

# WLJ

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Selma Moidel Smith Law Student Writing Award Winner:

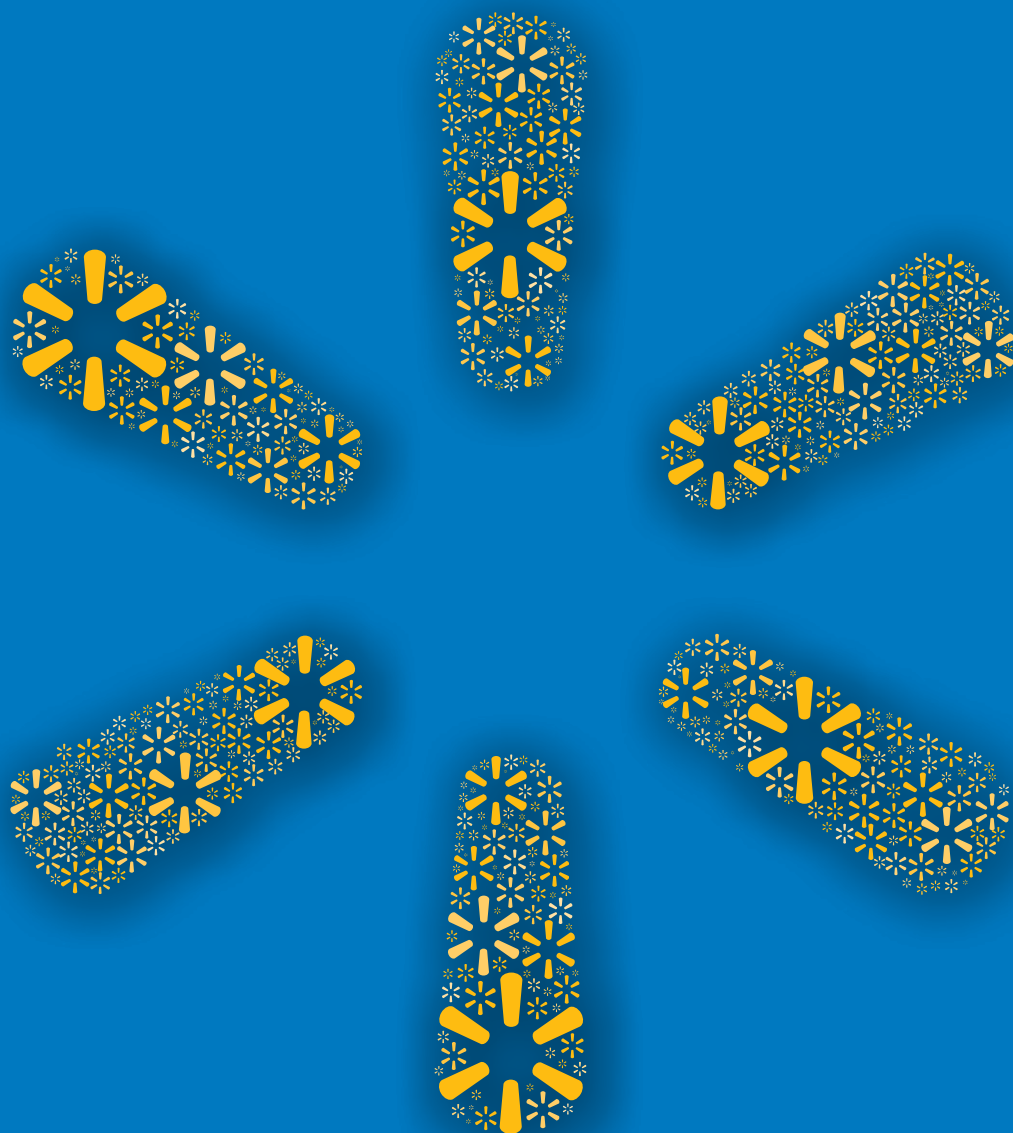
## The decriminalization of rape on America's college campuses

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Deborah S. Froling officially passed the torch to Lisa M. Passante, who will serve as NAWL's 2014-2015 president. At the luncheon, awards also were presented to Kim M. Keenan, general counsel and secretary of the NAACP; Robert J. Grey Jr., partner with Hunton & Williams LLP; Kathryn H. Ruemmler, partner with Latham & Watkins in the Litigation Department; Honeywell; and Anita F. Hill, senior adviser to the provost and professor of Social Policy, Law and Women's Studies at Heller Graduate School of Policy and Management, Brandeis University.

Additionally, Outstanding Member awards were presented to Lauri A. Damrell who practices with Orrick, Herrington & Sutcliffe LLP's Employment Law Group; Babette V.E. Orenstein is a senior attorney with the Consolidated Edison Company of New York; and Lesley R. Weber (1975-2013), a dedicated and respected in-house counsel with Allstate Insurance Co.

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In 2006, the National Association of Women Lawyers issued the NAWL Challenge to increase to at least 30 percent the number of women equity partners, women chief legal officers and women tenured law professors. While the profession has made strides in two of the areas, the number of women equity partners remains relatively stagnant. The NAWL Challenge Club is for those law firms and corporate legal departments committed to increasing the number of women equity partners in law firms.

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# NAWL Challenge Club



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## About NAWL

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By joining NAWL, you join women throughout the United States and overseas to advocate for women in the legal profession and women's rights. We boast a history of more than 100 years of action on behalf of women lawyers. For more information about membership and the work of NAWL, visit [www.nawl.org](http://www.nawl.org).

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## Are we obligated to help others climb the proverbial ladder?

*There is strong evidence that companies with greater diversity in the boardroom have less stock volatility and more stable profits.*

**By Jennifer M. Guenther**

**Finding qualified candidates and talented individuals, no matter what their background, is always good for the overall success of any business.**



Jennifer M. Guenther is general counsel/director for FCS International Inc., a company that works with clients to improve profitability through sustainability consulting and energy and environmental data management solutions. An experienced land use and environmental attorney in controversial environmental, development and litigation matters, she has appeared before local, state and federal agencies, as well as the California Court of Appeals. She can be reached at [jguenther@fcs-intl.com](mailto:jguenther@fcs-intl.com).

IT WAS NOT SO LONG AGO that the great debate a woman entering the legal profession had to face was career or family – the question of whether a woman could have both a successful career and, well, a life outside of work that involved more than a cat. As the majority of households became dual-income-households, that debate began to shift – focusing more on how to achieve a work-life balance.

In 2013, the Pew Research Center released a study finding that four in 10 U.S. households with children under 18 now have a woman as the sole or primary earner as head of household. Women are now entering a work force where it is the norm for the woman to be the sole or primary breadwinner.

Thus, another shift in the debate: As women achieve success in their careers, are they obligated to assist others in their ascent up the proverbial ladder? Madeleine Albright once said, “There is a special place in hell for women who don’t help other women.” But what if helping other women injures one’s own professional development?

The Wall Street Journal featured a study conducted by researchers at the University of Colorado that found that women and minorities who promoted other women and minorities in the workplace were seen as less effective and less competent in their roles.

This study raises the deeper question. Why do these biases occur? Is it because the study was somehow biased in its analysis? After all, studies on social behavior are nearly impossible to make completely neutral. Any data

provided or created by humans will have the biases of the individual built into it.

Is it because when a lone woman sits on a board, it can be seen from different biased points of view: She either represents the “token woman” to meet a quota, or she represents the “exception to the rule.” If it is the former, it is unlikely that a “token” would have the power or authority to promote another individual – especially one who is perceived on any level as less qualified. If the bias comes from the latter, the question becomes “How many ‘exceptions to the rule’ can there be?”

Or is it that diversity is becoming the new “four-letter word,” joining the long list of other words such as “feminist” or “liberal”?

The promotion of diverse candidates, whether from different genders, race, religions or cultural backgrounds has a profound effect in the workplace. There is strong evidence that companies with greater diversity in the boardroom have less stock volatility and more stable profits. Adding creativity and different perspectives to business decisions can lead to healthier debate and ultimately better decision-making. Access to resources and connections that may otherwise be unavailable is also an added benefit of promoting and retaining women and minorities. Finding qualified candidates and talented individuals, no matter what their background, is always good for the overall success of any business. Perhaps then, the question isn’t the qualifications of the individuals, but the ability of the reviewer in overcoming his or her own personal biases.

Laurel Thatcher Ulrich once said “Well-behaved women seldom make history.” If diversity is to become the new four-letter word, then it is incumbent upon us all to do a little bit of swearing.





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## Great opportunities for all in the coming year

*Join a long line of women and men who will not stop until we have reached true parity in our profession.*

**By Lisa M. Passante**

**The NAWL Challenge Club will put theory into action by providing a very concrete opportunity for women equity-partner candidates and forward-thinking corporate legal departments to interact.**

IT'S THE BEGINNING OF A NEW YEAR for NAWL — and we are off and running! The Annual Meeting and Awards Luncheon in July was once again an inspiring event with a full day of great presentations, a packed ballroom for the luncheon and stirring speeches from our awardees. We ended the day on a great note with a Night of Giving benefitting Legal Momentum, which has been fighting for the legal rights of women through the courts, legislation and education for 45 years.

I also am extremely excited about the new initiative announced at the Awards Luncheon by NAWL Treasurer Angela Brandt of Larson King and Alan Bryant of WalMart Legal — the NAWL Challenge Club. The Club will put theory into action by providing a very concrete opportunity for women equity partner candidates and forward-thinking corporate legal departments to interact. We've had tremendous interest from both the law firm and corporate side — so as you read this, if your organization has not signed up, please check out the details on our website.

We are also looking forward to our 10th Annual General Counsel Institute in November. Once again, women in-house lawyers from around the country will have the opportunity to network, attend substantive

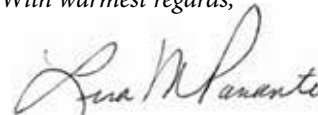
presentations and be inspired by keynotes from some of the most well-known general counsel and thought leaders in our profession. This event, which I chaired five years ago, is particularly near and dear to my heart. It is an exceptionally collegial gathering with many repeat attendees. If you are an in-house lawyer and haven't attended, I highly recommend it.

And that is just for 2014! We have exciting plans for 2015 — our Mid-Year Meeting in Chicago, a Pathway to Equity Partnership ("P2P") program in San Francisco, a "boot camp" for women's initiatives at West Point, and a Regional General Counsel Institute in the Minneapolis-St. Paul area. In addition we'll have our virtual book club, webinars and more. Stay tuned to the website and e-blasts for details.

I hope that after reading this edition of the Women Lawyers Journal, you will be inspired to become even more involved with NAWL. Attending our programs is certainly a fun way to do that, but don't forget about our committees either. We have a wide variety of options available, and it is a great opportunity to get to know women lawyers from all over the country.

Most importantly, by joining NAWL, you will be joining a very long, 115-year-old line of women and men who will not stop until we have reached true parity in our profession. So be a part of history and join us!

*With warmest regards,*



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Lisa M. Passante is vice-president and associate general counsel at Thomson Reuters, where she serves as the senior U.S.-based legal adviser to the Intellectual Property & Science business unit. She can be reached at [lisa.passante@thomsonreuters.com](mailto:lisa.passante@thomsonreuters.com).

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# *The decriminalization of rape on America's college campuses*

**How federal sex discrimination policy has  
diminished the role of the criminal justice  
system in combatting sexual violence.**

**By Danielle Elizabeth DeBold, J.D.  
May 2014, New York University School of Law**



Selma Moidel Smith, in whose honor the competition is named, has been an active member of NAWL since 1944. Smith is the author of NAWL's Centennial History (1999), and recently received NAWL's Lifetime of Service Award. In the ABA Senior Lawyers Division, Selma was appointed the chair of the Editorial Board of Experience magazine (the first woman to hold that position) and was elected to the governing council for four years, also serving as chair of several committees and as NAWL's Liaison to the Division. Selma is a member of the board of directors of the California Supreme Court Historical Society and is publications chair and editor-in-chief of the Society's annual journal, California Legal History.



