

IN CONTEXT

# Campus Sexual Assault

## INSIDE

### Colleges on the Hook

No one expected a gender-equity law to make colleges responsible for resolving rape cases. **2**

### A Maze of Rules

Campuses are being thrust into a law-enforcement role. **4**

### How to Handle Reports

A Q&A from the Education Department clarifies common points of confusion. **6**

### Don't Mention Alcohol

Administrators fear that focusing prevention on drinking will lead to blaming victims. **8**

### Promise Unfulfilled

Title IX enforcement may not live up to students' expectations. **11**

### Presumed Guilty

College men accused of rape say there's a rush to judgment. **17**

### Protecting the Party

Students look out for one another to lower the risk of assault. **21**

FALL 2014

Campus sexual assault has become a focus of public discussion and—for colleges—an urgent, crucial concern. The pressure to step up prevention and handle cases more effectively has grown steadily since 2011, when the federal government signaled stricter enforcement of the gender-equity law known as Title IX, which compels colleges to investigate and resolve students' reports of rape, whether or not the police are involved.

Colleges are grappling with the weight of that responsibility. The national movement Know Your IX is informing students of their rights and helping them file federal complaints, which fault campus officials for missteps at nearly every juncture. The Department of Education is investigating roughly 90 colleges; it has already announced a few strict settlements requiring new policies and consistent monitoring. Students are also suing their institutions—not just alleged victims, but also the accused, who say attention to the issue has tipped the scales against them. Anyone looking to understand campus sexual assault, help protect students, and comply with expanding legal obligations should refer here.

### READER'S GUIDE

This is a digest of recent Chronicle reporting on sexual assault on campuses nationwide. For more, go to [Chronicle.com](http://Chronicle.com).

# Why Colleges Are on the Hook for Sexual Assault

By **ROBIN WILSON**

**W**HEN CONGRESS PASSED the gender-equity law known as Title IX more than 40 years ago, no one expected it to make colleges responsible for handling sexual assault.

Title IX was enacted in 1972 without controversy or even much debate, a “stealth law” aimed at helping women get through the doors of higher education, says Bernice R. Sandler, a longtime activist who is now a senior fellow at the Women’s Research and Education Institute. But the law is now being interpreted to require colleges to investigate and resolve students’ reports of rape, determining whether their classmates are responsible for assault and, if so, what the punishment should be. That is the case whether or not an alleged victim decides to report the incident to the police.

If colleges don’t handle such reports promptly and fairly, they may be blamed for violating the rights of alleged victims and creating a hostile environment for learning, according to the U.S. Department of Education, which is charged with enforcing the law. In April the agency got specific about compliance in a 52-point Q&A, telling colleges how to conduct an investigation, including interviewing witnesses, examining evidence, and taking “interim measures to protect the complainant.”

“Title IX is a pebble in a pond,” says Brett A. Sokolow, president of the National Center for Higher Education Risk Management, a consulting and law firm that advises colleges. “Its influence is ever increasing outward in concentric circles.”

Campuses are clearly grappling with the weight of their responsibility as they come under pressure from activists, as well as the White House. Many self-identified survivors of sexual assault are pressing colleges to step up their response to sexual violence. And the Obama administration recently released stringent new guidelines to help colleges combat assault—including tips for students on how to file complaints against institutions they believe fall short. The Education Department is now investigating 61 colleges and universities for possible violations of Title IX related to alleged sexual violence.

How effective campuses will be in carrying out their broader role under Title IX is not yet clear, says Peter F. Lake, director of the Center for Excellence in Higher Education Law and Policy at Stetson University. “Is this vision of making Title IX effective in these cases going to work?” he asks. Expectations are still evolving,



WMARTIN74, WIKIPEDIA

**Ann Olivarius, now a lawyer, was among a group of female students who sued Yale U. in 1977 over sexual harassment by professors. That case helped establish that such harassment is a form of discrimination under Title IX.**

he says, but “we are being forced into developing a college court system, and we haven’t really had that before.”

## DECISIONS SET PRECEDENTS

So how did a law originally meant to prevent gender discrimination morph into one being used to combat rape?

Expanding the reach of the gender-equity law happened gradually, in large part through precedents set by court cases, starting in the early 1980s. Students sued schools and colleges for allegedly mishandling complaints of harassment and assault; rulings established sexual harassment as a form of discrimination, with assault the most severe form. Therefore, victims of rape could be considered subjects of discrimination under Title IX.

While there was no watershed case establishing sexual assault as a form of gender discrimination, a federal court ruled on student-on-student sexual assault in a case involving Yale University in 2003. “There is no question that a rape,” the ruling held, “constitutes severe and objectively offensive sexual harassment.”

As a result of the early cases, campuses began instituting formal procedures in the 1980s that allowed students to file complaints about sexual harassment and assault. Many undergraduates, however, said colleges often minimized such complaints, botched investigations, and ultimately failed to protect young women from the men

## WHAT IT MEANS

- People often ask why colleges, not police, are handling sexual-assault cases. It’s because federal gender-equity law compels them to investigate and resolve students’ reports.
- The law, Title IX, was passed four decades ago to bar discrimination in education; since then courts have interpreted that to include rape.

they said had assaulted them.

It wasn't until 2011, experts say, when the Education Department's Office for Civil Rights released a "Dear Colleague" letter, that campuses began taking their role more seriously.

"The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination," the letter states. It is up to colleges and universities, it says, "to take immediate and effective steps to end sexual harassment and sexual violence." The letter also stressed that colleges should adhere to a standard of proof the department first set in 2002—a standard many had ignored—that told campuses to determine responsibility based on the preponderance of the evidence (i.e., more likely than not), a standard used in civil cases, as opposed to the higher standard of "beyond a reasonable doubt" required for a criminal conviction.

"This was a dawn of a new awakening," says Sandra K. Schuster, a lawyer with the risk-management firm. The letter, she says, put campuses on notice that they must handle students' complaints against fellow students in a uniform way, with the goals of investigating the allegation, remediating its impact on the victim, stopping the behavior, and preventing it from recurring.

Since then, a few investigations by the Education Department have resulted in high-profile settlements—with the University of Montana at Missoula, for example, and Tufts University—imposing many rigid requirements on those institutions, with implications for others. Hire a consultant on equity issues, for instance. Develop a confidential tracking system for reports of sexual misconduct. Conduct regular surveys to gauge the campus climate.

Still, many question why colleges—not the police or courts—seem to have the primary responsibility for dealing with a crime as serious as rape.

First, say higher-education experts, colleges have always had disciplinary systems in place to deal with student misconduct. "Partying, substance abuse, sex," says S. Daniel Carter, director of the 32 National Campus Safety Initiative of the VTV Family Outreach Foundation, an advocacy group representing survivors and victims of the mass shooting at Virginia Tech in 2007. "These are the same things college students have engaged in for hundreds of years," he says. "When they cross certain lines, campuses have long stepped in to both educate and protect, by undertaking disciplinary action." Parents who pay tens of thousands of dollars in tuition each year also expect campuses to help keep their children safe.

In addition to their responsibility to impose discipline, says Mr. Carter, colleges now have the primary role in responding to reports of sexual assault because no one else will. The criminal-justice system, he says, often opts not to follow through with complaints. Establishing consent or guilt in an encounter between two people in which details are often made murky by alcohol can be difficult, and prosecutors are often reluctant to pursue cases they can't win.

"While a criminal investigation is initiated at the discretion of law-enforcement authorities," the Education Department says in its recent Q&A, "a Title IX investigation is not discretionary; a school has a duty under Title IX to resolve complaints." The department recom-

mends that institutions "notify complainants of the right to file a criminal complaint" and "not dissuade" them from doing so, but clarifies that "Title IX does not require a school to report alleged incidents of sexual violence to law enforcement."

Students who have reported incidents to their colleges often say the criminal-justice system seems daunting. Many instead seek justice on their campuses, and some activists have lobbied administrators to expel any student found responsible for sexual assault. Adds Mr. Carter: "Colleges can offer a quite attractive alternative to the criminal-justice process, with a lower burden of truth, a less public process, and a greater chance of actually having something done that protects women."

### 'GOING TO TAKE TIME'

How campuses handle sexual assault might evolve as drunken-driving laws did, says Mr. Lake, at Stetson. "It used to be you could drive drunk in lots of places," he says, "and get away with it."

But public pressure and legislation changed that. "Tactics, training, and techniques to address drunk driving are now ubiquitous," says Mr. Lake. It took 25 years, he says, but "it is now uniformly enforced."

Campuses' responsibility to respond to sexual assault is also about "society redefining a public-health issue," he says. "It is going to take time for colleges to catch up to the epidemic of sexual assault."

Ann Olivarius, for one, is impatient. In 1977 she and four other female students sued Yale University in one of the first sexual-harassment cases to use Title IX. Harassment of students by professors, the ruling helped determine, is a form of discrimination.

At the time, Ms. Olivarius was a senior at Yale who ran the undergraduate women's caucus and had been asked by the Yale Corporation to draft a report on the status of women at the university. As part of the suit, Alexander v. Yale, she argued that the university's lack of procedures for students to report sexual harassment meant she had to intervene on behalf of alleged victims. In that role, she said, she was threatened by professors whose names she forwarded to the Yale administration after students reported them. And Yale, Ms. Olivarius argued, had failed to protect her. The case prompted Yale and other institutions to establish the first procedures for students to file formal complaints about harassment and assault.

Nearly 35 years later, Ms. Olivarius is a lawyer with her own firm, in London and New York, which represents victims of sexual assault in higher education. Colleges are still struggling, she says, with how to protect young women.

"Why is it so hard for an educational institution to police itself?" Ms. Olivarius asks. "If it were GM or McDonald's that had made no real progress in fixing a serious product defect that's been illegal for three decades, people would rightly be angry. Universities charge students tuition, they realize this is a recurring issue, yet despite having the best and brightest minds, they seem immobilized." ■

June 6, 2014; <http://chronicle.com/article/Why-Colleges-Are-on-the-Hook/146943>



CHRISTINE BAKER, THE PATRIOT-NEWS, LANDOV

Colleges are under increasing pressure—from the federal government, advocacy groups, and their own students—to improve their prevention efforts and responses to complaints of sexual violence and harassment. Above, a rally in 2011 at Dickinson College, where students protested for tougher campus policies.

