

I In this chapter, we describe the history of sexual violence as it pertains to postsecondary institutions, focusing on social movements, research, and policy, and their implications for higher education.

History of Sexual Violence in Higher Education

Jody Jessup-Anger, Elise Lopez, Mary P. Koss

Research on sexual violence on college and university campuses emerged in the public media over 40 years ago. Over the past decade, attention to campus sexual violence has moved from the margins of research and practice to a central institutional focus in higher education. In this chapter, we approach postsecondary sexual violence initiatives from a historical perspective, describing the social context, the research, and the resulting policy and legislation. We also discuss implications for higher education.

Social Context

Awareness of sexual violence on postsecondary campuses arose from consciousness-raising activities of the second-wave feminist movement (Bevacqua, 2000). This movement recognized the voices and perspectives of largely white, well-educated women who came together in small groups and shared stories of sexual harassment, rape, and interpersonal violence. The women in these groups discovered that their experiences of sexual violence were not unique, but rather widespread and persistent. As the broader movement spread, survivors and their allies created organizations to respond to those in crisis, with early rape crisis hotlines and centers emerging in the early 1970s in metropolitan areas of California and Washington, DC (Wasserman, 1973). The anti-rape message swelled to a fever pitch with Brownmiller's (1975) groundbreaking work *Against Our Will: Men, Women, and Rape*. This pivotal text provided a meticulous overview of the history, politics, psychology, and anthropology of rape. Brownmiller's book influenced public understanding of rape as an act of violence, intimidation, and power. By 1978, anti-rape activists were organizing. The first Take Back the Night march in San Francisco, an event organized to raise awareness about

and reject violence against women, still exists on many campuses today (Greensite, 2003).

As anti-rape activism spread throughout the country, it gained traction on some college and university campuses by the late 1970s, with the addition of services to support survivors. On some campuses, these services were organized as a partnership between a community-based rape crisis center and a campus women's center. On others, university-based rape crisis centers offered services to both the campus and the community (Kaplan, Hindus, Mejia, Olsen, & La Due, 2002). By the early 1990s, many campus-based rape crisis centers had been established.

Second-wave feminism and the sexual assault movement struggled with recognizing and addressing intersectionality, defined as the ways in which privilege and oppression related to race, gender, class, sexual orientation, ability, and age interact to shape the various dimensions of one's experiences (Crenshaw, 1991). Crenshaw (1991) explained that

many of the experiences Black women face are not subsumed within the traditional boundaries of race or gender discrimination as these boundaries are currently understood, and that the intersections of racism and sexism factors into Black women's lives in ways that cannot be captured wholly by looking at race or gender dimensions of those experiences separately (p. 1244).

Absent from the early rape crisis movement in the United States was recognition of the intersections of privilege and oppression related to social identities—though these voices were heard on the margins of the movement. For example, in 1978, a group of Black feminists issued the Combahee River Collective statement, which outlined the contributions of African American women to the feminist movement and illustrated the intersections of racial, sexual, heterosexual, and class oppression (Combahee River Collective Statement, as cited in Smith, 1983). The statement discussed the complexity of working in solidarity with Black men to address racism, while also struggling with the same men to address sexism. The authors emphasized the need for a collective, collaborative movement against all oppression and highlighted the reality that their intersecting oppressions necessitated they work together to address sexism while also addressing racism in the women's movement. Among their projects were workshops and educational presentations about Black feminism, battered women, and rape on college campuses (Combahee River Collective statement, as cited in Smith, 1983).

Research

Early research surrounding sexual violence on campus predated the modern crisis movement, as evidenced by the troubling language used to describe sexual violence. In one of the earliest studies, Kirkpatrick and Kanin (1957)

examined women's reports of male "erotic aggressiveness" in "dating-courtship relationships" on a university campus (p. 52). Among the researchers' findings was that more than a quarter of women in the sample reported experiencing "forceful attempts" or "aggressively forceful attempts at sex intercourse in the course of which menacing threats or coercive infliction of physical pain were employed" (Kirkpatrick & Kanin, 1957, p. 53). The researchers also found that "offended women" (those who described experiencing sexual assault or coercion) were not likely to report the behavior to authority figures, including parents, faculty or staff, clergy, or any other authority. These findings were replicated by Russell (1982), whose study on forcible and attempted rape of women found that 88% of the sample knew their perpetrator, and very few of these women reported the offense to police.