On Jan. 22, 2014, President Obama announced the creation of a new federal task force, The White House Task Force to Protect Students from Sexual Assault (“Task Force”).<sup>1</sup> The Task Force was created in the midst of public outcry about colleges inadequately responding to campus sexual assaults and the Department of Education (“DOE”) insufficiently enforcing federal law.<sup>2</sup> The Task Force is seeking to address these problems in part by building on existing enforcement efforts, addressing compliance issues and providing institutions with additional tools to respond to sexual assaults.<sup>3</sup>

These goals are crucial given the prevalence of sexual assault on college campuses: It is estimated that between 20 and 25 percent of college women will be victims of sexual assault or attempted sexual assault before graduating.<sup>4</sup> For many college students, the pervasiveness of sexual assault has been further exacerbated by institutional apathy and incompetence. The overwhelming extent of this problem has become glaringly obvious, as more and more students file complaints with the DOE alleging that their college failed to provide them with the proper investigation, process and remedies in the aftermath of a sexual assault. In 2013 alone, complaints were filed against dozens of colleges,<sup>5</sup> accusing them of improperly responding to sexual assaults and violating federal law in the process.<sup>6</sup>

While it is clear that the federal government needs to do more to prevent the sexual assault of college students and to hold universities accountable, it is not so clear that better enforcement of existing standards alone is the solution.<sup>7</sup> Under federal law, *Title IX* places a duty on colleges to respond to sexual violence that occurs on their campuses. The Office for Civil Rights (“OCR”) of the DOE has elaborated on this duty by issuing policy guidance letters to clarify what this duty requires universities to do when an alleged sexual assault occurs.<sup>8</sup> The current policies, however, tend to place a broad obligation on colleges to alleviate the hostile environment created by sexual assaults on their campus, while granting them great discretion to choose the appropriate means by which this is done. Most importantly, the current policy guidelines do not require universities to report sexual assaults to local police or to investigate sexual assaults in coordination with local law enforcement. Rather, the current policies let universities deal with sexual assaults internally—allowing them to establish their own investigations and procedures—without the oversight, assistance or involvement of outside law enforcement agencies.

This paper will argue that better enforcement of current policies is insufficient to fix the sexual assault epidemic on college campuses. Part I will describe the current state of sexual assault investigations under *Title IX*. It will elaborate on how federal law has failed to secure coordination between universities and law enforcement agencies. It will also discuss the adequacy of mechanisms that have been employed by universities, states and victims to fill in the gaps. Part II will discuss problems with the current system whereby universities are allowed to investigate sexual assaults internally



Danielle Elizabeth DeBold graduated from NYU School of Law, cum laude, in May 2014. DeBold received her B.A. from the University of Texas at Austin in 2010. While at NYU School of Law, DeBold studied women’s rights and international law. She was also an active participant in the Reproductive Justice Clinic, for which she received the Ann Petluck Memorial Prize for excellence in a clinical program. The winning paper published on the following pages is an adaptation of a paper DeBold submitted for NYU School of Law’s seminar on Sex Discrimination. The original paper was drafted under the direction of Deborah Ellis. DeBold would like to thank Ellis for encouraging her to explore this topic and for her feedback and recommendations along the way. DeBold would also like to thank Sarah Burns and Avram Frey whose work through the Carr Center for Reproductive Justice has helped inspire DeBold to undertake a career as an advocate for gender equality.

## When a college student is sexually assaulted, she should not be treated as if her assault is a mere institutional matter of gender discrimination

without oversight, particularly emphasizing concerns posed by lack of resources, conflicts of interest and decriminalization. Part III will provide recommendations for solving these problems, with the goals of reinforcing the role of the criminal justice system and carving back on university discretion in favor of policies that establish firmer requirements and ensure more accountability. In particular, it will argue that these goals can be achieved in part by (1) establishing mandatory reporting requirements that obligate universities to contact local law enforcement agencies when an alleged sexual assault is reported and (2) mandating that universities partake in joint investigations with local law enforcement agencies in the aftermath of a sexual assault.

### **I. The law: How federal policy has diminished the role of the criminal justice system in combatting sexual violence on college campuses.**

While sexual assault has been treated as a criminal offense for centuries,<sup>9</sup> it has also more recently begun to be treated as an issue of sex discrimination. This is particularly true in the context of sexual assaults on college campuses. Under *Title IX*, sexual assault is classified as a form of sex discrimination that universities are obligated to prevent, investigate and remedy.<sup>10</sup>

Although historically sexual offenses have fallen solely within the jurisdiction of the criminal justice system, *Title IX* has diffused responsibility for sexual violence on college campuses by opening up an alternative avenue through the university system. This has led to the creation of a dual jurisdiction regime whereby both the university and the criminal justice system have overlapping jurisdiction to investigate alleged assaults and provide an adjudicative process. Theoretically, this system of “dual jurisdiction” should provide victims with the ability to pursue charges against perpetrators through the criminal justice system while also ensuring that their university takes disciplinary and remedial measures. In practice, however, the university process has served as a replacement to the criminal justice system, instead of as an alternative or supplement to it.

This is partly due to the way *Title IX* regulates sexual assaults on college campuses. *Title IX* is a federal anti-discrimination statute<sup>11</sup> that prohibits discrimination on the basis of sex in educational programs receiving federal funding under *Title IV*.<sup>12</sup> This prohibition against sex discrimination requires colleges to respond to sexual violence—including rape, sexual assault, sexual

battery and sexual coercion—on their campuses.<sup>13</sup> If an educational institution is aware or should reasonably have been aware of a sexual assault that creates a hostile environment,<sup>14</sup> the institution has a duty to take action to eliminate the harassment, to prevent future occurrences and to provide remedies and assistance to victims.<sup>15</sup>

The OCR of the DOE has released various policy guidance letters to provide more concrete directions for how universities can comply with *Title IX*. In particular, the DOE released an important policy guidance letter in 2011, the Dear Colleague Letter (“DCL”).<sup>16</sup> The DCL primarily stipulates that colleges are required to (1) adopt and publish a notice of nondiscrimination that prohibits sexual violence; (2) appoint a *Title IX* coordinator to oversee investigations and complaints that are filed with the school; and (3) provide a prompt and equitable grievance procedure when a complaint is filed.<sup>17</sup>

While the DCL outlines requirements imposed on colleges, it tends to focus on the disciplinary and remedial processes that universities must provide. It sets forth minimal guidelines for how universities should investigate sexual assaults, granting universities significant discretion to establish and implement procedures that comply with *Title IX*. In particular, the DCL maintains that the investigation, proceedings, time frame and process “will vary in detail, specificity and components, reflecting differences in the age of students, school sizes and administrative structures, State or local legal requirements and past experiences.”<sup>18</sup>

Noticeably absent from the DCL’s policy guidelines are any sort of concrete directions for how universities should implement sexual assault investigations in light of the dual jurisdiction regime. The DOE has not established guidelines for how university officials and outside law enforcement agencies should coordinate and align their independent duties to exercise jurisdiction over sexual assault cases. Although the DOE has specifically stated that it is not the job of university personnel to take on the role of law enforcement,<sup>19</sup> the DOE has not required universities to contact law enforcement when a sexual assault is reported. The only affirmative reporting requirement that the DOE places on universities is the mandate that universities contact law enforcement annually to receive crime statistics for an Annual Security Report.<sup>20</sup>

Because there is no federal reporting requirement, the criminal justice system usually will become involved in a campus sexual assault only if: (1) the university has entered into a voluntary memorandum of understanding



with local law enforcement; (2) state law mandates reporting and joint investigations; or (3) a victim chooses to contact law enforcement at her own discretion.

Despite the fact that federal law does not require universities to enter into cooperative agreements with local law enforcement agencies, some colleges do enter into voluntary memorandums of understanding.<sup>21</sup> Memorandums of understanding and similar protocol are often used to facilitate a coordinated response when a sexual assault is reported. Such protocol may differ in formality and in context, but they often cover reporting procedures, investigative responsibility, information and resource sharing.<sup>22</sup>

Although memorandums of understanding are often helpful because they establish a cooperative standardized investigative process, not all protocols are created equal. While protocols may send a message that sexual assault is a serious crime,<sup>23</sup> some protocols do not go far enough to ensure that local law enforcement will play a role in

investigating campus sexual assaults. Indeed, just because a university develops a protocol to coordinate with outside law enforcement agencies, it does not necessarily mean that the protocol sufficiently secures an investigatory role for law enforcement agencies. Such protocol may in fact be used to diminish the role of law enforcement in

sexual assault investigations. For example, while some institutions have adopted memorandums of understanding that delegate primary responsibility for investigating forcible rapes to outside law enforcement agencies, the institutions have specifically cut law enforcement agencies out of the investigations of acquaintance rapes.<sup>24</sup> This type of arrangement is questionable, given that it allows universities to retain authority over the investigations of acquaintance rapes—the most common form of rape on college campuses.<sup>25</sup>

While the nature and substance of such arrangements are indeed discretionary, it is important to note that these arrangements are secondary to a university's *Title*

The DOE has not established guidelines for how university officials and outside law enforcement agencies should coordinate and align their independent duties to exercise jurisdiction over sexual assault cases.



## The university process has served as a replacement to the criminal justice system, instead of as an alternative or supplement to it

*IX* duties. In circumstances where cooperation with law enforcement may somehow inhibit or delay the university's ability to respond to the sexual assault, the DOE requires colleges to move forward with the process independently. This is true regardless of whether doing so will undermine a prior arrangement that the university has with outside law enforcement.<sup>26</sup>

Some states have also adopted laws requiring greater coordination between local law enforcement agencies and universities. South Carolina and Tennessee are two states that have adopted legislation that requires universities to immediately notify outside law enforcement agencies and to participate in a joint investigation—with campus police leading the investigation—when a university receives a report that an alleged sexual assault has occurred.<sup>27</sup>

Although both of these laws seek to achieve greater coordination between campus personnel and local law enforcement, in practice they have not achieved the goal of securing joint investigations. This is partly due to the fact that the laws mandate that the university shall lead the investigation, not local law enforcement. These laws allow universities to maintain control over sexual assault investigations by placing law enforcement agencies in a secondary, supplementary role.<sup>28</sup> Some states lawmakers have attempted to adopt laws that are not susceptible to

agencies.<sup>31</sup> Campus personnel, in turn, funnel complaints to college administrators.<sup>32</sup> This fact alone means that many serious offenses often do not reach outside law enforcement agencies because they are reported to college administrators who choose to deal with them internally.<sup>33</sup>

Nonetheless, federal law does require universities to inform victims of their rights to contact outside law enforcement and to press criminal charges.<sup>34</sup> Although federal policy mandates that colleges are generally required to cooperate with a victim's decision to pursue criminal charges, there have been various instances where campus personnel have discouraged victims from pursuing remedies through the criminal justice system by presenting the university disciplinary process as a less intrusive mechanism.<sup>35</sup> A victim's decision to contact outside law enforcement often will be affected by her institution's initial treatment of her assault. If the institution does not treat the assault seriously or does not investigate and gather evidence that could help the victim corroborate her claim, she may be deterred from pursuing criminal charges. Finally, while victims retain the right to reach out to the criminal justice system, this right often is not substantiated by any form of coordinated process. The lack of information sharing and joint investigations between the university and local police can frustrate the ability for law enforcement agencies to take meaningful action on behalf of the victim.

