

Cynthia P Garrett

From: Cynthia P Garrett
Sent: Thursday, September 07, 2017 6:58 PM
To: Ferguson, Gillum
Cc: Jackson, Candice; Henderson, Chelsea; Scott Alison
Subject: Re: Families Advocating for Campus Equality: Op Eds for Publication
Attachments: N Wolfinger Op Ed FINAL.docx

One more Op Ed, this by a professor.

Cynthia

On Sep 7, 2017, at 3:18 PM, Cynthia P Garrett <(b)(6)@gmail.com> wrote:

Thank you!

On Sep 7, 2017, at 3:14 PM, Ferguson, Gillum <Gillum.Ferguson@ed.gov> wrote:

Thank you Cynthia, both for sending and for your kind words. Will take a look at these this evening and get back to you.

Best,
Gillum

From: Cynthia P Garrett <(b)(6)@gmail.com>
Sent: Thursday, September 07, 2017 5:56 PM
To: Ferguson, Gillum
Cc: Jackson, Candice; Henderson, Chelsea; Scott Alison
Subject: Families Advocating for Campus Equality: Op Eds for Publication

Mr. Ferguson,

As you know Candice Jackson has asked FACE to provide Op Eds to be published in connection with Secretary DeVos' speech today.

Here are four:

We may have one more coming.

Please let us know if you need anything further,

Sincerely,

Cindy and Alison

P.S. in searching Google to be sure we knew your correct gender (you never know these days) I came across your wedding site - congratulations and we hope it goes well!

Cynthia P Garrett and Alison Scott, Co Presidents

Families Advocating for Campus Equality

www.facecampusequality.org

facecampusequality@gmail.com

@FaceCampusEqual

(b)(6)

@aol.com

From: (b)(6)@aol.com
Sent: Tuesday, May 30, 2017 2:05 PM
To: Jackson, Candice
Cc: (b)(6)@aol.com
Subject: Thank You
Attachments: AFalseAccusationCanSpellEndOfCollegeMalesFutureBostonGlobe.doc;
SBIAffirmativeConsentUYoungMensRightsinPeril.docx;
SexTheNewWarOnMenNCFM.docx; TheDenialOfDueProcessMayBankruptUniversi
tiesNCFM.docx; NCFMAdviserGordonFinleyTheRealReasonDemocratsOpposeEduc
atioSecretaryBetsyDeVos.docx

Ms. Jackson, thank you very much for your kind call today. It's always nice to know that someone actually reads what you write. I am pasting below and attaching five other pieces I have written on issues related to sexual assault that I have on my home computer. Please feel free to contact me if you have any questions.

Gordon E. Finley, Ph.D.
Professor of Psychology Emeritus
Florida International University

Miami

cell:

(b)(6)

faculty web site: <http://psychology.fiu.edu/faculty/gordon-finley/>

Research & scholarly publications uploaded on ResearchGate:

https://www.researchgate.net/profile/Gordon_Finley/stats

A false accusation can spell end of college male's future

The letter below was published in *The Boston Globe* on Saturday October 18, 2014 and is followed by the responded to op-ed signed by 28 former and current members of the Harvard Law Faculty demanding that Harvard change it's sexual misconduct policy to provide greater protections for the accused.

Gordon E. Finley, Ph.D.

A false accusation can spell end of college male's future

<http://www.bostonglobe.com/opinion/editorials/2014/10/17/false-accusation-can-spell-end-college-male-future/LZaqmN6RNjNX6hYdrbs16H/story.html>

RE "RETHINK Harvard's sexual harassment policy" (Op-ed, Oct. 15): While the

legal critiques of the Harvard Law School faculty members are critically important, so too, from a psychological perspective, are false sexual allegations by women. Such allegations are dismissed by proponents of affirmative consent policies, who say that women never lie about rape, or who cite a 3 percent to 8 percent rate of false allegations.

A recent summary of the false abuse and rape allegation literature can be found in a 2013 book by Phillip Cook and Tammy Hodo titled "When Women Sexually Abuse Men." While statistics in this literature are problematic, Cook and Hodo report four studies that found false allegation rates of 62 percent, 41 percent, 50 percent, and 60 percent.

Proponents of these policies also demand an evidentiary standard of "preponderance," which basically is a coin toss where all a university administrative committee needs to deem a man guilty of sexual assault and expel him is a smidgen above 50 percent.

This "preponderance" standard raises the likelihood that a college male who engaged in consensual sex will be wrongly convicted and expelled. Once this happens, that college male has no future.

Fair?

Gordon E. Finley

Miami

http://www.bostonglobe.com/opinion/2014/10/14/rethink-harvard-sexual-harassment-policy/HFDDiZN7nU2UwuUuWMnqbM/story.html?s_campaign=8315

Rethink Harvard's sexual harassment policy

In July, Harvard University announced a new university-wide policy aimed at preventing sexual harassment and sexual violence based on gender, sexual orientation, and gender identity. The new policy, which applies to all schools within the university and to all Harvard faculty, administrators, and students, sets up the Office for Sexual and Gender-Based Dispute Resolution to process complaints against students. Both the definition of sexual harassment and the procedures for disciplining students are new, with the policy taking effect this academic year. Like many universities across the nation, Harvard acted under pressure imposed by the federal government, which has threatened to withhold funds for universities not complying with its idea of appropriate sexual harassment policy.

In response, 28 members of the Harvard Law School Faculty have issued the following statement:

AS MEMBERS of the faculty of Harvard Law School, we write to voice our strong objections to the Sexual Harassment Policy and Procedures imposed by the central university administration and the Corporation on all parts of the university, including the law school.

We strongly endorse the importance of protecting our students from sexual misconduct and providing an educational environment free from the sexual and other harassment that can diminish educational

opportunity. But we believe that this particular sexual harassment policy adopted by Harvard will do more harm than good.

As teachers responsible for educating our students about due process of law, the substantive law governing discrimination and violence, appropriate administrative decision-making, and the rule of law generally, we find the new sexual harassment policy inconsistent with many of the most basic principles we teach. We also find the process by which this policy was decided and imposed on all parts of the university inconsistent with the finest traditions of Harvard University, of faculty governance, and of academic freedom.

Among our many concerns are the following:

Harvard has adopted procedures for deciding cases of alleged sexual misconduct which lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused, and are in no way required by Title IX law or regulation. Here our concerns include but are not limited to the following:

- The absence of any adequate opportunity to discover the facts charged and to confront witnesses and present a defense at an adversary hearing.
- The lodging of the functions of investigation, prosecution, fact-finding, and appellate review in one office, and the fact that that office is itself a Title IX compliance office rather than an entity that could be considered structurally impartial.
- The failure to ensure adequate representation for the accused, particularly for students unable to afford representation.

Harvard has inappropriately expanded the scope of forbidden conduct, including by:

- Adopting a definition of sexual harassment that goes significantly beyond Title IX and Title VII law.
- Adopting rules governing sexual conduct between students both of whom are impaired or incapacitated, rules which are starkly one-sided as between complainants and respondents, and entirely inadequate to address the complex issues in these unfortunate situations involving extreme use and abuse of alcohol and drugs by our students.

Harvard has pursued a process in arriving at its new sexual harassment policy which violates its own finest traditions of academic freedom and faculty governance, including by the following:

- Harvard apparently decided simply to defer to the demands of certain federal administrative officials, rather than exercise independent judgment about the kind of sexual harassment policy that would be consistent with law and with the needs of our students and the larger university community.
- Harvard failed to engage a broad group of faculty from its different schools, including the law school, in the development of the new sexual harassment policy. And Harvard imposed its new sexual harassment policy on all the schools by fiat without any adequate opportunity for consultation by the relevant faculties.
- Harvard undermined and effectively destroyed the individual schools' traditional authority to decide discipline for their own students. The sexual harassment policy's provision purporting to leave the schools with decision-making authority over discipline is negated by the university's insistence that its Title IX compliance office's report be totally binding with respect to fact findings and violation decisions.

We call on the university to withdraw this sexual harassment policy and begin the challenging project of carefully thinking through what substantive and procedural rules would best balance the complex issues involved in addressing sexual conduct and misconduct in our community.

The goal must not be simply to go as far as possible in the direction of preventing anything that some might

characterize as sexual harassment. The goal must instead be to fully address sexual harassment while at the same time protecting students against unfair and inappropriate discipline, honoring individual relationship autonomy, and maintaining the values of academic freedom. The law that the Supreme Court and lower federal courts have developed under Title IX and Title VII attempts to balance all these important interests. The university's sexual harassment policy departs dramatically from these legal principles, jettisoning balance and fairness in the rush to appease certain federal administrative officials.

We recognize that large amounts of federal funding may ultimately be at stake. But Harvard University is positioned as well as any academic institution in the country to stand up for principle in the face of funding threats. The issues at stake are vitally important to our students, faculties, and entire community.

Elizabeth Bartholet

Scott Brewer

Robert Clark

Alan Dershowitz, Emeritus

Christine Desan

Charles Donahue

Einer Elhauge

Allen Ferrell

Martha Field

Jesse Fried

Nancy Gertner

Janet Halley

Bruce Hay

Philip Heymann

David Kennedy

Duncan Kennedy

Robert Mnookin

Charles Nesson

Charles Ogletree

Richard Parker

Mark Ramseyer

David Rosenberg

Lewis Sargentich

David Shapiro, Emeritus

Henry Steiner, Emeritus

Jeannie Suk

Lucie White

David Wilkins

'Affirmative Consent' U

Young Men's Rights in Peril

The op-ed below was published as the lead opinion piece in *The Santa Barbara Independent* on Monday August 11, 2014 and comments are invited at the end of the critique. For re-posting this copyrighted material, please use the link below. While the focus is on California's SB 967 the issues raised also apply to bills currently introduced in Congress.

Dianna Thompson and Gordon E. Finley, Ph.D.

<http://www.independent.com/news/2014/aug/11/affirmative-consent-u/>

'Affirmative Consent' U

By Dianna Thompson and Gordon E. Finley

Young Men's Rights in Peril

Monday, August 11, 2014

Rape and sexual assault are very serious crimes, and we applaud efforts to protect both male and female students on California campuses. However, SB 976 introduced by State Senators Kevin de Leon (D-Los Angeles) and Hannah-Beth Jackson (D-Santa Barbara) would initiate harmful changes with disastrous consequences for California's sons.

The bill adopts the "preponderance of evidence" standard. That is a lower bar than the "beyond reasonable doubt" standard used in the criminal courts or the middle-ground "clear and convincing evidence" standard typically used in matters with serious consequences to the accused. In the college

setting, the accused will be saddled with a lifetime "sex offender" stigma because of an ambiguous social interaction, not a forcible rape.

The U.S. Department of Justice data reveals that rape on college campuses has declined precipitously from 1995 to a historic low today. Rather than celebrate this achievement, SB 967 radically redefines "sexual assault" to include almost any touching of one person by another without prior "affirmative consent."

To avoid being accused of sexual assault, consent must be ongoing throughout a sexual encounter and can be revoked at any time — including months later. Regardless of whether an existing dating relationship between the people involved existed, or past sexual encounters with each other happened, it can't be assumed to be an indicator of consent.

SB 967 moved to the Assembly after a report, authored by the White House Task Force to Protect Students from Sexual Assault, stated that one in five women are sexually assaulted while at college. This statistic is utterly false and [scores of articles](#) point this out.

False Allegations

Tragically, SB 967 would dramatically increase the number of he said/she said sexual assault allegations. When bill co-author Assemblymember Bonnie Lowenthal (D-Long Beach) was asked how an innocent person is to prove he or she indeed received consent, Lowenthal said, "Your guess is as good as mine. I think it's a legal issue. Like any legal issue, that goes to court."

The problem is that under SB 967, allegations of sexual assault do not go to court but rather to a university administrative committee comprised of faculty, students, and administrators. Such committees deny California's accused sons of the kinds of basic evidentiary, due process, and cross-examination rights found in criminal courts. Sexual assault charges should be handled by those trained to do so — the police and the criminal justice system.

While being a victim is devastating, so too is being falsely accused. In 2002, Wanetta Gibson falsely accused fellow California high school student Brian Banks of rape. Luckily, Brian was exonerated in 2012 after Wanetta was later caught on tape admitting that he was innocent.

Lawsuits

Critically, a growing number of the students who have been disciplined or expelled for false allegations of sexual assault are filing lawsuits against their schools. The number of publically reported lawsuits filed by sons whose lives have been ruined by campus tribunals now exceed 30 and are growing daily.

As Californians, do you want your educational tax dollars spent to pay off totally unnecessary lawsuits?

Reduced Male Attendance

Today's educational gender gap is the opposite of what it was in the 1960s. Then, about 60 percent of advanced degrees were awarded to men. Today it is about 40 percent. California's sons already are in the minority, and their number would be further reduced by the hostile and dangerous work environment SB 967 would create on campus.

Parents and sons will run a very high risk of losing their education dollars while the son would be permanently banned from further higher education because of his "conviction." Why would any parent want to support SB 967 and expose their sons to the prospects of lifelong losses in finances, education, employment, marriage, family formation, and home buying?

Attenuating sexual misconduct on the part of both male and female perpetrators is without question a worthy cause. However, seeking that goal by denying due process, evidentiary, and cross-examination protections of the accused is unfair to the accused and fails to meet the U.S. Supreme Court standard of "Equal Justice Under Law."

We urge the sons and the parents of sons in California to band together to defeat SB 967.

Dianna Thompson is director of Stop Abuse for Everyone. Gordon E. Finley is professor emeritus of psychology at Florida International University.

