

FULL TESTIMONY

Experience and Context:

Like many others who work on the issue of campus sexual assault, my connection to this cause is a personal one. Nearly four years ago, six weeks into my first year, I was raped by a fellow student on my campus after a night out with friends. In the time following the assault, I became active in peer sexual assault education, worked for the University of Virginia’s Women’s Center, interned with the Commonwealth Attorney’s Victim Witness Program, worked with U.Va. administration to improve prevention and response efforts, and chaired Take Back The Night, a national campaign to raise awareness about sexual violence.

Beyond prevention and response work, I also conducted research on topics including intimate partner violence prevalence on campus, the relationship of Title IX compliant policy elements to reporting rates, and how survivors’ primary disclosure point affects subsequent resource seeking.

This past year, I helped organize and presented at the national conference U.Va. hosted to discuss sexual misconduct at colleges and universities. Finally, I also consulted with the Whitehouse’s Task Force to Protect Students from Sexual Assault. I am now working in the Office of the Vice President for Student Affairs at U.Va. as we try to revamp our prevention and response efforts, taking into account recent guidance from the Department of Education’s Office of Civil Rights.

In my experience and course of work, I have learned a great deal about the dynamics around campus sexual assault that I hope will be informative for the committee. In this testimony, I lay out several key observations I have made about the challenges survivors of sexual assault face and the way that federal law and regulation influence – or could influence – those challenges.

SECTION ONE: This section will address four points relating to the way federal regulation or oversight on university campus-level policies can help address challenges specific to survivors.

I. Mandated prevention programming must include education about supporting peer survivors to foster a culture of reporting.

Self-blame and victim-blame are among the primary factors that deter victims from reportingⁱ. Personal feelings of responsibility for an attack, especially when reinforced by peers, undermine a survivor’s sense that it is his or her right to seek justice.

One of the student survivors I worked with, Jenna*, was gang-raped by five fraternity men early in her freshman year. Despite the severity of the assault and injuries she sustained, Jenna still experienced a feeling of personal responsibility. Looking for affirmation, she sought out peers and told her story. Sadly, each and every one of the friends she reached out to responded with varying denials of her experience; these responses worsened her feelings of self-blame – that she must be confused because that fraternity “is full of great guys”; that she must have made them think she was “down for that”; questioning how no one else at the party could have heard what was going on if she was telling the truth; or discouraging her from seeking help because “you don’t want to

be one of those girls who has a reputation” for reporting “that kind of thing.” These statements haunted Jenna. She told me that they made her feel crazy, and made her question whether her own understanding of the rape was legitimate.

Survivors who receive disaffirming responses to initial disclosures are more likely to experience negative mental health consequences as wellⁱⁱ. These negative and victim-blaming responses from her peers reinforced Jenna’s sense of fault, and prevented her from coming forward to the University’s administration or the Police. When she finally sought assistance from the Dean of Students’ office, after struggling and nearly failing out of her classes for two semesters, it was difficult for the university to conduct a meaningful investigation because much of the evidence had been lost, and witnesses were more difficult to locate.

Though assault “severity” (i.e., degree of physical force) is typically correlated with faster self-identification as a victim, powerful cultures of victim-blame and self-blame hinder that self-identification that would encourage help seeking and reportingⁱⁱⁱ. In my own case, despite explicit force (e.g. strangulation, loss of consciousness and injuries to my head and torso), I still felt responsible for the assault because I had been drinking and had willfully gone to my assailant’s dorm room. If victimized students are unable to overcome feelings of responsibility reinforced by victim-blaming statements made by peers, we will not see the kinds of reporting behaviors it will take to identify and remove the violent perpetrators on our campuses.

Subsequently, as the VAWA amendments to the Clery Act and Title IX recommendations both provide for prevention efforts on campuses (e.g., “bystander intervention training”), these prevention efforts should acknowledge the importance of supportive responses to survivors. A strong culture of bystander intervention should also intervene after an assault has occurred in order to both encourage reporting and encourage seeking resources for the health of survivors individually and the university community more generally.