# College Lawyers Confront a Thicket of Rules on Sexual Assault

By ERIC KELDERMAN

DENVER

**L**AWYERS REPRESENTING colleges have a host of worries about if and how their institutions can possibly meet a burgeoning list of federal rules for dealing with sexual violence on campuses.

The new, and still evolving, laws and guidelines have set off a scramble at institutions across the country. Colleges that can afford it are hiring staff members to investigate and help resolve sexual-assault complaints. Smaller institutions that may not be able to afford to hire their own staff are ponder-

ing alternatives, such as collaborating with other colleges. Nearly every institution is poring over its policies and procedures for how to manage cases of sexual violence.

And there is training—lots of training—for students, faculty members, nonacademic staff members, administrators, and even trustees on what they can and can't do, and what individuals must do if a student reports a sexual assault to them.

In conversations with lawyers here at the annual meeting of the National Association of College and University Attorneys, nearly all stressed that colleges want to protect students from sexual violence, and that it is the right

## WHAT IT MEANS

- Colleges are scrambling to keep up with an evolving array of laws and regulations on sexual assault.
- Campus lawyers wonder if it's practical for academic institutions to become like law-enforcement agencies.

thing to do. But even as colleges work to do so—and to meet the administrative and legal requirements that now entails—lawyers here expressed frustration that their institutions were being held to a different standard than even law-enforcement agencies and were being given increasingly complex rules that sometimes go well beyond their capacity.

And though colleges have embraced the moral and legal imperatives of confronting sexual harassment and violence on their campuses, the issues are not unique to higher education, said Leslie M. Gomez, a partner in the Philadelphia office of the law firm Pepper Hamilton. In many cases, she said, colleges are being held responsible for the wider failings of society and inconsistencies in the criminal-justice system, with little recognition of the broader context.

“Issues of rape culture are not unique to college campuses,” said Ms. Gomez, a former district attorney in Philadelphia who prosecuted cases of sexual and domestic violence against minors.

### A FLOOD OF INFORMATION

The pressure on colleges to respond more comprehensively to sexual assaults has been increasing since 2011, when the U.S. Department of Education’s Office for Civil Rights sent a letter to campuses explaining that a college’s mishandling of complaints could lead to a finding that it was in violation of Title IX of the Education Amendments of 1972, which prohibits gender discrimination at educational institutions that receive federal money.

That pressure has grown significantly in recent months. In May the Education Department announced that the Office for Civil Rights was investigating more than 50 colleges for possible violations of Title IX in their handling of complaints of sexual violence or harassment. The number of colleges under investigation has since grown to more than 60.

In April, the White House issued stringent guidelines designed to help colleges prevent and respond to sexual violence and to offer students a “road map” for filing complaints against institutions that fall short in their responses.

That was followed by a 52-point series of questions and answers from the Education Department about specific issues relating to reporting and responding to incidents of sexual violence.

Proposed new rules specify a range of incidents of sexual violence and harassment that colleges will be required to track, report, and offer prevention programs for under the Clery Act, as amended through reauthorization of the Violence Against Women Act, which Congress passed last year. Those rules would require more oversight not only of sexual assault but also of dating violence, domestic violence, and stalking. While the regulations have not been made final, colleges are still required to comply through a “good faith” effort, according to information presented at a session of the conference.

The flood of information about sexual violence and harassment has presented significant challenges to colleges. The various recommendations lay out broad responsibilities for campuses without always giving concrete guidance on what will satisfy the regulations, sev-

eral college lawyers said. For example, there is no clear standard for how frequently students and faculty members have to be trained on issues of sexual assault.

Lawrence White, vice president and general counsel at the University of Delaware, said his institution was going forward with broad training programs, though the specifics of how to comply with the new regulations were not entirely clear.

“The surest route to disaster is for the Office for Civil Rights to find out we hadn’t done training,” he said.

Beyond the issues of meeting the expanded federal requirements, college lawyers are asking if it’s appropriate, or even practical, for academic institutions to take on the role normally played by law-enforcement agencies.

One problem is that federal and state laws are often at odds, said Ms. Gomez. Another is that colleges don’t have the resources available to police departments and prosecutors.

Law-enforcement agencies have dedicated investigators, subpoena power, and the ability to collect and analyze forensic evidence, Ms. Gomez said. In addition, law-enforcement agencies can decline to prosecute a case without any legal repercussions.

“Colleges and universities lack the same tool kit, legal protections, or ability to decline a review,” Ms. Gomez said. “On college campuses, Title IX requires the institution to take immediate and appropriate action in every case to eliminate a hostile environment, prevent its recurrence, and address its effects, even if the victim requests that the college not take action,” she said.

And taking action requires time and resources. At the same time that many colleges are still struggling to regain their financial footing after the recession, they feel compelled to hire staff members with legal expertise to investigate complaints and provide support services for students who file complaints. For example, hiring Title IX coordinators, a position required on campuses by federal law, is a “seller’s market,” according to one legal consultant attending the conference.

Several lawyers pointed out that managing complaints of sexual violence requires several people, because the person doing the investigation has to be different from the person providing the support and advocacy services to the alleged victim.

But smaller campuses are wondering where the money will come from to hire people with such expertise, or whether they can manage with their existing staffs and procedures.

At Dickinson College, many people involved in resolving complaints of sexual assault are not trained as lawyers, said Dana Scaduto, the college’s general counsel. And even if the college spends the time training those people to understand complex legal concepts, that information may not be fresh or familiar by the time they have the opportunity to apply it, she said.

But she hastened to add that the college is committed to creating a “safe, hostile-free” environment. “No one is saying we’re opposed to complying.” ■

June 25, 2014; <http://chronicle.com/article/College-Lawyers-Front-a/147349>

# How to Handle Reports of Sexual Violence: New Q&A Offers Colleges Advice

By SARA LIPKA

CAMPUS OFFICIALS are commonly confused about their legal obligations in resolving reports of rape. The federal civil-rights law known as Title IX compels them to take action, periodically updated rules have offered some direction, and a new series of questions and answers from the U.S. Department of Education attempts to provide additional clarity.

Since the Education Department's Office for Civil Rights issued prescriptive guidance in the form of a "Dear Colleague" letter, in 2011, it has been collecting questions from students, colleges, and professional groups, such as the National Association of College and University Attorneys.

The 52-point Q&A, released this month along with recommendations from the White House Task Force to Protect Students From Sexual Assault, goes into significant detail—and repeatedly reflects the contention by many victims that the campus reporting process retraumatized them.

The document asks, for instance, what happens if a student is found to have sexually assaulted a classmate, and remedies require separating the two, but they're in the same major? The answer: Consider alternate solutions that minimize the burden on the victim, such as arranging for the perpetrator to take online courses or independent studies. What if, another question asks, at a Take Back the Night event, a student speaks out about having been assaulted—is the institution required to investigate? In that case, no, but it should provide information at such events on how to report an incident.

Any college that wasn't already reviewing its response to sexual violence in this recent wave of attention might start with the Q&A. Of course, interpreting guidance is no easy task. "We can write it in policy, but then we have to think about how it gets practically implemented," said Gina M. Smith, a lawyer and former sex-crimes prosecutor who advises colleges on sexual misconduct. And this week's document, she said, "cannot anticipate every combination and permutation of the facts."

With so much material released by the Obama administration—including resources and sample policies for institutions on the new website NotAlone.gov—several experts said they still hadn't immediately read the Q&A. "It will take some time to study all that the task force issued," Molly Corbett Broad, president of the American Council on Education, said in a written statement.

Careful study is what the Office for Civil Rights, or OCR, expects. "To gain a complete understanding of these legal requirements and recommendations," the agency says in the introduction to its Q&A, "this document should be read in full."

For now, here are a few focal points of the guidance.

## **A college can often honor the confidentiality of a student who reports an assault.**

Such requests are common, the guidance says, and "OCR strongly supports a student's interest in confidentiality in cases involving sexual violence." A college can grant that request, the document says, unless doing so would compromise the safety of the reporting student or others.

An adviser should explain to the student, meanwhile, that maintaining confidentiality may limit the college's "ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator." Still, the Q&A recommends alternative measures in such

cases, including "increased monitoring, supervision, or security at locations or activities where the misconduct occurred," and putting an alleged perpetrator on notice without revealing the accuser's identity.

The White House website offers additional policy guidance on this point, Sample Language for Reporting and Confidentially Disclosing Sexual Violence.

## **Some campus officials are obligated to disclose reports of sexual assault.**

Any individual designated as a "responsible employee" must report incidents of sexual violence to the campus Title IX coordinator. A responsible employee, according to the guidance, is one who "has the authority to take action to redress sexual violence," who has been given that duty, or whom students could reasonably believe served in that role. If a student reports an assault to such a person, he or she must disclose the relevant details to the Title IX coordinator: the names of the parties involved as well as the date, time, and location of the incident.

Whether resident advisers, or RAs, qualify as responsible employees has been a matter of debate, and the new guidance acknowledges that their responsibilities vary among institutions. But "if an RA is required to report other misconduct that violates school policy," the Q&A says, "then the RA would be considered a responsible employee obligated to report incidents of sexual violence."

### **WHAT IT MEANS**

- Administrators are often confused about how to investigate and resolve cases in compliance with the law.
- The Education Department is trying to clarify points like when colleges can honor alleged victims' requests for confidentiality.

Mental-health and pastoral counselors, health-center employees, and anyone who works at a sexual-assault center or women's center (including front-desk staff members) are not required, the document says, "to report incidents of sexual violence in a way that identifies the student without the student's consent." That confidentiality, it says, can "ensure that students will seek the help they need."

**Title IX protects all students, and campus officials should treat LGBT complainants equally.**

In response to reports of sexual violence involving students of the same sex, a college must use the same procedures and standards it does to investigate and resolve all complaints, the guidance says.

"Indeed, lesbian, gay, bisexual, and transgender (LGBT) youth report high rates of sexual harassment and sexual violence," the Q&A says. "A school should en-

sure that staff are capable of providing culturally competent counseling to all complainants."