The Kirkpatrick and Kanin (1957) study laid the groundwork for Koss's (chapter author) research on sexual violence in the 1980s, in which she and colleagues developed the Sexual Experiences Survey (SES) (Koss & Oros, 1982). The SES extended the dimensional view of rape as representative of an extreme behavior that existed on a continuum with other men's gender-stereotyped seduction behaviors, like coercion or harassment. Indeed, the design of the SES, with its reliance on behaviorally descriptive words (as opposed to the vague terminology employed by Kirkpatrick & Kanin, 1957), proved capable of measuring many unreported incidences of rape and sexual aggression (Koss & Oros, 1982). After early findings of Koss's research were published in 1982, Koss and colleagues (Koss, Gidycz, & Wisniewski, 1987) used the validated SES (Koss & Gidycz, 1985) to conduct the first national study of 6,159 students enrolled in 32 postsecondary institutions throughout the United States. This study, funded by the National Center for the Prevention and Control of Rape, a short-lived independent organization within the National Institutes of Health, was the first to illustrate the scope of sexual violence on college and university campuses. The researchers found that 27.7% of college women reported experiencing attempted rape or rape and 7.7% of college men reported perpetrating an attempted rape or rape. Results were published in a peer-reviewed journal (Koss et al., 1987) and distributed in summary form to the public in the October 1985 issues of *Ms. Magazine* and in a book by Warshaw (1988) titled *I Never Called It Rape: The Ms. Report on Recognizing, Fighting and Surviving Date and Acquaintance Rape*. The title of the book called attention to findings (Koss et al., 1987) that, despite meeting the legal definition of rape, most victims did not define their experiences as crimes, and thus were unlikely to report to police. In addition, because there was virtually no precedent or protocol on campus for responding to sexual violence at that time, there was often little recourse for addressing the issue on campus. These realities illustrate the difficulty inherent in addressing sexual violence in postsecondary contexts—most survivors had limited language for describing their experiences. Subsequent media attention and books such as Estrich's (1987)

Real Rape helped to raise public understanding of “acquaintance” or “date” rape as a common occurrence most often committed by someone known to the victim, countering the myth that rape is rare and mostly committed by strangers.

In the past 30 years, information about the incidence of sexual violence on campus has largely confirmed previous studies indicating that sexual violence on college campuses persists at alarming rates across categories of race and ethnicity, sexual orientation, and gender identity (Black et al., 2011; Kilpatrick, Resnick, Ruggiero, Conoscenti, & McCauley, 2007). Historically marginalized and underrepresented groups often experience greater rates of sexual violence (Black et al., 2011) and additional barriers to reporting and resources for recovery (Fisher, Cullen, & Turner, 2000; Grant et al., 2011). Further, sexual violence continues to be underreported, especially when a victim is rendered incapacitated (Kilpatrick et al., 2007).

As awareness of sexual violence on college campuses grew, researchers turned their gaze to understanding more about institutional responses. In 1999, with support from the National Institute of Justice, researchers from the University of Cincinnati and Police Executive Research Forum conducted a comprehensive, national study to examine the response of post-secondary institutions to campus sexual assault. The researchers examined issues related to institutional response to sexual assault, including the presence of definitions in campus codes of conduct, availability of statistics related to prevalence of violence on campus, and clearly defined policies related to resources and reporting (Karjane, Fisher, & Cullen, 1999), many of which remain issues today (Black et al., 2011). Findings from this comprehensive study, entitled *Campus Sexual Assault: How America’s Institutions of Higher Education Respond*, indicated substantial variation existed across institutions in handling sexual assault. We highlight pertinent findings to help contextualize the current policy and university response landscape related to sexual violence on campus.