Sex: The New War on Men

Gordon E. Finley, Ph.D.

The op-ed below was posted on the web site of the National Coalition for Men and several other web sites in early May 2014.

<http://ncfm.org/2014/05/action/ncfm-advisor-gordon-finley-ph-d-sex-the-new-war-on-men/>

Sex: The New War on Men

Gordon E. Finley, Ph.D.

It cannot have escaped anyone's notice that on May Day (May 1, 2014), and within hours of one another, the nation and the media have been bombarded with more than a half dozen exquisitely choreographed and coordinated reports demanding action based on claims of skyrocketing sexual assaults occurring on campus and on the battlefield.

But are these claims plausible? I argue not.

Singly, or in combination, all of these claims suffer from one or more of the following five fatal flaws.

1. Sexual allegations made by females are not taken as allegations but rather as "settled fact." These claims do not even consider the possibility that women might lie about any manner of things sexual and there is no statistical correction for false sexual allegations.

2. Women commit sexual assaults on men but female sexual perpetrators only rarely are prosecuted and male reports of abuse by female sexual predators only rarely are believed.
3. In order to “cook” the rapidly rising numbers needed for political effect, the Obama Administration has demanded that all investigations lower the standard of proof required for conviction or expulsion from “clear and convincing” evidence to a “preponderance” of evidence, which basically is a coin toss.
4. In order to falsely boost the rapidly rising numbers needed for political effect, the Obama Administration has moved the goal posts by expanding the definition of “sexual assault” to activities and circumstances most citizens would not even remotely consider to be rape. The former definition of forcible rape has morphed into anything sexual without “consent” and with the determination of “consent” left entirely up to the woman, even to be determined on the morning after.
5. Forcible rape is ranked second only to murder as a serious crime. Yet, Obama and the Progressives want to remove the investigation and prosecution of sexual crimes from the venues of the police and the courts and rather transfer these responsibilities to unqualified but ideologically sympathetic administrative units in universities and the military where the conclusion is foregone. Under Obama and the Progressives, men are stripped of all due process and cross-examination rights that they normally would be guaranteed in a court of law. Truly innocent men have no way to prove their innocence.

Finally: Men — don’t drink and have **sex**. A core principle of the Obama Administration’s New World Order is this: If alcohol crosses anyone’s lips, the male automatically is guilty of sexual assault and the female automatically is an innocent victim. With the consumption of any amount of alcohol, consensual *sex* does not exist.

The overwhelming onslaught of exquisitely choreographed and coordinated claims suggests that Obama and the Progressives are launching a War on Men to get the votes of women and advance their political base. This War clearly is designed to create not only “hostile work environments” but “dangerous work environments” for men on campus and in the military. This War further appears to be designed to eliminate men from the institutions to which they have striven and attained in the past and rapidly to make these coveted, prestigious and high paying positions open only to the political base of Obama and the Progressives.

Will Congress and the nation succumb to this loss of due process for men?

One hopes not. In my view, the words engraved above the entrance to the United States Supreme Court should prevail and apply equally to the sexual lives of both men and women: “Equal Justice Under Law.”

Gordon E. Finley, Ph.D. is Emeritus Professor of Psychology at Florida International University. His faculty web site is:

<http://psychology.fiu.edu/faculty/gordon-finley/>

The Denial of Due Process May Bankrupt Universities

The op-ed below was posted on the web site of the National Coalition for Men and several others on or about August 24, 2014.

Gordon E. Finley, Ph.D.

<http://ncfm.org/2014/08/action/ncfm-adviser-gordon-finley-urges-governor-brown-not-to-sign-sb-967-which-denies-due-process-to-college-students-accused-of-sexual-assault/>

The Denial of Due Process May Bankrupt Universities

Gordon E. Finley, Ph.D.

With now literally hundreds of editorials and op-eds taking positions both pro and con on California's SB 967 – as well as the broader issue of “affirmative consent” for sexual relations — it is virtually certain that the California legislature will pass and send to Governor Brown's desk SB 967 in the coming week. The bill is titled: “Student safety: sexual assault.”

Writing as a faculty member of more than four decades in four universities, it is tragically clear that this campus rape crusade bill presumes the veracity of accusers (a.k.a. “survivors”) and likewise presumes the guilt of accused (virtually all men). This is nice for the accusers – both false accusers as well as true accusers — but what about the **due process** rights of the accused?

Critically, and the reason why men are winning very substantial lawsuits against universities, is that the fact that the current campus rape crusade explicitly denies men fundamental *due process* rights such as the right to a lawyer, the right to cross-examine, and the right to evidentiary standards (clear and convincing evidence) appropriate to the consequences for the accused. Simultaneously, the campus rape crusade provides every conceivable aid and assistance to the accusers to prosecute the accused. This would be difficult to describe as “fair.”

If the ideologically tainted advocates in the administration, in Congress, and on campus continue this crusade against male students, it is possible that colleges and universities – as well as taxpayers — will be spending more money on administering these laws and on lawsuit pay-outs than on instruction. Further, and as more and more men win due process denial lawsuits (this is a slam dunk because the denial of due process for the accused explicitly is written into the laws) the rate of such lawsuits will grow exponentially.

The solutions are to drop the fraudulent “1 in 5” campus rape claims of the administration, return to the definition of “Forcible Rape” (rather than “affirmative consent”) for sexual assault, and prosecute crimes that are

ranked second only to murder in the criminal justice system which is trained and designed to investigate and prosecute them.

In deciding whether to sign or veto SB 967, the guiding principle should be that which is engraved above the entrance to the U.S. Supreme Court: "Equal Justice Under Law."

Governor Brown, I urge you to veto SB 967 and send it back to the legislature with the request that any future laws regarding sexual misconduct provide equal protection and full due process to both California's sons and daughters.

Anything less would be a dereliction of duty.

Gordon E. Finley, Ph.D. is Professor of Psychology Emeritus at Florida International University. His faculty web site is:

<http://psychology.fiu.edu/faculty/gordon-finley/>

NCFM Adviser Gordon Finley, The Real Reason Democrats Oppose Education Secretary Betsy DeVos

The op-ed below was posted on The National Coalition For Men website on Monday, February 13, 2017.

<http://ncfm.org/2017/02/news/discrimination-news/discrimination-against-men-news/ncfm-adviser-gordon-finley-the-real-reason-democrats-oppose-education-secretary-betsy-devos/>

The Real Reason Democrats Oppose Education Secretary Betsy DeVos

Gordon E. Finley, Ph.D.

Like the proverbial elephant in the living room, the most powerful concern that Democrats never raised against **Betsy DeVos** following her confirmation hearing was her unwillingness to promise Democrats – during the hearing – that

she would keep President Obama's fraudulent narrative on the false campus rape crisis campaign against college men in the Department of Education's Office for Civil Rights.

The false narrative of the campus rape crisis deprived male students of their due process rights in campus kangaroo courts, expelled them based on false accusations and ruined their lives — all in the service of maintaining the supremacy of identity and gender politics in the national political order. This is the real reason Democrats pulled an all-nighter just prior to the senate confirmation vote in an attempt to unseat her. They did not want to lose their most powerful weapon against men — false sexual abuse allegations.

Knowing in advance the likely outcome of the senate confirmation vote, the all-nighter was a really dumb and costly stunt by Democrats.

Thus, I would give the strongest possible urging to now Secretary DeVos and President Trump to reverse former President Obama's "Dear Colleague" letter and all the investigations and threats of loss of federal funds that followed from it. Second, I would urge that federal funding be withdrawn from any college or university that continues to implement the evidence-free Obama campus rape crisis false narrative and maintains the horrific torture and massive expense of what some have called a bloated "Sex Bureaucracy" in colleges and universities.

Taking these two actions would be a win-win for students, parents, taxpayers, lower tuition, smaller loans and — as an afterthought — educational quality.

Gordon E. Finley, Ph.D. is Professor of Psychology Emeritus at Florida International University in Miami.

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A false accusation can spell end of college male's future

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RE "RETHINK Harvard's sexual harassment policy" (Op-ed, Oct. 15): While the legal critiques of the Harvard Law School faculty members are critically important, so too, from a psychological perspective, are false sexual allegations by women. Such allegations are dismissed by proponents of affirmative consent policies, who say that women never lie about rape, or who cite a 3 percent to 8 percent rate of false allegations.

A recent summary of the false abuse and rape allegation literature can be found in a 2013 book by Phillip Cook and Tammy Hodo titled "When Women Sexually Abuse Men." While statistics in this literature are problematic, Cook and Hodo report four studies that found false allegation rates of 62 percent, 41 percent, 50 percent, and 60 percent.

Proponents of these policies also demand an evidentiary standard of "preponderance," which basically is a coin toss where all a university administrative committee needs to deem a man guilty of sexual assault and expel him is a smidgen above 50 percent.

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The new policy, which applies to all schools within the university and to all Harvard faculty, administrators, and students, sets up the Office for Sexual and Gender-Based Dispute Resolution to process complaints against students. Both the definition of sexual harassment and the procedures for disciplining students are new, with the policy taking effect this academic year. Like many universities across the nation, Harvard acted under pressure imposed by the federal government, which has threatened to withhold funds for universities not complying with its idea of appropriate sexual harassment policy.

In response, 28 members of the Harvard Law School Faculty have issued the following statement:

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Among our many concerns are the following:

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- The absence of any adequate opportunity to discover the facts charged and to confront witnesses and present a defense at an adversary hearing.

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The goal must not be simply to go as far as possible in the direction of preventing anything that some might characterize as sexual harassment. The goal must instead be to fully address sexual harassment while at the same time protecting students against unfair and inappropriate discipline, honoring individual relationship autonomy, and maintaining the values of academic freedom. The law that the Supreme Court and lower federal courts have developed under Title IX and Title VII attempts to balance all these important interests. The university's sexual harassment policy departs dramatically from these legal principles, jettisoning balance and fairness in the rush to appease certain federal administrative officials.

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the face of funding threats. The issues at stake are vitally important to our students, faculties, and entire community.

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Charles Ogletree

Richard Parker

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David Rosenberg

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David Shapiro, Emeritus

Henry Steiner, Emeritus

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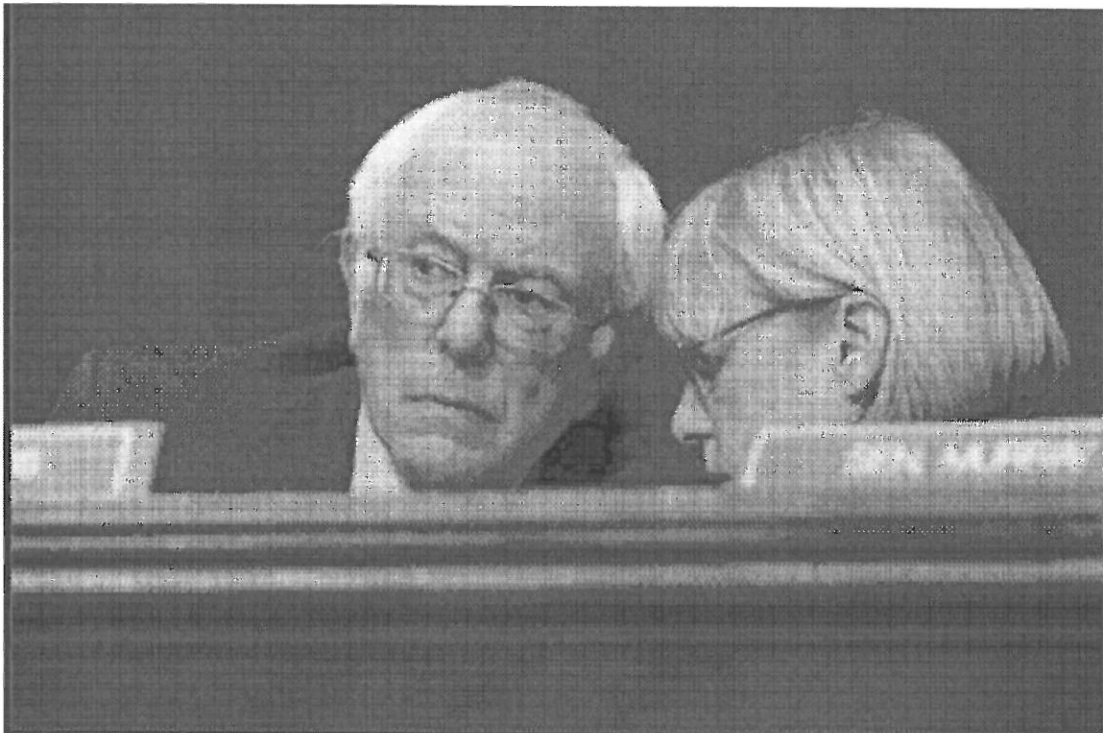
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The Real Reason Democrats Oppose Education Secretary Betsy DeVos

Gordon E. Finley, Ph.D.

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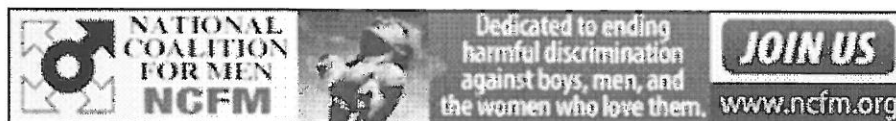
The false narrative of the campus rape crisis deprived male students of their due process rights in campus kangaroo courts, expelled them based on false accusations and ruined their lives — all in the service of maintaining the supremacy of identity and gender politics in the national political order. This is the real reason Democrats pulled an all-nighter just prior to the senate confirmation vote in an attempt to unseat her. They did not want to lose their most powerful weapon against men – false sexual abuse allegations.