The Human Rights Campaign and the Gay Lesbian & Straight Education Network, known as GLSEN, both welcomed that attention in the guidance. "Make no mistake: Transgender students are protected by Title IX, and the U.S. Department of Education stands ready to help them," Eliza Byard, GLSEN's executive director, said in a written statement.

The national campaign Know Your IX, composed chiefly of students and young alumni, has advocated for campus systems sensitive to special populations. This week's guidance also discusses how to support students who are in the United States illegally, international students, and students with disabilities. ■

*April 30, 2014; <http://chronicle.com/article/How-to-Handle-Reports-of/146263>*



MELISSA O'DONOHUE

Administrators fear that if sexual-assault prevention programs focus on how much students drink, victims will be blamed—and blame themselves.

# Why Campuses Can't Talk About Alcohol When It Comes to Sexual Assault

By **ROBIN WILSON**

**A**T THE BEGINNING of every academic year, college freshmen are quickly introduced to two hallmarks of campus social life, drinking and hooking up.

But while statistics show that alcohol and sex can be a dangerous combination—at least half of students involved in alleged sexual assaults were drinking—campus officials are reluctant to put the two in the same sentence.

“The discussion of alcohol and sexual violence is the third rail of discourse,” says Christopher P. Krebs, a senior social-science researcher for the company RTI International who has studied the effects of alcohol on sexual assault. “It’s something no one wants to go near.”

Preventing sexual assault is at the top of the agenda on many campuses,

but the people in charge of keeping students safe feel they can't say much about alcohol, even though it is a common element in many incidents. In discussing the dangers of sexual assault, administrators fear that if they counsel students to drink less, young women who get drunk and are assaulted will be blamed—and blame themselves. They may then not report the attacks to their colleges, and not get the help they need.

“The first things we hear are ‘What was she wearing?’ and ‘How much alcohol did she drink?’” says Darcie Folsom, director of sexual-violence prevention and advocacy at Connecticut College. “But those are not causing a sexual assault to happen. The perpetrator is the problem here.” As part of a separate effort, Ms. Folsom says, the director of wellness at the college already talks to students—

## WHAT IT MEANS

- In many cases of campus sexual assault, both parties were drinking, yet administrators worry that relating the two will result in blaming victims.
- Prevention programs focus instead on “bystander intervention,” or teaching students how they can help their friends stay safe.

most of whom are underage—about high-risk drinking.

A former college president discovered last month just how volatile it can be to relate alcohol and sexual assault. Stephen Joel Trachtenberg, president emeritus of George Washington University, suggested as a guest on a National Public Radio show that college women could protect themselves by drinking less. The remarks caused an immediate uproar on GW's campus and beyond.

"While we understand the desire to help women stay safe, this perspective puts the onus of stopping sexual assault on women," students in the Trachtenberg School of Public Policy and Public Administration wrote in a letter to the former president. "It also does not work."

Mr. Trachtenberg says he was chastened by the negative reaction but surprised that counseling sobriety could be so controversial. "Someone who is drunk," he wrote in response to the students, "is more vulnerable to attack."

### **ENFORCING THE TABOO**

In the past year, colleges have come under increasing pressure to properly deal with reports of sexual assault. They have a legal obligation to resolve such reports promptly and fairly, penalizing those found responsible. If the institutions mishandle the reports, they may be found in violation of the gender-equity law known as Title IX, according to the U.S. Department of Education.

As a result, many campuses are going on the offensive—offering educational programs, often online courses, that warn about the dangers of sexual assault and tell students how to prevent it. Soon, under new federal regulations, such training will be mandatory.

But most programs don't focus on students' decisions, including how much to drink. One reason is that, for 15 years, the Department of Justice has run a grant program that serves as a major source of funds to colleges developing resources for sexual-assault prevention. Campus efforts considered "out of scope" for the grants include programs that "focus primarily on alcohol and substance abuse," the grant program says online. It points administrators away from an emphasis on "changing victim behavior."

Kathleen A. Bogle learned that alcohol could be off limits when she tried to deliver a talk several years ago called "Hooking Up, Alcohol, and Sexual Assault: Understanding the Connections and Reducing the Problem." It was for a meeting sponsored by the Justice Department's Office on Violence Against Women, and federal officials asked Ms. Bogle, an associate professor of sociology and criminal justice at La Salle University, to remove the word "alcohol" from the title. Focusing on how much students drink, they said, leads to blaming victims.

"This starts to censor how we can talk about the issue," says Ms. Bogle. "I don't think you are doing young women any favors by saying, 'We're not going to tell you that this happens—and be careful about it.'"

Most sexual assaults happen after women voluntarily consume alcohol; relatively few occur after they have been given alcohol or drugs without their knowledge, according to an article in the *Journal of American College*

*Health* in 2009 by Mr. Krebs and other researchers. Yet sexual-assault-prevention programs, it says, "seldom emphasize the important link between women's use of substances ... and becoming a victim of sexual assault."

But some form of that message could help, Antonia Abbey, a professor of social psychology at Wayne State University who studies violence against women, has argued. "The fact that women's alcohol consumption may increase their likelihood of experiencing sexual assault does not make them responsible for the man's behavior," she wrote in an article in 2002 in the *Journal of Studies on Alcohol*. "Being intoxicated allows women to let down their guard and focus on their desire to have fun and be liked rather than on their personal safety," she wrote. "Such information may empower women when used in prevention programs."

On most campuses, however, education about sexual violence does not center on how students can lower their risk of assault by changing their own behavior. "What we steer our campuses away from is anything that says someone experienced gender violence because they had been drinking," says Joan Masters, coordinator of a statewide coalition of colleges in Missouri called Partners in Prevention. "Even if a student is sitting in a residence-hall room, gender violence can happen to them."

Instead, many campus programs focus on "bystander intervention," or teaching students how they can help their friends stay safe at parties and in other situations. It's an easier message for students to hear, say campus administrators, and doesn't result in blaming those who get drunk and are assaulted.

"They are taught to notice when something might be harmful to their friends and distract someone and get them away," says Ms. Masters. "Part of the conversation is 'We need to keep our friends safe,' and by doing that, we also learn how to keep ourselves safe."

The importance of gaining consent in sexual encounters is another point campus programs stress. "As far as assault prevention, we want to think about understanding what consent is, and that a person has the right to deny consent in a situation," says Connie J. Kirkland, manager of the sexual-assault services program at Northern Virginia Community College. "If somebody pushes the limits, that is the time to get out of Dodge or ask for help."

When campus officials do warn students about the role of alcohol in sexual assault, they frequently describe how a perpetrator may use it to wheedle consent out of a victim, or to get her too drunk to defend herself.

"Sexual predators weaponize alcohol," explains Peter F. Lake, director of the Center for Excellence in Higher Education Law and Policy at Stetson University. "Your typical sexual predator will stage an attack and place alcohol where it's heavily camouflaged, in sweet drinks."

### **'SELF-INFLICTED' FEAR**

While administrators see it as their job to help shape students' social behavior, undergraduates are hardly a blank slate when they come to college. Most have already absorbed messages about alcohol and sex—from parents, high-school health teachers, friends, and the media.

Ayushi Roy, who graduated in May from Columbia University, says her parents warned her before her freshman year to be careful about drinking—and she was. “I was a very square, obedient child,” she says. “I went from a California suburb to the middle of New York City. I was hyper-aware of my environment and very cautious.”

But she grew to resent feeling as if she had to monitor her behavior because of what others might do to her, says Ms. Roy, a volunteer for Know Your IX, a network of self-identified survivors and allies. “The cost of any form of self-policing—not walking alone in the dark, watching what you drink and what you wear—is that you live under a self-inflicted form of fear,” she says. “You are living in this fear that drinking or letting yourself go is a bad thing.”

Her friend and classmate Marybeth Seitz-Brown agrees. “All of this sends the message that it’s the responsibility of women not to get raped,” she says, “rather than the responsibility of everyone not to hurt other people.”

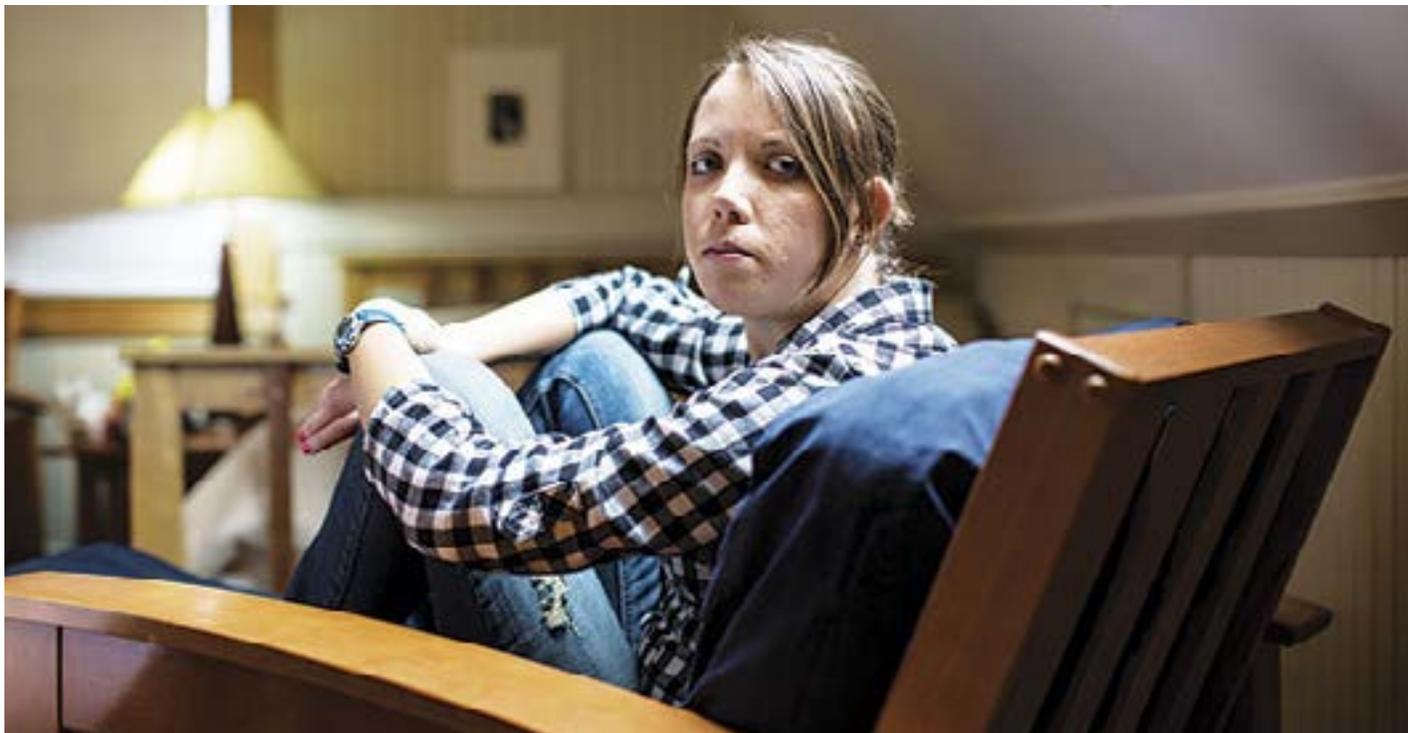
But some students are willingly vigilant. Angela Acos-

ta, who graduated in May from George Mason University, says she was careful “never to go to the extreme that I couldn’t talk, walk, or do anything” when it came to drinking. “My parents made sure I knew my limits,” she says, “and how important that was. They said, ‘You will lose control over yourself, and you need to keep yourself safe, especially if you are in an environment you aren’t familiar with.’”