II. Universities should ensure access to advocacy and/or counseling to increase reporting.

As mentioned above, self-blame and victim-blame are critical factors for discouraging reporting they produce more severe mental health consequences for victims. As such, access to crisis advocacy and counseling services is crucial for helping survivors receive affirmation of their experiences and alleviate feelings of self-blame. Furthermore, support from mental health and advocacy personnel is positively related to formally reporting assaults^{iv}. By ensuring access to these resources, colleges and universities increase the likelihood that they will receive more information and reports, while also reducing the number of student survivors who are unable to receive the care they need to continue succeeding in the campus environment.

Access to these resources must be free, and universities must offer assistance in helping survivors access them. Simple referral processes by campus mental health services to community providers are insufficient—the process of setting up a second appointment with a stranger after having already taken steps to receive care, not to mention the burden of managing cost and insurance, can all too easily prevent survivors from accessing needed care. I was fortunate to be retained by my university’s counseling center for long term care, but other survivors I worked with, such as a sophomore student

named Ashley*, was not accepted for treatment because her needs were “too extensive.” Ashley was referred to a community provider, but she did not follow up because she felt too overwhelmed by setting up her own appointments and coordinating her insurance and payment. As such, she did not receive adequate care until her parents pulled her out of school for a semester and set up treatment for her close to home (long after she had begun struggling academically). Ashley did not feel comfortable reporting her assault until after she had received counseling, but, by then, it was too late; her assailant had already graduated.

By mandating that universities ensure access to mental health and advocacy services, we can improve the likelihood that survivors like Ashley receive timely care and are able to make informed decisions about reporting.

III. Colleges must maintain a range of sanctions so as not to deter survivors from reporting and respect the variety of resolutions survivors seek.

The current national media spotlight has almost exclusively focused on the lack of punitive sanctioning for students found responsible in sexual assault cases. The knee-jerk reaction is often to move towards mandatory expulsion policies that send a strong message about a community’s lack of tolerance for sexual violence and increase the number of offenders removed from campus. This viewpoint narrowly considers those highly publicized cases in which complainants were unsatisfied with the harshness of the penalty after they brought forward a hearing. Oftentimes, though, survivors do not all have the same desires and goals for reporting or for seeking disciplinary action; in fact, many survivors are discouraged from reporting because they are afraid of overly punitive sanctioning for the accused. Especially in cases where the perpetrator is known, and for intimate partner violence in particular, many survivors hesitate to initiate the complaint process or seek informal resolutions because they are only interested in disciplinary action aimed at making their perpetrators acknowledge responsibility or getting their attackers help.

Sarah*, an entering first year student I worked with, had a mentally unstable abusive boyfriend in high school who would also be attending U.Va. with her in the fall. She sought and obtained a protective order through the courts, and a no contact order through the Dean of Students’ Office. Her former boyfriend violated the protective order dozens of times during her first semester, but Sarah was afraid for his wellbeing (he had, as many abusers do, threatened to kill himself if she came forward) and she did not want to see him get in trouble. The only way she could be persuaded by staff at the Women’s Center and by administration in the Dean of Students’ Office to seek disciplinary action against him for the protective order violations was by assuring her that the process could be used to mandate that he receive counseling. The ability to seek a “lower-level” or “non-punitive” sanction that offered help for the accused through discipline helped the school to respond to the hostile environment and helped Sarah come forward.

In my own experience, I resisted formally reporting and seeking disciplinary action after the assault because I fixated on the fact that my assailant had parents who cared about him, and that I did not want to ruin his life over what I then viewed as a mistake. Many survivors I have met and worked with echo the same concerns when thinking about bringing a complaint: that he used to be a friend; that he is generally a “good guy”; that it was a one-time mistake. Even though I now disagree with my former

self's evaluation of my assailant, and though I quietly disagree with many of these survivors, I know that fear of expelling him or suspending him was a serious barrier to reporting for me, and continues to be one for other survivors.

The prospect of informal resolutions and lower-level sanctions are sometimes a comfort and a reassurance to survivors that they will have some control over the resolution of their case. Mandatory expulsion policies have a strong likelihood of deterring survivors who are initially afraid of holding a friend or romantic partner accountable in a disciplinary setting. Not all survivors want the same resolution, and mandatory expulsion policies assume a one-size-fits-all approach that may have a chilling effect on reporting. It will prevent a college from getting as many reports as possible and from being able to more fully respond to sexual violence to rectify the hostile environment.