In sum, while these mechanisms—memorandums of understanding, state laws and victim self-reporting—may go further than federal policy by ensuring that the criminal justice system is alerted of a sexual assault when it occurs, these mechanisms often fail to secure meaningful joint investigations between law enforcement agencies and universities. In some cases it is the absence of protocol that may cause this

issue, in other cases it is the law or the protocol used that is problematic. Either way, it is clear that these mechanisms alone have not adequately preserved the investigatory role of the criminal justice system.

### **II. The problem: Why universities should not be delegated the sole responsibility for responding to sexual violence on college campuses.**

Although it is true that universities now play the dominant role in handling the sexual assaults of college students,

The lack of information sharing and joint investigations between the university and local police can frustrate the ability for law enforcement agencies to take meaningful action on behalf of the victim.

this flaw—thereby requiring local law enforcement to lead the investigation in sexual assault cases—but have failed to get such a requirement enacted into law.<sup>29</sup>

In situations where universities do not contact local law enforcement pursuant to a memorandum of understanding or an obligation under state law, victims still have the ability to contact outside law enforcement of their own accord. Even so, the victims that do come forward<sup>30</sup> most often report their sexual assault to campus personnel—such as resident assistants, psychologists or campus security officers—and not to law enforcement

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## A victim's decision to contact outside law enforcement often will be affected by her institution's initial treatment of her assault

this would not be problematic per se if universities served as a sufficient substitute. Unfortunately, there are many concerns about the effectiveness and implementation of the university remedial process.<sup>36</sup> While it is true that universities may be in a better place to provide certain victim services—such as counseling, housing relocation and educational programs<sup>37</sup>—that does not mean that universities have the capability, resources, or incentives to take on the role of the criminal justice system in investigating instances of sexual violence. This is particularly true in circumstances where universities do not have the resources or training to handle sexual assaults internally, but it is also true more generally given that conflicting interests often lead universities to insufficiently investigate sexual assaults despite their

capacity to do so. Regardless of the sufficiency of the university investigation, letting universities partake in this process alone has been viewed as inherently problematic because it deemphasizes the criminal nature of sexual assault and diminishes the role of the criminal justice system in combatting sexual violence. These issues are considered in turn.

First, federal policy does not require universities with limited investigatory capabilities to enter into cooperative agreements with outside law enforcement. While federal policy creates an obligation that universities must do *something*, it gives them the discretion to choose what means are appropriate even when the university does not have the resources or capability to provide victims with a fair and proper investigation. Because institutions

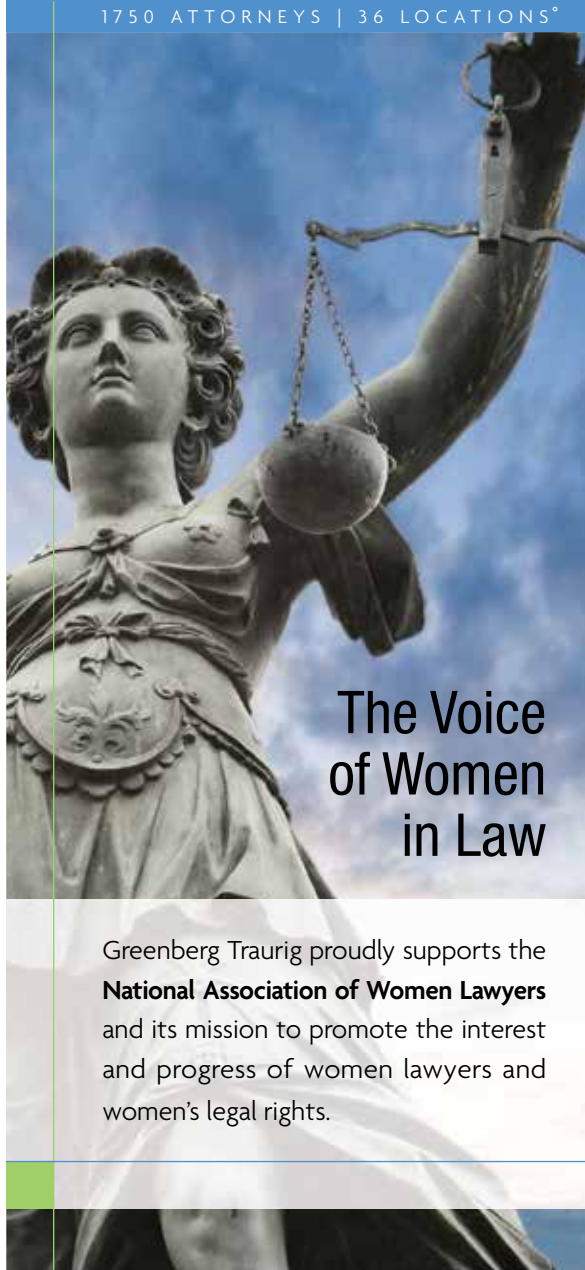


may not have properly trained personnel or the resources to respond to sexual assaults,<sup>38</sup> it may be crucial for universities to rely on external organizations and outside law enforcement to conduct a sufficient investigation. Indeed, universities that do not have the capacity to deal with sexual assaults internally will often form cooperative arrangements with outside law enforcement.

Unfortunately, not all universities who lack the resources to handle a sexual assault investigation form cooperative agreements with law enforcement. In fact, many simply refuse to sacrifice control over the matter. Some universities see themselves as an “island” separate from the rest of the community, believing that they have the right and obligation to handle matters of student misbehavior independently.<sup>39</sup> Universities that have adopted this attitude tend to be the most problematic because they fail to establish relationships with community organizations that could supplement their own resources and they frequently refuse to ask outside law enforcement for assistance in investigating student misbehavior, even when such misbehavior constitutes a criminal offense.<sup>40</sup> Accordingly, victims who attend universities with such predisposition are likely to suffer from insufficiently conducted investigations, making it more difficult for them to press criminal charges or to make a case before a university disciplinary board.<sup>41</sup>

Second, even when universities do have the proper resources and training to investigate campus sexual assaults, federal policy willingly promotes a university-led process that is not subject to sufficient scrutiny or regulation and is, in turn, highly susceptible to abuse.<sup>42</sup> The internal nature of investigations and the total control of college administrators over them deeply compromise the effectiveness of the university response. Even where campus personnel are trained, they may hesitate to take meaningful action where doing so would conflict with the interests of the institution. This is made possible by the fact that the university response is not subject to any sort of checks and balances or oversight by actors outside of the institutional structure.<sup>43</sup>

As a practical matter, when a victim files a sexual assault complaint with her university, the investigation of her assault will be in the hands of a powerful institution that has its own priorities. Because preventing and remedying the assault of young women is not a major priority for these institutions, universities will often fail



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## The university process is not subject to any sort of checks and balances or oversight by actors outside of the institutional structure

to protect victims and provide them with a fair process when doing so would conflict with other institutional interests. Countless reports of universities “mishandling” sexual assault cases suggest that this conflict of interest is not the extreme, but is the norm.<sup>44</sup> Indeed, it seems rational a college will be inclined to “sweep cases under the rug” when it fears that negative publicity will affect future enrollment, fundraising efforts, alumni support and the overall reputation of the institution.<sup>45</sup> In some cases, when complaints are launched against prominent individuals on campus—such as star athletes—there may be even less incentive to seriously investigate if it would result in a finding that the accused was responsible.<sup>46</sup> This type of institutional conflict cannot be easily overcome by increasing the resources and training of campus personnel; it requires enforcing policies that carve back on the internal nature of the university process and

employ sworn officers that are part of the civil system.<sup>48</sup> In such circumstances, law enforcement agencies have become frustrated with universities, believing that they protect students from the consequences of their actions by sheltering them from legal culpability.<sup>49</sup>

Lack of cooperation also has made it more difficult for law enforcement agencies to deal with sexual violence effectively within their respective jurisdictions. Some law enforcement agencies have criticized universities by suggesting that the lack of information sharing between universities and law enforcement agencies has only intensified the problem of sexual assault on college campuses.<sup>50</sup> Because of the amount of discretion given to campus police, combined with the confidential and secretive environment in which universities investigate sexual assaults, it is often very difficult for outside law enforcement authorities both to know about the extent

of a sexual assault problem at a given university as well as to understand whether the university is appropriately responding to it.<sup>51</sup>

Studies have indicated that, when law enforcement agencies and university personnel collaborate, it increases the likelihood that sexual assaults incidents will be more fully investigated.<sup>52</sup> Unfortunately, current federal policy permits universities to

Current federal policy permits universities to take jurisdiction over sexual assault crimes, downgrade them to conduct issues, and dispose of them through a process that is almost entirely within the control of the university.

mandating ongoing oversight of the investigative process by actors outside of the university system.

Finally, and perhaps most notably, federal law has allowed the university process to trump the criminal justice system. Critics have ridiculed the fact that federal policy treats sex discrimination and sexual violence interchangeably under *Title IX*.<sup>47</sup> Federal policy has essentially gutted the dual jurisdiction regime by allowing crimes of sexual violence on college campuses to be converted into the sole problem of educational institutions. This has greatly diminished the role of the criminal justice system and led to conflicts between law enforcement and universities, instead of mutual cooperation.

While it is true that some universities have developed strong relationships with law enforcement agencies, it is not uncommon for universities to butt heads with local police about how to handle crime on their campuses. This is especially common with private universities that do not

take jurisdiction over sexual assault crimes, downgrade them to conduct issues and dispose of them through a process that is almost entirely within the control of the university. At its worst, federal policy has thus both redefined sexual assault—transforming it from a state criminal law issue into a federal sex discrimination issue—and fostered a radical administrative intrusion into the sphere of the criminal justice system<sup>53</sup> that has castrated local law enforcement agencies and has led to a systematic “decriminalization” of rape.

Ultimately, while the importance of *Title IX* should not be dismissed, it cannot be treated as a mandate that the sexual assaults of college students be converted into the problem of educational institutions. Doing so has led college administrators to downplay the seriousness of sexual violence on campuses<sup>54</sup> and has further aggravated its prevalence. The frivolous treatment of sexual violence not only fails to deter perpetrators from



becoming repeat offenders but it also fosters the ability of perpetrators to continue assaulting.<sup>55</sup> In this way, federal policy has harmed the victims it seeks to protect. Until federal policy requires universities to work in cooperation with local law enforcement, the benefits of dual jurisdiction will remain unrealized.

**III. The recommendation: Better coordination between universities and law enforcement agencies can help fix the sexual assault problem on college campuses.**

In light of these problems, it is clear that the federal government needs to reevaluate its current sexual assault

The frivolous treatment of sexual violence both fails to deter perpetrators from becoming repeat offenders and also fosters the ability of perpetrators to continue assaulting.<sup>55</sup>

it will better promote dual jurisdiction by ensuring that the university process does not replace, but only supplements, the criminal process; it will contribute to better investigative processes and preservation of

policy. In doing so, the federal government should seek to ensure more accountability and transparency from universities by requiring them to work with local law enforcement agencies to investigate sexual assaults on their campuses. Changing current protocol will not only help to alleviate some of the issues that have arisen by granting colleges control over the investigation of sexual assault cases, it will also reinforce important public policy goals:

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## Institutions may not have properly trained personnel or the resources to respond to sexual assaults

evidence that will, in turn, better safeguard a victim's right to press criminal charges while also providing for a more thorough university remedial process; and it will send a message that sexual assault is not an internal disciplinary matter, but a serious crime. These goals can be achieved by adopting policies that require (1) mandatory and

timely reporting of sexual assault complaints to outside law enforcement agencies; and (2) joint investigations of sexual assault cases, with outside law enforcement serving as the lead agency.

First, in order to abate the conflict of interest that arises out of sexual assault cases, the DOE should carve back on the ability of universities to internally investigate and adjudicate sexual assault matters without assistance or scrutiny. An effective policy would require universities to immediately report sexual assault crimes to outside law enforcement. Requiring institutions to not only report crimes on an annual basis, but requiring institutions to report crimes of sexual violence directly to outside law enforcement as they happen, will foreclose a gaping hole that exists in current federal policy.