That’s just good advice, says Caroline Kitchens, a 2012 graduate of Duke University who now writes about sexual assault as a senior research associate at the American Enterprise Institute. “In a perfect world, women would be able to do whatever they want,” she says. But the world isn’t perfect. “There are always evil people out there, people who want to take advantage of women,” she says. “If they exist, we have to practice some common-sense risk reduction.”

It’s too bad, she says, campuses aren’t delivering that message. ■

*September 4, 2014; <http://chronicle.com/article/Why-Campuses-Can-t-Talk/148615>*



JASON P. SMITH FOR THE CHRONICLE

“Maybe nothing comes from my Title IX complaint,” says Angie Epifano, who filed a complaint against Amherst College. But it’s out there, she says, bearing a message: “You don’t have to be silent.”

# Promise Unfulfilled

Students hope Title IX complaints will transform colleges’ response to sexual misconduct. So far the process has rarely met their expectations.

By **JONAH NEWMAN**  
and **LIBBY SANDER**

**I**N a recent surge of demands that colleges step up their response to rape, students have put their faith in the federal civil-rights law known as Title IX.

Meant to prohibit sex discrimination, the law requires colleges to investigate and resolve reports of sexual misconduct—including assault—whether or not the police are involved. It has inspired the name of an informal national network of self-described survivors (the IX Network) and a grassroots campaign to end sexual violence on campus (Know Your IX). Two women who filed a federal complaint against their university last year, alleging that

it mishandled their cases, had the law’s Roman numerals tattooed on their ankles.

Since then, students and alumni around the country have filed dozens of complaints with the U.S. Department of Education—against the Universities of Chicago, of Colorado, and of Texas-Pan American, as well as Harvard—faulting institutions for inadequate responses to reports of rape and asking federal authorities to scrutinize campus policies.

But the power and influence that students attribute to Title IX to transform how colleges handle sexual assault might be more than the law’s enforcement process can deliver. A *Chronicle* analysis of Title IX complaints filed with the Department of

## WHAT IT MEANS

- Students have filed federal complaints against dozens of colleges for mishandling reports of rape, but the process is fraught with conflicting expectations.
- In the rare cases the Education Department settles with colleges, campus officials can’t tell if they’re being punished or shown a way forward.

Education shows that from 2003 to 2013, fewer than one in 10 led to a formal agreement between federal and college officials to change campus policies.

That fraction reveals a process that, for all the hope students place in it, can be fraught with confusion and conflicting expectations, and often brings unsatisfying outcomes. In the 10-year span, about three-quarters of Title IX complaints involving alleged sexual harassment, a category that includes assault, were dismissed or administratively closed. Sometimes that was because a student didn't provide consent for an investigation, or filed the complaint after too much time had passed.

Yet the Education Department's Office for Civil Rights receives more Title IX complaints each year. The number of complaints against colleges involving alleged sexual violence has tripled since the office began tracking them, from 11 in the 2009 fiscal year to 33 in just the first half of 2014. Complaints of sexual harassment represent a growing share of all Title IX complaints: nearly 30 percent in the 2012-13 academic year, the *Chronicle* analysis shows.

Students who fault their institutions for mishandling reports say that filing a federal complaint can be a catharsis. They are telling their stories—and seeking justice. The appeal of the process, they say, is that it allows them to apply public pressure, hold colleges accountable, and push for change beyond their own experiences.

As the movement against sexual assault on campuses has gained momentum, the Obama administration has raised the bar on expectations for colleges. This week, a White House task force released a set of stringent guidelines meant to help colleges combat rape on campus, and unveiled a website, *NotAlone.gov*, to provide victims with a "road map" in filing complaints.

White House officials are taking a closer look at the Title IX enforcement process, too. The administration has declared that federal agencies will work together in a more coordinated fashion to ensure that colleges follow the law. And they'll be more transparent in their efforts, sharing key documents and data with the public on the new website.

These promises come as students and college officials alike are questioning how the enforcement process works, and for whom.

Students say that the law lacks teeth, and that its enforcement tilts toward helping colleges comply with the law rather than punishing them. Some victims of assault say they see parallels between how colleges treat alleged perpetrators and how the Office for Civil Rights treats colleges: trusting that all parties acted in good faith and will do what's right in the future.

Despite existing federal guidance, campus officials say they want a clearer sense of their legal obligations under Title IX before they, too, get hit with complaints from students or a "compliance review" by the department. Many colleges are hiring new staff—Title IX coordinators in particular—and turning to a burgeoning market of legal and risk-management consultants for help interpreting those obligations in practical terms.

Catherine E. Lhamon, the department's assistant secretary for civil rights, believes Title IX has great potential to show colleges how they can improve the way they

deal with sexual misconduct.

Enforcing the law, she says in an interview, can't erase past trauma. "But we can say, 'This shouldn't happen again in the future, and here are the steps to make sure those things don't happen again.' I'm a believer in the value of holding people to a promise about what they will deliver."

**I**N THE FALL OF 2012, Angie Epifano published a first-person account of her rape by a fellow student at Amherst College, where campus officials, she said, had brushed off her report. The article went viral.

Around the same time, Andrea L. Pino, a student at the University of North Carolina at Chapel Hill who said she was assaulted there that year, was reading up on federal law, including colleges' obligations under Title IX. Students aren't aware of this, she thought. We don't know Title IX guarantees us protection.

Ms. Pino soon linked up with Annie E. Clark, a recent graduate who also felt that university officials had not responded properly to her report of rape. In January 2013, the two joined several other women in filing a federal complaint and then got the "IX" tattoos. Elsewhere, other students were also soon drafting complaints against their institutions: Occidental College, the University of Southern California, the University of Connecticut.

For many students, filing a federal complaint under Title IX seems like the best available option. The criminal-justice system can seem daunting, and prosecutors often decline to pursue cases involving one party's word against another. In civil lawsuits, courts generally adhere to a narrower interpretation of colleges' obligations under Title IX than the Education Department does.

Connected with one another by social media and a shared sense of urgency, sexual-assault victims on dozens of campuses have placed Title IX at the center of their strategy for change. Ms. Clark and Ms. Pino, presiding over the IX Network, the national alliance, have traveled around the country to meet with students and help many of them file complaints, too.

Several months after publishing her account, Ms. Epifano, who had left Amherst, learned that the college had hired a legal team to look into her allegations and a host of grievances that surfaced from other victims. Amherst had strong policies in place, the team concluded. But in some cases, like hers, those procedures hadn't worked very well.

Jarred by the findings, which she interpreted as an attempt to characterize her case as an "outlier," Ms. Epifano began thinking that she might file a federal complaint. She had heard about Title IX's promise, and also its flaws. In November 2013, she and an Amherst alumna jointly filed a 113-page federal complaint against the college.

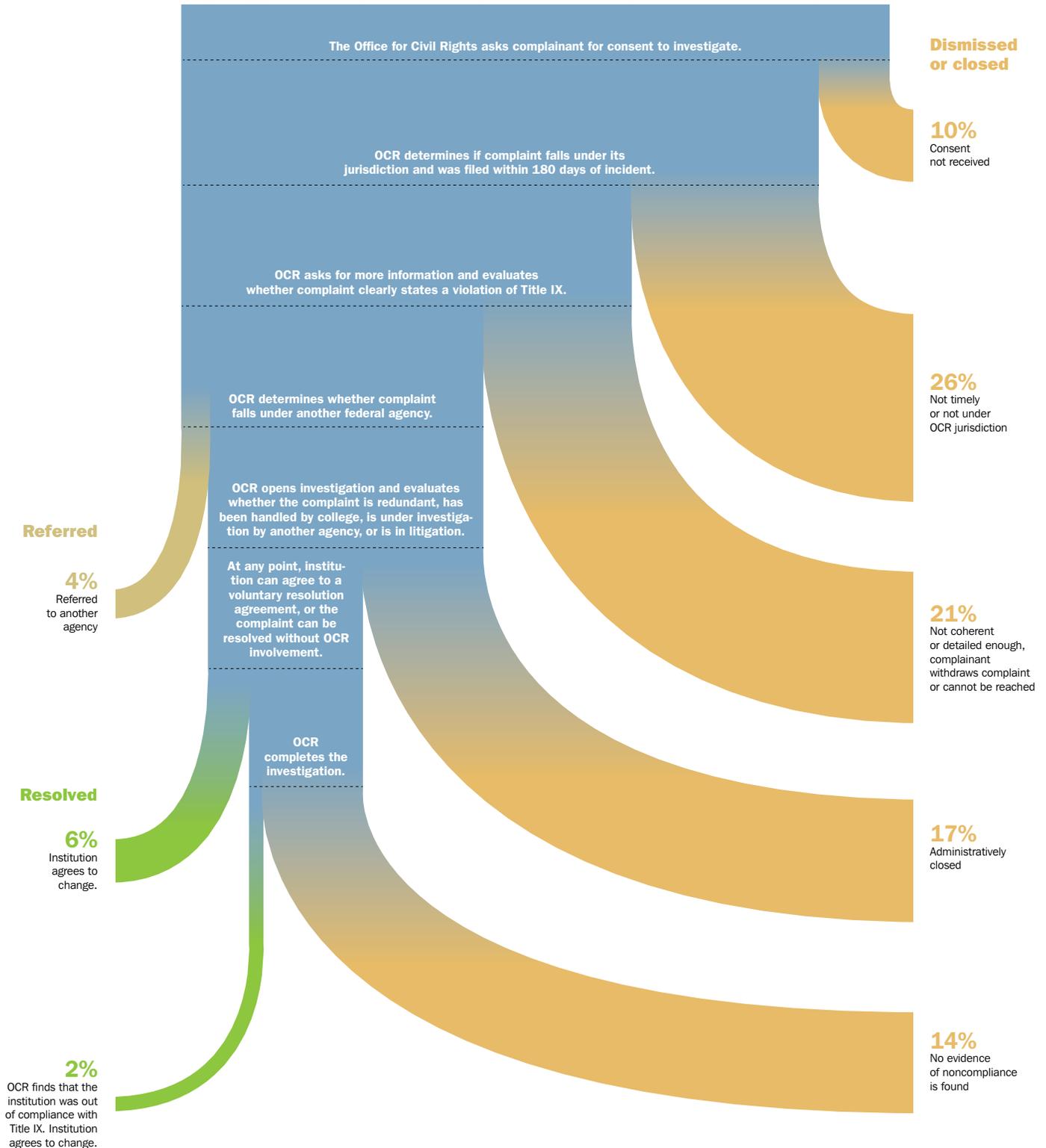
Nearly six months later, Ms. Epifano is hopeful but realistic. For her, the outcome of the process is not the only value of filing.

