

Inquiring Minds topic – 26 December 2014

Howard Pachman – Moderator

Tough Questions Raised by Recent High Profile Accounts of Sexual Assault on College Campuses

- Are colleges equipped to handle sexual assaults administratively? Should they be immediately turned over to the police as potentially criminal actions?
- What are the key contributors to the rise in sexual assault on campuses – fraternities, binge drinking, non-parental control, more freedom to report incidents?
- When does consensual sex among young adults become nonconsensual?
- Are we still blaming the victim?
- How can we thoughtfully address a very real campus problem given situations such as the University of Virginia, where Rolling Stone profiled a fraternity as allowing a group assault on its premises -- and then after a firestorm of outrage had to issue an apology as being unverifiable?

Sex crimes on campus

Professors as judges

The folly of letting amateurs handle serious crimes

Dec 6th 2014 | LOS ANGELES | The Economist

THE uproar about sexual assaults on American college campuses is growing louder. Barack Obama has called them “an affront to our basic humanity”. Several universities—including Johns Hopkins, San Diego State, Emory, MIT, Clemson and the University of Virginia—have shut down or suspended parties at their fraternities in recent months. This week Wesleyan University in Connecticut banned a fraternity from holding social events for a year following two allegations of assaults at booze-fuelled revels. Meanwhile, 90 schools in 35 states are under investigation by the federal Department of Education for mishandling cases of sexual violence.

Rape and sexual assault in America have declined sharply since the mid-1990s, to 1.1 per 1,000 women per year (see chart). And students are no more likely to be assaulted than non-students of the same age, according to the Bureau of Justice Statistics (though its numbers are somewhat out of date). Yet activists insist that American campuses—and especially fraternities—nurture a “rape culture”.

They often cite an estimate that one woman in five will be sexually assaulted during her time in college, which comes from a report prepared for the Justice Department in 2007. Skeptics doubt this estimate, noting that it was based on a small sample (an online survey of two universities) and used a broad definition of sexual assault, which included everything from rape to any kind of “unwanted sexual contact”, as well as any encounter where one party was too intoxicated by alcohol or drugs to give informed consent.

Reports of horrific individual cases have brought extra attention to the issue. *Rolling Stone* recently published an account of an alleged gang-rape at the University of Virginia, where a student says she was attacked by seven men while lying on shards of a broken glass-topped table. The magazine appears not to have interviewed the (un-named) alleged perpetrators, so it is unclear how they respond to the charges*.

In 2011 the Department of Education sent colleges a letter warning that if they did not take steps to curtail sexual violence, they could be in violation of Title IX, a federal anti-discrimination law. It urged schools to set up committees to adjudicate complaints of sexual wrongdoing, even of heinous crimes such as rape. These committees often consist of untrained professors, administrators and students. The director of a campus bookstore served on a judgment panel for one college last year.

Under this system, defendants and victims have no right to legal counsel and no opportunity to cross-examine witnesses. Colleges typically determine guilt based on the civil “preponderance of the evidence” standard, meaning it is more likely than not that the perpetrator committed the crime, rather than the far tougher “beyond a reasonable doubt” standard, which is used in criminal courts. Panels cannot jail wrongdoers, but they can expel them.

Students on both sides of the fence have complained that these amateur tribunals are inept. A lawsuit this year alleged that Columbia University unfairly allowed perpetrators to remain on campus. Meanwhile male students at Vassar, Duke, and the University of Michigan have sued their schools, claiming that campus committees found them guilty of sexual misconduct when they were innocent. At Harvard 28 law professors recently criticized the university’s new sexual-assault procedures as lacking “the most basic elements of fairness and due process”.

Critics of the system argue that crimes should be dealt with by the police and the courts. In colleges as in the wider world, most rape victims never report the attack to the police. Studies suggest that the vast majority of campus assaults are committed by a small fraction of college men who tend to rape over and over again. So campuses would be safer if these habitual offenders were swiftly identified and arrested, rather than just expelled—leaving them free to go to another college and rape again.

Other critics think that colleges—and the government—should regulate alcohol more realistically. Binge-drinking is common on campuses, and cited in many complaints of sexual transgressions. But because students under 21 have no legal way to obtain alcohol, they tend to party in places where there is no adult supervision nearby, such as in fraternity houses, which are not technically part of the university. The head of the University of Virginia notes that students at frat parties often have no idea how strong their drinks are. (At some parties, the hosts mix everything up in a trash can.)

The lack of adult supervision has had dire consequences: men in fraternities are three times more likely to rape than other men on campus, according to John Foubert of Oklahoma State University. If the drinking age were lowered, parties could be held on campus and colleges could supervise them better, critics say.