Knowing in advance the likely outcome of the senate confirmation vote, the all-nighter was a really dumb and costly stunt by Democrats.

Thus, I would give the strongest possible urging to now Secretary DeVos and President Trump to reverse former President Obama’s “Dear Colleague” letter and all the investigations and threats of loss of federal funds that followed from it. Second, I would urge that federal funding be withdrawn from any college or university that continues to implement the evidence-free Obama campus rape crisis false narrative and maintains the horrific torture and massive expense of what some have called a bloated “Sex Bureaucracy” in colleges and universities.

Taking these two actions would be a win-win for students, parents, taxpayers, lower tuition, smaller loans and – as an afterthought – educational quality.

Gordon E. Finley, Ph.D. is Professor of Psychology Emeritus at Florida International University in Miami.



The Real Reason Democrats Oppose Education Secretary Betsy DeVos

'Affirmative Consent' U

Young Men's Rights in Peril

The op-ed below was published as the lead opinion piece in *The Santa Barbara Independent* on Monday August 11, 2014 and comments are invited at the end of the critique. For re-posting this copyrighted material, please use the link below. While the focus is on California's SB 967 the issues raised also apply to bills currently introduced in Congress.

Dianna Thompson and Gordon E. Finley, Ph.D.

<http://www.independent.com/news/2014/aug/11/affirmative-consent-u/>

'Affirmative Consent' U

By Dianna Thompson and Gordon E. Finley

Young Men's Rights in Peril

Monday, August 11, 2014

Rape and sexual assault are very serious crimes, and we applaud efforts to protect both male and female students on California campuses. However, SB 976 introduced by State Senators Kevin de Leon (D-Los Angeles) and Hannah-Beth Jackson (D-Santa Barbara) would initiate harmful changes with disastrous consequences for California's sons.

The bill adopts the "preponderance of evidence" standard. That is a lower bar than the "beyond reasonable doubt" standard used in the criminal courts or the middle-ground "clear and convincing evidence" standard typically used in matters with serious consequences to the accused. In the college setting, the accused will be saddled with a lifetime "sex offender" stigma because of an ambiguous social interaction, not a forcible rape.

The U.S. Department of Justice data reveals that rape on college campuses has declined precipitously from 1995 to a historic low today. Rather than celebrate this achievement, SB 967 radically redefines "sexual assault" to include almost any touching of one person by another without prior "affirmative consent."

To avoid being accused of sexual assault, consent must be ongoing throughout a sexual encounter and can be revoked at any time — including months later. Regardless of whether an existing dating relationship between the people involved existed, or past sexual encounters with each other happened, it can't be assumed to be an indicator of consent.

SB 967 moved to the Assembly after a report, authored by the White House Task Force to Protect Students from Sexual Assault, stated that one in five women are sexually assaulted while at college. This statistic is utterly false and [scores of articles](#) point this out.

False Allegations

Tragically, SB 967 would dramatically increase the number of he said/she said sexual assault allegations. When bill co-author Assemblymember Bonnie Lowenthal (D-Long Beach) was asked how an innocent person is to prove he or she indeed received consent, Lowenthal said, "Your guess is as good as mine. I think it's a legal issue. Like any legal issue, that goes to court."

The problem is that under SB 967, allegations of sexual assault do not go to court but rather to a university administrative committee comprised of faculty, students, and administrators. Such committees deny California's accused sons of the kinds of basic evidentiary, due process, and cross-examination rights found in criminal courts. Sexual assault charges should be handled by those trained to do so — the police and the criminal justice system.

While being a victim is devastating, so too is being falsely accused. In 2002, Wanetta Gibson falsely accused fellow California high school student Brian Banks of rape. Luckily, Brian was exonerated in 2012 after Wanetta was later caught on tape admitting that he was innocent.

Lawsuits

Critically, a growing number of the students who have been disciplined or expelled for false allegations of sexual assault are filing lawsuits against their schools. The number of publically reported lawsuits filed by sons whose lives have been ruined by campus tribunals now exceed 30 and are growing daily.

As Californians, do you want your educational tax dollars spent to pay off totally unnecessary lawsuits?

Reduced Male Attendance

Today's educational gender gap is the opposite of what it was in the 1960s. Then, about 60 percent of advanced degrees were awarded to men. Today it is about 40 percent. California's sons already are in the minority, and their number would be further reduced by the hostile and dangerous work environment SB 967 would create on campus.

Parents and sons will run a very high risk of losing their education dollars while the son would be permanently banned from further higher education because of his "conviction." Why would any parent want to support SB 967 and expose their sons to the prospects of lifelong losses in finances, education, employment, marriage, family formation, and home buying?

Attenuating sexual misconduct on the part of both male and female perpetrators is without question a worthy cause. However, seeking that goal by denying due process, evidentiary, and cross-examination protections of the accused is unfair to the accused and fails to meet the U.S. Supreme Court standard of "Equal Justice Under Law."

We urge the sons and the parents of sons in California to band together to defeat SB 967.

Dianna Thompson is director of Stop Abuse for Everyone. Gordon E. Finley is professor emeritus of psychology at Florida International University.

Sex: The New War on Men

Gordon E. Finley, Ph.D.

The op-ed below was posted on the web site of the National Coalition for Men and several other web sites in early May 2014.

<http://ncfm.org/2014/05/action/ncfm-advisor-gordon-finley-ph-d-sex-the-new-war-on-men/>

Sex: The New War on Men

Gordon E. Finley, Ph.D.

It cannot have escaped anyone's notice that on May Day (May 1, 2014), and within hours of one another, the nation and the media have been bombarded with more than a half dozen exquisitely choreographed and coordinated reports demanding action based on claims of skyrocketing sexual assaults occurring on campus and on the battlefield.

But are these claims plausible? I argue not.

Singly, or in combination, all of these claims suffer from one or more of the following five fatal flaws.

1. Sexual allegations made by females are not taken as allegations but rather as "settled fact." These claims do not even consider the possibility that women might lie about any manner of things sexual and there is no statistical correction for false sexual allegations.
2. Women commit sexual assaults on men but female sexual perpetrators only rarely are prosecuted and male reports of abuse by female sexual predators only rarely are believed.
3. In order to "cook" the rapidly rising numbers needed for political effect, the Obama Administration has demanded that all investigations lower the standard of proof required for conviction or expulsion from "clear and convincing" evidence to a "preponderance" of evidence, which basically is a coin toss.
4. In order to falsely boost the rapidly rising numbers needed for political effect, the Obama Administration has moved the goal posts by expanding the definition of "sexual assault" to activities and circumstances most citizens would not even remotely consider to be rape. The former definition of forcible rape has morphed into anything sexual without "consent" and with the determination of "consent" left entirely up to the woman, even to be determined on the morning after.

5. Forcible rape is ranked second only to murder as a serious crime. Yet, Obama and the Progressives want to remove the investigation and prosecution of sexual crimes from the venues of the police and the courts and rather transfer these responsibilities to unqualified but ideologically sympathetic administrative units in universities and the military where the conclusion is foregone. Under Obama and the Progressives, men are stripped of all due process and cross-examination rights that they normally would be guaranteed in a court of law. Truly innocent men have no way to prove their innocence.

Finally: Men — don't drink and have **sex**. A core principle of the Obama Administration's New World Order is this: If alcohol crosses anyone's lips, the male automatically is guilty of sexual assault and the female automatically is an innocent victim. With the consumption of any amount of alcohol, consensual *sex* does not exist.

The overwhelming onslaught of exquisitely choreographed and coordinated claims suggests that Obama and the Progressives are launching a War on Men to get the votes of women and advance their political base. This War clearly is designed to create not only "hostile work environments" but "dangerous work environments" for men on campus and in the military. This War further appears to be designed to eliminate men from the institutions to which they have striven and attained in the past and rapidly to make these coveted, prestigious and high paying positions open only to the political base of Obama and the Progressives.

Will Congress and the nation succumb to this loss of due process for men?

One hopes not. In my view, the words engraved above the entrance to the United States Supreme Court should prevail and apply equally to the sexual lives of both men and women: "Equal Justice Under Law."

Gordon E. Finley, Ph.D. is Emeritus Professor of Psychology at Florida International University. His faculty web site is:

<http://psychology.fiu.edu/faculty/gordon-finley/>

The Denial of Due Process May Bankrupt Universities

The op-ed below was posted on the web site of the National Coalition for Men and several others on or about August 24, 2014.

Gordon E. Finley, Ph.D.

<http://ncfm.org/2014/08/action/ncfm-adviser-gordon-finley-urges-governor-brown-not-to-sign-sb-967-which-denies-due-process-to-college-students-accused-of-sexual-assault/>

The Denial of Due Process May Bankrupt Universities

Gordon E. Finley, Ph.D.

With now literally hundreds of editorials and op-eds taking positions both pro and con on California's SB 967 – as well as the broader issue of “affirmative consent” for sexual relations — it is virtually certain that the California legislature will pass and send to Governor Brown's desk SB 967 in the coming week. The bill is titled: “Student safety: sexual assault.”

Writing as a faculty member of more than four decades in four universities, it is tragically clear that this campus rape crusade bill presumes the veracity of accusers (a.k.a. “survivors”) and likewise presumes the guilt of accused (virtually all men). This is nice for the accusers – both false accusers as well as true accusers — but what about the **due process** rights of the accused?

Critically, and the reason why men are winning very substantial lawsuits against universities, is that the fact that the current campus rape crusade explicitly denies men fundamental *due process* rights such as the right to a lawyer, the right to cross-examine, and the right to evidentiary standards (clear and convincing evidence) appropriate to the consequences for the accused. Simultaneously, the campus rape crusade provides every conceivable aid and assistance to the accusers to prosecute the accused. This would be difficult to describe as “fair.”

If the ideologically tainted advocates in the administration, in Congress, and on campus continue this crusade against male students, it is possible that colleges and universities – as well as taxpayers — will be spending more money on administering these laws and on lawsuit pay-outs than on instruction. Further, and as more and more men win due process denial lawsuits (this is a slam dunk because the denial of due process for the accused explicitly is written into the laws) the rate of such lawsuits will grow exponentially.

The solutions are to drop the fraudulent “1 in 5” campus rape claims of the administration, return to the definition of “Forcible Rape” (rather than “affirmative consent”) for sexual assault, and

prosecute crimes that are ranked second only to murder in the criminal justice system which is trained and designed to investigate and prosecute them.

In deciding whether to sign or veto SB 967, the guiding principle should be that which is engraved above the entrance to the U.S. Supreme Court: "Equal Justice Under Law."

Governor Brown, I urge you to veto SB 967 and send it back to the legislature with the request that any future laws regarding sexual misconduct provide equal protection and full due process to both California's sons and daughters.

Anything less would be a dereliction of duty.

Gordon E. Finley, Ph.D. is Professor of Psychology Emeritus at Florida International University. His faculty web site is:

<http://psychology.fiu.edu/faculty/gordon-finley/>

Edward Bartlett

From: Edward Bartlett
Sent: Thursday, September 07, 2017 6:35 PM
To: Sherman, Brandon
Cc: cperry@saveservices.org
Subject: RE: Attendance at today's announcement

Hello, Brandon –

Please thank Secy. DeVos for delivering a wonderful, inspiring speech today. This one goes down in the history books in terms of beginning to restore fundamental notions of fairness to identified victims and the accused.

Best,
Ed

E. Everett Bartlett, PhD
President
SAVE: Stop Abusive and Violent Environments
P.O. Box 1221
Rockville, MD 20849
T: 301-801-0608
C: 301-670-1964
www.saveservices.org

From: Sherman, Brandon [mailto:Brandon.Sherman@ed.gov]
Sent: Thursday, September 7, 2017 9:38 AM
To: Christopher Perry <cperry.esq@outlook.com>
Cc: 'E. Everett Bartlett' <ebartlett@saveservices.org>
Subject: RE: Attendance at today's announcement

Here is a link to the live stream of the event https://www.facebook.com/ED.gov/?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term

From: Christopher Perry [mailto:cperry.esq@outlook.com]
Sent: Thursday, September 07, 2017 9:05 AM
To: Sherman, Brandon
Cc: 'E. Everett Bartlett'
Subject: Attendance at today's announcement

Good Morning Brandon,

This is Chris Perry, with SAVE. We met a few times at the various get togethers and dinner with Candice to discuss the Dear Colleague Letter.

I am planning to attend the event today at GMU to hear the Secretary speak. Is the event open to the public, and if not, is there any way I can get my name onto a list as an attendee?

Thanks,

Chris Perry

Deputy Executive Director, SAVE

Email - cperry@saveservices.org

Cell - (610) 733-0247

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Unwanted Advances

Laura Kipnis

Introduction: Sexual Paranoia on Campus

There are two conflicting stories about sex at the moment. The first story is all about license: hooking up, binge drinking, porn watching—my students talk knowingly about “anal,” and funnily about “dormcest” . . . they’re junior libertines, nothing sexual is alien to them. Layered on top of that is the other big story of the moment: sex is dangerous; it can traumatize you for life. It’s not a happy combination.

