

Realities of Campus Sexual Assault and Top 5 Title IX Implementation Issues

and, time permitting, a little
Confidentiality

Colby Bruno, Esq.
Victim Rights Law Center
October 22, 2014

WHO IS THE VRLC?

VRLC Boston Office
115 Broad Street, 3rd Floor
Boston, MA 02110
Email: TA@victimrights.org
(617) 399-6720
877-758-8132

VRLC Portland Office
520 SW Yamhill, Suite 200
Portland, OR 97204
(503) 274-5477
Email: TA@victimrights.org
Web: www.victimrights.org



The VRLC as a presenter will not be providing legal advice and encourages all schools to direct legal questions to their institution's legal counsel.

Objectives

- ***Identify and dispel myths and stereotypes about sexual violence***
- ***Learn from foundational research and studies*** what the realities of campus sexual violence are

Sexual Violence Myths and Stereotypes

Myth #1: Victim Bears Responsibility

- “Contributory Negligence Theory of Rape”
 - Belief that victim has control over the situation
 - Belief that victims’ actions lead to sexual violence

Focus on the Perpetrator, Not on the Victim



**THE VICTIM DOES NOT BEAR ANY
RESPONSIBILITY IN THE COMMISSION OF A CRIME**

Myth #2: *False Allegation Rates are High*

- False rape allegation rates are b/t 2-8%
 - *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault*, Lonsway, Archambault & Lisak, 2009



**FALSE REPORTS OF RAPE ARE CONSISTENT
WITH FALSE ALLEGATIONS OF ANY OTHER
FELONY CRIME**

Myth #3: Rapes are Misunderstandings

- Accused made a mistake on this one occasion
- Alcohol causes people to commit sexual assaults, who would not do so otherwise
- Most campus sexual assaults are “miscommunications” between students
- Rape is motivated by sexual impulse or desire
 - “Boys will be boys”