* On December 5th Will Dana, the managing editor of *Rolling Stone*, issued a note to readers saying that the gang rape story they published may have been inaccurate.



Mishandling Rape

By JED RUBENFELD | NOV. 15, 2014 | *The New York Times*

OUR strategy for dealing with rape on college campuses has failed abysmally. Female students are raped in appalling numbers, and their rapists almost invariably go free. Forced by the federal government, colleges have now gotten into the business of conducting rape trials, but they are not competent to handle this job. They are simultaneously failing to punish rapists adequately and branding students sexual assailants when no sexual assault occurred.

We have to transform our approach to campus rape to get at the root problems, which the new college processes ignore and arguably even exacerbate.

How many rapes occur on our campuses is disputed. The best, most carefully controlled study was conducted for the Department of Justice in 2007; it found that about one in 10 undergraduate women had been raped at college.

But because of low arrest and conviction rates, lack of confidentiality, and fear they won't be believed, only a minuscule percentage of college women who are raped — perhaps only 5 percent or less — report the assault to the police. Research suggests that more than 90 percent of campus rapes are committed by a relatively small percentage of college men — possibly as few as 4 percent — who rape repeatedly, averaging six victims each. Yet these serial rapists overwhelmingly remain at large, escaping serious punishment.

Against this background, the federal government in 2011 mandated a ramped-up sexual assault adjudication process at American colleges, presumably believing that campuses could respond more aggressively than the criminal justice system. So now colleges are conducting trials, often presided over by professors and administrators who know little about law or criminal investigations. At one college last year, the director of a campus bookstore served as a panelist. The process is inherently unreliable and error-prone.

At Columbia University and Barnard College, more than 20 students have filed complaints against the school for mishandling and rejecting their sexual assault claims. But at Vassar College, Duke University, The University of Michigan and elsewhere, male students who claim innocence have sued because they were found guilty. Mistaken findings of guilt are a real possibility because the federal government is forcing schools to use a lowered evidentiary standard — the “more likely than not” standard, which is much less exacting than criminal law’s “proof beyond a reasonable doubt” requirement — at their rape trials. At Harvard, 28 law professors recently condemned the university’s new sexual assault procedures for lacking “the most basic elements of fairness and due process” and for being “overwhelmingly stacked against the accused.”

Is the answer, then, as conservatives argue, deregulation — getting the government off the universities’ backs? Is it, as the Harvard law professors suggest, strengthening procedural protections for the accused?

Neither strategy would get to the true problems: rapists going unpunished, the heady mixture of sex and alcohol on college campuses, and the ways in which colleges are expanding the concept of sexual assault to change its basic meaning.

Consider the illogical message many schools are sending their students about drinking and having sex: that intercourse with someone “under the influence” of alcohol is always rape. Typical is this warning on a joint Hampshire, Mount Holyoke and Smith website: “Agreement given while under the influence of alcohol or other drugs is not considered consent”; “if you have not consented to sexual intercourse, it is rape.”

Now consider that one large survey showed that around 40 percent of undergraduates, both men and women, had sex while under the influence of alcohol. Are all these students rape victims? And what if both parties were under the influence? Asked this question, a Duke University dean answered, “Assuming it is a male and female, it is the responsibility in the case of the male to gain consent.” This answer shows more ideology than logic.

In fact, sex with someone under the influence is not automatically rape. That misleading statement misrepresents both the law and universities’ official policies. The general rule is that sex with someone incapacitated by alcohol or other drugs is rape. There is — or at least used to be — a big difference. Incapacitation typically means you no longer know what’s happening around you or can’t manage basic physical activity like walking or standing.

So where is this misleading statement coming from? It’s part of the revolution in sexual attitudes and college sex codes that has taken place over the last 50 years. Not long ago, nonmarital sex on college campuses was flatly suppressed. Sex could be punished with suspension or expulsion. This regime kept universities out of the business of adjudicating rape charges. Rape was a matter for the police, not the university.

Beginning in the late 1960s however, sex on campus increasingly came to be permitted. Only nonconsensual sex was prohibited. The problem then became how to define consent.

According to an idealized concept of sexual autonomy, which has substantial traction on college campuses today, sex is truly and freely chosen only when an individual unambiguously desires it under conditions free of coercive pressures, intoxication and power imbalances. In the most extreme version of this view, many acts of seemingly consensual sex are actually rape. Catharine A. MacKinnon took this position in 1983 when she argued that rape and ordinary sexual intercourse were “difficult to distinguish” under conditions of “male dominance.”