The term carceral feminism has been used to describe the hawkish security state swerve in social policy on women’s issues: more policing (carceral derives from incarceration), more regulation, an eagerness to trade away civil liberties for illusory promises of safety, and the same complacent failures of analysis. Carceral feminism—the term was invented by Barnard sociologist Elizabeth Bernstein—is pretty much the guiding spirit in campus policy, and it’s a profoundly conservative, law-and-order spirit, with resources diverted away from education and toward punishment. Even if no one’s going around wearing little flag lapel pins, the idea that this is some kind of left-wing plot strikes me as short on . . . intelligence. It’s long been true of mainstream American feminism that the most supposedly radical factions have been closet conservatives, dedicated to recycling the most conventional versions of feminine virtue and delicacy.

Does this make my classroom an “unsafe space?” I hope so, obviously, though I’m going to (mostly) refrain from mocking students for demanding “safe spaces,” which I consider low-hanging fruit. The problem is this: the more that “safety” means lowering the bar for accusation-bringing, then the more of a magnet the process becomes, and has become, for anyone with an agenda, a grudge, a neurosis, and sometimes financial ambitions—payouts can be huge for a well-timed claim—and there’s no adequate method for sorting legitimate from specious claims (as we’ll see). It’s not in administrators’ interests to sort them: a campus’s success in “combatting sexual assault” is measured in increased accusations, which are closely tracked. By the way, complaints can increasingly be made anonymously—which is to say that witch hunt conditions are now an institutionalized feature of campus life.

From what I’ve learned in the last year and a half, these sorts of arbitrary and often outlandish tribunals are being conducted at colleges and universities all over the country, with accused faculty and students being stripped of their rights and, in many instances, simply hung out to dry to give the appearance that higher ed is mobilized against sexual assault. The reality is that a set of incomprehensible directives, issued by

a branch of the federal government, are being wielded in wildly idiosyncratic ways, according to the whims and biases of individual Title IX officers operating with no public scrutiny or accountability. Some of them are also all too willing to tread on academic and creative freedom as they see fit.

...Introduction: Sexual Paranoia on Campus

Lately I've been thinking that future generations will look back on the recent upheavals in sexual culture on American campuses and see officially sanctioned hysteria. They'll wonder how supposedly rational people could have succumbed so easily to collective paranoia, just as we look back on previous such outbreaks (Salem, McCarthyism, the Satanic ritual abuse preschool trials of the 1980s) with condescension and bemusement. They'll wonder how the federal government got into the moral panic business, tossing constitutional rights out the window in an ill-conceived effort to protect women students from a rapidly growing catalogue of sexual bogeymen. They'll wonder why anyone would have described any of this as feminism when it's so blatantly paternalistic, or as "political correctness" when sexual paranoia doesn't have any predictable political valence. (Neither does sexual hypocrisy.) Restoring the most fettered versions of traditional femininity through the back door is backlash, not progress.

Feelings are what's in fashion. I'm all for feelings; I'm a standard-issue female, after all. But this cult of feeling has an authoritarian underbelly: feelings can't be questioned or probed, even while furnishing the rationale for sweeping new policies, which can't be questioned or probed either. (I speak from experience here.) The result is that higher education has been so radically transformed that the place is almost unrecognizable.

Sexual paranoia has converted the Title IX bureaucracy into an insatiable behemoth, bloated by its own federal power grab, though protests are few because—what are you, in favor of rape culture or something? Also, paranoia is a formula for intellectual rigidity, and its inroads on campus are so effectively dumbing down the place that the traditional ideal of the university—as a refuge for complexity, a setting for the free exchange of ideas—is getting buried under an avalanche of platitudes and fear.

It turns out that rampant accusation is the new norm on today's campus; the place is a secret cornucopia of accusation, especially when it comes to sex.

Including merely speaking about sex. My in-box became a clearinghouse for depressing and infuriating tales of overblown charges, capricious verdicts, and frightening bureaucratic excess. I was introduced to an astonishing netherworld of accused professors and students, rigged investigations, closed-door hearings, and Title IX officers run amok.

Sexual assault is a reality on campus, though not exactly a new one. But despite all the recent attention and the endless flurry of statistics, it's still an incredibly underexamined reality, permeated by speech taboos and barbed-wire fences meant to deter intellectual

intruders. We're never going to decrease sexual assault on campus—a goal I assume everyone shares—if we can't have open conversations about it. Having control over your body is, especially for women, a learned skill; it requires education. It also requires a lot more honesty about the complicated sexual realities hiding behind the slogans than is currently permissible.

...Introduction: Sexual Paranoia on Campus

the endangerment story produces huge blind spots, which are reproduced in every new policy and code supposedly meant to reduce unwanted sex. The policies are ineffectual because the endangerment story and the realities of sexual assault are two entirely separate things. That's blind spot number one. About those realities: the underlying gender dynamic is blind spot number two—the dynamic between men and women, I mean. Men and women. What I'm saying is that policies and codes that bolster traditional femininity—which has always favored stories about female endangerment over stories about female agency—are the last thing in the world that's going to reduce sexual assault, which is the argument at the heart of this book.

Shifting the stress from pleasure to danger and vulnerability not only changes the prevailing narrative, it changes the way sex is experienced. We're social creatures, after all, and narrative is how we make sense of the world. If the prevailing story is that sex is dangerous, sex is going to feel threatening more of the time, and anything associated with sex, no matter how innocuous (a risqué remark, a dumb joke) will feel threatening.

The danger of sex may be a recurring cultural script, but what's still worth pointing out is how it shapes gender roles, and colors how gender is lived, especially for women. Women are situated differently from men when it comes to sexual danger (though, according to social science research, we typically also feel ourselves to be far more vulnerable to sexual danger than we are—and I can think of no better way to subjugate women than to convince us that assault is around every corner).

There's no singularly true way of thinking about sex and no direct way of experiencing it: how we think about sex is always going to be filtered through whatever shifting set of cultural suppositions prevails. Call this "sexual ideology" or "sexual culture," but there aren't fixed truths about sex, or reliable facts. All we have are fluctuating emotional colors and tendencies presenting themselves in the guise of truths and facts. And no matter how many statistics and percentages get thrown around to buttress the fantasy that there's some "objective" way of knowing the truth of sex, nothing's more unreliable than sexual statistics—humans are horrendous at sexual self-reporting, to begin with. Everyone lies about sex, though maybe every generation lies about sex differently, or so I've been thinking of late. All we can say is that the "truth" of sex has been different at every point in history, that every era believes its own sexual narrative to be the truth of sex, and at this point the dominant narrative, on the nation's campuses anyway, is all about hazard.

But today's hazard story, too, comes with its own evasions, namely the blind spot about women's agency. In a sexual culture that emphasizes female violation, endangerment, and perpetual vulnerability ("rape culture"), men's power is taken as a given instead of interrogated: men need to be policed, women need to be protected. If rape is the norm, then male sexuality is by definition predatory; women are, by definition, prey. Regulators thus rush in like rescuing heroes, doing what it takes to fend off the villains—whatever it takes, since when women are imperiled, vigilantism is the better part of heroism.

...Introduction: Sexual Paranoia on Campus

And here's where I say, as a feminist: this is terrible for women. We all, men and women both, want the law to protect us from unequal strength and exercises of violence: the brute can't be allowed to rule because he's larger or stronger. The law bridges the gap in bodily differences to provide equity between citizens. But why treat sexual assault as the paradigmatic female experience when there are plenty of other female experiences in which women's embodied, physiological differences from men materially impede gender equity? As a feminist, I want to see the government step in to remedy those, too. I don't mean just pay equity, the conventional demand. I mean making child care and maternity costs free, which would obviously be the fastest path to real equity for the greatest number of women. This is an issue you hear pretty much zero about on American campuses these days, by the way. Instead, all historical inequities between the genders have been relocated to the sexual sphere and displaced onto sexual danger, with paranoia substituting for sustained thought or historical perspective.

The ruling was that he should have known that consent had to be "voluntary, present and ongoing." For campus officials to find this kid responsible for "emotional coercion" not only means prosecuting students for the awkwardness of college sex, it also brands an eighteen-year-old a lifelong sex criminal—all college applications now ask if a student has been found responsible for "behavioral misconduct" at a previous institution, and demand the details. He assumes he'll never get into another school and is adamant he'll never return to the previous one, even if he could. His life is wrecked, he feels.

If incidents like these are being labeled sexual assault, then we need far more discussion about just how capacious this category is becoming, and why it's in anyone's interests. Including women's. What a lot of retrogressive assumptions about gender are being promulgated under the guise of combating assault! Not only was the woman's agency erased, note the unarticulated premise of the finding: women students aren't men's equals in emotional strength or self-possession, and require teams of campus administrators to step in and remedy the gap. Another unarticulated premise: sex is injurious and the woman had sustained an injury in that thirty seconds, one serious enough to require official remediation. My question: how much are such unexamined premises contributing to the ballooning number of sexual allegations, and to women's own self-identification as perpetually injured parties?

None of this is to diminish the reality of sexual assault. At the same time, we seem to be breeding a generation of students, mostly female students, deploying Title IX to remedy sexual ambivalences or awkward sexual experiences, and to adjudicate relationship disputes post-breakup—and campus administrators are allowing it. If this is what feminism on campus has come to, then seriously, let's just cash it in and start over, because this feminism is broken. It has exactly nothing to do with gender equity or emancipating women—a cynic might say it actually has more to do with extending the reach of campus bureaucracy into everyone's lives. It's a vast, unprecedented transfer of power into the hands of the institution. But whatever the agenda, and whoever the secret beneficiaries, hard-fought rights, namely the right for women to be treated as consenting adults in erotic matters, are being handed back on a platter.

...Introduction: Sexual Paranoia on Campus

The problem, of course, is that it's also all far messier than this. There are plenty of cases where unequivocal sexual assaults happen and the system fails to deal with it—especially when it comes to athletes and frats—even as there are shocking prosecutorial excesses in other instances. There's no coherence to the situation. But weaponizing Title IX isn't going to fix the sexual assault problem. If anything's going to make a dent, it's education, and the educational system is failing to educate anyone, largely because speaking honestly about sexual realities has become taboo.

How is it that the most reactionary versions of feminism are the ones enjoying the greatest success on campuses? For one thing, those are the versions reaping the institutional support, not least in Washington. Perhaps there's also something reassuringly familiar—at least timeless—about these tales of female peril, even amidst the supposed sexual free-for-all of hookup culture.

I suppose it's a universal thing about sex (as I think anthropologists have variously observed) that it requires prohibitions, even if the particulars of what's permitted and prohibited keep shifting around. As we see on campus: on the one hand, all sorts of practices and identities not so long ago regarded as outré (transgenderism, polyamory, BDSM, and queerness of every stripe) are newly ascendant, whereas practices that were not so long ago the norm (professor-student dating) have suddenly been recoded as criminal enterprises. Along with awkward sex, ambivalent sex—even the wrong eye contact can get you brought up on complaints at present. I recently heard about a male grad student filing a Title IX complaint against a female professor for dancing “too provocatively” at an off-campus party. All of which is worth some intellectual analysis, an activity you used to encounter with regularity on campuses. In lieu of analysis, we get sweeping regulations and faculty silence. Maybe there are isolated pockets of opposition, but for the most part dissenters are keeping a low profile, like skeptics during the Inquisition.

The fiction of benevolent officialdom requires a certain historical amnesia, particularly when it comes to sexual minorities.

...Introduction: Sexual Paranoia on Campus

Terms such as coddled have been thrown around a lot lately about this generation of students,

The ratio of administrators to students has nearly doubled since 1975, political scientist Benjamin Ginsberg reports in *The Fall of the Faculty: The Rise of the All-Administrative University and Why It Matters*, while the ratio of faculty to students has stayed constant. These administrative hires often have no academic background, yet they're the ones making policies and setting the tenor of the place. They're also typically paid a lot more than faculty.

Sure, there have always been ideologues on campuses, but the old ideologues were at least expected to argue the validity of their ideas. The new brand are ideologues of feelings, and feelings can't be argued. Despite being a certified left-wing feminist, I just don't believe that experience or identity credentialize you intellectually. In fact, it's usually the opposite: overvaluing subjectivity has a way of stunting intellectual growth, especially when it comes to ideas that threaten your self-coherence, which the best ideas often do. The latest demands for intellectual conformity may come in progressive packaging, but feminists and leftists should be flinging these pieties away like lumps of dung, not kowtowing to the virtue parade.

Sex is our era's Communist threat, and Title IX hearings our new HUAC hearings. Except this time around, they're under the direction of the Department of Education, not Congress.

1: The Accusation Factory

As everyone knows, there's an unprecedented level of sexuality on public display in the culture (viz: the Internet), and an unprecedented level of offended sensibilities on campuses. Campus culture is at once bawdier than ever, at least for the students (random drunken hookups on weekends), and more censorious than ever for all of us (speech codes and hypersensitivity during the week). The reigning versions of student feminism are a mess, a hodgepodge of gender progress and gendered conventionality: demands for female sexual equity on the one hand (fucking and drinking like the guys); extremes of sexual suspicion and injury on the other. Emotional vulnerability runs high and introspection runs low, making campus life messy for student and professor alike, though mostly for different reasons. Sex on campus isn't just confusing, it's schizophrenic. Into this mess steps officialdom. It would be tough to say what's messier, the sexual situation on campus or the insane measures being foisted on us to straighten everything out.

...1: The Accusation Factory

Here's a capsule summary. In 2011 the Department of Education's Office for Civil Rights (OCR) expanded Title IX's mandate from gender discrimination to encompass sexual misconduct (everything from sexual harassment, to coercion, to assault, to rape), issuing guidelines so vague that I could be accused of "creating a hostile environment on campus" for writing an essay. These vague guidelines (never subjected to any congressional review) take the form of what are called, with faux cordiality, "Dear Colleague" letters—note the nebulously threatening inflections of overempowered civil servants everywhere.