IV. Resolution agreements should foster cooperation between administration and students to combat mistrust of the university that could deter reporting.

Highly publicized cases of university mishandling of sexual assault complaints, such as the Title IX complaint brought against U.Va. in the fall of 2012, while forcing universities to reevaluate and improve policies and procedures to better serve victims, also paradoxically tend to scare other survivors away from seeking resources or disciplinary action through the school. Many survivors I worked with following news of U.Va.'s Title IX complaint expressed strong reservations about going to the Dean of Student's office for information about resources available or filing a report. They assumed that their cases would be mishandled or not taken seriously as was alleged in the public complaint. This prevented survivors from receiving interim remedies (e.g., no contact orders, changes in classes or housing arrangements) because they were too afraid to seek assistance from the Dean of Students.

In order to rectify the chilling effect on reporting and seeking resources that publicized Title IX investigations might have, resolution agreements with OCR should incorporate recommendations and requirements to form working committees of students and administrators to help keep students involved in and informed of steps a university is taking to rectify issues from the initial public complaint. Ensuring student involvement is likely to lead to not only a response from the administration that is better tailored in its procedural and programmatic changes to what students actually need, but also improved communication among students about the changes being made. A top-down communications approach of university to students does not ameliorate fears and concerns about mistreatment as much as student-to-student communication about what the administration and students are working on together. The knowledge of and opportunity for input is also certain to reassure students that administration is transparent with students about the way it handles cases (and will handle cases in the future).

By including formal requirements for student-administrator working groups, resolution agreements can help address some of the fears raised by publicized complaints so that survivors can feel safe and supported when they seek resources from the offices and administrators best suited to connect them to those resources and remedies.

SECTION TWO: This section will address four points related to improving federal oversight of universities and Title IX compliance more broadly.

V. Structured follow-up and public progress reports from a university following a Title IX investigation will help ensure—and communicate to students—a university’s commitment to rectifying its policy and procedures.

Similar to the point made in IV, structured follow-up from OCR and public progress reports on recommendations from Title IX resolution agreements that are drafted by committees of administrators, faculty, staff and students will help to improve compliance with the agreements. Public progress reports that are jointly drafted and distributed to the university community will help hold the university accountable to the student body and help to inform students of the changes being made. These public reports will help create feedback loops for universities to receive continual input from students on the program and procedural changes, and actively keep OCR aware of steps taken to comply with the resolution agreements.

Jointly drafting progress reports also helps to guarantee that members of all parts of the university have an up to date and consistent understanding of the university’s plans and progress. Having stakeholders across the university well informed helps to standardize the dissemination of information so that all members of the community are receiving consistent messaging about the university’s stance on sexual violence, and makes it more likely that survivors are receiving uniform information about reporting options and resources.

VI. Provide OCR with more flexible sanctions and forced budget reallocations.

In OCR’s Title IX enforcement efforts it seeks to obtain voluntary compliance from universities, but carries sanctioning power as a threat to obtain compliance. OCR’s current sanction, however—to remove all federal funding—has never been used, and is often painted as punishing innocent students rather than the institution for non-compliance. The disproportionate and impractical nature of the only sanction available to OCR hinders its efforts at enforcement. OCR should be given the latitude to design smaller and more flexible sanctions appropriate to the violations. Additionally, rather than simply imposing fines of varying sizes, OCR should be empowered to impose fines in the form of forced budgetary reallocations, to help push schools into compliance.

A fine imposed on a school ultimately detracts from a school’s resources that could be used for student services. Rather than a purely punitive financial sanction, budgetary reallocations could force schools to appropriate resources to students to improve its Title IX efforts. For example, a sanction could mandate that a school must allocate \$50,000 per year for four years to fund a trauma specific counseling position at the student health center. A sanction could require a school to set aside \$5,000 per year for several years to fund implementation of climate and incidence surveys to require and help a school measure the nature of sexual violence on its campus and respond more effectively. In both of these examples, the financial sanction does not deprive a school of any of its resources, but rather guarantees that students and survivors will directly benefit from budgetary allocations to improve Title IX compliance. Smaller, more flexible

sanctions would help OCR to obtain compliance more effectively and forcefully, while avoiding penalizing innocent students in the effort to punish the institution.