"Maybe nothing comes from my Title IX complaint or any other Title IX complaint," she says. What matters is

## How a Title IX Complaint Is Processed

About three-quarters of sexual-harassment complaints under Title IX are dismissed or administratively closed by the Office for Civil Rights, according to a Chronicle analysis of 801 complaints filed between 2003 and 2013. Here's what the process looks like and why—more often than not—complaints don't lead to the changes on campuses that student activists are looking for.

### After a complaint is filed ...



that it's out there, she says, bearing a message to other students: "You don't have to be silent."

**S**HIFTS IN POLICY and politics, meanwhile, have opened the door to complaints. Education Department guidance in 2001 increased colleges' responsibility to recognize and act upon reports of sexual misconduct; another round of guidance a decade later set a new, lower standard of evidence for campus sexual-assault cases and reminded institutions, in firm language, that they must investigate and resolve all reports.

When Ms. Lhamon was tapped to lead the Office for Civil Rights in June 2013, campus sexual assault had already begun to draw national attention. Almost a year into her tenure, it has become a marquee issue for the Obama administration.

"Colleges and universities can no longer turn a blind eye or pretend rape and sexual assault don't occur on their campus," Vice President Joseph R. Biden said on Tuesday during the release of the latest guidelines for colleges. "Everybody has a responsibility to act, from college presidents to college students."

Two Democratic senators who pushed this year to reform the way the military handles sexual assault within its ranks have also taken notice. Before the White House released its report, Sen. Kirsten Gillibrand, of New York, and Sen. Claire McCaskill, of Missouri, called for additional funds for the Office for Civil Rights to expand its work on campus sexual violence.

Ms. Lhamon, meanwhile, has visited OCR's 12 regional offices, given speeches at think tanks and colleges, and invited campus officials to share their questions and concerns. However, absent additional funds, she is leading an office that has been asked to do more with less.

Responsible for enforcing several civil-rights laws in educational settings, the office has 27 percent fewer staff members today than it did 20 years ago, to field three times as many complaints.

Ms. Lhamon acknowledges that the Office for Civil Rights expected an increase in complaints when it issued its policy guidance in 2011. Despite the heavier workload and smaller staff, she is working on new processes, she says, that allow for timely, "fulsome" investigations. The office now tries to "step back" from a particular complaint against a college, she says, and determine whether broader patterns of noncompliance exist. How has the institution responded to other, similar incidents? Does a hostile environment exist?

The message Ms. Lhamon and her office send to colleges is alternately collaborative and tough. In February, at a gathering of about 250 college presidents, Title IX coordinators, and student-affairs leaders at the University of Virginia, she urged them to act quickly to update their policies on sexual assault and improve the climate for victims. "I know we can do that together," she said. "And I also know that if you don't want to do it together, I will do it to you."

**W**HETHER THE CIVIL-RIGHTS OFFICE investigates a complaint or initiates its own compliance review, it may work with campus officials to draw up a "resolution agreement" detailing how a college must

change its policies. The agency may also issue a "letter of findings" after concluding an investigation.

Sometimes those two documents leave college officials wondering if they're being punished or shown a way forward.

At Tufts University, perceived contradictions between a resolution agreement and a letter of findings led to a public standoff in April with the Department of Education. Tufts withdrew from a binding agreement after learning that the agency would include in a forthcoming letter of findings that the university was in violation of Title IX.

"I felt that I was sort of misled," said Mary R. Jeka, the university's senior vice president and general counsel.

In another case, at the University of Montana at Missoula, officials from the Departments of Education and Justice—which jointly investigated the university's handling of rape allegations against football players—praised the ensuing agreement as a "blueprint" for colleges to prevent sexual harassment and assault.

Such agreements are specific to institutions and not technically directives from the Education Department meant for all colleges to follow. "But you'd be a fool not to be guided by them," says Peter F. Lake, a law professor and director of the Center for Excellence in Higher Education Law and Policy at Stetson University College of Law. "That's a confusing message for anybody to hear."

The enforcement process can mystify even colleges in the midst of an investigation. In Montana's case, federal officials said they would produce two documents: a letter of findings and a resolution agreement specifying steps for the university to take to comply with federal law.

For several months, administrators collaborated with federal officials to craft the agreement, which codified many practices that Montana had recently put in place and also laid out new ones: developing a confidential tracking system for reports of sexual misconduct, for instance, and conducting annual "climate surveys" to gauge students' familiarity with the process.

But university officials didn't see the Department of Justice's 31-page letter of findings until just before it was released. "We were in what I felt was a difficult position of signing off on a resolution agreement without ever seeing the findings," says Royce C. Engstrom, the university's president.

There were other surprises, like the government's use of the term "blueprint" to describe the policies set forth in Montana's agreement as a model for colleges across the country.

One provision in particular, defining sexual harassment, sparked protests from civil-liberties advocates. Ms. Lhamon later said the settlement applied only to Montana and did not represent the official policy of the Departments of Education or Justice.

Mr. Engstrom shared that view. "We were working on the situation before us at our university," he says. "We weren't trying to solve the rest of the world's problems. We weren't trying to put in place something that we felt applied to other institutions."

Resolution agreements often create more confusion



JOON POWELL FOR THE CHRONICLE

**Sarah O'Brien, a 2013 Vanderbilt U. graduate, filed a Title IX complaint, calling the university's response to victims of sexual assault inadequate. She has serious doubts about the process: "I don't see these complaints making the changes that we want."**

than clarity for other colleges trying to understand their obligations under Title IX, says Brett A. Sokolow, chief executive of the National Center for Higher Education Risk Management, a consulting group and law firm. Federal officials "wait until the college screws up, they write a letter, they call it a 'blueprint,' and nobody knows what they are supposed to do," he says.

So they turn to him—and many other consultants who, offering training sessions and webinars, profess to have the answers. Mr. Sokolow's Association of Title IX Administrators, for instance, offers a free sexual-misconduct model policy.

"This policy has helped hundreds of campuses as they strive to comply with Title IX ...," the website states. "Let it help yours."

**A**S COMPLAINTS have proliferated, word is getting around among students that the process can be taxing. For the 16 percent of sexual-harassment complaints that the agency fully investigates, resolution takes, on average, almost nine months. And only one in 10 of those investigations ends with a finding that a college was in violation of Title IX. In addition to the long period of waiting and uncertainty, some students say, there is plenty of legal and policy jargon to decipher, often without the help of a lawyer. Occasionally, filing a complaint requires difficult conversations with investigators about the details of an assault and its aftermath.

It can also mean not having a say in the final outcome. Alexandra Brodsky, a Yale University law student who was an undergraduate when she and 15 students and alumni filed a Title IX complaint against the university in 2011, says they were surprised and disappointed to realize that they wouldn't be at the negotiating table as the Education Department and the university crafted a resolution agreement.

"We were a group of people who felt that we had been betrayed by an institution we had trusted," she says. "Then, to resolve that, we put our faith in another institution that betrayed us."

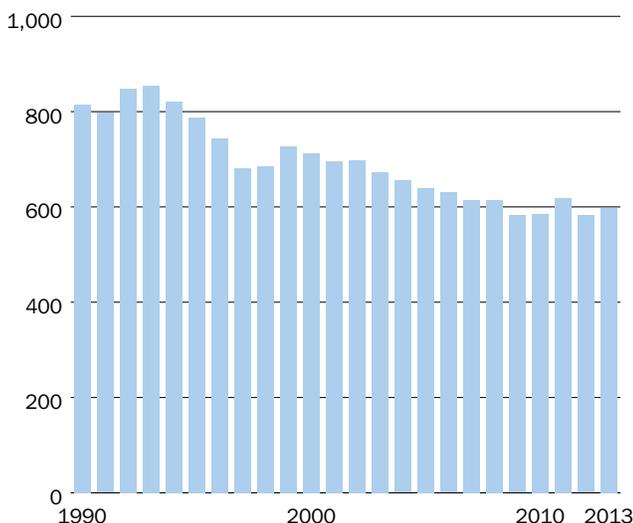
The resolution agreement in the Yale case called, among other things, for the university to conduct periodic assessments of the campus climate on sexual misconduct, and praised the university for "proactively" introducing new policies to create a safer, more supportive environment. The agreement did not, however, "constitute an admission that the University is not in compliance with Title IX," it stated. When it was announced, Ms. Brodsky says, Yale was able to frame that as a positive development. "It really halted the conversation," she says. "What most of the country heard was everything was fine in New Haven."