The Dear Colleague era has been disastrous for anyone who cares about either education or democracy, beginning with the manner in which these guidelines were implemented: with a tire iron. Colleges and universities are bludgeoned into compliance because "Ed" threatens to withdraw federal funding from institutions found deficient,

The legal challenges to Title IX are mounting: there are cases accusing schools of trampling on due process, there are cases alleging gender bias against men, there are cases arguing that the low standard of proof demanded by the Department of Education in Title IX cases ("preponderance of evidence") is inherently unfair to the accused. The preponderance issue may sound obscure, but if you're one of the 25 million or so people working or studying on an American campus—a not insignificant chunk of the populace—it's the standard of proof that will apply if or when you're accused of something. In other words, a 50.01 percent certainty of guilt. ("Fifty-fifty plus a feather" is how our university's Title IX officer put it.) Note that being accused doesn't mean you've actually done anything, but given the low bar for a guilty finding and the utter capriciousness of the process, an accusation itself pretty much suffices to constitute preponderance, as we'll see.

So long to niceties such as presumption of innocence. Hello to campus as penal colony.

If you get the idea that the process is stacked against the accused, law professors around the country agree with you, and have been circulating open letters protesting the rampant rights-violations and kangaroo court procedures. The specifics vary from school to school (and are often different for students and faculty), but typically the accusee doesn't know the precise charges, doesn't know what the evidence is, and can't confront witnesses. Many campuses don't even allow the accusee to present a defense, such as introducing text messages from a complainant that contradict his or her statements.

The Department of Education responds that the Dear Colleague letters are merely "guidance" and don't carry the force of law, though this is beyond disingenuous, since schools seen as insufficiently vigilant face being put on the "OCR watchlist" and subjected to federal investigation. Schools that are too fair toward the accused—for instance, using the "clear and convincing" standard of proof rather than the lower bar of

“preponderance” demanded by Dear Colleague—will soon find OCR investigators descending on their campuses.

...1: The Accusation Factory

But colleges and universities facing OCR investigations are too afraid to push back—no college presidents have dared stand up to OCR, and they’re the only ones who can.* (The reason is that they’re predominantly men and can’t risk it, one college president I spoke to said, not for attribution.) The safer path is to simply throw everyone accused of anything under the bus. Except then your school gets sued, generally by aggrieved male students found guilty of things they say they didn’t do; over a hundred and fifty such suits are currently wending their way through the courts.

I hear the term sex-positive a lot from my students. What I find myself wanting to say is that the older you get, the more you realize that sex is always going to be messy, and sometimes even negative (which is what’s both appealing and also distressing about it)—and messy in ways that embarrass everyone’s good intentions, like a delinquent friend who spits in your face after you post his bail money. The messiness resides as much in your own desires as in the gross ones other people foist on you. There’s no honest sex-positivity; it’s all just a lot less simple than that.

2: Flip-Flopping on Consent

Lockwood’s argument is that sexual consent per se isn’t the crucial factor in deciding whether sex is consensual; the decisive factor is context. Were there unequal power dynamics between the two parties? If yes, how can we say there was consent when the consent may have been coerced, or when subordinated persons don’t feel they can say no? For Lockwood, female sexual autonomy itself appears to be more or less a myth: “‘Autonomy’ presumes . . . that we’re not systematically confined by differentials in power or resources or in circumstances and background that can shape those internal processes of judgment.” Her opponent, philosopher Michael Tooley, ventures that having power is different from exercising power: no one has power over you who doesn’t actually attempt to exert that power. The distinction gets no play with Lockwood: there can’t be free consent in the context of power asymmetries. One might wish to ask Lockwood how women can ever consent to heterosexual sex in the context of patriarchy if, according to her logic, even pay disparities would wipe out any meaningful consent.

Sexual consent can now be retroactively withdrawn (with official sanction) years later, based on changing feelings or residual ambivalence, or new circumstances. Please note that this makes anyone who’s ever had sex a potential rapist.

Of course this isn’t an original argument on Lockwood’s part. It’s the position that anti-pornography activists Catharine MacKinnon and Andrea Dworkin took back in the last century, though Lockwood is both expanding their argument and arguably upping its

incapacitating effects. She acknowledges that forcible sex (the previous era's definition of rape) isn't the problem on campuses these days: the real issue is consent, or the lack of it. Yet she would also shrink any possibility for consent to the point of vanishment. "You can threaten my agency . . . by using the power of your mind to mentally manipulate me, to persuade me," as Lockwood puts it, running down the reasons that sexual autonomy is a myth. So who can consent to sex? Not women obviously—how could we? Someone might be mentally manipulating us.

...2: Flip-Flopping on Consent

You begin to see the degree to which consent is a moving target, and the direction in which it's moving on campus is sentimentality about female helplessness. Factor in that sex when either person has been drinking is now typically designated nonconsensual in campus codes—and virtually all sex is fast approaching rape. I don't mean to be hyperbolic, my point is that "rape culture" is less a description of sexual conditions on the ground than an argument about what sex is going to be designated consensual and what asymmetries are going to be designated significant. Except that we're not actually having that argument in any sort of honest or open fashion; instead the bar of consent is being moved around behind closed doors, cloaked in demands for confidentiality and neo-sentimentality about female vulnerability.

Even as the wider culture has moved on, preferring narratives of female agency to the wilting flower thing, on campus it's another story: Lockwood-style views about sex aren't just ascendant in the Dear Colleague era; they've been weaponized in the form of campus codes that paint sex as injurious to women, and rape as the consistent experience. All of which means that even years after the fact, a twenty-five-year-old woman can now change her mind about whether she really consented—not just to sex, but to an entire relationship

3: My Title IX Inquisition

One of the more informative documents that came my way later, after I'd broken all the rules and gone public about my case, was the transcript of a Listserv conversation among a handful of Title IX professionals discussing exactly the procedural questions that had baffled me throughout the investigation. Here was an amazing chance to eavesdrop on what the inquisitors say when they think no one's listening. The discussion was about the optimal moment to tell "respondents," professors or students, the specifics of the charges filed against them. How long should investigators withhold this information for strategic purposes? It turns out there's no established or nationally uniform set of procedures; each institution devises its own. Naturally this leaves a lot of leeway, especially for those who enjoy power a little too much. (I suspect this isn't without a gendered dimension: there's no doubt in my mind that female Title IX officers handed a rare opportunity to put male sexuality on trial are responsible for quite a bit of Title IX overreach. It's payback time, gentlemen.)

...3: My Title IX Inquisition

In Lockwood's world, women have no desires of their own; they're strictly the passive receptacles of other people's (men's) desires. In "The Extreme Badness of Silence," an online article Lockwood wrote based (she says) on conversations with fifteen to twenty philosophy grad students, she reports that each of her interviewees was almost destroyed by an experience with a sexually rapacious professor. The women report a range of PTSD-like responses: nausea when returning to the scene of an encounter (even after three years), terror at being alone in a classroom with a male professor, vomiting after an attempted kiss, fear of taking classes with men. I find myself wondering when this version of besieged womanhood came back into fashion. I don't want to sound cavalier about sexually gross professors, but I've heard my own mother describe once being chased around a desk, literally, by her astronomy professor, for whom she was working part time and who was trying to kiss her. This would have been the 1950s. Her hands were covered in mimeograph ink, and she left a mimeograph handprint on his forehead when she pushed him away, she recalls laughingly.

I also knew next to nothing about Title IX, but we were still living in America (or so I thought), and either the place had turned into a police state without my noticing, or using a federal law against gender discrimination to punish a professor for writing an essay was something other people were likely to find outrageous too.

The reasons for these various interdictions were never explained, which is par for the course in every Title IX investigation I've since heard about. You have no idea what your rights are; you have no idea what the procedures are; you have no idea if what you might say will later be used to hang you.

Title IX hawks versus Title IX doves, of which there appeared to be only one.

(This sounded familiar. Oh, right—it's what the FBI, CIA, and NSA are always saying: you don't need civil rights if you haven't done anything wrong.)

Having been on the other side of the process, reading this conversation left me seething—also because I've now heard from so many panicked students and professors who were summoned to mysterious meetings and then sandbagged, whose futures and jobs were on the line, who were confronted with rumors and false information by condescending and mysteriously empowered functionaries who seemed to be making up the rules as they went along. As it turns out, they were.

Let's pause to note that "third-party complaints" are permissible under Title IX. Here's a working definition of "third-party complaint." At the moment a legal case is pending against the Office for Civil Rights itself, by a male student charged with having nonconsensual sex with a consenting woman. The woman has said repeatedly that the sex was consensual. The problem came when a friend of hers spotted a hickey on her neck and reported it. The accused student, who was black, by the way, and attending

school on an athletic scholarship, received a multiyear suspension, effectively ending his college career. That's what "third-party complaint" means.

...3: My Title IX Inquisition

Please pause to note that a Title IX charge can now be brought against a professor over a tweet. Also note that my tweets were being monitored. The tweet in question—a response to someone I didn't know named @lemonhound, who'd tweeted something to me regarding my essay, and the catastrophic effects of students dating professors—was: "It's a problem that 'trauma' is now deployed re any bad experience. And dating is not the same as rape!" The tweet wasn't about Hartley.

The fact is, and as my case revealed, no one knows what Title IX demands of universities. University presidents don't know, Title IX officers themselves don't know. Title IX officers I've spoken to say (not for attribution) that the Dear Colleague letters are incoherent and that everyone's left trying to figure out how to comply with insufficient and wildly contradictory directives. This means, in effect, that anyone on campus is empowered to decide on and radically expand the Title IX purview, including designating ideological opponents as creators of hostile environments.*

A few days later I learned, via back channels, that my indefatigable complainants had also filed Title IX complaints against the president of the university over his Wall Street Journal op-ed. What was there to do but laugh—the whole thing was a circus, and the university just kept hiring new teams of lawyers to sweep up the tent. Of course I understood why: they couldn't be seen as lax on Title IX compliance.

I recently came across the phrase "noble cause corruption," the belief that a good cause justifies fraudulent means. Maybe it does in some cases, but it would still probably be reckless advice to give students.

4: F*** Confidentiality

I previously mentioned the case of the Big Ten freshman I called Simon, who was brought up on charges for pleading for oral sex from his steady girlfriend. The charges came several months later, when she decided (after a breakup initiated by him) that the episode hadn't been consensual. At the hearing, Simon couldn't ask questions of his accuser, and had ten minutes to speak. The panel convened to judge the case included staff members from food services, along with the investigating student dean. They asked him a lot of disdainful questions about the physical circumstances of the blow job. He testified that he hadn't been touching the woman during the blow job, so how could he have forced her into it? Their eventual ruling hinged on a detailed physical analysis of who had moved, and to what extent, during thirty or so seconds of fellatio. Simon says his girlfriend knelt on the floor, opened her mouth, and moved her mouth back and forth on his penis. She said he knelt in front of her, pressed his penis against her mouth,

and moved it back and forth. He said she verbally assented; she says she didn't. The panel's conclusion[...]

...4: F*** Confidentiality

The 2 percent false rape allegations has been a huge article of faith among campus activists (and Title IX officers, I suspect), so frequently quoted that no one bothers to ask where it came from—until a legal scholar named Edward Greer published a rather gripping statistical whodunit in 2000, about his attempts to track down the source of the stat. His first discovery was that though the 2 percent figure was endlessly cited, every single citation ultimately led back to Susan Brownmiller's 1975 book, *Against Our Will: Men, Women and Rape*. Yet Brownmiller's notes provide a rather obscure source for the figure: a speech to the New York Bar Association by an Appellate Division judge named Lawrence H. Cooke, delivered in 1974. Greer contacts Brownmiller: where did this information about the (now-deceased) judge's speech come from? Brownmiller cooperatively combs through her decades-old files—Greer credits her with being “a very meticulous and organized writer”—and sends him a copy of the judge's photocopied speech. The speech quotes the “Commander of the New York City's Rape Analysis Squad” as having determined that “only about 2 percent of all rape and related sex charges are determined to be false[...]

Were Judge Cook, Brownmiller, and the Times reporter all drawing on the same unknown source? Brownmiller gets a little defensive when Greer presses her on it. The answer may be “lost to antiquity,” Greer finally concludes dejectedly, though what he's established with certainty is that the famous 2 percent statistic, what one feminist scholar calls a “consensus fact,” derives from a single police department unit over forty years ago, and there's no other published source for it.

In other areas of the social world prone to abuses and excess, terms like transparency, whistleblower, sunshine laws, and citizen journalism have credence because they're understood as counterbalances to official or corporate misconduct. Viral videos of police brutality have changed the national conversation on race and policing; documents supplied by WikiLeaks exposed vast misuses of NSA surveillance. The Title IX bureaucracy's fetish for secrecy has so far gone unquestioned.

With those who were willing to talk, I'd ask for more details and often receive thousands of words in response—they couldn't talk to friends or colleagues and were bottled up with impotent rage. They'd been subject to crazy accusations, insulting interrogations, capricious procedures, and then warned against speaking about it to anyone. (One professor, a poet, described the bullying attitude of his investigators as “savage, crazed delight.”) They felt alone—because they were ignorant about all the other cases, because of the threats about secrecy.

Rather, “preponderance of evidence” was established because a college freshman didn't compose the sort of Facebook messages a panel of adults think he should have written to support a story he didn't foresee having to support.