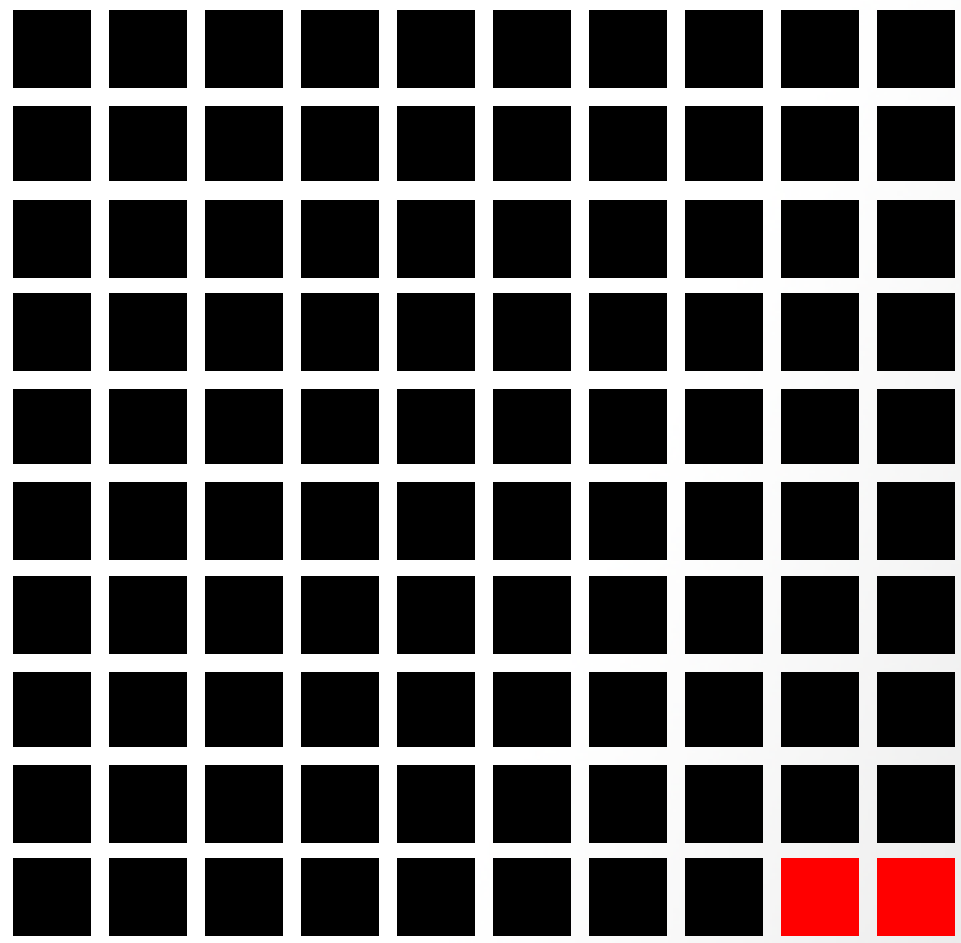
RAPES ARE NOT MISUNDERSTANDINGS

Myth #4: *Rape is a law enforcement issue*

For every 100 rapes committed:

- 19 are reported to police
- 7 result in prosecution
- 3 result in conviction
- 2 result in incarceration

In 98% of cases, the perpetrator doesn't spend a single day in jail.



REALITIES OF SEXUAL ASSAULT WHO ARE THE PERPETRATORS AND VICTIMS?

The majority of sexual assault against women and girls is perpetrated by non-intimate partners.

DOJ Special Report “Female Victims of Sexual Violence 1994-2010”

From 2005-2010, **incidents** of rape and/or sexual assault against female victims age 12 and older were perpetrated by the following:

66% → Non-intimate Partner

38% Acquaintance

6% Relative

22% Stranger

34% → Intimate Partner (includes current & former)

TABLE 3

**Rape and sexual assault victimizations against females,
by number of offenders and victim-offender relationship,
1994–1998, 1999–2004, and 2005–2010**

Offender characteristic	1994–1998	1999–2004	2005–2010
Number of offenders	100%	100%	100%
One	93	91	90
Two or more	7	9	10
Victim-offender relationship^a	100%	100%	100%
Stranger	21	25	22
Nonstranger	79	75	78
Intimate partner ^b	28	30	34
Relative	9	3	6
Well-known/casual acquaintance	42	42	38

Note: Detail may not sum to total due to rounding. See appendix table 7 for standard errors.

^aDoes not include a small percentage of victimizations in which the victim-offender relationship was unknown.

^bIncludes former or current spouse, boyfriend, or girlfriend.

Source: Bureau of Justice Statistics, National Crime Victimization Survey, 1994–2010.

What the Research Tells Us

Repeat Offenders

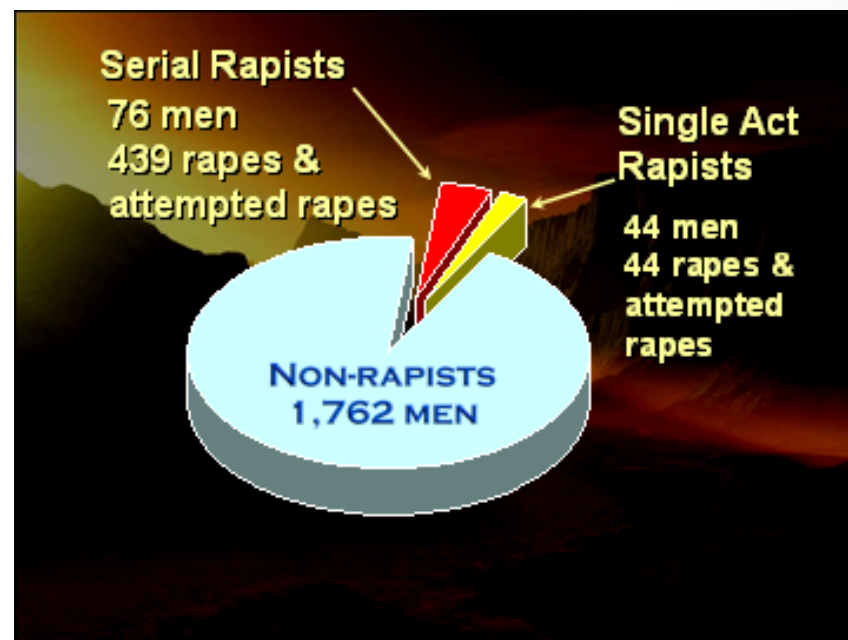
Multiple Offending Among Undetected Rapists

Study by Dr. David Lisak
Associate Professor of
Psychology,
UMass Boston

- "Have you ever had sexual intercourse with someone, even though they did not want to, because they were too intoxicated [on alcohol or drugs] to resist your sexual advances?"
- "Have you ever had sexual intercourse with an adult when they didn't want to because you used physical force [twisting their arm, holding them down, etc.] if they didn't cooperate?"