Sarah O'Brien, too, has doubts about the process. Ms. O'Brien, who graduated from Vanderbilt University in December, says she was assaulted in 2010. She filed a Title IX complaint against the university this past November, alleging that its response to victims

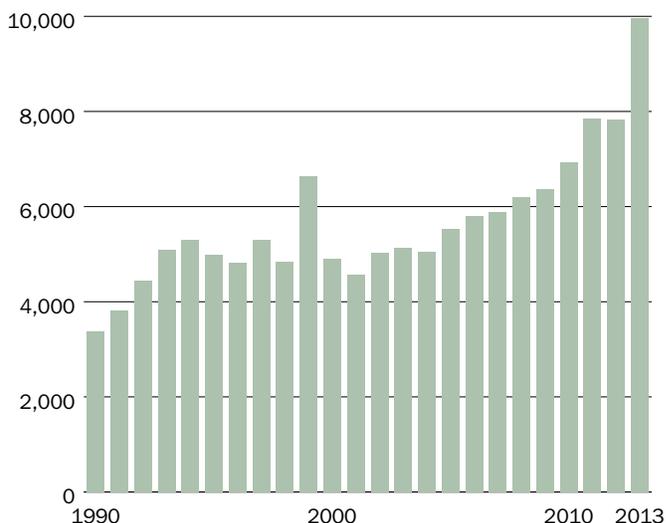
## A Civil-Rights Office Squeezed for Resources

Since 1990, the Office for Civil Rights has seen its staff shrink by 27 percent as the number of complaints it receives has tripled. The office enforces laws relating to discrimination based on sex, age, race, color, national origin, and disability in educational institutions.

**OCR staff**



**Total complaints received**



SOURCE: DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

of sexual assault was inadequate. The Office for Civil Rights is conducting a broader compliance review of the university.

Now, even as Ms. O'Brien leads campus workshops teaching students—male and female—about their rights under Title IX, she has left the IX Network and says she no longer advises students to file complaints under the law. Instead, Ms. O'Brien is pouring her energy into a nonprofit group she started to create an eventual home in Nashville where college-age victims of sexual assault can begin, as she puts it, a “healing journey.”

Title IX enforcement is “a horribly broken process that needs to be re-evaluated,” she says. “I don’t see these complaints making the changes that we want.”

But the dozens of complaints now before the Education Department—and the heightened scrutiny from the White House—may spell change. Some complaints filed in this recent wave of activism have been pending for more than a year, and Ms. Lhamon says her staff is working to resolve them.

Student activists with the Know Your IX campaign, meanwhile, say they are encouraged by the White House’s new recommendations. But those steps, they said, still fall short, and don’t address a central tenet of

students’ activism: that the Office for Civil Rights have the power to impose fines on colleges that run afoul of the law.

Ms. Brodsky, in particular, is troubled by flaws in the enforcement process and the low proportion of complaints that lead to change. She and other activists have pushed the Education Department to more forcefully compel colleges to comply with Title IX. They’d like to see the department involve complainants in negotiating resolutions, for example, and make public the names of institutions under investigation for alleged violations of the law. Ms. Brodsky is hopeful that such steps can achieve the kind of culture change that she and other victims want.

“There’s an incredibly affirming promise lurking in there,” she says of Title IX. To students, especially survivors of an assault, she says, the law carries a weighty message: You have rights.

“We’re clinging to the promise,” she says. “I don’t want to give up on Title IX.” ■

*Sara Lipka contributed to this article.*

*April 30, 2014; <http://chronicle.com/article/Promise-Unfulfilled-146299>*



BRETT FLASHNICK FOR THE CHRONICLE

Joshua Strange's former girlfriend accused him of forcing her to have sex after they had been drinking. Despite his denials, he was expelled from Auburn U., and he moved home, graduating from the U. of South Carolina-Upstate.

# Presumed Guilty

College men accused of rape say the scales are tipped against them

By **ROBIN WILSON**

**C**ALEB WARNER drives a delivery truck and may never finish college. Joshua Strange moved home and enrolled at a branch campus of the University of South Carolina after he was kicked out of Auburn University, his dream college. Zachary Hunt lost a \$30,000 scholarship and his place on Denison University's football team.

All three young men were expelled after their colleges found them responsible for sexual assault. A national campaign against what some have called a rape culture on college campuses has brought attention to sexual violence, and to victims—typically women—who have long described being ignored. But others think the movement has gone too far, labeling some innocent students as rapists.

Many young men who feel unfairly accused recognize that campus sexual assault is a serious issue, and that some students are truly responsible. But in the current climate, they say, the gender-equity law known as Title IX is allowing women to allege rape after alcohol-fueled sexual encounters in which the facts are often murky. An increasing number of undergraduate men are now fighting back—with the help of parents, lawyers, and a new national advocacy group.

“Fundamental fairness has become a pawn in the gender wars,” says Judith E. Grossman, a mother who helped found the group, Families Advocating for Campus Equality. Her son, who graduated this spring from a small liberal-arts college, was accused last January by a former girlfriend of “nonconsensual sex.” Ms. Grossman wrote to administra-

## WHAT IT MEANS

- Students who feel unfairly accused of sexual assault argue that support for victims and a lower burden of proof have resulted in a rush to judgment.
- Some accused students are filing lawsuits against their colleges and lodging federal complaints; their mothers plan to lobby nationally.

tors and hired a lawyer; after a campus hearing, the college found her son not responsible.

"I am a feminist, and I believe one rape is one too many," says Ms. Grossman, who would not name her son or the institution. "But in their rush to judgment, colleges are now substituting one class of victims for another."

Antirape advocates hardly see it that way. Now that colleges are paying more attention to sexual assault, they say—investigating reports and punishing offenders—some students found responsible are bound to cry foul. "It's a little hard to believe that we can go for generations where rape victims are ignored, disbelieved, and disregarded, and now the battle cry is out that we're ruining the lives of untold numbers of innocent young men," says David Lisak, a clinical psychologist who consults with colleges on rape cases. People accused of assault, he says, frequently contend that they're innocent.

Many students accused describe feeling much like their classmates who say colleges have mishandled their reports of being assaulted. Alleged victims have charged colleges with minimizing their experiences and trauma, even blaming them for the incidents. Alleged perpetrators, meanwhile, also feel betrayed and mistreated: presumed guilty, they say, by campus administrators so concerned with protecting victims that due process falls away. Some men found responsible lose weight, suffer depression, and watch their college and career plans crumble.

Mr. Strange, expelled from Auburn in 2012, says he felt branded with a scarlet R even before the university decided his case. "I stood in line to eat once between classes and heard people talking about me, saying, 'Can you believe this guy Josh raped a girl?'" he recalls. His girlfriend had accused him of forcing her to have sex, a charge he disputes. Through the new national group, he has become an informal adviser to other students accused of rape. "I lost who I was," he says. "I lost my way for awhile. I was devastated and crushed."

**S**TATISTICS PAINT a scary picture for college women. One in five is sexually assaulted, according to a 2007 study by the National Institute of Justice, although some observers have questioned whether the incidence is really that high. The number of sex crimes reported by colleges rose by 52 percent between 2001 and 2011, to 3,300, another federal study found. Headlines have multiplied: In a May cover story, *Time* magazine called campus sexual assault a "crisis," pronouncing colleges "hazardous places" for women.

Colleges face increasing pressure from survivors and the federal government to improve the campus climate. Title IX compels them to resolve reports of rape whether or not an alleged victim reports the incident to the police. If a college fails to handle cases promptly and fairly, the U.S. Department of Education can find that it has created a hostile learning environment. The department is now investigating 76 colleges for possible violations of Title IX related to alleged sexual violence. In recent months it has announced a few harsh settlements requiring institutions to strengthen their policies.

Laura Dunn, a law student who started an advocacy

group called SurvJustice, has advised some Washington officials pushing colleges to be more responsive to victims. "Women are very intelligent—they know when they've been harmed," says Ms. Dunn, who has shared her own story of being raped 10 years ago as a freshman at the University of Wisconsin at Madison by two men on the crew team. (The university determined that they were not responsible.) "There is an unfortunate, aggressive sexual norm related to masculinity in our culture," she says. "We are asserting our rights now in the face of aggressive, predatory sexuality."

A network of self-described survivors and allies has sprouted up to encourage students to report campus assaults and file federal complaints and lawsuits if colleges don't take the reports seriously.

But the crackdown, say young men and their lawyers, has come at a cost. Since the Education Department issued a "Dear Colleague" letter in 2011, admonishing colleges to process students' reports of assault uniformly—with the goals of investigating all cases and preventing new ones—many campus officials believe the underlying message is that they should side with victims, says Brett A. Sokolow, president of the National Center for Higher Education Risk Management, a consulting and law firm. The department's letter also emphasized that colleges should determine responsibility using the "more likely than not" standard of proof. That's lower than the "beyond a reasonable doubt" standard required for a criminal conviction.

At a national summit on sexual assault held at Dartmouth College in July, a participant asked Catherine E. Lhamon, who leads the Education Department's Office for Civil Rights, if colleges could safely assume that it was urging them to tip the scales in favor of accusers. Ms. Lhamon said no, apologized if her office had given that impression, and said she wanted "all students to have a fair and appropriate process."

When a student reports a sexual assault to a campus administrator, the college typically conducts an investigation to determine whether to pursue the case. If it does, a panel of faculty and staff members usually hears from both parties, then issues a finding and in some cases a penalty.

Gina M. Smith, a lawyer who advises colleges on sexual misconduct and Title IX, says the system tends to work well. "Colleges and universities have long been in the business of student discipline," she says. "They remain committed to providing fair, impartial, and informed processes that produce reliable results."

**O**THERS WHO OBSERVE that process believe something has gone wrong. The burden of proof, say several lawyers representing students who have been found responsible for sexual assault, is too low, letting colleges rule against alleged perpetrators on very slim, sometimes conflicting evidence. (Colleges use the term "responsible" rather than "guilty" to distinguish the findings of their proceedings from those of the criminal system.)

Some students are appealing campus findings. Others are filing lawsuits—against Columbia, Denison, and Duke Universities and the University of Massachusetts

at Amherst, among other institutions. And several young men have lodged Title IX complaints of their own, arguing that in a rush to judgment, their colleges discriminated against them on the basis of their gender.