Second, to ensure that sexual assault allegations are handled in a serious and thorough manner, federal policy must reinforce the role of the criminal justice system and require law enforcement agencies to be involved in the investigation of sexual assault offenses that occur on college campuses. A revision of this nature would better ensure cooperative agreements between local police and universities and provide for a more thorough process for gathering information and evidence.<sup>56</sup> By pooling resources and sharing information, university personnel and law enforcement officers collectively will be able to provide victims with a more effective response.

If the conflict of interest between institution and victim is to be minimized, federal policy must not only mandate the involvement of local law enforcement in campus sexual assaults, it must also ensure that law enforcement agencies are not put in a position that is secondary to campus personnel. In order for joint investigations to achieve the purpose for which they are meant to serve, federal policy must mandate that external law enforcement agencies take the lead on conducting investigations. Such a policy would reinforce the role of local law enforcement in combatting sexual violence both on college campuses and in the broader community.<sup>57</sup>

As a final note, it is important to clarify that changing federal policy to require coordination between local law enforcement and universities does not mean that victims automatically have to pursue criminal charges.<sup>58</sup> An appropriate policy will guarantee that the option of choosing to press criminal charges remains in the hands of the victim.<sup>59</sup> Indeed, the goal of these revisions is not



Changing federal policy  
to require coordination  
between local law  
enforcement and universities  
does not mean that victims  
automatically have to pursue  
criminal charges.<sup>59</sup>

to strip victims of their rights in the aftermath of a sexual assault; the goal is to ensure that universities respond swiftly, competently and seriously when an assault is reported.<sup>60</sup> Bringing the criminal justice system into

the process serves as an important check on the university, thereby protecting the integrity of the investigative process while also increasing the amount of resources, information and experience devoted to the investigation.

It is worth noting that the ability of a victim to pursue criminal charges greatly increases when local law

enforcement is made aware of an incident and timely pursues an investigation. In this manner, requiring joint investigations while letting victims retain the ability to choose whether to pursue criminal charges

further empowers victims by increasing the likelihood that they will get a meaningful opportunity to bring a case through the criminal justice system. Many victims do not pursue criminal charges because of haphazard investigations that do not generate enough evidence to prove their assault. A timely response and thorough investigation can change this, however.

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## Lack of cooperation has made it more difficult for law enforcement agencies to deal with sexual violence effectively

Indeed, conducting a thorough investigation—and gathering forensic evidence in particular—increases the likelihood that a victim will choose to press criminal charges.<sup>61</sup>

### IV. Conclusion

Failing to carve out a meaningful role for the criminal justice system to be involved in investigating campus sexual assaults downplays the serious nature of sexual violence. When a college student is sexually assaulted, she should not be treated as if her assault is a mere institutional matter of gender discrimination. While fixing the campus sexual assault problem will not occur overnight, requiring educators to sacrifice internal control over campus sexual assault matters in favor of joint investigations is an important first step. Such a requirement will reinforce the criminal justice process and send the message that sexual violence is not a matter

of youthful discipline; it is a serious criminal offense and it must be treated as such.

In the last year alone, the press has reported numerous stories about colleges across the country mishandling sexual assault investigations. Not surprisingly, the number of complaints victims have filed with the DOE is growing rapidly.<sup>62</sup> The Obama Administration has responded to these growing problems in various ways, including forming the Task Force. The Task Force has pledged to release recommendations for cooperation and coordination between universities and law enforcement agencies.<sup>63</sup> This paper indicates why it is necessary for these recommendations to be structured in a way that reinforces the criminal nature of sexual violence and breathes life back into the dual jurisdiction regime. After all, *Title IX*'s goal is to promote gender equality: it should be used as a tool to prevent sexual assault, not to decriminalize it. ■

### Endnotes

1 Valerie Jarrett, *A Renewed Call to Action to End Rape and Sexual Assault*, THE WHITE HOUSE BLOG (Jan. 22, 2014), <http://www.whitehouse.gov/blog/2014/01/22/renewed-call-action-end-rape-and-sexual-assault>.

2 Recent studies have indicated that the DOE has acted as a "feeble watchdog," rarely holding universities liable for violations and even more rarely imposing fines when violations are found. Kristin Jones, *Law Enforcement of Title IX in Campus Sexual Assault Cases*, THE CENTER FOR PUBLIC INTEGRITY (Feb. 25, 2010, 12:00 PM), <http://www.publicintegrity.org/2010/02/25/4374/lax-enforcement-title-ix-campus-sexual-assault-cases-0>; See also Grayson Sang Walker, Note, *The Evolution and Limits of Title IX Doctrine on Peer Sexual Assault*, 45 Harv. C.R.-C.L. L. Rev. 95, 99, 101-02 (Winter 2010) (explaining that the OCR only investigates the worst institutions and rarely will examine sexual harassment policies that are ineffective but not egregious. While the OCR can terminate federal funding, its goal is to elicit voluntary compliance and those who are dissatisfied with a university's policy and actions will often have to turn to the courts to vindicate their civil rights).

3 Memorandum from The White House Office of the Press Secretary on Establishing a White House Task

Force to Protect Students from Sexual Assault (Jan. 22, 2014) available at <http://www.whitehouse.gov/the-press-office/2014/01/22/memorandum-establishing-white-house-task-force-protect-students-sexual-a>.

4 In 1982, *Ms. Magazine* published the findings of a three year-study highlighting the prevalence of "date rape" on college campuses. The study, which was funded by the federal government and conducted by a renowned research psychologist named Mary Koss, brought significant national attention to a problem that previously had gone unnoticed. Ellen Sweet, *Date Rape Revisited*, WOMEN'S MEDIA CENTER (Feb 23, 2012), <http://www.womensmediacenter.com/feature/entry/date-rape-revisited>. The major findings of Koss' study indicated that sexual assault was much more prevalent on college campuses than previously thought, estimating that 1 in 4 college women were victims of completed or attempted sexual assault. See ROBIN WARSHAW, I NEVER CALLED IT RAPE (1988). Since then, subsequent studies have reiterated Koss' findings, suggesting that between 20-25 percent of women on college campuses are victims of completed or attempted sexual assault. See e.g. RANA SAMPSON, U.S. DEP'T OF JUSTICE, ACQUAINTANCE RAPE OF COLLEGE STUDENTS (2010) available at <http://www.cops.usdoj.gov/pdf/e03021472.pdf>; CHRISTOPHER P. KREBS, CHRISTINE H. LINDQUIST, TARA D. WARNER, BONNIE S.



FISHER, AND SANDRA L. MARTIN, THE CAMPUS SEXUAL ASSAULT (CSA) Study, NCJ 221153, xii (Dec. 2007) available at <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>.

- 5 Tyler Kingkade, *These Are the Colleges Accused of Mishandling Sexual Assault Cases (INFOGRAPHIC)*, THE HUFFINGTON POST (Jan. 31, 2014, 4:30 PM), [http://www.huffingtonpost.com/2014/01/31/college-sexual-assault-complaints\\_n\\_4675460.html](http://www.huffingtonpost.com/2014/01/31/college-sexual-assault-complaints_n_4675460.html) (“In fiscal year 2013, the U.S. Department of Education’s Office for Civil Rights received 30 complaints against colleges and universities alleging failures in the way the schools handled cases of sexual violence.”) Although the DOE does not formally disclose a list of the colleges that it investigates, some of the colleges that the DOE is investigating/has investigated include: Pennsylvania State University, Dartmouth College, Princeton University, University of North Carolina at Chapel Hill, Amherst College, University of Southern California, Occidental College, University of Colorado at Boulder, University of Connecticut, University of Michigan, and Michigan State University. *Id.*
- 6 *Id.* (“The complaints that the OCR received include allegations specifically related to sexual violence and failures to address them under the gender equity law *Title IX*.”)
- 7 The Task Force released its first report on April 28, 2014. In this report, the Task Force set forth many recommendations for how universities can better handle sexual assaults. Although the report seems promising, its overall structure gives me pause. In many key areas, the Task Force has vowed to provide models and examples of “best practices” for schools to adopt. This approach seems good at first blush, but it is problematic to the extent that it serves as an extension of the DOE’s current policies—policies that tend to grant extreme discretion to universities to implement their sexual assault policy as they see fit. The Task Force needs to move away from the DOE’s practice of providing recommendations but shying away from establishing mandatory requirements to fundamentally alter university practices. It remains unclear whether the Task Force will do this. See generally THE WHITE HOUSE TASK FORCE TO PROTECT STUDENTS FROM SEXUAL ASSAULT, NOT ALONE: THE FIRST REPORT OF THE WHITE HOUSE TASK FORCE TO PROTECT STUDENTS FROM SEXUAL ASSAULT (April 2014) available at [http://www.whitehouse.gov/sites/default/files/docs/report\\_0.pdf](http://www.whitehouse.gov/sites/default/files/docs/report_0.pdf) [hereinafter “Task Force Report”].
- 8 *Title IX* is enforced and administered by the Department of Education’s Office for Civil Rights. Policy guidance letters, known as “Dear Colleague Letters,” are released by the DOE as guidance documents written to educational administrators to explain the OCR’s legal positions and enforcement priorities. They do not, in themselves, have the force of creating new law but do indicate how the OCR evaluates whether institutions are complying with their legal obligations.
- 9 For a history and overview of criminal laws regulating rape and sexual assault see generally CAROL E. TRACY, TERRY L. FROMSON, JENNIFER GENTILE LONG, & CHARLENE WHITMAN, RAPE AND SEXUAL ASSAULT IN THE LEGAL SYSTEM, WOMEN’S LAW PROJECT (June 5, 2012) available at <http://www.womenslawproject.org/resources/>