...4: F*** Confidentiality

I heard from another grad student whom I'll call Darren, who'd made a joke to a group of friends in a bar, suggesting that the new TAs should have an orgy to get acquainted—or he thought he was joking with friends, until a woman pal, who'd contributed to imagining who would do what to whom during the protracted joking, repeated the story to the guy's ex-girlfriend. The ex decided that Darren had been “sexualizing” the TAs and turned him in. He was charged with sexual harassment and “creating a hostile work environment,” despite being off campus. (There's actually no such thing as “off campus,” according to the latest Dear Colleague letter.)

For some of our leading public feminists, whether male students accused of sexual misconduct get fair hearings or not is beside the point. As activist and commentator Zerlina Maxwell put it in a 2014 Washington Post commentary: “We should believe, as a matter of default, what an accuser says. Ultimately, the costs of wrongly disbelieving a survivor far outweigh the costs of calling someone a rapist.”

Someone is out here raping 1 in 5 American women,” writes Maxwell. “And yes, it could be someone that you know and love. It could be the boy at the frat party.” Recall that the “1 in 5” stat refers to all unwanted sexual contact, not rape alone. Thus, when Maxwell concludes we shouldn't waste time questioning survivors' stories because “the FBI reports that only 2–8 percent of rape allegations turn out to be false,” she's entered statistical Neverland. Not only are rape and sexual assault being conflated, an FBI statistic on false rape reports to police is being confusedly applied to sexual assault reports on campus.

None of this would matter if fly-by-night statistics like this one didn't condition decisions on guilt in campus procedures or, indeed, the Education Department's insistence on the preponderance standard to ensure more convictions. Greer thinks that as many as a quarter of men charged with criminal rape might be innocent (and points out that such wrongful convictions fall disproportionately on young black men).

Given the ease of accusation-making on campus, weeding out “false” reports is even more of a rat's nest. Instead of trying, the general view seems to be that we're living in emergency times, and if a few male students are found guilty of unprovable things they haven't done, that's the cost of vigilance.

The flawed Title IX process that David Barnett exposed was duplicated in any number of other cases I learned about: astounding levels of bias against accused men, inventive deployments of the preponderance standard, and female complainants with ambiguous motives. I don't wish to betray my gender, but the premise that accusers don't lie turns out to be mythical. By sentimentalizing women in such preposterous ways, aren't Title IX officials setting schools up as cash cows for some of our more creatively inclined women students?

One reason to get rid of confidentiality in campus adjudications would be to cut down on abuses of the process. Another is to initiate an open discussion about what counts as injury and consent. The gender assumptions embedded in these verdicts should also be open to public scrutiny. As it stands, the procedural haphazardness in such cases is beyond shocking—precisely because investigators are accountable to no one.

5: Sexual Miseducation

I like to suggest that what's needed are fewer obfuscating stats and more frankness about what all this drinking means. I say this because the more students I talked to, and the more accounts of unwanted sex I heard, the more I became convinced that the style of drinking in fashion is a symptom in the classic sense: that is, simultaneously masking and enacting a conflict. People use alcohol in all sorts of ways, and it's easy to disparage them—consider the perpetual charges of “escapism” or “irresponsibility” and the accompanying moralizing sneers aimed at drunks from upstanding citizens. Personally, I don't have anything against escapism or irresponsibility, and you certainly won't hear me arguing against drunken hookups. “Fuck all the guys you want” would be my

Here's what I think is being disregarded. It's not just that kids are getting bombed and having bad sex, or getting bombed and taking pills and having bad sex. The forms of bad sex are more specific, and the motives for drinking are probably less simple than just “relaxing.” Alcohol is an intensifier; it intensifies acting out. Increased male aggressiveness when drinking is inarguably a factor in what's known as rape culture. Men drink and act out stereotypical versions of masculinity, especially men in groups—namely, frat guys and athletes. Men drink because, as one of my male students tells me, “What you do when you're drunk isn't really you.” You don't have to take responsibility for it: “It was the booze, not me.” And of course guys like to drink because the more alcohol you've drunk, the more “into you” girls seem, he acknowledged. Translation: it helps them combat their insecurities about sex. And what about the other side of the gender divide? Is it possible that it's not men alone for whom “gender progress” has been a little superficial? Drinking may be a way of shedding inhibitions, but if we can't also talk about the ways that[...]

The pattern, in other words, when it comes to heterosexual sex, is college-age men and women getting bombed and acting out the respective gender extremes: men as aggressors, as predators; women as passive, as objects—because what's more passive than a woman in a drunken stupor or unconscious on the bathroom floor? It's worth acknowledging that gender progress, for all its pluses, comes with a certain level of fun dampening—a “raised consciousness,” in the classical feminist formulation. How fun is that? If such dampers are among the first shed by drunken students, maybe we should ask, for the sake of honesty, whether the chance to enact regressive gender stereotypes might be among the reasons for getting plastered out of your gourd: not an unintended consequence, but a motive; not just for men, for women, too. If 44 percent of students binge-drink, as studies estimate, if binge drinking is a great way of inducing

amnesia, then the main item forgotten by men and women both, is the last fifty or so years of progress toward female autonomy.

...5: Sexual Miseducation

The myth of hookup culture may be that women have achieved sexual parity with men. But it's in no way clear that women's agency is either on the rise or equal to men's, especially when it comes to saying no. The source of the impediment is sort of unclear—it was certainly unclear for Ruckh (though she's a wonderfully clear writer). A provisional answer is that there aren't sufficient social prohibitions to rely on these days: women actually have to know what they want to do, especially since there are endless pressures to say yes. Not just from guys, the pressure to be sexy or "hot" is a huge social factor—don't get me started on commodified sexuality. Those pressures (and self-pressures) loom just as large as guys pressuring women for sex. In the absence of physical force—and it is mostly absent in "nonconsensual sex" situations on campus, according to all the data (only 5 percent of assault cases involve physical coercion, according to a 2009 study)—it's not simply men who are responsible for the incomplete progress toward female sexual agency.

In the previous two weeks, Sokolow writes in one post, he'd worked on five cases involving drunken hookups on different campuses; in each case, the male accused of sexual misconduct was found responsible. "In each case, I thought the college got it completely wrong," he writes, adding, "We are making Title IX plaintiffs out of them." Another way of putting it is that the new campus codes aren't preventing nonconsensual sex; they're producing it.

There are clearly sexual assaults on campus. There are also hyperbolic accusations, failures of self-accountability, and a crazy expansionism about what constitutes rape and assault. Most campus rape activists, including Heidi Lockwood, now argue that rape doesn't require penetration—Lockwood calls the obsession with penetration as the definition of rape "old-fashioned and bizarre." Focusing on the physical specifics of a sexual assault is "archaic" and disrespectful to victims, she says. Even shifting the focus from the act to whether it was consented to is problematic for her, since it puts victims in the position of proving they aren't lying. I think she's saying that what counts as rape is whatever the victims feel counts as rape, which is increasingly the approach the officials adjudicating the cases seem to be taking too.

A typical experience, as related to me by a friend of one of my students: saying no a few times to a guy she was hanging out with, being pressed with a lot of "why nots," and finally just giving in. She didn't describe it as assault. She wasn't traumatized, she said. She chalked it up to her inexperience and being a freshman, though it's still an uncomfortable memory. Why is a "no" not a no? I was reminded, talking to students, how much sentimentality governs these situations. Or let's call it heterosexual sentimentality. Obviously it's not that women want to be assaulted; too often it's that they trust their male friends and dates and former hookups aren't going to assault them. Likewise, the men somehow won't grasp that their female friends are sexually refusing

them: they trust that the “no,” when there is one, isn’t meant seriously. It goes without saying that men have to stop forcing sexual situations, and if they use physical force, they should go to prison. But the emotional reality is that the mistaken identity operates in both directions, and will no doubt proceed into adult life and govern future relations as well, but[...]

...5: Sexual Miseducation

These failed educational measures are leaving college women effectively crippled. Recently I stumbled on a website called Strategic Misogyny, dedicated to “connecting stories of sexism at universities.” The first post, titled “Surrounded,” was by a woman grad student who described going for drinks after a conference with one of her lecturers and some other grad students. At some point, one of the male grad students started stroking her leg under the table. Then the lecturer put his hand on her thigh. “I felt quite scared,” writes the grad student, “but also frozen. I was in public surrounded by other people, and yet I didn’t feel like I could tell both of them to stop touching me. Why didn’t anyone else react? I was surrounded by people who taught me and people with whom I studied. Did they think this was ok?” No, it’s not okay (though I was confused about why she thought anyone else knew what was happening under the table). Let’s all agree this shouldn’t happen. Let’s agree these guys are pigs. The question becomes what to do in such a situation, because thus far in human history, aggression, sexualized and otherwise, is an unfortunate fact. How[...]

The current approaches to combating sexual aggression end up, perversely, reifying male power. It becomes something fearsome and insurmountable, when it’s often pathetic and mockable. Look, I too was raised female in this culture and am on intimate terms with passivity and internalized helplessness. I’ve had the usual range of female experiences and sexual assaults, which is why I feel pretty strongly that someone has to call out the codes of self-martyring femininity permeating tales like “Surrounded’s,” not to mention the covert veneration of feminine passivity enshrined in our campus policies and initiatives. What would happen if we stopped commiserating with one another about how horrible men are and teach students how to say, “Get your fucking hand off my knee”? Yes, there’s an excess of masculine power in the world, and women have to be educated to contest it in real time, instead of waiting around for men to reach some new stage of heightened consciousness—just in case that day never comes.

I very much hope this guy goes to prison. He’s responsible. But I have a few other questions: Why couldn’t Catherine say no to going on the date from the start? Why would she go to the apartment of a guy she already didn’t trust? This isn’t victim blaming. It’s grown-up feminism, one that recognizes how much feminine deference and traditionalism persist amid all the “pro-sex” affirmations and slogans, even as women are trying to switch up gender roles and sexual scripts. And that’s what has to be talked about, along with changing male behavior.

Reflecting on recent events in my life, I ultimately came to think it wasn’t entirely impossible that in a convoluted and indirect way—like a butterfly flapping its wings in

China causing a hurricane in rural Illinois—I got brought up on Title IX complaints because of the booze problem. Not my booze problem; I'm talking about students. I never much cared whether my students spent their weekends binge-drinking and barfing into bushes, as long as they got to class. Still, you can't help noticing, if you pay any attention to campus sexual culture, that there's a pretty strictly enforced cone of silence around the drinking problem as it pertains to women and the sexual assault issue. The main enforcement mechanism is that if you mention the connection, you'll immediately be accused of "blaming the victim"—or "slut shaming."

...5: Sexual Miseducation

The expanding regulatory net I got myself snared in? I suspect it exists precisely because all the new regulations and codes are so ineffectual at actually reducing campus assault. I blame that cone of silence. The solution to ineffectual regulations? More ineffectual regulations.

For example, here's a snippet of the sort of conversation you can have off campus, but not on, which occurred at dinner a couple of years ago with a friend, another writer. We were talking about the campus assault problem, which had been in the news on a daily basis that week. She mentioned that her sister had been raped in college. "How did it happen?" I asked. "She got drunk, fell asleep on the couch in a frat house, and woke up with some guy on top of her," my friend answered. "I guess you couldn't see that coming," I said. We both laughed.

We laughed because we're feminists with a certain shared mordancy about female propensities for self-martyrdom, among other things. And because her sister's story, horrible as it surely was, is also horribly familiar. Yet somehow it keeps happening. As one campus official on the front lines of sexual assault puts it (as reported by Deborah V. O'Neill, whose work I'll be discussing), "99% of the time, both parties are stinking drunk." Estimates vary: a Washington Post-Kaiser poll puts it at two-thirds, but that's based on self-reporting, which is problematic, since being stinking drunk often means not entirely remembering what precisely happened the night before.*

When we talk about sexual assault on campus, the Morris-Mock case represents, by all accounts, the typical fact pattern, so maybe it's worth trying to talk more honestly about why it's such an enduring pattern.

This often results in women (many, I suspect, schooled by us feminist professors that gender is a social construction) trying to match guys shot for shot in drinking rituals that parody equality, and then passing out first because beer pong doesn't differentiate for body mass. Longitudinal studies of drinking styles observe a sharp increase in "intentional or efficient intoxication" among young women—that is, fasting before drinking or rapidly downing shots, to get drunk as fast as possible. This means a lot of passing out. And a lot of blacking out. And passing out and occasionally winding up with some guy on top of you, often a "friend." Or blacking out and having sex you didn't exactly want to have. (Blacking out means you seem conscious but aren't forming

memories, due to diminished blood circulation to the brain, which is why heavy drinkers often have amnesia about the previous night's events.)

...5: Sexual Miseducation

Still, if you're going to talk about the drinking in conjunction with the nonconsensual sex, tread carefully. One researcher studying campus assault calls it "the 'third rail' of the discourse, something no one wants to go near." Anyone who suggests that women should drink less to avoid sexual assault will be "disemboweled upon arrival into the gladiator arena of public discourse," as Hepola puts it. Those running sexual violence prevention programs (now mandatory on campuses) often don't bring up drinking or dance carefully around it. The University of Virginia's new Alcohol-Wise training module is a typically mealy-mouthed example, devoted to helping students "clarify their choices around drinking habits and attitudes." Agencies that fund sex assault research, including the Justice Department, have told researchers that focusing on alcohol is "out of scope." Academics presenting reports have been told to take the word alcohol out of their presentation titles; drinking can be discussed only in the context of "wellness."^{*}

I became a bit less dubious about the alarming stats as I started hearing just how normalized unwanted sex is, especially blackout drinking and blacked-out sex. There's no doubt that plenty of men are having sex with women who are comatose or close to it; are using various combinations of persuasion or physical advantage, or assuming consent where none is given. Also, for a lot of women, this is a standard part of the college experience. To be fair to the men, it can be impossible to tell when someone's blacked out; you can seem completely cogent while being technically incapable of consent.

