). My interviewee decided to report her assault because she believed if the last girl had reported hers, this second assault could have been avoided. Cantalupo explains that “the rate of campus peer sexual violence and the high non-reporting rate perpetuate a cycle whereby perpetrators commit sexual violence because they think they won’t get caught or because they actually haven’t been caught. Then, because survivors do not report the violence, perpetrators are not caught, continue to believe they will not get caught, and continue to perpetrate…If we are going to break the cycle and end the violence, we need survivors to report, and we cannot expect survivors to report unless we treat them better when they do” (11).

Survivors also report that current sexual assault policies sometimes leave students feeling betrayed by their universities. One student I interviewed described feeling like he had to choose between reporting his assault and jeopardizing his relationship with the university, or staying quiet and pursuing a career in academia (Interview E). One interviewee who did report her assault described feeling as if administrators didn’t
believe her, leaving her feeling alienated from her community (Interview D). After a botched investigation into a rape at Marquette University, the survivor told the Chicago Tribune, “I don’t trust anyone. I will never again trust the university” (34). Improper investigations into sexual assault allegations leave survivors feeling alone and unprotected by their university.

**Conclusion**

The issue of college sexual assault is too fraught with conflicts of interest to be left only in the hands of universities and the Department of Education. Universities seek to minimize public information about sexual assaults on their campuses because it damages their public image. Universities are also placed in the awkward position of trying to defend the rights of the accused and the accuser in student-on-student sexual assault allegations. It is not surprising, then, that universities are not in the best position to make progress on sexual assault policies. But there is another group of individuals who is in the ideal position to help survivors of sexual assault: human rights organizations. Human rights organizations can offer legal advice to survivors, supervise contentious hearings, and monitor student sexual assault reporting mechanisms. The obligation of a human rights organization is only to defend human rights, and it can more effectively oversee sexual assault procedures than a conflicted university.
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