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- 10 Letter from Russlynn Ali, Assistant Sec'y for Civil Rights, Office for Civil Rights, U.S. Dep't of Educ. (April 4, 2011) available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> [hereinafter "DCL"] ("Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by *Title IX*.")
- 11 The purpose of *Title IX* is to ensure equal access for the sexes to educational opportunities and the scope of its language reaches broadly to reach all discriminatory conduct on the basis of sex: "*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.*" 20 U.S.C. § 1681(a).
- 12 Because most institutions of higher education receive federal funding, this requirement applies to virtually all colleges, both private and public.
- 13 DCL, *supra* note 10, at 1-2.
- 14 *Id.* at 4. A hostile environment can be created by even one rape. *Id.* at 3.
- 15 *Id.* at 4.
- 16 *Id.* at 1.
- 17 *Id.* at 6.
- 18 *Id.* at 9; see also THE U.S. DEPARTMENT OF EDUCATION, THE HANDBOOK FOR CAMPUS SAFETY AND SECURITY REPORTING 5 (2011) available at <http://www2.ed.gov/admins/lead/safety/handbook.pdf> [hereinafter "DOE Handbook"] ("The law contains specific requirements, but allows a great deal of flexibility in complying with them. This flexibility acknowledges the myriad differences in types, locations and configurations of postsecondary schools.")
- 19 DOE Handbook, *supra* note 18, at 77 ("A campus security authority is not responsible for determining authoritatively whether a crime took place—that is the function of law enforcement personnel. A campus security authority should not try to apprehend the alleged perpetrator of the crime. That too is the responsibility of law enforcement."); see also DCL, *supra* note 10, at 4 ("...the school's *Title IX* investigation is different from any law enforcement investigations and a law enforcement investigation does not relieve the school of its independent *Title IX* obligation to investigate the conduct.")
- 20 Under *The Campus Security Act*, 20 U.S.C. §1092(f), institutions of higher education that receive federal funding under *Title IV* must disclose campus security policies and report campus crime statistics in an Annual Security Report. Colleges must make a good faith effort to contact outside law enforcement to collect crime statistics that occur within the school's jurisdiction to include in this Report. DOE Handbook, *supra* note 18 at 82.
- 21 Although the use of such protocol has generally been found to be a promising practice, only about one in four schools currently have them. HEATHER M. KARJANE, BONNIE S. FISHER, AND FRANCIS T. CULLEN, CAMPUS SEXUAL ASSAULT: HOW AMERICA'S INSTITUTIONS OF HIGHER EDUCATION RESPOND 113 (Oct. 2002), NCJ 196676 available at <https://www.ncjrs.gov/pdffiles1/nij/grants/196676.pdf>.
- 22 CAROL BOHMER AND ANDREA PARROT, SEXUAL ASSAULT ON CAMPUS 110 (1993).
- 23 *Id.*
- 24 *Id.* But also note that other institutions have adopted memorandums of understanding that require colleges to notify outside law enforcement agencies when any sexual assault occurs—including acquaintance rape—and delegates the authority to investigate such crimes to outside law enforcement. This ladder type of protocol may be more favorable, given that it ensures effectiveness and accountability because it allows outside law enforcement officials, who are independent from the control of school administrators and generally better equipped to deal with sexual assault investigations, to be involved in the investigation of all campus sexual assaults from the very beginning.
- 25 Studies have shown that the majority of sexual assaults that occur on college campuses are "acquaintance rapes," a type of sexual assault that is characterized by a prior relationship between the victim and the assailant. Approximately 90 percent of the time that a sexual assault occurs on a college campus, the victim and assailant know each other. Sampson, *supra* note 4, at 3.
- 26 DCL, *supra* note 10, at 10.
- 27 In 2004, Tennessee passed *The Robert Nottingham Campus Crime Scene Investigation Act of 2004* ("*Robbie Nottingham Act*"), TENN. CODE ANN. §49-7-129. The *Act* requires institutions of higher education to immediately notify the local law enforcement agency with territorial jurisdiction over the institution when the institution receives a report alleging that any degree of rape has occurred, regardless of whether that institution has developed a mutual assistance agreement with local law enforcement. Upon notification, the law enforcement agency is required to participate in a joint investigation of the alleged rape, with campus police leading the investigation.  
  
In 2007, South Carolina passed a law modeled after the *Robbie Nottingham Act*. This law, known at the *Jessica Horton Campus Crime Act* ("*Jessica Horton Act*"), S. C. Code Ann. §59-154-10, requires the chief of campus police at any institution of higher education to immediately notify the State Law Enforcement Division when the institution receives a report alleging an act of criminal sexual conduct. Upon notification, the State Law Enforcement agency shall participate in a joint investigation of the death or alleged act of criminal sexual conduct, with campus police leading the investigation.
- 28 The Attorney General of Tennessee has stated that the *Robbie Nottingham Act* is "not subject to rigid definition" and has further suggested that "the appropriate level of participation for the non-lead agency (law enforcement) is a matter to be determined by the lead investigatory agency (the university)." Letter of Paul G. Summers to Senator Tim Burchett, Attorney General of Tennessee, "Investigatory Duties Under Tenn. Code Ann. § 49-7-129" Opinion No. 06-061 (April 5, 2006), <http://www.tn.gov/attorneygeneral/op/2006/op/op61.pdf>.

The language of the *Jessica Horton Act* has also been cited by universities to cut law enforcement agencies out of the investigative process. In 2012, after a particular sexual assault incident at the College of Charleston in South Carolina, the college cited the language of the *Jessica Horton Act*—namely the provision mandating that campus police shall lead sexual assault investigations—as the reason why the case was handled solely by campus police. Andrew Knapp, *Accusers, Families Seek Changes in Handling of Sex Assault Cases at College of Charleston*, THE POST AND COURIER (Nov. 25, 2013, 12:30 AM), <http://www.postandcourier.com/article/20121125/PC16/121129597/1268/accusers-families-seek-changes-in-handling-of-sex-assault-cases-at-college-of-charleston%26source%3DRSS>; Andrew Knapp, *Dad Faults Police, College of Charleston in Investigation of Sex Assault Involving Athletes*, THE POST AND COURIER (Nov. 18, 2012, 12:29 AM), <http://www.postandcourier.com/article/20121118/PC16/121119268>.

- 29 For example, in 2011, Delegate Paula Miller introduced House Bill 2490, “*Kathryn’s Law*,” in the Virginia legislature. *Death and Rape Investigations by Campus Police Department (HB 2490)*, VIRGINIA STATE CRIME COMMISSION 3, [http://services.dlas.virginia.gov/User\\_db/fmvscs.aspx?ViewId=2715](http://services.dlas.virginia.gov/User_db/fmvscs.aspx?ViewId=2715). The proposed bill would have made it mandatory for public and private institutions of higher education to immediately notify law-enforcement agencies when an alleged rape was reported. *Id.* The bill also would have delegated authority to outside law enforcement agencies to lead sexual assault investigations

and would have required universities to cooperate with law-enforcement agencies when conducting investigations. Mark Bowes, *New Mandate for Campus Police Rejected*, THE RICHMOND-TIMES DISPATCH (Dec. 11, 2011, 12:00 AM), [http://www.timesdispatch.com/news/new-mandate-for-campus-police-rejected/article\\_2e18be7a-59cf-55ad-a479-40616eac6bc1.html](http://www.timesdispatch.com/news/new-mandate-for-campus-police-rejected/article_2e18be7a-59cf-55ad-a479-40616eac6bc1.html). The Virginia State Crime Commission ultimately gutted the bill after finding that there was “no evidence” that campus police departments are “somehow inferior, inadequately trained or poorly staffed.” *Id.* The bill’s advocates failed to persuade the Commission that—adequacy of training aside—the professionalism and impartiality of campus police is undoubtedly impaired by the oversight of college administrators. Larry O’Dell, *Va. Panel Backing Campus-Local Police Cooperation*, NECN (Nov. 16, 2011, 5:40 PM), [http://www.necn.com/11/16/11/Va-panel-backing-campus-local-police-coo/landing\\_nation.html?&apID=a8801e7e738e438eaa72ed8cb83975ab](http://www.necn.com/11/16/11/Va-panel-backing-campus-local-police-coo/landing_nation.html?&apID=a8801e7e738e438eaa72ed8cb83975ab).

- 30 Most victims do not report sexual assault offenses to law enforcement or university personnel. Underreporting is one of the most significant reasons why the sexual assault epidemic has gone unaddressed on college campuses. Of those who are sexually assaulted, it is estimated that a mere 5 percent report their assault to either law enforcement agencies or campus officials. Sampson, *supra* note 4, at 4. Studies have indicated the most common reasons victims do not report sexual assaults is because they do not want public disclosure of their rapes, they do not believe they can prove that victimization occurred

#68

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and they are not convinced that the incident was “serious enough” to warrant formal intervention. KARJANE, et al., *supra* note 21, at 81.

- 31 Universities are often first notified when a sexual assault occurs and their employees typically serve as the first responders. See *Campus Sexual Assault: Suggested Policies and Procedures*, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS (February 2013), <http://www.aaup.org/report/campus-sexual-assault-suggested-policies-and-procedures#overlay-context=news/new-statement-sexual-assault> [hereinafter “AAUP Report”].
- 32 Nina Bernstein, *On Campus, A Law Enforcement System to Itself*, N.Y. TIMES, Nov. 11, 2011, [http://www.nytimes.com/2011/11/12/us/on-college-campuses-athletes-often-get-off-easy.html?\\_r=0](http://www.nytimes.com/2011/11/12/us/on-college-campuses-athletes-often-get-off-easy.html?_r=0)
- 33 *Id.* For example, in 2012, when the details of the Pennsylvania State University scandal involving the molestation of young children by a football coach unfolded, one of the key findings of the grand jury was that the sex crimes at issue were not reported to outside law enforcement in part because they were brought to the attention of administrators who used their discretion to deal with the matters quietly.
- 34 *Title IX* places the reporting duty in the hands of the victim. DOE Handbook, *supra* note 18, at 77. Colleges must inform students of their rights to file a criminal complaint; they should not dissuade or delay a student’s decision to file a criminal report. While colleges must respect a victim’s wishes regarding reporting an assault, colleges also should not attempt to persuade a victim to contact law enforcement against her wishes. *Id.* (“It’s also not a [campus security authority]’s responsibility to try and convince a victim to contact law enforcement if the victim chooses not to do so.”)
- 35 BOHMER AND PARROT, *supra* note 22, at 62 (“Very often, the college has discouraged the victim from pressing charges in the criminal justice system.”)
- 36 While there have been various criticisms about the nature of the college disciplinary process, this paper is concerned with the overarching issues that arise when the university takes on the role of law enforcement and is allowed to conduct its own internal investigations of sexual assaults without public scrutiny. Even so, there are critiques of the university disciplinary process that warrant mentioning, including concerns that the university disciplinary process employs ineffective techniques, fails to treat offenses seriously, and does not sufficiently protect victims or punish perpetrators.

Given that *Title IX* does not require colleges to develop a separate judicial process for sexual assault cases, universities are allowed to use the same disciplinary boards that they would use to handle other matters. The DOE maintains that schools do not have to adopt special grievance procedures for *Title IX* cases; schools are allowed to use the disciplinary proceedings they use for other violations of school policies so long as proceedings comply with other *Title IX* requirements. DCL, *supra* note 10, at 8. Because of this, many of the university forums that are used are not equipped to deal with serious instances of sexual violence. WARSHAW, *supra* note 4, at 147. Diane Moyer, the Legal Director of the Pennsylvania Coalition Against Rape, has found serious fault with the forums universities use, arguing that it is inappropriate to handle sexual assault complaints through the same entities that deal

with minor academic infringements and internal academic issues. *Critical Issue in Policing Series: Improving The Police Response to Sexual Assault*, POLICE EXECUTIVE RESEARCH FORUM 23-24 (March 2012) available at [http://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/improving%20the%20police%20response%20to%20sexual%20assault%202012.pdf](http://www.policeforum.org/assets/docs/Critical_Issues_Series/improving%20the%20police%20response%20to%20sexual%20assault%202012.pdf) [hereinafter “Police Forum Report”]. Many of these proceedings were originally established to deal with issues of plagiarism, vandalism and academic infringements; they were not developed to deal with sexual assaults.

Victims often are dissatisfied with the punishments that are allocated as a result of the internal disciplinary process. WARSHAW, *supra* note 4, at 147 (finding that, of the victims interviewed in the process of writing her book, not a single woman who had taken her case before a university judicial board felt satisfied with the result); see also Tyler Kingkade, *College Sexual Assault Policies Get Mediocre Grades from Students in Survey*, THE HUFFINGTON POST (May 10, 2013, 7:37 PM) (College students surveyed generally are not satisfied with their school’s sexual assault policy). Ultimately, victims often come to view the lack of punishment as a lack of institutional support. A recent study has shown that women who experience institutional betrayal after a sexual assault are more likely to suffer severe posttraumatic symptoms. Carly P. Smith and Jennifer J. Freyd, *Dangerous Safe Havens: Institutional Betrayal Exacerbate Sexual Trauma*, 26 JOURNAL OF TRAUMATIC STRESS 119, 122 (Feb. 16, 2013). Because of this, it is by no means rare that an unsatisfied victim will drop out or transfer schools in the aftermath of a sexual assault. Kristen Lombardi, *A Lack of Consequences for Sexual Assault*, THE CENTER FOR PUBLIC INTEGRITY (Feb. 24, 2010, 12:00PM), <http://www.publicintegrity.org/2010/02/24/4360/lack-consequences-sexual-assault> [hereinafter “A Lack of Consequences”].