In the past few months, Mr. Sokolow says he has gotten nearly 60 calls from accused students and their parents—a steep rise from just a year ago. He takes the cases he feels are the strongest (for now, a dozen). “The last thing I want to do,” he says, “is represent a rapist.”

Of the cases Mr. Sokolow has accepted, at various stages of resolution, three young men have had charges against them dismissed following campus investigations or hearings. Three others whose colleges had found them responsible had those findings reversed on appeal, and two who were found responsible reached settlements with their institutions. The rest of the cases are pending.

Andrew T. Miltenberg, a lawyer based in New York City, says he has been getting about 15 calls a month this year, including a recent one from a father in South Korea whose son had been expelled by an elite American institution. Mr. Miltenberg and a colleague have filed five lawsuits so far this year claiming discrimination under Title IX. They are in the process of drafting several others and have consulted on almost a dozen campus appeals.

What many of the accused want most is for their college records not to reflect conduct violations, says Eric Rosenberg, a lawyer in Ohio who represented three young men who were expelled by Denison in reaching confidential settlements with the institution. “If this boy wants to become a lawyer or a doctor, this has the potential to rear its ugly head down the road, like Chapquiddick,” he says.

In most of the cases they accept, plaintiffs’ lawyers say, the two students involved knew each other before the sexual encounter. Some were in relationships, but most were just acquaintances who shared a group of friends—and maybe had had sex before. Typically, both were drinking, often to excess, and what actually happened, say lawyers for many of the young men, is an ambiguous he-said, she-said muddle of events.

In Mr. Strange’s case, at Auburn, he and his girlfriend had been out at a bar celebrating a friend’s acceptance to law school. They got drunk, he says, went back to his apartment—where the girlfriend had been staying for a couple of weeks—and in the middle of the night began having sex. Mr. Strange insists that nothing out of the ordinary had happened when suddenly his girlfriend “freaked out.”

In a hearing at Auburn, however, the young woman said Mr. Strange had begun sodomizing her, and when she asked him to stop, he wouldn’t. Mr. Strange denies intentionally attempting to have anal sex and says he stopped physical contact as soon as she objected.

Occidental College expelled a freshman last February after finding that he had had sex with a female classmate too drunk to consent. The woman said she remembered performing oral sex on him but didn’t recall having intercourse. He has sued the college, arguing that she sent text messages telling her friends she was about to have sex and asking him if he had a condom.

Officials at Auburn and at Occidental declined to comment on the cases.



BRETT FLASHNICK FOR THE CHRONICLE

**Caleb Warner was expelled from the U. of North Dakota after a female student said he had raped her. Later the police charged her with filing a false report, and the university revoked his expulsion. Rather than re-enroll, however, he kept his job as a delivery driver.**

Under current interpretations of colleges’ legal responsibilities, if a female student alleges sexual assault by a male student after heavy drinking, he may be suspended or expelled, even if she appeared to be a willing participant and never said no. That is because in heterosexual cases, colleges typically see the male student as the one physically able to initiate sex, and therefore responsible for gaining the woman’s consent. If the woman was not just intoxicated but incapacitated, then colleges frequently find that she was incapable of consenting: The male student should have realized she was too drunk and refrained from sex.

The problem with that reasoning, say lawyers representing those accused, is that colleges often apply it in cases in which both parties were drunk but not incapacitated. “If the university poorly distinguishes between being merely intoxicated and being incapacitated—and many do—it’s discriminatory to charge only the man,” says Mr. Sokolow. But that is what often happens, he says.

Colleges are essentially expecting men to judge women’s ability to consent to sex, says Mr. Miltenberg, another of the lawyers. “As much as everyone wants to appear forward-thinking in terms of sexuality, colleges are applying an antiquated, chauvinistic, and paternalistic standard,” he says. “In every one of these situations, the male is in no better shape, physically, emotionally, or maturity-wise, to make any of these decisions than the girl is.”

But people who advise colleges on sexual assault say they make decisions on the basis of individual cases,

not stereotypes. “These cases turn on the application of well-written and informed policies,” says Ms. Smith, “and robust evaluations of all the facts and circumstances.”

**S**TORIES REVEAL different scenarios for campus sexual assault. Sometimes aggressive men, maybe acting in groups, feel entitled to take things as far as they want—even when their partners protest or are incoherent. What lawyers for accused perpetrators describe, though, are situations in which a young man believes that a woman is describing a mutually drunken hookup as rape.

“Colleges, too often for fear of their reputations or their liability under Title IX, set up these processes where they define sexual assault poorly,” says Matt Kaiser, a lawyer in Washington whose firm has represented about a dozen men accused of assault on campuses. “The student himself becomes a scapegoat for that college looking bad or getting an investigation from the Department of Education.”

That is exactly what “John Doe,” a sophomore astronomy major at UMass, says happened to him this past academic year. In the fall, he met a female classmate at a party and ended up back in her dorm room. “She invited me there,” says Mr. Doe, the name he used in a lawsuit he filed in August against the university. Both students had been drinking but weren’t drunk, he told *The Chronicle*, and nothing about their sexual encounter was surprising, he says. “She said yes to everything I asked, and immediately prior to having sex, she said, ‘Put on a condom.’ At one point I had stopped, and she asked me why, and I said, ‘I’m sorry. I’m a little nervous.’ And she said, ‘OK, don’t worry about it.’”

The next day, says Mr. Doe, he sent the woman a text message, asking her if what had happened was a one-night stand or the beginning of a relationship. Her answer: a one-night stand. Later that day, he says, he got a call from the dean’s office: The young woman was alleging that Mr. Doe had sexually assaulted her.

Under federal rules, colleges must take “interim measures” to protect students who report rape by keeping alleged perpetrators away from them while a case is being investigated. “They told me I had six hours to get out of my dorm and find somewhere else to live,” says Mr. Doe. “They treated me with such hostility, like I was already a criminal.”

UMass quickly found him responsible, ruling that his partner had been too drunk to consent to sex, he says. Within three months, he had been expelled.

“They undermined all of the hard work I had done. I had been making friends and networking,” says Mr. Doe. “It was humiliating and degrading.” Just before he was expelled, he transferred to a different college—“the back-up to my back-up schools,” he says—and now commutes there from home. By throwing him out, his lawsuit argues, UMass violated his right to an education free of gender discrimination under Title IX.

UMass declined to comment on the suit but issued a written statement. “The university does take allegations of sexual assault seriously and conducts reviews through a detailed procedure specified in the Code of Student Conduct,” it says. “Due process for all parties involved is a central aspect of the code.”

Mr. Doe’s story is familiar to mothers like Ms. Grossman, Alison Strange—Joshua’s mother—and Sherry Warner Seefeld, who together started the group Families Advocating for Campus Equality. Ms. Warner Seefeld’s son Caleb was expelled from the University of North Dakota in 2010 after a female student alleged that he had raped her. (He has maintained that the sex was consensual.) Following his expulsion, Ms. Warner Seefeld says she “went into mom mode” to defend her son, writing to politicians and to the university’s president, threatening “a national PR campaign.”

The case led the local police to charge the young woman with filing a false report. And although Mr. Warner was readmitted to North Dakota in 2011 with the penalties against him revoked—including the requirement that he attend sensitivity training regarding sexual assault—he decided not to return, says Ms. Warner Seefeld. “He got a driver’s job, he is making excellent money, and he is really too traumatized to attempt college again,” she says. He declined to be interviewed for this article. A spokesman for North Dakota also would not comment.

Tiffany Hunt’s son Zachary was expelled by Denison in 2013, after what he has described as walking a female classmate who had been drinking heavily at a party back to her dorm room. She charged him with sexual assault. But Mr. Hunt has said they never had any sexual contact, and he passed a polygraph test, says his lawyer, Mr. Rosenberg.

“Can you imagine what it feels like to a young boy to be accused of such a heinous crime?” asks Ms. Hunt. “You trust the college administration to take care of them, just like the parent whose daughter is assaulted, and you feel like that trust was broken.”

Mr. Hunt declined interview requests. He lost 25 pounds in the months following the allegation against him, his mother says. He is now volunteering at a ministry and trying to figure out his next step.

Under scrutiny, colleges are struggling to balance the need to protect victims and punish perpetrators with the need to guarantee a fair process to students accused of assault. And the cases keep coming.

The mothers hope their new nonprofit group can represent the voices of the accused in the national conversation. Some spoke this spring to a committee appointed by the Education Department to draft regulations under the Campus Sexual Violence Elimination Act. As Congress considers legislation intended to make colleges more responsive to reports of assault, the mothers want to get involved. They also want to support parents who find themselves in the same position they did. “It’s a lonely road,” says Ms. Warner Seefeld.

On a trip to Washington this summer as part of her work as a history teacher in North Dakota, she visited the National Archives. Her first stop: to examine the original copy of Title IX. She wanted to see for herself: Was the law just for women, or for men, too?

“It says equal opportunity for all in education,” Ms. Warner Seefeld says. “It wasn’t created just for women.” ■

September 1, 2014; <http://chronicle.com/article/Presumed-Guilty/148529>



MARK ABRAMSON FOR THE CHRONICLE

Underwear with messages like “Ask before unwrapping” were put on display by students at Union College (N.Y.) as part of a campaign against sexual assault. “No college has all the right solutions yet,” says Shayna Han (right), a senior who helped start a group at Union dedicated to sexual consent.

# Protecting the Party

With focus on sexual assault, students look out for one another while drinking just as much

By ROBIN WILSON

SCHENECTADY, N.Y.

**I**T WAS A TYPICAL SATURDAY NIGHT at the house on Park Street where the Union College men’s hockey team goes after games to unwind and party. Sébastien Gingras, a 6-foot-1 defenseman, noticed a classmate hovering around a young woman who looked unsteady.

Mr. Gingras watched them. “She was a freshman, and this was a guy from outside the team who had the reputation of trying to get girls when they were drunk,” he says. After a while, “the guy was sitting next to her on a couch, trying to get her to leave.” So Mr. Gingras, a junior, asked one of his teammates to call the guy over to distract him while Mr. Gingras checked the young woman’s ID and walked her back to her dorm.