Today’s college sex policies are nowhere near so extreme, but they are motivated by a similar ideal of sexual autonomy. You see this ideal in play when universities tell their female students that if they say yes under the influence of alcohol, it’s still rape. You see it in Duke’s 2009 regulations, under which sex could be deemed coercive if there were “power differentials” between the students, “real or perceived.” You also see it in the new “affirmative” sexual consent standards, like the one recently mandated in California, or in Yale’s new policy, according to which sexual assault includes any sexual contact to which someone has not given “positive,” “specific” and “unambiguous” consent.

Under this definition, a person who voluntarily gets undressed, gets into bed and has sex with someone, without clearly communicating either yes or no, can later say — correctly — that he or she was raped. This is not a law school hypothetical. The unambiguous consent standard requires this conclusion.

Sexual assault may not be perfectly defined even in the law, but that term has always implied involuntary sexual activity. The redefinition of consent changes that. It encourages people to think of themselves as sexual assault victims when there was no assault. People can and frequently do have fully voluntary sex without communicating unambiguously; under the new consent standards, that can be deemed rape if one party later feels aggrieved. It will take only one such case to make the news, with a sympathetic defendant, and years of hard work building sexual assault protections for women on campus will be undermined.

Understanding this effort to redefine sexual assault is crucial from a policy standpoint. The new affirmative consent standards are in part an effort to change the culture of sexual relations on campus. “Talking with sexual partners about desires and limits may seem awkward,” counsels Yale’s official sexual misconduct policy, “but serves as the basis for positive sexual experiences shaped by mutual willingness and respect.” If positive sexual experiences are the goal, perhaps schools should continue what they’re doing. An unambiguous consent standard will be unenforceable, but enforceability need not be the criterion when the goal is cultural change. Sending the right message may be more important. Nor should schools raise the burden of proof or adopt other

due process protections. Those apply when people are accused of crimes — and the new definitions of consent are divorced from criminality.

But if schools are genuinely interested in preventing sexual assault, they need to overhaul how they think about assault and what they do about it. Prevention, rather than adjudication, should be a college's priority.

That means, first of all, we need to stop being so foolish about alcohol on campus. A vast majority of college women's rape claims involve alcohol. Not long ago, 18-year-olds in many states could drink legally. College-sponsored events could openly involve a keg, with security officers on hand to ensure that things didn't get out of hand. Since 1984, when the federal government compelled states to adopt a drinking age of 21, college alcohol policies have been a mockery. Prohibition has driven alcohol into private spaces and house parties, with schools largely turning a blind eye. When those spaces and parties are male-dominated, it's a recipe for sexual predation. Such predation has been documented: Attending fraternity parties makes women measurably more likely to be sexually assaulted.

If colleges are serious about reducing rapes, they need to break the links among alcohol, all-male clubs and campus party life. Ideally, we should lower the drinking age so that staff or security personnel could be present at parties.

In any event, schools need to forcibly channel the alcohol party scene out of all-male clubs and teach students "bystander" prevention — how to intervene when one person appears to be taking sexual advantage of another's extreme intoxication. At the same time, students need to be told clearly that if they are voluntarily under the influence (but not incapacitated), they remain responsible for their sexual choices.

Moreover, sexual assault on campus should mean what it means in the outside world and in courts of law. Otherwise, the concept of sexual assault is trivialized, casting doubt on students courageous enough to report an assault.

The college hearing process could then be integrated with law enforcement. The new university procedures offer college rape victims an appealing alternative to filing a complaint with the police. According to a recent New York Times article, a "great majority" of college students now choose to report incidents of assault to their school, not the police, because of anonymity and other perceived advantages.

But the danger is obvious. University proceedings may be exacerbating the fundamental problem: the fact that almost no college rapists are criminally punished — which they will never be if the crimes are never reported to the police. Nationwide, the Department of Justice states that about 35 percent of rapes and sexual assaults were reported to the police in 2013. That's not enough, but it's a lot better than the 5 percent reported by college women.

Rape on campus is substantially enabled by the fact that rapists almost always get away with their crimes. College punishments — sensitivity training, a one-semester suspension — are slaps on the wrist. Even expulsion is radically deficient. It leaves serial rapists free to rape elsewhere, while their crimes are kept private under confidentiality rules. If college rape trials become a substitute for criminal prosecution, they will paradoxically help rapists avoid the punishment they deserve and require in order for rape to be deterred.

But colleges can't just leave sexual assault victims to the criminal justice system, in part because most victims are so reluctant to report assaults to the police. That is why integrating college rape hearings with law enforcement is critical. New training for the police and prosecutors is essential, too. Special law enforcement liaison officers who know how to respectfully receive and vigorously act on sexual assault complaints should be present in every college town. They should be at every college sexual assault hearing. The rights of the accused have to be protected, but whenever there is evidence of a rape on a college campus, the police need to know.