- No standard institutional or state definitions of “sexual assault” and “rape” existed . . . and even if the experience met the legal definition, most student victims did not define their experience of rape as a crime.
- Only about one-third (36.5%) of schools reported crime statistics in a manner fully consistent with the *Clery Act*.
- Less than half of all institutions of higher education (IHEs) provided new students with sexual assault awareness education and acquaintance rape prevention programming, despite active support from friends being the primary factor distinguishing victims who report the crime from those who remain silent.
- Due process procedures for the accused were utilized at only 37.3% of IHEs (Karjane et al., 1999).

The variation in institutional responses to sexual violence provided a strong rationale for much of the federal and congressional guidance that followed.

Policy and Legislation

In the 1970s and 1980s, federal legislation followed the increased awareness of and publicity about sexual violence. Title IX of the Educational Amendments of 1972, which prohibits sex discrimination under any education program receiving federal financial assistance was implemented; however, it was interpreted to apply solely to situations involving sexual harassment. In addition, many criminal codes changed to reflect a more contemporary understanding of sexual violence. For example, both legislation and litigation resulted in changes in the public's recognition of who could be a victim of rape by acknowledging the existence of rape within marriage and the possibility of men as victims of rape. Further, in 1991, the Supreme Court ruled that Michigan's rape shield law, which limited evidence related to a victim's past sexual history in court proceedings, was constitutional (Lindgren & Taub, 1993).

Clery Act. Lobbying efforts also gained momentum in the 1980s. Among the activists advocating for policy changes regarding campus crime were Connie and Howard Clery, whose daughter Jeanne was murdered in her residence hall at Lehigh University by another student during her freshman year in 1986 (Kiss & Feeney White, 2016). Subsequently, the Clerys founded Security on Campus, Inc., which lobbied the government at the state and federal levels to bring greater awareness to campus crime. One of the first federal bills introduced was the Student Right to Know and Campus Security Act (20 U.S.C. § 1092), which was enacted in 1990. It required postsecondary institutions to collect data, report these to the Department of Education, and publish these in Annual Security Reports (Gersen & Suk, 2016). In 1998, this legislation was renamed to honor Jeanne Clery's memory; today it is known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, or simply the Clery Act.

Although the Clery Act attempted to bring greater awareness to campus crime on campus, critics argued that the bill remained both insufficient and burdensome. The reporting process lacked guidance and oversight, which led to underreporting. In addition, the sheer breadth of crimes that institutions must report remains cumbersome (Gardner, 2015; Hartle, 2001).

Another early bill was the Campus Sexual Assault Victim's Bill of Rights, signed into law in 1992 as an amendment to the Higher Education Act (Bohmer & Parrot, 1993). The provisions of the amendment required postsecondary institutions to create and distribute a sexual assault policy, which would (1) include information about prevention; (2) outline the resources available in the aftermath (for example, mental health counseling, academic resources, and support for changing their living situation); and

(3) the specific procedures used on campus to investigate and adjudicate sexual assault. The amendment also required postsecondary institutions to provide the same opportunities to claimants (accusers) and respondents (the accused) to have others present during the hearing and to notify both parties of the outcome of the proceedings (Kiss & Feeney White, 2016).

Violence Against Women Act. In 1994, President Clinton signed the Violence Against Women Act (VAWA) into law. The bill, sponsored by then-Senator Joe Biden, was the first federal legislative package that addressed violence against women. Among the provisions of the bill were required recognition and enforcement of victim protection orders, support for development of dedicated law enforcement and prosecution units to assist in prosecution, conviction, and sentencing of offenders, and provision of federal resources to encourage community-coordinated responses to combatting violence against women (White House, n.d.). For postsecondary institutions, the passage of VAWA meant access to funds to reduce crimes and improve response to crime associated with sexual assault, domestic violence, dating violence, and stalking (National Task Force to End Sexual and Domestic Violence Against Women, 2013).