Hanging out, drinking, and hooking up are for many students just part of life in college. They’re also a common backdrop for sexual assault. As many as four in five campus assaults involve drinking, stud-

## WHAT IT MEANS

- Messages about preventing sexual assault now come at students from many directions, and they’re paying attention, intervening in what they see as risky situations.
- By monitoring their friends while out drinking—a practice many colleges now promote—students can watch for both aggressive conduct and vulnerability to predators and opportunists.

ies have found. Plenty of those cases hinge on whether a woman was drunk or incapacitated, and therefore unable to give consent.

Messages about preventing sexual assault now come at students from many directions: campus and federal officials, the news media, their peers. And what students are hearing has started to influence their behavior. They're paying more attention, and they're looking out for one another.

That's precisely what President Obama's new campaign, "It's On Us," is asking them to do: "to intervene if we see someone in a risky situation." Union College, with 2,250 undergraduates, enlisted its popular hockey team, which won last year's Division I national championship, to sign the campaign's pledge and encourage others to take seriously the goal of protecting students.

People here think it's working. "We're hearing from more students concerned about what they are seeing or hearing," says Amanda E. Tommell-Sandy, assistant director of the counseling center. "We are seeing more students sharing that they have intervened."

Deciding when a friend is having fun and when it's time to step in can be tricky. Students here and elsewhere are fumbling a bit in new roles—ordering a man talking with a tipsy woman to leave a party, or seeing a drunk couple together and calling campus security. "No college has all of the right solutions yet," says Shayna Han, a senior at Union who helped start the college's Committee on Consent Education and Awareness this year.

The idea on many campuses is that intervention, not drinking less, is the solution. None of the students *The Chronicle* spoke with talked about scaling back their own drinking to avoid becoming too aggressive or vulnerable. Administrators responsible for sexual-assault prevention feel that they can't say much about alcohol, even though it is a common element in many incidents. If they counsel students to limit consumption, they fear, young women who drink and are assaulted will be blamed, and will blame themselves, perhaps not reporting the attacks.

By monitoring their friends—a practice many colleges now promote—students can watch for both threatening conduct and vulnerability to predators and opportunists. That way, students let one another drink to excess while lowering the risk of assault.

"I am the mom of my group," explains Brianna, a sophomore here who asked that her last name not be used. "Last year I literally pulled my friend away from a guy because they were both too intoxicated." Her friend appreciated her judgment, Brianna says. "She knew I was completely sober, so she trusted me."

**W**RENCHING STORIES of sexual assault have rocked many campuses in the past couple of years, sparking protests and scrutiny. Many alleged victims have filed federal complaints about the way their colleges handled their reports.

While Union hasn't had a case go public—the college received five formal reports of sexual assault in 2013—the topic has provoked a lot of discussion.

"I knew we had an opportunity with our hockey

team," says Jim McLaughlin, the athletic director. The team attended a half-day workshop in September on bystander intervention. Next in line are the women's hockey team and the men's and women's basketball and swim teams.

"We are tough, bold women, and we would have the confidence to step into a bad situation," says Christine Valente, captain of the women's hockey team.

Athletes aren't the only ones getting involved. Ms. Han and a few classmates formed their group to talk frankly about sexual consent. In November, members wrote slogans on men's and women's underwear and hung them outside the student center. "Ask before unwrapping" said a pair of panties. "I like butts," someone wrote in pink marker on a men's pair. "Butt ... I ask before I touch."

Organizers are holding workshops with sports teams, fraternities, and sororities. But they don't preach or try to give students all the answers. On a recent Thursday evening, the men's lacrosse team packed into a dorm's common area, where the group's presenters, all women, tried to draw the athletes out. What does consent mean? How does sexual assault affect men? How do stereotypes of masculinity play into the problem?

"You should have consent before you go out and party and get drunk, instead of waking up the next day and regretting it," one player said. "As a team, I want to win a national championship," offered another. "I don't want another player going out and touching a woman who doesn't want to be touched and undermining our success." Every time someone spoke up, the women tossed out packets of Sweet Tarts or Reese's Pieces.

After such presentations, students sometimes approach members of the consent group, says Ms. Han, to say they've been applying its lessons. "I was having sex," a student might report, "and I asked for consent!"

**W**OMEN AT UNION say they do two things to keep themselves and their friends safe from sexual assault. They never walk alone after dark, and they go to parties in groups. Some also bring their own alcohol—keeping their drinks covered and close at hand. Campus safety officers taught three self-defense classes this fall, and the Theta Delta Chi fraternity offered to buy women a new kind of nail polish that is supposed to change colors to detect the presence of common date-rape drugs.

Relatively few sexual assaults on college campuses, however, involve strangers, weapons, overwhelming physical force, or date-rape drugs, experts say. The most common substance consumed by victims is alcohol.

"There is this notion of the predator out there, and those people definitely exist," says Steve Leavitt, dean of students at Union. "But we haven't seen them in any of our judicial cases." A more common scenario, he says, involves students drinking, and something going wrong.

Like many colleges, Union has tried to control the flow of alcohol. Under new rules this year, fraternity parties must serve bottled water. The familiar red Solo cups are banned—all beer must be distributed in cans—and Union limits the number of cans at each party. It is more difficult to slip something into a can than a cup, and the lack of cups restricts drinking games.

Still, students can load up on alcohol before parties. Heavy drinking is common here, just as it is on many campuses. What has changed, students say, is how closely they watch out for their drunken friends.

At Sigma Chi, one of Union's biggest fraternities, students party in the basement, with a big American flag painted on the wall and a beat-up wooden stage for the DJ. Brothers step in if a woman complains of aggressive behavior, says Ben Nadareski, the chapter's president.

This year a female student accused a classmate looking to join Sigma Chi of offensive conduct after a night of partying (Mr. Nadareski declined to offer specifics). She reported the incident to her resident assistant, and the college disciplined the student. Because of privacy law, Union didn't tell Sigma Chi about the violation, but the fraternity rejected the student as a brother, saying it didn't want someone like that among its 90 members.

For the most part, women here say they feel safe at frat houses. Meghan, a senior who asked that her last name not be used, remembers being at a party last year without her closest friends. "I got really, really drunk," she says.

A fraternity brother took her up to his bedroom, Meghan says, propped her up on her side in his bed, and locked the door so no one could bother her. "I woke up with a cup of water next to the bed," she says, "and a text saying: 'I'm in the chapter room downstairs. When you wake up, come and get me.'"

Meghan was grateful, she says. "I have a lot of somebodies around to help me."

**S**O WHEN do friends step in for one another? The new emphasis on bystander intervention may be making some students a little overzealous.

Elizabeth Murad, a junior at Union, says one of her friends was drinking heavily at a party one night and made out with a guy they didn't know well. "After a while I asked her, 'Are you OK?'" says Ms. Murad. The friend said yes but added that she didn't want things to go any further.

As Ms. Murad called her over to a group of girlfriends, a male classmate who had witnessed the interaction yelled at the young man. "He said the guy shouldn't even be talking to her when she's drunk," says Ms. Murad. "It's good he was looking out for her, but she can do what she wants. He was being out of line about it, and he got kicked out."

One student was worried when his roommate brought a woman back to their dorm room after both had been drinking. "He wondered if he could be seen as part of the problem if he ignored it," says Marcus S. Hotaling, director of counseling. So he called campus safety. Officers knocked on the door, and both students responded that they were there willingly.

The culture of looking out for one another means making judgments for your classmates, or at least asking. Mr. Gingras, the hockey player, is an RA in what he

calls the biggest party dorm. This fall he saw a couple stumbling down the hall. He pulled the young woman aside and asked, "Are you feeling comfortable?"

She said she wasn't sure if she wanted to go into a room with the man. "If you put yourself in there," Mr. Gingras says he told her, "you have to have a clear understanding with him." She went into the room, he says, came out, and explained to the RA that she'd told the guy she didn't want to sleep with him yet.

While students watch for signs of trouble, some men are monitoring their own behavior. They want to avoid situations they've heard about in which men think sex is consensual, but their partners say otherwise. In some cases, the women have had enough to drink that they don't remember what happened.

It's not worth the risk that your partner is not in con-



MARK ABRAMSON FOR THE CHRONICLE

**Members of the men's lacrosse team at Union College return from a campus workshop on sexual consent. The women leading the workshop asked them, What does consent mean? How does sexual assault affect men? How do stereotypes of masculinity play into the problem?**

trol of her actions, one hockey player said at a team dinner last month. "A drunk girl holds your life in her hands."

All the discussion of sexual assault here has heightened awareness while also stoking fear. "It's made everyone a lot more paranoid," one student says, "avoiding the gray area at all costs."

Women notice how sensitive some men have become about appearing inappropriate or aggressive. While that may mean less spontaneity, young women feel more protected—even when they want to party hard.

"This weekend a kid was trying to dance with me," says Meghan, the senior who was safely tucked in at the frat house. "He asked only once, and I decided not to." Still, with lessons about consent and respect in his head, his conscience seems to have weighed on him.

The next day he sent her 30 text messages. All of them said, "I'm sorry." ■

# Resources

**White House Task Force report:** A group convened by President Obama released 20 pages of recommendations in April 2014 providing practical instructions for colleges to prevent and respond to sexual assault.

[http://www.whitehouse.gov/sites/default/files/docs/report\\_0.pdf](http://www.whitehouse.gov/sites/default/files/docs/report_0.pdf)

**Federal Government Q&A:** The U.S. Department of Education's Office for Civil Rights released this policy guidance alongside the White House report to answer common questions about colleges' responsibilities under Title IX.

<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

**NotAlone.gov:** This government-backed website offers resources to colleges developing sexual-assault policies and to students who have experienced an assault or believe they have been mistreated by their institution.

<https://www.notalone.gov/>

**It's On Us:** This public-service campaign, unveiled by the White House in September 2014, urges more people—especially young men—to identify risks of sexual assault and intervene.

<http://www.itsonus.org/>

**Know Your IX:** This national movement, led by self-identified survivors of sexual assault, is pressing colleges to strengthen policies, teaching students to file federal complaints, and lobbying for legislative change.

<http://knowyourix.org/>

**Families Advocating for Campus Equality:** This national advocacy group, founded by mothers of college men who say they were wrongly accused of sexual assault, seeks to protect due-process rights in campus disciplinary proceedings.

<http://www.facecampusequality.org/>