VII. Codification of OCR recommendations for Title IX may ameliorate due process concerns about equity for accused students.

Though OCR and the courts have repeatedly assured that campus disciplinary hearings, including hearings for sexual assault, do not have to mirror the justice system. Public concerns, however, tend to focus on the ways in which accused students are potentially being denied their due process rights because these hearings address conduct that would otherwise constitute a violation of state and federal law. In order to address concerns about equity, it may be helpful to statutorily define the requirements and procedures for sexual assault hearings on campus. By specifically codifying some of the recommendations and interpretations forwarded by the OCR, it may clarify concerns colleges have about how to appropriately adjudicate. For example, interim measures such as changes to academic and housing arrangements are defined as critical to a quick and effective response to a potential Title IX violation. OCR recommends that a school should not place undue burden on the complainant and move his or her schedule or housing while allowing the accused to remain, but there may be some due process concerns about whether it is fair to move the accused while allowing the complainant to remain^v. The legislature may want to consider whether mandating a particular course of action, such as requiring that both parties be moved in those cases, would ensure greater equity.

Many colleges appear hesitant to strongly sanction because of concerns that the accused student may appeal or sue the school—as more and more young men are now doing^{vi}. This may then contribute to schools insufficiently sanctioning in cases where a hostile environment exists (JMU imposing expulsion after graduation for several accused students found responsible for sexual assault is a particularly salient recent example^{vii}). Statutory definition of how procedures ought to look, based on OCR recommendations, may help to distinguish the campus process from criminal proceedings and draw clear boundaries between the two so that colleges have a clear sense of how to proceed and address hostile environments without fear of civil action from accused students.

VIII. A holistic approach to the issue of sexual assault cannot ignore possibilities for criminal law reform at the federal and state level.

It is important to emphasize that Title IX was extended to address sexual violence on campus mostly because of the recognition that the criminal justice system failed to meaningfully address the issue. While the use of Title IX to address sexual assault and sex discrimination is an incredibly important tool, a more comprehensive approach to the issue of sexual assault would also consider potential reforms to state and federal criminal laws. We would not have to rely so heavily on colleges to address the problem of sexual violence, colleges may be more effective at addressing sexual violence, and offenders would be addressed outside of the college context more meaningfully if we improved our criminal prosecution efforts. Options for criminal reforms may make it possible to better address this problem more comprehensively.

*Not the survivor's real name for the purposes of confidentiality

ⁱ Sabina, Chiara and Lavinia Ho. (2014). “Campus and College Victim Responses to Sexual Assault and Dating Violence: Disclosure, Service Utilization, and Service Provision.” *Trauma, Violence, & Abuse*.

ⁱⁱ Relyea, Mark and Sarah Ullman. (2013). “Unsupported or Turned Against: Understanding How Two Types of Negative Social Reactions to Sexual Assault Relate to Postassault Outcomes.” *Psychology of Women Quarterly*. Vol 30. 1-16.

ⁱⁱⁱ Ullman, Sarah, Stephanie Townsend, Henrietta Filipas, and Laura Starzynski. (2007). “Structural Models of the Relations of Assault Severity, Social Support, Avoidance Coping, Self-Blame, and PTSD Among Sexual Assault Survivors.” *Psychology of Women Quarterly*. Vol 31. 23-37.

^{iv} Ruch, Libby and Susan Chandler. “Sexual Assault During the Acute Phase: An Explanatory Analysis.” *Journal of Health and Social Behavior*. Vol 24, No 2. 174-185.

^v Department of Education, Office of Civil Rights. “Dear Colleague Letter.” April 4, 2011.

^{vi} “Students Expelled For Sexual Assault Turning To Lawsuits To Regain Diplomas.” June 4, 2014. http://www.huffingtonpost.com/2014/06/04/sexual-assault-expulsions-lawsuits_n_5440665.html

^{vii} “Students Are Outraged At JMU Over Unusual Punishment For Filmed Sexual Assault.” June 20, 2014. http://www.huffingtonpost.com/2014/06/20/jmu-sexual-assault-punishment_n_5515408.html