Dear Colleague Letter. Since the 1990s, sexual violence policy related to postsecondary institutions fundamentally transformed because of federal and congressional laws and mandates. In 1997, the Department of Education's Office for Civil Rights (OCR) issued a guidance document regarding Title IX that connected sexual harassment of students to sex discrimination and declared that schools must have grievance procedures through which students can file complaints about alleged sexual discrimination, including sexual harassment (Gersen & Suk, 2016). In 2001, OCR reiterated the 1997 compliance standards and implored schools to stop the harassment, prevent its recurrence, and remedy the effects when appropriate (Gersen & Suk, 2016). This guidance was followed in 2011 by the *Dear Colleague Letter* (DCL), which was issued to address explicitly that Title IX requirements related to sexual harassment must also address sexual violence. In 2017, the Office for Civil Rights under the Trump administration reversed course, issuing a new *Dear Colleague Letter on Campus Sexual Misconduct* (Jackson, 2017), rescinding the 2011 guidance, and indicating that new guidance may be forthcoming. Additional information about the 2017 letter is found in Wilgus and Lowery's Chapter 7.

Campus SaVE Act. In addition to compliance with Title IX requirements, institutional response is also affected by the 2013 Campus Sexual Violence Act provision (often referred to as the Campus SaVE Act or the SaVE Act), which amended the Clery reporting requirements, strengthened victim's rights, and obligated colleges and universities to adopt training requirements focused on sexual assault prevention (American Council on Education, 2013). The SaVE Act expanded Clery reporting requirements, updated hate crime categories, and addressed required prevention and response information for students (American Council on Education, 2013).

Although the SaVE Act is intended to provide greater protections to victims of sexual violence, it has been met with some critique. For example, Koss and Lopez (2014) contend that the focus on crime-based definitions and increasing information-sharing between local justice jurisdictions and campus adjudicators have shaped a quasi-criminal justice system on campus that potentially limits the menu of response options that student conduct administrators can employ, even when alternative resolution is desired by complainants.

Concurrent to Congressional action on VAWA, the White House Council on Women and Girls and the Office of the Vice President issued *Rape and Sexual Assault: A Renewed Call to Action*. The report detailed the incidence of sexual violence in the United States—with special attention focused on campus sexual assault, the societal and economic costs, and the criminal justice response. In addition, the report highlighted what the Obama administration had done to address sexual violence and issued a renewed call to action. Among the conclusions of the report was a need for additional attention to addressing sexual violence on college and university campuses. Subsequently, President Obama established the *White House Task Force to Protect Students from Sexual Assault* (2014), which issued *Not Alone*, a report that sought to provide preliminary action steps and recommendations for addressing sexual violence on college and university campuses. The report offered implications for monitoring campus climates, conducting prevention education, and providing response and adjudication. Many of these recommendations are incorporated into Edwards, Shea, and Barboza Barela's Chapter 4, Monahan-Kreishman and Ingarfield's Chapter 6, and Wilgus and Lowery's Chapter 7.

When taken together, the federal and legislative policy changes regarding sexual violence on college and university campuses represent a clear shift in the willingness of policymakers to address sexual violence on campus. Postsecondary institutions are tasked with addressing sexual violence like never before. Although some researchers and administrators believe it is vital that postsecondary institutions play a role in addressing sexual violence on campus, others believe it is outside the scope of institutional responsibility and should be left to local law enforcement officials. Gersen and Suk (2016) expressed concern that the expanding definition of sexual violence, coupled with myriad legislative and executive actions meant to address it, is expanding the reach of sexual violence response beyond violence, and is, in effect, beginning to regulate sex. Others took issue with the characterization of campus rapists as serial predators, a mischaracterization that encumbers their recommendations (Swartout et al., 2015). Still others argued that because sexual violence is a crime, it should be handled in the criminal justice system (Thomason, 2016), as campuses do not possess the resources to adequately investigate and adjudicate sexual violence and the sanctions are not appropriate. These critics overlook the differences between criminal and university conduct processes. The former involves

violations of state and federal statutes, whereas the latter relates to the conduct codes of the institution. It is possible that some forms of sexual misconduct are not actionable in a civil or criminal case, but still violate the behavioral codes of the institution. Further, Cantalupo (2016) argues that by solely focusing on a criminal justice response, postsecondary institutions would fail to address Title IX, the Clery Act, and VAWA. She points out that by not having a campus-based adjudication option, postsecondary institutions are not able to address sexual violence on campus effectively.