Research cont.

- 120 Rapists
- 63% had committed more than one rape
- 483 rapes and attempted rapes
- Average of 4 rapes per rapist



Offenders Commit More than SA

76 Serial Rapists Committed:

- 49 Sexual Assaults
- 439 Rapes and Attempted Rapes
- 66 Acts of Physical Abuse on Children
- 277 Acts of Sexual Abuse on Children
- 214 Acts of Battery

Total: 1,045 Offenses

Trigger warning

“Frank Video”

(Seven-minute re-enactment of part of an actual interview conducted by Dr. David Lisak)

<http://www.frequency.com/video/undetected-rapist/84972536/-/5-6967060>

DEEP BREATH...

FRANK DEBRIEF

SO NOW WHAT?!

**YOU HAVE AN UNDERSTANDING
OF THE DYNAMICS, BUT HOW DO
YOU IMPLEMENT THE POLICY
FAIRLY?**

TOP IMPLEMENTATION CHALLENGES

#1
Implementation
Problem

**Something About A Party
Makes the Complaint
“Complicated”
or
“Special”**

#2

Implementation
Problem

**Policy is Written
for Administrators...
Not Students**

#3
Implementation
Problem

Abbreviated Investigation on “He Said/She Said” and Incapacitation Cases

#4
Implementation
Problem

**Decision Makers
Are Not Properly
Trained**

Decision Makers Need MORE Training

- Beyond Board Members, decision makers on the administrative side need the same training on the issues:
 - Realities of Sexual Violence, Domestic Violence and Stalking
 - Impact of Violence on Victims
 - How to Conduct an Investigation
 - How to Conduct a Disciplinary Hearing
 - AND...

Everyone Must Have a Deep Understanding of the Policy

- Complaint Rules
- Hearing Rules
- Outcome Rules

#5
Implementation
Problem

Unfair Appeals Process

RECENT CHANGES/GUIDANCE

April 2014 OCR FAQ Highlights

- Title IX protects against discrimination of transgender students
- Title IX protects students regardless of their immigration status or citizenship status (ex. International students)
- Even when the perpetrator is not affiliated with the school, the school must provide appropriate remedies to the complainant and, where appropriate, the broader school
- Disclosures at public awareness events are not considered notice to the school (ex. Take Back the Night)
- Title IX does NOT require a school to report to law enforcement
- Schools must process complaints of sexual violence when they occur off campus

Reporting Structure

Responsible Employees

Persons with Statutory
Privilege

Persons with
Confidentiality

Persons with Privilege

- Persons with statutory privilege are **NOT** required to report any information regarding a disclosure of sexual violence for Title IX purposes.
 - Determined by state law
 - Must be acting in that capacity at time of disclosure
 - Does not prevent a formal report

Depending on your state laws, positions could include:

- campus mental-health counselors,
- pastoral counselors,
- social workers,
- psychologists,
- health center employees,
- or any other person with a professional license requiring confidentiality, or who is supervised by such a person

Practically Speaking...

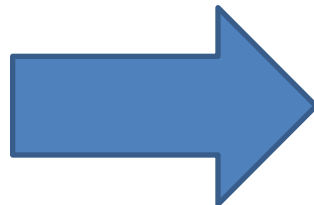
Should the privileged employee explain their role to a victim?

Yes. Privileged employees should explain that:

- “Must promptly investigate” has not been triggered through them without victim consent to disclose
- Not going to report any (identifying) information
- If victim wants specific action against the accused, will likely need to speak with Responsible Employee or Title IX Coord.

Mary tells Licensed Counselor

Persons with Statutory
Privilege



What is required by
Title IX to be reported?

Not Required to Provide Any
Information

What does Counselor
tell Mary?

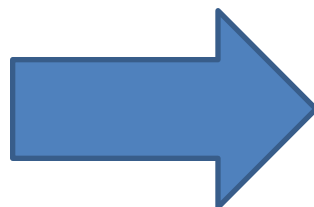
One Sheeter –
services,
accommodations,
ability to report to
school and LE

Persons with Confidentiality

- “People who provide assistance to students who experience sexual violence and are not professional or pastoral counselors”
 - “all individuals who work or volunteer in on-campus sexual assault centers,
 - victim advocacy offices,
 - women’s centers,
 - health centers,
 - including front desk staff and students.”
- Provide non-identifying, aggregated data to the Title IX Coordinator

Mary Tells Receptionist at Counseling Center

Persons with
Confidentiality



What is required by
Title IX to be reported?