While the consequences for sexual assault victims can be life changing, their assailants frequently walk away from the university disciplinary process with minimal, if any, punishment. A survey conducted by *The Chicago Tribune* in 2011 found that many schools often fail to convict assailants. Of the six schools surveyed by *The Chicago Tribune*, three of them—Indiana University, The University of Notre Dame and Northwestern University—had zero convictions from 63 reported cases. See Todd Lighty, Stacy St. Clair and Jodi S. Cohen, *Few Arrests, Convictions in Campus Sex Assault Cases*, THE CHICAGO TRIBUNE, June 16, 2011 available at [http://articles.chicagotribune.com/2011-06-16/news/ct-met-campus-sexual-assaults-0617-20110616\\_1\\_convictions-arrests-assault-cases](http://articles.chicagotribune.com/2011-06-16/news/ct-met-campus-sexual-assaults-0617-20110616_1_convictions-arrests-assault-cases).

Even when colleges find the accused responsible during a disciplinary hearing, very rarely does the punishment fit the crime: “students deemed ‘responsible’ for sexual assaults on college campuses face little or no consequence for their acts.” See *A Lack of Consequences*, *supra*. Information on school sanctions gathered from the database of the Department of Justice’s Office on Violence Against Women shows that those who are held to be responsible for sexual assault offenses in campus disciplinary hearings rarely face expulsion. *Id.* Data gathered from over 130 college and universities indicated that colleges permanently expel only 10 to 25 percent of those who are found responsible for sexual assaults. *Id.* Many have argued that these numbers are a result of administrators choosing to impose lesser charges for sexual assault violations because they do not want to stigmatize their institutions with findings of rape. WARSHAW, *supra* note 4, at 149.



Although a university's code of conduct may seem harsh on paper and call for certain punishments after a sexual assault offense, there have been instances where universities do not act in accordance with their own prescribed code — issuing punishments that are far less punitive than their policies suggest. *Id.* at 147. For example, although Harvard University's Handbook of Students states that "a student who commits rape, sexual assault, or other sexual misconduct is subject to severe penalties," from 2005 to 2010 only eight cases of sexual misconduct were brought before Harvard's disciplinary board. *General Regulations: Sexual Assault and Other Sexual Misconduct*, HARVARD UNIVERSITY HANDBOOK 2011-2012 available at <http://isites.harvard.edu/icb/icb.do?keyword=k79903&pageid=icb.page418723> (last visited May 18, 2013); Reina A.E. Gattuso and Jessica C. Salley, *Harvard's Sexual Assault Victims Feel School Policies Favor Their Assailants*, THE HARVARD CRIMSON (March 7, 2013). Of those eight cases, only three perpetrators were required to withdraw from the university for a temporary period. None of them were permanently expelled. *Id.*

- 37 Adam Goldstein, *Rape is a Crime, Treat it as Such*, N.Y. TIMES, March 12, 2013, <http://www.nytimes.com/roomfordebate/2013/03/12/why-should-colleges-judge-rape-accusations/rape-is-a-crime-treat-it-as-such>.
- 38 The type of security personnel employed at colleges often differs from institution to institution. While nearly all public universities

use sworn police officers, less than half of private universities do. Brian A. Reaves, *Bureau of Justice Statistics Special Report: Campus Law Enforcement, 2004-05*, U.S. Dep't of Justice (Feb. 2008), available at <http://www.bjs.gov/content/pub/pdf/cle0405.pdf>. As an alternative, some colleges employ private security officers, while some colleges employ a mix of private personnel, sworn police officers and students. BOHMER AND PARROT, *supra* note 22, at 106. Accordingly, the experience, training, and resources available to campus security officers and university personnel also ranges from institution to institution. For the most part, the most common tasks campus security officials perform—whether sworn officers or private security personnel—include providing special events security, parking and traffic enforcement, and property crime investigations. *Id.* at 105. Officers who are primarily trained to perform these sorts of tasks often do not have the necessary skills to investigate sexual violence cases effectively.

- 39 *Id.* at 118.
- 40 *Id.*
- 41 The university "investigative" process has been criticized as being highly insufficient because it does not entail the type of investigation that is necessary to prosecute or adjudicate a sexual assault in a disciplinary forum. Given this criticism, it is not surprising to note that only 1 in 4 schools demarcate an official "investigative" stage in sexual assault cases. KARJANE,

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ET AL., *supra* note 21, at 113. While the failure to demark an investigative stage does not mean universities do not investigate assaults, it does mean very few universities have implemented transparent policies about how campus security personnel should conduct investigations and proceed to gather evidence. A survey of over 2,000 colleges and universities showed that only 4 in 10 schools have policies stressing the importance of preservation of evidence in the investigative process, and, of those schools, nearly one-third of them do not provide further direction about how evidence should be gathered. *Id.* at 70. While the other two-thirds provide more detailed information about steps that should be taken to preserve evidence, currently the primary evidence that campus security personnel gather is statements of victims and the accused as well as any witnesses that came into contact with the victim or accused following the alleged assault. *Id.* at 72.

42 Although sworn officers tend to be better trained and to have better relationships with outside law enforcement, there can still be significant tension between the officers and administrators about how to deal with campus sexual assault cases. BOHMER AND PARROT, *supra* note 22, at 106-08, 112. Even though sworn officers generally receive more extensive training and education than their un-sworn counterparts, they are not solely representatives of the state but are also university officials. *Id.* at 118. While sworn officers often view themselves as “real police” and may want to handle sexual assault cases over to prosecutors, they will frequently face pressure from administrators who prefer to deal with cases internally. *Id.* at 105.

43 *Id.* at 93.

44 Ineffective responses are often attributed to systematic resistance by universities that do not want to face the reality of sexual assaults on their campuses and do not want to treat sexual assault complaints seriously. *See generally* Adam Goldstein, *OSU Demonstrates Why Universities Shouldn't Handle Sex Assault Claims*, THE HUFFINGTON POST (Dec. 17, 2012, 10:37 AM), [http://www.huffingtonpost.com/adam-goldstein/universities-sexual-assault\\_b\\_2281552.html](http://www.huffingtonpost.com/adam-goldstein/universities-sexual-assault_b_2281552.html).

45 Xiaofan Pan, *Holding Campuses Accountable in Reporting Sexual Assault*, THE WOMEN'S HEALTH ACTIVITY (July-August 2012) available at <http://nwhn.org/newsletter/node/1422>.

46 Systematically sheltering athletes from the consequences of sexual assault is particularly worrisome given that members of college fraternal cultures—such as all-male sports teams—are more likely to be perpetrators of rape. Gattuso and Salley, *supra* note 36 (Liz Canner, a filmmaker currently documenting the epidemic of sexual assault on college campuses, has stated that: “There’s a direct correlation between competitive all-male institutions—sports teams, frats, that kind of thing—and sexual assault ... Men in those kinds of organizations are more likely to engage in these kinds of behaviors ... because these kinds of institutions support a certain kind of misogynistic behavior.”) *See e.g.* Tim Murphy, *40 Year's of College Football's Sexual-Assault Problem*, MOTHER JONES (Dec. 5, 2013, 4:00 AM), <http://www.motherjones.com/media/2013/12/college-football-sexual-assault-jameis-winston>.

47 BOHMER AND PARROT, *supra* note 22, at 4-5.

48 *Id.* at 111.

49 *Id.*

50 Police Forum Report, *supra* note 37, at 22-24.

51 Boston Police Department's Deputy Superintendent Kelly Nee has argued that the “perceived lack of forthrightness” from some universities has made it more difficult for his department to protect college students from sexual violence. *Id.* at 24.

52 AAUP Report, *supra* note 31. (“Closer coordination with trained law-enforcement officials, for example, increases the likelihood that incidents will be more fully investigated and adjudicated.”)

53 Burton Dodd, “Dear Colleague...”, Fisher & Phillips LLP (Oct. 1, 2012), <http://www.laborlawyers.com/19136>.

54 BOHMER AND PARROT, *supra* note 22, at 75.

55 Martin D. Schwartz, *Male Peer Support and a Feminist Routine Activities Theory: Understanding Sexual Assault on the College Campus*, 18 JUSTICE QUARTERLY 623, 623-50 (2001); BOHMER AND PARROT, *supra* note 22, at 183. Some universities may not respond to particular instances of sexual assault because they believe that acquaintance rapes are simply misunderstandings between students. This is deeply problematic given that studies have indicated that college rapes are rarely the result of a misunderstanding: repeat sexual assault predators account for nine out of every ten rapes on college campuses. Joseph Shapiro, *Myths That Make it Hard to Stop Campus Rape*, NATIONAL PUBLIC RADIO (March 4, 2010 12:00 AM), <http://www.npr.org/templates/story/story.php?storyId=124272157>.

56 The adoption of protocols that clearly delineate the roles and responsibilities of both university personnel and outside law enforcement better protects the investigative and evidence-gathering process. AAUP Report, *supra* note 31.

57 KARJANE, ET AL., *supra* note 21, at 113.

58 Victim's advocates have argued that turning over adjudication to the courts, regardless of the victim's wishes, is disempowering to victims because it forces survivors to participate in a process that they may not want. Wendy Murphy, *Rely on Law Enforcement, but Demand More*, N.Y. TIMES, March 12, 2013 available at <http://www.nytimes.com/roomfordebate/2013/03/12/why-should-colleges-judge-rape-accusations/rely-on-law-enforcement-but-demand-more>. Forcing victims to deal with the criminal process may also have unintended affects, including discouraging victims to report sexual assaults. Dana Bolger, *College Systems Can Work Where Courts Fail*, N.Y. TIMES, March 12, 2013, <http://www.nytimes.com/roomfordebate/2013/03/12/why-should-colleges-judge-rape-accusations/colleges-help-rape-survivors-where-courts-fail>. Concern about the effects of forcing victims to participate in a criminal process is what led the DOE to adopt the position that it is the choice of the victim, and not the responsibility of campus security authorities, to contact outside law enforcement. DOE Handbook, *supra* note 18, at 143. In light of these concerns, the recommendations set forth in this paper seek to preserve the right of the victim to choose whether to pursue charges through the criminal justice system without cutting law enforcement out of the investigatory process.

59 Oklahoma State University is one school that has particularly adopted this approach in their “Responding to Incidents of Sexual Assault” document. The documents provide that reporting an assault and allowing investigation does not commit a victim to prosecute a case, but generally allows for the gathering of information and evidence in order to maintain future options for criminal and civil actions against the perpetrator and helps the university obtain helpful information to prevent future rapes. See KARJANE, ET AL., *supra* note 21, at 131.

60 By keeping the decision to pursue criminal charges in the hands of the victim, this framework aligns with the goals of the White House Task Force to Protect Students from Sexual Assault. The Task Force has emphasized the importance of victim empowerment—the ability of victim’s to choose how to respond after their assault. This framework would apply to situations where a victim chooses to file a complaint with their university and have an investigation conducted. It would not apply in situations where victims only want to speak with someone — such as a psychiatrist or counselor — about their assault confidentially, as distinguished in the Task Force’s report. See *generally* Task Force Report, *supra* note 7.

61 See KARJANE, ET AL., *supra* note 21, at 135.

62 See *generally* Ashley Ulrich, *Multiple Universities See Title IX Complaints*, THE DARTMOUTH, Apr. 30, 2013 available at <http://thedartmouth.com/2013/04/30/multiple-universities-see-title-ix-complaints>

63 Task Force Report, *supra* note 7, at 15. It is important to note that, although the Task Force has stated it will provide recommendations for coordination between law enforcement agencies and universities, it has suggested that recommendations for memorandums of understanding will be geared towards situations where a victim has chosen to file a complaint with both law enforcement and with university personnel. The report does not suggest that the Task Force will provide recommendations for coordination more generally. Nor has there been any sort of indication that these recommendations will become anything more than “best practice” policy. See *id.* This paper argues that it is not enough for the Task Force to simply provide guidelines to universities about coordination and cooperation. The Task Force must take it a step farther—moving from recommending to requiring. The Task Force should require universities to participate in joint investigations with law enforcement agencies in all circumstances where an investigation is conducted, in accordance with this recommendations set forth in this paper.