Rather than limiting the scope of institutional response, a movement exists toward exploring additional alternative resolution options such as restorative justice conferencing and community circles for addressing sexual harms on campus (Karp, Shackford-Bradley, Wilson, & Williamsen, 2016). This option could be utilized for complainants who desire a non-adversarial response to respondents who are willing to admit responsibility for the misconduct and work through a redress plan to repair the harm done. However, although some sexual violence survivors have expressed interest in restorative options, institutions have been hesitant to introduce these options for sexual misconduct because of fears that these options would be mistaken for mediation, which is expressly prohibited in the (now-rescinded) 2011 *Dear Colleague Letter* (Koss & Lopez, 2014, 2015; Koss, Wilgus, & Williamsen, 2014). In Chapter 7, Wilgus and Lowery provide further distinction between the criminal and university conduct processes and address alternative formats for adjudication.

Higher Education Institution and Association Responses

The legislative and executive action surrounding sexual violence in postsecondary education, coupled with the enhanced enforcement of Title IX and the Clery Act, sent a clear message to postsecondary institutions that they must respond to sexual violence. Yet, despite these signals, many presidents continue to believe that their campuses are immune to the problem of sexual violence (Jaschik & Lederman, 2015). However, the dramatic increase in the number of institutions that are under investigation by the Office for Civil Rights and the increased awareness and outcry by the public illustrate that postsecondary institutions cannot afford to be ignorant. As a result, many institutions are leaning on professional associations to guide their efforts in addressing sexual violence. For-profit companies like ATIXA have burgeoned (Lipka, 2011), and many other professional associations are releasing white papers and monographs to provide guidance on how to address sexual violence most effectively (see, for example, ACPA—College Educators International’s *Beyond Compliance* (Jessup-Anger & Edwards, 2015), ASCA—Association for Student Conduct Administrators’ (2014), *Student Conduct Administration & Title IX: Gold Standard Practices for Resolution of Allegations of Sexual Misconduct on College Campuses*, and NASPA—Student Affairs Administrators in Higher

Education's (2017) *CORE Blueprint: A Strategic Roadmap for Addressing Campus Sexual Violence*).

Although this guidance has helped to elevate promising practices to addressing sexual violence, additional guidance is warranted. Campus administrators need help in understanding what constitutes due process in an educational context so that the rights of victims and respondents are both addressed equitably (for a more detailed analysis, see Monahan-Kreishman and Ingarfield's Chapter 6 and Wilgus and Lowery's Chapter 7). Furthermore, additional guidance is warranted to respond to the campus climate mandate advanced by *Not Alone* to ensure that the data collected by campuses portray an accurate description of the climate and incidents of sexual violence, are useful in bolstering prevention and response efforts, and are not excessively expensive. To do so, we urge administrators to partner with knowledgeable faculty to ensure uniform definitions of sexual violence and that the difficulty inherent in gathering data about sexual violence (see Koss & Oros, 1982) is attended to in future research.

Because of the work of activists, advocates, researchers, and administrators in the past half century, issues of sexual violence have come into sharpened focus. Now, campuses must tap into the collective expertise of student affairs educators, faculty, and other administrators to implement creative, equitable, and socially just solutions to address sexual violence holistically.

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JODY JESSUP-ANGER is an associate professor of higher education and coordinator of Marquette University’s Student Affairs in Higher Education program.

ELISE LOPEZ is a coordinator of sexual assault prevention programs in the Mel and Enid Zuckerman College of Public Health at the University of Arizona.

MARY P. KOSS is Regents’ professor in the Mel and Enid Zuckerman College of Public Health at the University of Arizona. She is a member of the working group to develop a Best Practice manual for the assessment of campus climate and a second group to develop and advocate for innovation in collegiate response to sexual misconduct within the Office for Civil Rights and VAWA guidelines.

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