I still think the one-in-five stat is probably most useful as a lapel pin, but if "unwanted sexual contact" is the yardstick for a student to become a statistic, just call it 50 percent, or even 75, and let's move on from rape number crunching to reducing unwanted sex. The problem is that moving on would mean addressing the complicated realities behind the numbers. Perhaps recognizing the awkwardness this would present, the generally agreed-on solution to reducing sexual assault on campuses is conducting more surveys, because quantifying the unquantifiable is a safe stalling maneuver. Office for Civil Rights, say hello to Sisyphus.

Just don't fuck the ones you don't want, which is where things get tougher, since this requires women actually knowing what they want, and resisting what they don't want. It requires a certain amount of self-coherence, which isn't readily available when one is passed out.

As anyone with a grain of self-honesty knows, one of the great pleasures of drinking, possibly one of the fundamental reasons to drink in the first place, is being introduced to a version of yourself who does things you'd never do when sober, and enjoys them, at least at the time. Yet the reality is that freedom from self-coherence also comes with the territory—and here we have a sizable contradiction. To expect a drunken college guy to

have more self-coherence than you're willing to have yourself, in the face of all prior evidence to the contrary, is to treat yourself rather nonchalantly. Not that we don't all want the world to be different from how it is! No one's saying women get assaulted because they pass out in dicey locales: I fully believe that women should be able to pass out wherever they want—naked, even—and be inviolable. One hopes such social conditions someday arrive. The issue is that acting as if things were different from how they are isn't, thus far, working out.

...5: Sexual Miseducation

The solution school administrators have come up with is criminalizing sex when either party has been drinking—pretty much all sex, in other words—and, of course, holding men responsible for sex when both parties are drinking, if complaints later ensue. What a boon for the assault stats and expulsion ranks that's been—except that exponentially expanding the potential criminal class on campus isn't the same thing as educating students, which is what we're actually supposed to be doing.

Students described the main activity at college parties to sociologist Lisa Wade, in *American Hookup*, as grinding—a combination of dancing and dry humping—with guys coming up to women from behind and grinding their crotches into the women's butts, and willing women pushing their swaying backsides into men's crotches. But it's the men doing the choosing, and the women don't always know whose erection they're pushing up against. In Wade's account, these women aren't being assaulted, they're engaging in mating rituals; hoping to allure high status guys to hook up with to impress their friends. But the line between dancing and assault would seem to rest on next morning's foggy recollections—and, of course, the later appraisals of student deans.* Going to these parties sober is against the rules.

If college drinking is a symptom, then uneven progress toward emancipation for women (including ambivalences about responsibility for our own freedom) would be the place to start looking for causality. The issue with the drinking is unconsciousness, in all respects of the word. It's not just about taking back the night; it's about admitting that progress is uneven and ambivalent on both sides of the gender divide, especially if what looks like female independence and convention-flouting ends up restoring feminine conventionality through the back door. (Self-induced helplessness isn't gender progress.)

Two different things can be true at once: men are responsible for sexual assault; and women who act as if sexual assault weren't a reality are acting incoherently.

One of the dirty little secrets of hookup culture is that a significant proportion of college women don't know how to say no to sex, which is painful to anyone who thinks that, by this point in the long slog toward female independence, no would be the easiest word in the language.

So what if we try backing off the regulatory mania and tackle a tougher human subject: sexual ambivalence. To help us in this endeavor, I'd like to draw on an essay on so-called gray rape, by a young writer named Veronica Ruckh, a recent college grad, who published it a couple of years ago on a site called Total Sorority Move. Gray rape is a term that's been getting a lot of play in campus discussions. It refers to situations where women have sex when they don't want to, because they don't or can't say no, or because the guy hasn't asked for consent and just proceeds.

...5: Sexual Miseducation

The next day, she lamented that there wasn't a word for this sort of experience: a "weird place in between consensual sex and rape," a place that most women have experienced but no one talks about. She later called the episode "rape-ish," reflecting that "I certainly didn't feel like I'd been raped. But what had happened the night prior was not consensual sex, and I didn't like it." She wanted the flirting, she says, and the kissing and the sleepover. But "I didn't want to go all the way. And that's very hard to explain to a man who is just as drunk as you are." She concludes: "We [women] just feel like we got the short end of the stick, and that sometimes, we have to do something we don't want to do, out of politeness or social obligation."

There was a lot of debate about whether Ruckh's experience was or wasn't rape. What wasn't discussed, either by her or in the comments, I noticed, was that booze had impeded her from saying (or, indeed, knowing) what she did or didn't want. Or, to put it in a slightly more complicated way, the booze permitted her to say both no and yes—except, the "no" came only after the fact.

regret equals rape

This same often-inexplicable parsing of consent is playing out around the country daily in secret campus tribunals, and the cases being adjudicated are ever murkier.

My point is this. Heterosexual arrangements are a pact that includes men and women both: male and female desires, male and female pathologies. Gender is a system: male aggression and female passivity are both social pathologies that are, to varying degrees, normalized. Changing any element (including reducing female passivity) is going to alter the dynamics of the system. Yes, aggressively disposed men forcing sex on passively inclined women is routine in our culture. But if women can't be taught to protect themselves against such normalcy because men should stop assaulting women, and because learning to defend yourself means capitulating to rape culture—well, here you begin to see the two-way nature of the current social pathology.

Let's face it: sex, even under optimal circumstances, requires a certain amount of psychological resiliency. Being naked, exposed, and physically handled by another human can be destabilizing and not always pleasant, especially when the other human is drunk, clumsy, and/or a complete stranger. If you're a girl, for the most part no one teaches you what to do or how to extricate yourself when things don't feel good.

(Sometimes girlfriends are a resource here, sometimes not.) For the more emotionally unprotected among us, drunken random hookups are a formula for psychological discomfort and interpersonal disaster.

...5: Sexual Miseducation

Women want to have sexual adventures and make mistakes, but there's a growing tendency, at the moment, to offload the responsibility, to make other people pay for those mistakes—namely, guys. Women don't drink; men get them drunk. Women don't have sex; sex is done to them.

This isn't feminism, it's a return to the most traditional conceptions of female sexuality. What dimwitted sort of feminism wants to shelter women from the richness of their own mistakes? Their own ambivalences? And speaking now as a teacher, how do such protections prepare students to deal with the sexual messiness and boorish badlands of life post-graduation, when code-wielding bureaucrats aren't on standby?

Reading the growing literature on rape culture and listening to the activists, I'm struck by how little focus there is, strangely, on women themselves. There's zero attention on women's relations to men or what women want from sexual situations with them—

Here's an interesting fact about current educational efforts to minimize campus assaults: they've been useless. According to all the research, including a recent meta-analysis of sixty-nine different empirical studies, there's no demonstrable relation between prevention efforts and reducing assault levels. (Reporting rates may be up in some places, but so are definitions of what counts as assault, of course.) Few of these educational programs have any clear theoretical foundation. Some may improve students' "rape-prone beliefs," such as victim blaming, but that doesn't correlate with reducing the incidence of assault. The minimal success of any of these programs has been no deterrent to continuing them however, which seems simultaneously well-meaning and cold-blooded.

In my forays into the sex assault prevention lit, what I've learned is that there are deep ideological schisms among the experts. On the one side are the "harm reductionists," who want to educate potential victims about how to decrease their chance of victimhood—using a buddy system at parties, not falling asleep with male study partners, and so on.

On the other side of the schism are the "primary preventionists," who believe in targeting potential offenders while promoting overall cultural change. In short, harm reductionists want to aim educational efforts at women; preventionists want to aim them at men.

Why do the preventionists think educating women on avoiding assault is the wrong approach? Because, in the words of the communications director of the National Sexual Violence Resource Center: "Considered in a broader societal context, focusing on self-

defense places responsibility on the victim to defuse an attack rather than on society as a whole to prevent it.” To the preventionists, risk-reduction strategies are victim blaming—why should the onus be on women to stop predators? “The issue really is about men,” says one expert, “who we know commit most sexual assaults, and how do you stop men from doing it, not how do you coach women to cleverly get out of situations of harm.” Says another likeminded expert, “Society needs to establish a zero tolerance for sexual violence. Instead of saying, ‘don’t get raped,’ which shifts the responsibility onto a potential victim, the message should be ‘don’t rape’ and focus on holding perpetrators accountable.” One behavioral scientist, Sarah DeGue of the Centers for Disease Control, was quoted in the New York Times as fearing that if we train some potential victims to avoid rape, perpetrators will just rape other, more vulnerable women.

...5: Sexual Miseducation

Still, there’s growing evidence that “risk-reduction” programs targeting women decrease the likelihood of being assaulted by as much as 50 percent, the New York Times reports. Women with self-defense and assertiveness training are a lot more able to subdue an attacker (both physically and psychologically able) than those with no training. Lisa Wade cites research, in *American Hookup*, that yelling, punching, or fleeing reduces the likelihood of a completed rape by 81 percent.

Women trained in self-defense are also better able to set boundaries in sexual situations with men, suggesting an overall increase in their sense of agency. So why aren’t these programs being universally adopted? Because risk-reduction programs run counter to the getting-men-to-change agenda which appears to dominate the assault prevention field.

a large problem with focusing social change efforts on men is that the men most likely to be assholes to women are precisely the ones most likely to resist being enlightened.

In my fantasy Clery Act (which mandates “Interpersonal Violence Prevention and Education” courses for all incoming students), all institutions of higher education would be required to teach freshman women self-defense: how to yell, “No!” and how to physically fight off an attacker. (After a conversation with one of my gay male students, about finding himself in a threatening sexual situation, I’d say offer sessions to at-risk male students too.) Teaching affirmative consent is great—sure, keep doing it until it works. (It’s not going to.) Yes, harassment and assault are structural problems; yes society has to change. But individuals can change structures too. If schools are serious about reducing unwanted sex, then get realistic about education. Nobody thinks self-defense training will be effective in every case. But it would change the outcome in plenty of cases, and we’re doing women no favors by not training them in how to deal with the range of situations they’re likely to face.

Politicizing rape and reforming the criminal justice procedures for handling it has been among the great successes of American feminism, though one propelled (necessarily,

in the early years) by significant blind spots and exclusions. One blind spot is female agency.

...5: Sexual Miseducation

The propensity toward female passivity is no secret. Women are socialized into politeness, niceness, deference to and overvaluation of men—this is on the normal scale for heterosexual femininity, though not exactly beneficial when it comes to assault avoidance. Yet, when rape activists talk about rewriting cultural scripts and gender norm expectations, femininity is off-limits. In all the literature I've reviewed about campus assault education, I've never once seen the term feminine passivity, yet in anecdotal and official accounts of sexual assault, it pervades the scene.

Hookup culture is code for women operating the way men traditionally have (scoring, impersonality) in the sexual sphere. Rape culture is code for the demand that men suppress their (apparently boundless) sexual aggression and operate according to newly imposed (perhaps more “feminine”) standards: asking for permission to move forward at each stage and so on.

Rape culture mashes together all different types or degrees of unwanted sex, resulting in ineffectual, hamstrung educational efforts. Vast resources are being directed toward useless assault education and prevention programs—call it the “sexual assault industrial complex,” such are the fortunes to be made. The whole enterprise is a terrific boondoggle for the consultants and entrepreneurs who saw opportunity beckoning, got in early, and now wage public relations duels with one another over whose dubious prevention strategies are better.*

Hookup culture is obfuscating, too. I truly hope there are lots of independent women having a great time, but an appalling amount of what goes on is still organized around male prerogatives, including on the part of women themselves. It's not “gray rape” we need to talk about; it's the learned compliance of heterosexual femininity.

If sexual parity between men and women is ever going to be a reality, these would be the issues to address. No one thinks there are simple answers or magic bullets, but insisting that men change first, or that the culture reform itself first, may pass for activism, but it's a lot like the old female passivity in a slightly edgier wardrobe.

Coda: Eyewitness to a Witch Trial

Are the accusers always holy now?” demands the accused witch John Proctor (soon to be executed) in Miller's *The Crucible*. On campus, the answer is yes.

Yes, Ludlow was guilty—though not of what the university charged him with. His crime was thinking that women over the age of consent have sexual agency, which has lately

become a heretical view, despite once being a crucial feminist position. Of course the community had to expel him. That's what you do with heretics.

About the Publisher

* I witnessed the industrialization of sexual assault firsthand when attending the 2016 Association of Title IX Administrators convention in Philadelphia, with its array of exhibitor booths promoting all manner of assault prevention “products”: smartphone apps, online training courses, web-based platforms to manage sexual assault incidents and reports, and so on. With every school in the country mandated to conduct trainings and climate surveys, and much of it outsourced, the profit potentials are huge. As I passed one booth, I heard the salesman say smarmily to a potential customer, “Are you guys in one of those three-to-five-year contracts that everyone is in?” There’s an investigative story to be written about the revenues being generated by the expanding definitions of sexual assault, and what part of the educational pie is shrinking to cover it. (Libraries and faculty salaries would be my guess.)

Jackson, Candice

From: Jackson, Candice
Sent: Tuesday, July 18, 2017 3:32 PM
To: Henderson, Chelsea
Subject: FW: SAVE's Perspective on the Use of Victim Centered Investigations and the Single Investigator Model for Campus Sexual Assault Cases
Attachments: Letter to OCR - 7.18.17.docx

Everyone needs to read for tomorrow AM meeting.