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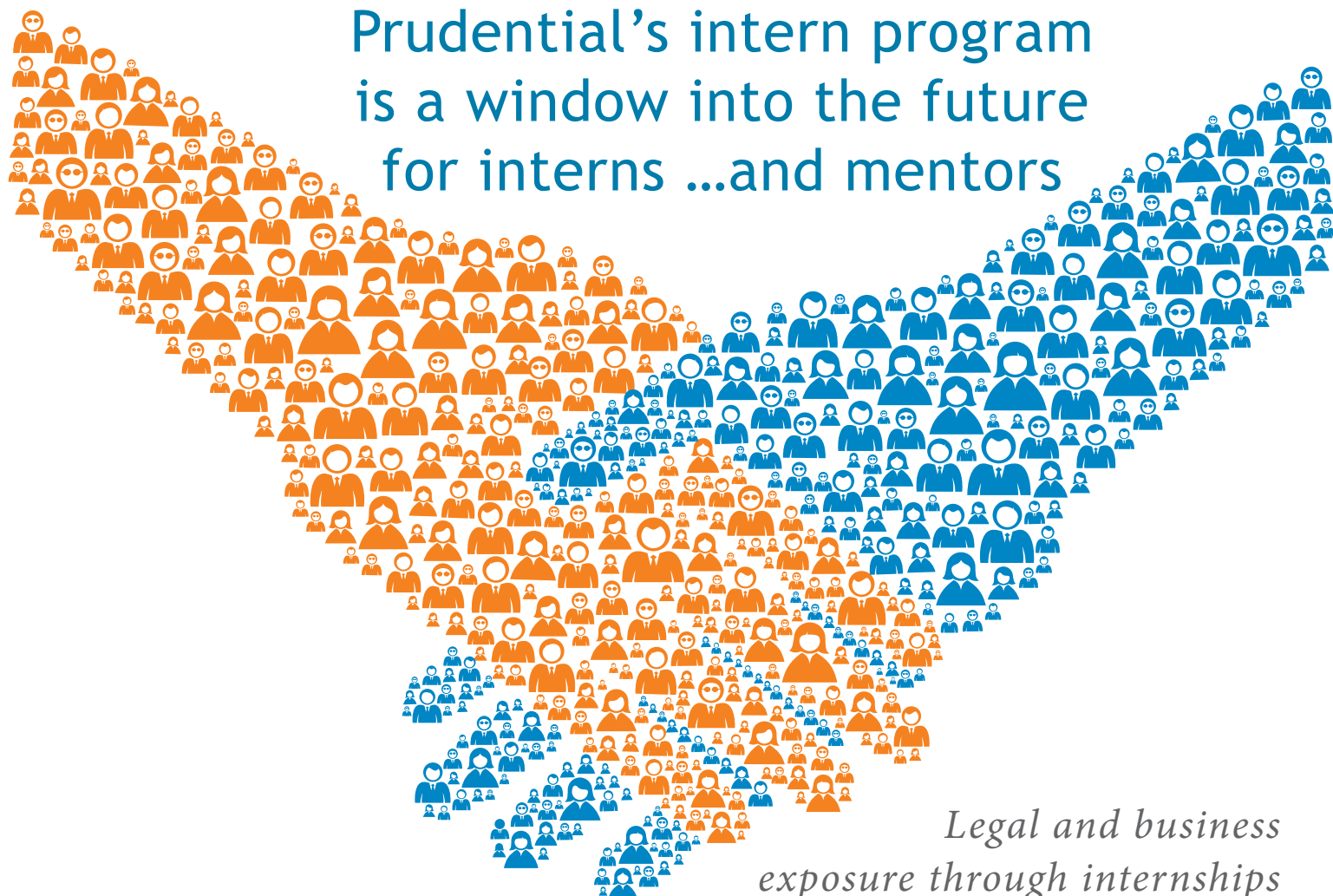
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# Prudential's intern program is a window into the future for interns ...and mentors



*Legal and business  
exposure through internships  
may lead to better jobs*

**By Deborah K. Wright, VP – Corporate Counsel**

The 1L Summer Intern Program for Prudential Financial's legal department just completed its 13th year. With this summer's class of interns, the program will have hosted more than 177 students. The Internship Program supports Prudential's effort to promote diversity and inclusion, cultivate a talent mindset and enhance Prudential's

long-held dedication to community engagement. Each year, a concerted effort is made to improve the quality of the program.

The idea first was discussed when a group from Prudential's law department attended an MCCA "Employer of Choice" awards dinner in New York City



Deborah K. Wright is in-house with Prudential Financial, serving as General Counsel to its servicing affiliate, Prudential Asset Resources. PAR has a more than \$76 billion commercial real estate loan portfolio covering Prudential's General Account, CMBS, Fannie Mae, FHA, Freddie Mac and other loan portfolios. In addition to general servicing matters, Wright assists in strategic initiatives, corporate matters, insurance concerns, rating agency matters, operations and development, and the acquisition of servicing portfolios. Recently, she has been very involved with the coalition working to ensure continued availability of Evidence of Insurance to commercial lenders. Deborah has more than 30 years' experience in servicing, special servicing, workouts and bankruptcy, information technology, banking, real estate and finance.



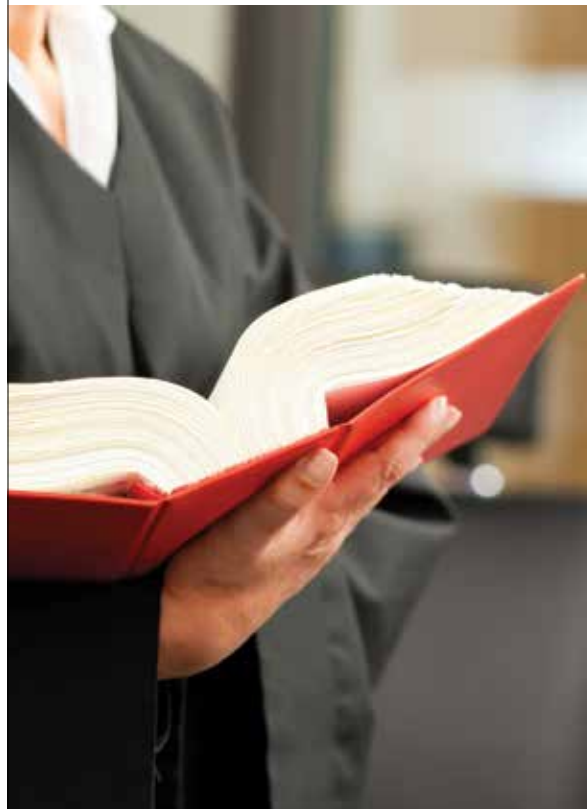
in 2000. There, another company was awarded for its launch of a 1L internship program for diverse students. Inspired by the concept, that law group “borrowed” the idea and quickly ran with it.

The 1L Legal Intern Program partners with a number of bar associations in addition to NAWL to select a diverse pool of interns; these include the Hispanic National Bar Association, the National Asian Pacific American Bar Association, the National Bar Association, the National LGBT Bar Association, and the American Bar Association’s Commission on Disabilities as well as Rutgers University and the Association of the Bar of the City of New York. Although most interns are placed in Prudential’s headquarters in Newark, some interns have spent their Prudential summer in Roseland or Parsippany, N.J.; New York; Shelton, Conn.; Dallas; or San Francisco.

Prudential focuses on first-year law students, believing that the Prudential experience has the potential to enhance a participant’s opportunities to secure high-quality second-year clerkships and jobs by raising their legal and business exposure; opportunities that might not be as available without the internship at Pru. This means that the program must be designed to ensure the interns have a robust experience, not just grind out legal memos for lawyers. In addition to multiple orientation sessions, interns are exposed to a variety of practice areas through “Lunch and Learn” sessions, day-to-day job shadowing, legal writing courses and even participation in pro bono/volunteer experiences. A program highlight is giving interns an opportunity to go through a mock interview

After interns are assigned to work supervisors, they are paired with mentors who can serve as a resource for just about anything.

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## *Prudential interns go through a mock interview with one of our outside counsel firms.*

with one of our outside counsel firms. The interns then receive feedback from the firm so they can improve interview skills.

As with any large organization, Prudential can be a big and sometimes confusing place, so after interns are assigned to work supervisors, they are paired with mentors who can serve as a resource for just about anything. In addition, for those interns who have come to us via a diverse bar association, we like to establish an informal sponsoring relationship with one of the relationship managers who works directly with that bar association.

My personal experience with the Internship Program has been fabulous. I have served in the roles of work supervisor, mentor and Lunch and Learn instructor. Whatever the context of my role with an intern, it has been exciting to watch the intern's knowledge evolve over the course of the summer. I think the leap in knowledge and confidence is greater for 1L students than for 2L students.

The role I enjoyed the most was mentor. I have been a mentor for two interns and it was a wonderful two-way

energizing, uplifting experience it is to be surrounded by all those amazing, talented women. (Think 500 women mentally standing in the Wonder Woman power pose!) Just imagine getting to be in that setting as a first-year law student!

I have engaged in a wide variety of discussion points with interns. Of course there are the expected legal topics along with critique and guidance in the preparation of legal research memorandum. However, some conversations are more about business or business etiquette. (e.g., "Do not sit at the head of the table when you are the youngest/most junior person in the room.") I particularly enjoyed creating a *Despicable Me*-themed fact pattern for a real estate Lunch and Learn. I was pleased that most of the interns knew the former name of "The Bank of Evil." (The answer is Lehman Bros. Bank for those of you who are not minion experts.)

The Internship Program has its rewards for Prudential's Law Department as well. Since Pru does not often hire straight out of law school, the Internship Program gives Prudential attorneys a fresh perspective, a change from routine and an opportunity to enhance our mentoring, presentation or other skills. Having interns in the office brings an extra spark in the day for all the attorneys involved in the program. A somewhat unanticipated benefit has been to provide us with early exposure to what it will be like to work with the next generation of lawyers. We know that generation works differently, so

early experience in learning how to work with this highly technology savvy and independent group is helpful to the growth and development of Prudential's legal and business teams.

While Prudential is clearly pleased with what its 1L Internship Program has done to enhance its partnership with the various diverse bar associations, the real payoff is getting to work with the Interns. Prudential is already looking forward to its 2015 Class of Interns. ■

## *The Internship Program gives Pru attorneys a fresh perspective, a change from routine and an opportunity to enhance our own skills such as mentoring or presentation.*

relationship that continues to this day. Whether it is an update email about life events or a conversation about other internship, clerkship or fellowship opportunities, I enjoy keeping up with both women. Each has made fabulous progress through law school and both are reaching that stepping-off point into the real world of practicing law.

One year, I was able to take our NAWL Intern to the awards luncheon at NAWL's annual meeting at the Waldorf Astoria. If you have been, you know what an

## Intern experience set intern on new career path



*Prudential offered the opportunity for personal growth as well as broader professional skills*

**By Kateri Tremblay**

By the spring of my first year at the University of North Carolina School of Law, I was still unsure about what I wanted to do with a law degree. Having majored in Economics in college, I assumed I would end up doing some form of corporate law, but I was not sure what corporate law even entailed. When I

saw that NAWL was partnering with Prudential to offer a summer legal internship, I was immediately interested. My two sisters and I are the first women in my family to attend college and promoting women's success in all professions has always been a focus of mine. Furthermore, I felt that the internship was

Kateri Tremblay is currently a 2L at the University of North Carolina School of Law in Chapel Hill, N.C. She is originally from Montreal, Quebec, and grew up mostly in Pittsburgh. She has bachelor's degrees in Economics and Political Science from The Pennsylvania State University. This past summer, she worked as a summer associate at Reed Smith in Pittsburgh. Upon graduation, she will be returning there as an associate.