Aggregated Data

What does
Receptionist tell Mary?

One Sheeter –
services,
accommodations,
ability to report to
school and LE

Reporting Structure

Responsible Employees

Persons with Statutory
Privilege

Persons with
Confidentiality

Responsible Employees

One

An Employee who has the authority to take action to redress the harassment or

Two

An employee who has the duty to report to the appropriate school officials sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee

Three

An individual who a student could reasonably believe has this authority or duty

Responsible Employee: Reporting to Title IX Coordinator

“A responsible employee must report to the school’s Title IX coordinator, or other appropriate school designee, all relevant details about the alleged sexual violence that the student or another person has shared and that the school will need to determine what occurred and to resolve the situation. This includes”:

- “the name of the alleged perpetrator (if known),”**
- “the student who experienced the alleged sexual violence,”**
- “other students involved in the alleged sexual violence,”**
- “as well as relevant facts, including the date, time, and location.”**

Responsible Employee: What to Tell a Student

“Before a student reveals information that he or she may wish to keep confidential, a responsible employee should make every effort to ensure that the student understands” the following:

1. The employee’s obligation to report relevant details to the Title IX Coordinator or other appropriate school officials,
2. The student’s option to request that the school maintain his or her confidentiality, which the school (e.g., Title IX coordinator) will consider, and,
3. The student’s ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services

Easy to Avoid IMPLEMENTATION PITFALLS

- Equal everything!
- Accused should not directly question the Accuser
- Name a Title IX Coordinator and publicize his/her information widely
- Do not wait for the outcome of a criminal case
- Keep a transcript or record of all hearings or fact-finding interviews
- Adhere to written outcomes

RESOURCES

- VRLC: www.victimrights.org
- VRLC TA email: ta@victimrights.org
- OCR Web Page:
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>
- Know Your Rights:
<http://www2.ed.gov/about/offices/list/ocr/docs/title-ix-rights-201104.pdf>
- Dear Colleague:
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>
- Background, Summary and Fast Facts:
<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201104.pdf>
- Campus SA Policies:
www.safercampus.org
- Campus SaVE Act:
<http://clerycenter.org/campus-sexual-violence-elimination-save-act>
- “Online College Social Life Survey” by Paula England

Resources

- *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault*, Lonsway, Archambault & Lisak, 2009
- Kimberly Lonsway & Sgt. Joanne Archambault, *The ‘Justice Gap’ for Sexual Assault Cases: Future Directions for Research and Reform* pg. 43, available at <http://counterquo.org/reference-materials/sexual-violence/>
- Bureau of Justice Statistics, National Crime Victimization Survey, 1994-2010, Table 3 of DOJ Special Report, “Female Victims of Sexual Violence 1994-2010”
- David Lisak & Paul M. Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*, 17 VIOLENCE AND VICTIMS 73 (2002)
- S.K. McWhorter et al., *Reports of Rape Reperpetration by Newly Enlisted Male Navy Personnel*, 24 VIOLENCE & VICTIMS 204 (2009).

OTHER RESOURCES

Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. §1092(f). Student Right-to-Know § 1092(f)(7).

Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99.

Bonnie S. Fisher, et al., *The Sexual Victimization of College Women*, 10 NIJ Bureau of Justice Statistics (2000).

Nancy Chi Cantalupo, *Campus Violence: Understanding the Extraordinary Through the Ordinary*, 35 J.C. & U.L. 613-690 (2009).

Nancy Chi Cantalupo, *Burying Our Heads in the Sand: Lack of Knowledge, Knowledge Avoidance, and the Persistent Problem of Campus Peer Sexual Assault*, 43 Loy. U. Chi. L.J. 205 (2011).

Educational Rights of Sexual Assault Victims, Sexual Violence Law Center (April 2008).

NPR/Center for Public Integrity (CPI) pieces on SA and Education (there are 7 stories with corresponding interviews).

David Lisak, *The Undetected Rapist* (“Frank Video”).

Thanks!

- **Thank you, University of Rochester.**