Everything possible should be done to encourage victims to participate in a criminal investigation; if students make a formal complaint of rape to their school, the college should provide them with a lawyer to go with them to the police, help them report the crime and ensure they are treated properly. Meanwhile, the hearing process should be put in the hands of trained investigatory personnel and people with criminal law experience.

Along with returning the definition of sexual assault on campus to its legal meaning, these changes could better protect the accused and help identify and punish rapists.

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Getting to ‘No’

By [SUSAN DOMINUS](#) | DEC. 11, 2014 | *The New York Times*

The night started, as so many college nights do, with a red cup pressed into a hand. Ubiquitous at tail gates and parties, those bright plastic cups are a harbinger of carnival, of unleashing. The hand around the cup was mine.

I remember many of the details only vaguely, but the cup shines through; I can still taste the sweet-sour drink inside it. No matter how much I sipped — and each sip made the next one easier — the cup remained filled, courtesy of a young man, a fellow college senior, attending to its contents. I liked him, a little; I found his focus — on me — impressive.

I drank from the red cup, and in the next scene from that evening that I can recall, I am on my bed, and he is on top of me. I am resisting, but he is heavy, so heavy, and my limbs so leaden. I am certain he thought he was, as we used to say back then, a totally decent guy. Even now, I can imagine him as someone’s loyal husband, a maker of pancakes, his kids’ soccer coach. But that night I said no, and still he lay there, massive, pleading, sloppy with beer, for what seemed to be hours (but surely was not), until I finally stopped holding him off. Too close to sleep to rouse myself to outrage, I settled for capitulation, then revulsion.

In the past weeks, I have been thinking about that evening, its foggy events summoned by the two dozen or so women who bravely stepped forward to accuse Bill Cosby; by reports of sexual assaults on campuses; by a young woman at Columbia University so furious that she carries around a mattress in protest. All of this has jolted me, and other women, into a moment of openness, an openness that reveals not just a secret, but the secrecy itself. We would have thought ourselves too enlightened, too freed from a legacy of shame, to have hidden those complicated stories all these years. But some of us did. A woman I know recently told me about a sexual assault she endured in college; it was the first time she had spoken of it, she said, in 20 years, including many in therapy. I had never told anyone — not my husband, not my best friend and roommate at the time — about that particular night in college.

I have found myself having conversations with friends and female acquaintances and women I know only online, some of whom were painfully re-evaluating past experiences as sexual assault. But many conversations were attempts to make sense of encounters that fell, in our own minds, into some murky realm. There was no roofie, no preplanned assault, nor, in some instances, were there protestations — but those encounters were upsetting nonetheless. One friend described a sexual experience, at 19, with a friend’s much older brother: “In my head, I was trying to think of ways to get him to stop, and I couldn’t, so I just lay there, paralyzed.”

By the legal definition, what happened the night of the red cup was sexual assault: I said no. He pressured me, until, under the influence, I stopped resisting. I can imagine other young women in similar situations justifiably going to their universities or pressing charges. But in the disgusted days that followed my own encounter,

though I was angry, I did not consider myself the victim of an attack. If I had been afraid of anything, it was only of some deeply awkward moment. I did not have it in me to make a scene.

In 1993, one year after I graduated from college, Katie Roiphe published an incendiary op-ed in *The New York Times* called "[Date Rape's Other Victim](#)," in which she suggested that the issue of sexual assault on campus was overblown, that some feminists were casting women as passive victims in need of protection. She offered one way I could look at what happened to me that evening: "There is a gray area in which one person's rape may be another's bad night," she wrote. I was no ingénue, and had had "bad nights"; and yet the night of the red cup stood out as something significantly more troubling than that.

The language we use for a given experience inevitably defines how we feel about it. I could not land on language that felt right — to me — about that encounter. I still cannot.

Struggling to find language to define that experience after the fact left me longing for more words that could have been used in the moment. What I wish I had had that night was a linguistic rip cord, something without the mundane familiarity of "no" or the intensity demanded in "Get off or I'll scream."

"No" and "stop" — of course, they should be said and respected. But several women who told me they felt their consent was ambiguous said that in the moment, they froze, and language eluded them altogether: They said nothing. Because those words are inherently confrontational, they can require a degree of strength that someone who is feeling pressured or confused or is just losing her nerve or changing her mind might not have.

What if every kid on every college campus was given new language — a phrase whose meaning could not be mistaken, that signaled peril for both sides, that might be more easily uttered?