Candice Jackson

Acting Assistant Secretary for Civil Rights
Dep. Ass. Sec. for Strategic Operations & Outreach
Office for Civil Rights
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

From: Chris Perry [mailto:cperry@saveservices.org]
Sent: Tuesday, July 18, 2017 2:08 PM
To: Jackson, Candice
Cc: ebartlett@saveservices.org
Subject: SAVE's Perspective on the Use of Victim Centered Investigations and the Single Investigator Model for Campus Sexual Assault Cases

Hello Candice,

Attached, please find a letter detailing SAVE's concerns for the use of victim centered investigations and single investigator models on college campuses. Thank you for your kind consideration. Please feel free to contact me with any questions or to discuss these perspectives in further detail.

Regards,

Christopher J. Perry, Esq.

Deputy Executive Director
SAVE - Campus Justice Coalition
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Stop Abusive and Violent Environments is a 501 (c)(3) organization that addresses the problem of sexual assault.



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July 18, 2017

Candice Jackson
Deputy Assistant Secretary for Strategic Operations and Outreach
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

RE: Campus Procedures Violate Legal Requirements for Reliable and Impartial Investigations

Dear Deputy Assistant Secretary Jackson,

SAVE applauds the recent statements of Secretary DeVos regarding the need to assure fairness in campus sexual assault cases.

By law, universities are required to implement grievance procedures providing for “prompt and equitable resolution” of complaints of sexual discrimination. In 2001 the Office for Civil Rights issued its Revised Sexual Harassment Guidance mandating that universities undertake “adequate, reliable, and impartial investigation of complaints” and employ “[p]rocedures that . . . will lead to sound and supportable decisions.”¹

In recent years, two investigative approaches have gained currency in campus sexual assault cases that serve to vitiate due process: the single investigator model and victim-centered investigations. This letter describes the shortcomings of these approaches.

Single Investigator Model

In 2014 the White House Task Force to Protect Students from Sexual Assault issued a report touting the single investigator model as a “promising new idea.” The report described the single investigator model as follows:

[W]here a trained investigator or investigators interview the complainant and alleged perpetrator, gather any physical evidence, interview available witnesses – and then either render a finding, present a recommendation, or even work out an acceptance-of-responsibility agreement with the offender. These models stand in contrast to the more

¹ <https://www2.ed.gov/offices/OCR/archives/shguide/index.html#Guidance>

traditional system, where a college hearing or judicial board hears a case (sometimes tracking the adversarial, evidence-gathering criminal justice model), makes a finding, and decides the sanction.²

Following issuance of the White House Report, two organizations and one federal judge sharply criticized the single investigator approach:

- The Foundation for Individual Rights in Education expressed its reservations with the single investigator model, which it characterized as empowering a sole administrator “to serve as detective, judge and jury, affording the accused no chance to challenge his or her accuser’s testimony.”³
- United Educators provides liability insurance to nearly 1,300 schools, colleges, and universities throughout the United States. United Educators warned “although some public institutions are moving toward a single investigator model, UE does not recommend this approach, as it may expose them to due process claims.”⁴
- In *Doe v. Brandeis*, U.S. District Court Judge Denis Saylor opined, “The dangers of combining in a single individual the power to investigate, prosecute, and convict, with little effective power of review, are obvious. No matter how well-intentioned, such a person may have preconceptions and biases, may make mistakes, and may reach premature conclusions.”⁵

More recently, an American Bar Association Task Force set out “to develop guidelines and best practices to ensure due process for both the victim and the accused in college campus sexual misconduct cases.”⁶ The Task Force was especially critical of the single investigator model:

- “It was the consensus of the Task Force that the single investigator model, which consists of having an investigator also serve as the decision-maker, carries inherent structural fairness risks especially as it relates to cases in which suspension or expulsion is a possibility.” (ABA Recommendations at 3)
- “As the Supreme Court acknowledged in *Withrow v. Larkin* (1975), a ‘fair trial in a fair tribunal is a basic requirement of due process’ that applies to both court cases and hearings before administrative agencies. ‘Not only is a biased decision maker constitutionally unacceptable,’ the Court wrote, ‘but ‘our system of law has always endeavored to prevent even the probability of unfairness.’” (ABA Report at 6-7)

The fundamental flaw of the single investigator model is the inherent conflict of interest between the investigative and adjudicatory functions. This conflict serves to undermine and even preclude the reliability of campus determinations.

² NOT ALONE, The First Report of the White House Task Force to Protect Students From Sexual Assault, April 2014. See <https://www.justice.gov/ovw/page/file/905942/download> at 14.

³ <https://www.thefire.org/fire-responds-to-white-house-task-forces-first-report-on-campus-sexual-assault/>

⁴ <https://www.edurisksolutions.org/blogs/?Id=2801>

⁵ *Doe v. Brandeis Univ.*, No. 15-11557-FDS, 2016 WL 1274533, at *36 (D. Mass. Mar. 31, 2016).

⁶ https://www.americanbar.org/groups/criminal_justice/committees/campus.html

Victim-Centered Investigations

Amplifying the above-referenced concerns, campus investigators are now being taught to utilize a “victim-centered investigation” (VCI) approach.

The VCI method was originally implemented in human trafficking cases where the person had endured a life-threatening traumatic event. Now, the VCI approach has spread to campus investigations for allegations of sexual assault.

In practice, the VCI approach has gone beyond just educating investigators on the effects of trauma, and has begun to compromise the objectivity of investigations. The SAVE Special Report, *Victim Centered Investigations: New Liability Risk for Colleges and Universities*, highlights several examples of VCI training programs:

- In 2011, End Violence Against Women International (EVAWI) launched a campaign directed at police officers titled “Start by Believing.” EVAWI urges “criminal justice professionals and others to start by believing [the complainant]. EVAWI also maintains that even though “‘Innocent until proven guilty’ is a critical foundation of our legal system,...it is not the starting point for a successful investigation.”⁷
- A training program by the consulting firm Margolis Healy instructed college investigators to “Focus on offender behavior – not victim behavior” (slide 28), to “Always approach a case believing that ‘something’ occurred” (slide 26), and to obtain “Documentation of sensory and peripheral details from the victim’s perspective,” but presumably not from the accused student’s perspective (slide 27).⁸
- More recently the University of Texas at Austin School of Social Work published a Blueprint for Campus Police that promotes the victim-centered concept. The 170-page document argues the complainant should control the pace of the investigation, despite the fact that timely collection of evidence is critical in sexual assault investigations. The Blueprint even delineates a series of recommendations how the investigator can anticipate and counter legal defense strategies (Table 7.4).⁹

In contrast, SAVE recommends a “justice-centered approach.” Under the justice centered model, investigators shall:

- Discharge their duties with objectivity and impartiality.
- Refrain from making assumptions about the guilt or innocence of the accused based solely on the initial interview with the complainant.
- Make reasonable efforts to contact all potential witnesses identified by the investigation.
- Seek to gather all evidence, both inculpatory and exculpatory.

⁷ End Violence Against Women International, Start by Believing (April 2011), available at <http://www.startbybelieving.org/CantReallySayThat.aspx>.

⁸ Margolis Healy & Associates, Title IX Investigations (October 8, 2012), available at <http://www.slideshare.net/margolishealy/mha-title-ix-investigations-2012-legal-issues-in-higher-education>.

⁹ University of Texas at Austin & IDVSA, The Blueprint for Campus Police: Responding to Sexual Assault (2016), available at <http://sites.utexas.edu/idvsa/title-blueprint-for-campus-police-responding-to-sexual-assault/>.

- Make all evidence readily available to the complainant and the accused at the conclusion of the investigation.
- Thoroughly document steps taken at all phases of the investigation.
- Document any medical reports or expert reports provided by the parties.
- Investigators should never serve in conflicting roles for the same case.

In summary, victim-centered investigations replace traditional notions of investigator impartiality and objectivity with a flawed presumption to “always believe the victim.”

Conclusion

Many colleges have embraced both the single-investigator model and victim-centered investigations for sexual assault allegations, an approach that is fundamentally incompatible with rudimentary notions of justice. In the interest of fundamental fairness, SAVE urges the Department of Education to endorse an adjudicatory model over the investigatory model, and a justice-centered approach over a victim-centered approach.

Students accused of a heinous, socially stigmatizing, and potentially career-altering offense deserve nothing less.

Thank you for your kind consideration of these concerns.

Sincerely,

Christopher J. Perry, Esq.

Deputy Executive Director
Stop Abusive and Violent Environments

Henderson, Chelsea

From: Henderson, Chelsea
Sent: Tuesday, July 18, 2017 4:08 PM
To: Faiella, Matt; Reyes, Alejandro; Patel, Shiwali; Wheeler, Joseph; Gettler, Rachel; Battle, Sandra; Yao, Alice; Sherman, Brandon; Wills, Randolph; Karvonides, Mia; Chang, Lisa; Ashley, Carol; Nock, Michael
Cc: Jackson, Candice
Subject: Before tomorrow's 10:00 meeting...
Attachments: Unwanted Advances - Excerpts.pdf; Letter to OCR - 7.18.17.docx

Hello all,

Attached is the summary of a book by Laura Kipnis titled "If this is feminism, it's feminism hijacked by melodrama." Candice discussed this in our meeting this morning and how helpful it has been in reference to the issues we are discussing. I am also leaving two copies of the book on the small table outside of Candice's office. It is imperative that we all read either the summary OR the book, in addition to the word document attached, and the link below before tomorrow's meeting. Thank you to each and every one of you!

[http://www.chronicle.com/blogs/ticker/u-of-central-florida-student-says-he-was-suspended-for-viral-tweet/119377?](http://www.chronicle.com/blogs/ticker/u-of-central-florida-student-says-he-was-suspended-for-viral-tweet/119377?cid=pm&utm_source=pm&utm_medium=en&elqTrackId=7934f7e337944465b019183f1f67a9d0&elq=52a3d33b5ff0420c9503d8e4dbc38c13&elqaid=14779&elqat=1&elqCampaignId=6247)

[cid=pm&utm_source=pm&utm_medium=en&elqTrackId=7934f7e337944465b019183f1f67a9d0&elq=52a3d33b5ff0420c9503d8e4dbc38c13&elqaid=14779&elqat=1&elqCampaignId=6247](http://www.chronicle.com/blogs/ticker/u-of-central-florida-student-says-he-was-suspended-for-viral-tweet/119377?cid=pm&utm_source=pm&utm_medium=en&elqTrackId=7934f7e337944465b019183f1f67a9d0&elq=52a3d33b5ff0420c9503d8e4dbc38c13&elqaid=14779&elqat=1&elqCampaignId=6247)

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June 26, 2017

VIA EMAIL

Candice Jackson
Acting Assistant Secretary for Civil Rights
Deputy Assistant Secretary for Strategic
Operations and Outreach
U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
Washington, D.C. 20202-1100

Re: Families Advocating for Campus Equality
Outreach

Dear Ms. Jackson:

I submit this letter in support of the recent effort by members of Families Advocating for Campus Equality (FACE) to reach out to you to express their concerns about the lack of fairness and due process rights accorded to students (principally male) by college administrators in disciplinary proceedings involving alleged sexual misconduct. My association with FACE is an outgrowth of my firm's nationwide practice of representing and counseling students who have been suspended, expelled from, or otherwise disciplined by their colleges following campus sexual misconduct disciplinary proceedings. My firm has represented nearly 100 students at the college disciplinary proceeding level, as well as in lawsuits in federal and state courts on the basis that the colleges' investigation and adjudication procedures failed to ensure these students fundamental due process rights, discriminated against them on the basis of sex, and breached the school's contractual obligations. We have observed the devastating impact in clients who have been found responsible through these proceedings, including serious emotional and mental health issues such as depression, anxiety, and suicidal ideation, and failed attempts to complete their college educations at transfer schools.

Candace Jackson
June 26, 2017
Page 2

We believe the goals of FACE – achieving equality, fairness, and due process of law in college campus sexual misconduct proceedings, while also effectively addressing the problem of sexual assault on college campuses – are in the best interests of all stakeholders involved in this important issue.

I would be happy to meet with you to discuss our experiences and observations if that would be helpful.

Sincerely yours,

(b)(6)

Patricia M. Hamill

cc: facecampusequality@gmail.com

Families Advocating for Campus Equality

From: Families Advocating for Campus Equality
Sent: Monday, June 26, 2017 8:24 PM
To: Jackson, Candice
Cc: Alison Scott; Cynthia Garrett
Subject: FACE Letter Campaign - Packet 2
Attachments: FACE Named Families (v2).pdf; FACE Unamed Families (v2).pdf

Hi Candice!

After we had talked on Wednesday, in the interest of time I thought it would be best to ask FACE family members to send their letters directly to you.

Packet 2 (attached) continues where Packet 1 leaves off. There are not nearly as many entries , I suspect due to our request to send to you directly. I hope the response you've received to date is what you're looking for.

We are now circling back personally to families, friends, and supporters we have close relationships with and will also send a follow-up email to the larger group. I've heard from a few of our families of their excitement to hear from you. One mom commented she received your call after just one hour of having sent her letter. As you can imagine, it was all the "buzz" and I have no doubt helped inspire others to contact you. Your sincere interest in our families is out of our norm and we are grateful.

We're still working. The press release should be distributed tomorrow or Wednesday, and Cindy is scheduled to be back today.

Talk soon :)
Alison