One phrase that might work is "red zone" — as in, "Hey, we're in a red zone," or "This is starting to feel too red zone." Descriptive and matter-of-fact, it would not implicitly assign aggressor and victim, but would flatly convey that danger — emotional, possibly legal — lay ahead. Such a phrase could serve as a linguistic proxy for confronting or demanding, both options that can seem impossible in the moment. "We're in a red zone" — the person who utters that is not a supplicant ("Please stop"); or an accuser ("I told you to stop!"). Many young women are uncomfortable in either of those roles; I know I was.

In an ideal world, clear consent will always precede sex, and young women (and men) who do find themselves in a tricky situation will express their discomfort firmly. But in the imperfect world in which we live, new language — if not red zone, then some other phrase that could take off with the universality of slang — might fill a silence.

Quite possibly no language would have worked for me that night: most men who do not heed no are not going to heed "red zone" either. But if such a phrase had existed, I think I would have reached for it: a quick, unemotional way to telegraph how deeply uncomfortable I was, without having to explain to someone I barely knew just how deeply uncomfortable I was. It is hard to talk about sex under the best of circumstances. I could not rise to the challenge of confrontation, much less frank talk, which required an intimacy that he and I did not share and that I had no interest in.

In the days following that encounter, I avoided calls from the guy, who so clearly misunderstood the situation that he thought he was courting me; there may have been flowers, but not to apologize. I considered him someone between a brute and an oaf, my own experience falling somewhere between assault and just a bad night. I never felt I was a victim; looking back, I was an English major for whom language failed at a moment when I needed it most.

Susan Dominus is a staff writer for the magazine. *A version of this article appears in print on December 14, 2014, on page MM21 of the Sunday Magazine with the headline: About That Night.*



CONSENT is key to healthy sexuality, and it is each person's responsibility to be sure they obtain consent before initiating any sexual activity. It is important to know that all involved feel safe and comfortable with each and every action.

Getting consent enhances sexual experiences.

Communicating with partners to make sure they consent to sexual activity:

- Takes the guess-work out of sex
- Let's you know that the sexual encounter is desired
- Can lead to feeling more comfortable
- Can create a feeling of safety
- Can create an environment free from pressure, intimidation or fear
- Shows respect
- Offers the opportunity to express personal values and to acknowledge, respect, and accept the values of our partners
- Promotes increased communication regarding STI prevention and preventing unintended pregnancy

... and all of these factors can lead to more enjoyment from sex and to healthier relationships.

Asking for CONSENT might take practice. Here are some suggestions for ways to ask:

- Is this okay?
- Is there anything you don't want to do?
- Does this feel okay?
- Is it okay if I take off my shirt/top/pants?
- Is it okay if I take off your shirt/top/pants/etc.?
- Do you want to go further?
- Please tell me what you like.
- Please let me know if you want me to stop at any time.
- Please let me know if you feel uncomfortable and I'll stop.
- Do you want to make-out? Have sex? Kiss?

CONSENT NEEDS TO BE INFORMED, VOLUNTARY & FREELY GIVEN, SOBER, ENTHUSIASTIC, AND MUTUAL.

How do you know you have CONSENT?

- There must be a "yes" in order for any sexual activity to take place, not the absence of a "no".
- No means no. Nothing also means no.
- Absence of clear signals means the absence of consent. If in doubt, ask.
- Consent is on-going. Giving consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Consent requires that the person initiating the sexual activity get permission to do so.
- Consent occurs when individuals decide together to engage in mutually agreed upon sexual activity.
- Consent involves respecting one's partners' boundaries and accepting times when they are not interested in engaging in sexual activity.
- Consent cannot be obtained through the use of physical force, threats, intimidation or coercion.
- The person initiating sexual activity can be held responsible for a sexual assault, even if under the influence of alcohol or other drugs. Being intoxicated is not an excuse for engaging in sexual activity without consent.
- If the person who is not initiating sexual contact is under the influence of alcohol or other drugs, that person is considered unable to give consent.



STOP if you do not have informed, voluntary, freely given, sober consent.



GET CLARIFICATION if you are unsure you have consent.



GO IF YOU HAVE INFORMED, VOLUNTARY & FREELY GIVEN, SOBER, ENTHUSIASTIC, AND MUTUAL CONSENT.

INITIATING SEXUAL ACTIVITY WITHOUT FIRST OBTAINING CONSENT IS A CRIME AND A VIOLATION OF THE CODE OF STUDENT CONDUCT.

SEXUAL OFFENSES occur when individual(s) engage in sexual behavior without consent.

RAPE is: Sexual intercourse without consent.

SEXUAL ASSAULT is: Sexual activity, including rape, without consent.