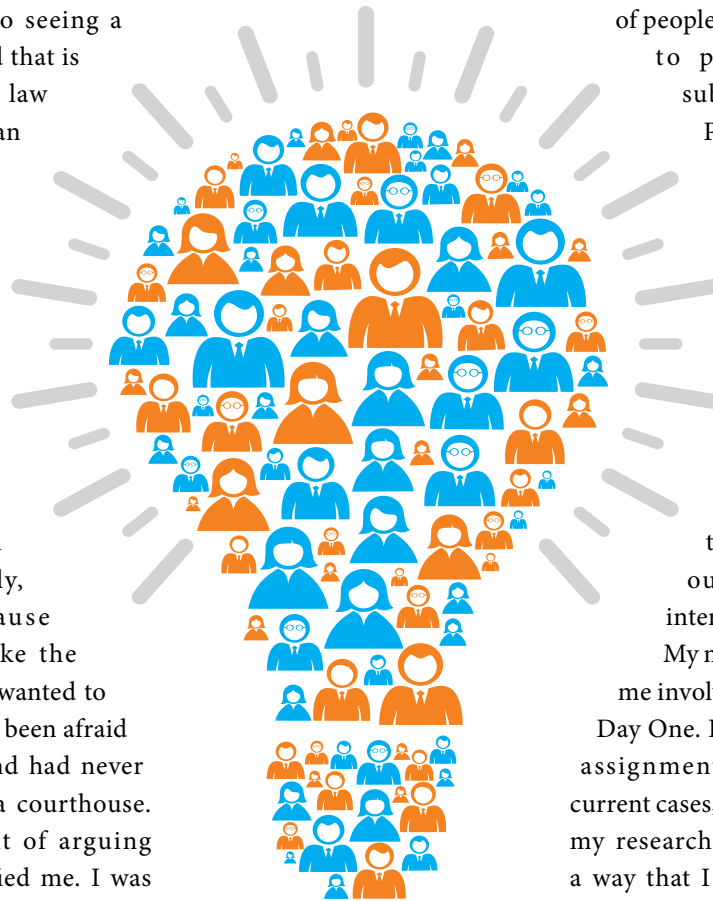


## *I was given meaningful assignments that pertained to current cases*

the perfect way to get practical legal experience while also seeing a part of the legal world that is rarely emphasized in law school: the career of an in-house attorney.

When I was given the opportunity to join Prudential's summer internship program, I was ecstatic. Within a few weeks, I found out that I would be working within Prudential's litigation department. Initially, I felt uneasy because litigation seemed like the last type of law that I wanted to practice. I have always been afraid of public speaking and had never even set foot inside a courthouse. Frankly, the thought of arguing in a courtroom terrified me. I was worried that working in the litigation department was not going to be the right fit.

The internship ended up being the most rewarding work experience I have had thus far. Prudential's internship program was extremely well organized and interactive, with weekly "Lunch and Learns" in which attorneys from various legal departments would come speak to us about their careers. We also did mock interviews with real law firms and went to New York City to attend legal workshops. Any time I had a question, whether it be career advice



*Any time I had a question, whether it be career advice or a research question, I had plenty of people to consult.*

or a research question, I had plenty of people to consult. In addition to providing me with substantive legal work, Prudential was invested in helping us develop our professionalism and networking skills. Of course, my first networking event was nerve-racking, but within a few weeks, I felt confident enough to introduce myself to people and seek out opportunities that interested me.

My mentor, Jack Lerner, had me involved with his work from Day One. I was given meaningful assignments that pertained to current cases, helping me strengthen my research and writing skills in a way that I could not experience sitting in a law school classroom. Any time I wrote a legal memorandum, Jack would sit down with me and we would go through the entire piece sentence by sentence. I had never been so appreciative of feedback and I was grateful to have the chance to write my first legal memoranda in such a supportive environment. Other than the research and writing components of the internship, I was also able to sit in on multiple meetings and conferences, and I even had the chance to attend a very memorable negotiation in New York City. I began to understand



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what litigation work really entailed and I appreciated the wide array of issues that came across the litigation department's desk. I worked on assignments in secured transactions, intellectual property and legal ethics, to name a few. I particularly enjoyed the fact that my internship combined mentorship and legal training with challenging and thought-provoking assignments.

The first time I entered a courtroom was about five weeks into my internship. I found the process incredibly lively and fascinating. I enjoyed seeing the teams of lawyers working together, seeing the fruition of their work come together in the courtroom. I realized that not only was litigation something I could absolutely do – it was something I wanted to do. I knew I could not possibly pursue a career in law without having the chance to go to court, and that is when I decided that litigation was likely the right career path for me.

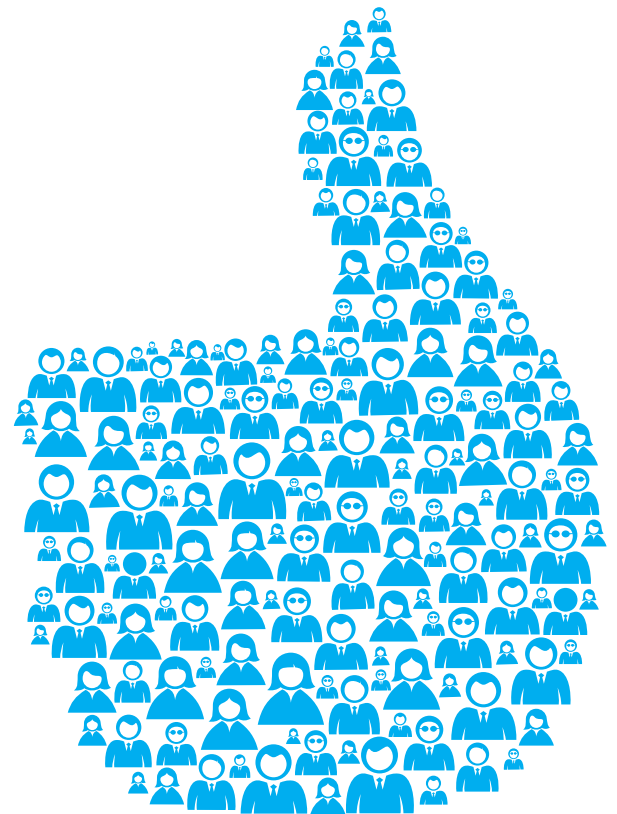
My summer internship opened a lot of doors for me and helped shape my career path. Interning for in-house counsel did not isolate me from the world of law firms, and in fact, I interacted with law firms throughout the summer. I was able to get a sense of the dynamic between inside and outside counsel and get a glimpse of what life would be like in either position. Especially for a law student who is not entirely sure what she wants to do after law school, this internship is the perfect first summer job. It is relatively easy to find an internship that can assign work requiring the use of research and writing skills, but it is important to find one that can strengthen communication skills and boost a law student's confidence as well.


Next, I will serve as a summer associate at Reed

## I worked on assignments in secured transactions, intellectual property and legal ethics, to name a few.

Smith. I look forward to having the chance to work in a wide variety of practice areas, though I do plan to focus my attention on assignments in the litigation department. But for my time at Prudential, I am not sure that I would have ever considered a career in

litigation. The NAWL and Prudential internship partnership is a fantastic opportunity for law students and I urge all women law students to consider it as they begin the internship application process. ■





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## 2014 Outstanding Law Students

Selected by law schools as their outstanding students, these talented and dedicated award winners are among the best and brightest. They are honored for academic achievements and for the impact they have made beyond their classrooms. The men and women listed below have worked to further the advancement of women in society and promoted the concerns of women in the legal profession with tenacity and enthusiasm that inspired their fellow law students and their professors.

NAWL salutes these individuals who have begun working early in their careers to promote justice for women. We encourage them to continue making a difference as their careers blossom.

**Catherine Ady-Bell**  
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Rutgers University  
Camden School of Law

**Karen A. Anderson**  
University of Tennessee  
College of Law

**Nicole Marie Barnard**  
University of Maryland  
Francis King Carey  
School of Law

**Goggo-Maryam Belly**  
George Washington University  
Law School

**Hiwot Berihun**  
Washburn University  
School of Law

**Veronica Bernal**  
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**Megan M. Block**  
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**Linda Elise Boss**  
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University of Utah  
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**Diane E. Clarke**  
Touro College  
Jacob D. Fuchsberg Law Center

**Caitlin C. Conklin**  
Rutgers University  
Newark School of Law

**Jennifer K. Cuesta**  
University of Cincinnati  
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**Emma Fox Cullen**  
Campbell University  
Norman Adrian Wiggins  
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**Caitlin Cutchin**  
Elon University School of Law

**Naveen Dosanjh**  
New York Law School

**Jennifer Grace Ewa**  
University of Louisville  
Brandeis School of Law

**Diana Feitl**  
Case Western Reserve  
University School of Law

**Beatrice Franklin**  
Columbia University  
School of Law

**Amelia Frenkel**  
New York University  
School of Law

**Sarah Freudenrich**  
University of Tulsa  
College of Law

**Eleanor Frisch**  
University of Minnesota  
The Law School

**Alexis Marie Gabrielson**  
Georgetown University  
Law Center



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School of Law

**Bryr L. Grace**  
University of Wyoming  
College of Law

**Kelsey Green**  
Northwestern University  
School of Law

**Sarah M. Gruber**  
Quinnipiac University  
School of Law

**Khaula Hadeed**  
Samford University Cumberland  
School of Law

**Hailey Hawkins**  
Charlotte School of Law

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University of New Hampshire  
School of Law

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College of William & Mary  
School of Law

**Emily Hetu**  
American University  
Washington College of Law

**Stefanie Hilliard**  
Atlanta's John Marshall  
Law School

**Krista L. Hite**  
University of Idaho  
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**Tara Hummer**  
University of South Carolina  
School of Law

**Amanda Iler**  
University of the Pacific  
McGeorge School of Law

**Samantha Divine Jallah**  
The Pennsylvania State University  
The Dickinson School of Law

**Lakshmi Jayanthi**  
Valparaiso University  
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**Kathleen D. Kennedy**  
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**Stephanie L. Ramos**  
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**Robyn Raymondo**  
Pepperdine University  
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**Judith Ann Hale Reed**  
Duquesne University  
School of Law

**Svetlana Revina**  
Suffolk University Law School

**Margaret Riley**  
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**Gloria M. Rispoli**  
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**Laura J. Rush**  
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**Edda Santiago**  
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**Jaryn Saritzky**  
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Golden Gate University  
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**Haminy Silva**  
St. Thomas University  
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**La'Toyia Jenessa Slay**  
Mississippi College  
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**Rebecca L. Slutzky**  
Santa Clara University  
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**Kimberly A. Smith**  
Vanderbilt University Law School

**Katherine B. Somers**  
Catholic University of America  
Columbus School of Law

**Kelly I. Spencer**  
Vermont Law School

**Amanda L. Stephens**  
Indiana University Maurer  
School of Law

**Stacie Stewart**  
Brigham Young University  
J. Reuben Clark Law School

**Kaleigh Rose Thacker**  
University of Memphis  
Cecil C. Humphrey  
School of Law

**Martha Alice Thibaut**  
Louisiana State University  
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**Eleanor K. Wedum**  
Seton Hall University  
School of Law

**Kelly Wegel**  
University of Georgia  
School of Law

**Alexandra C. Wells**  
Saint Louis University  
School of Law

**Bethany Whitfield**  
University of Arkansas  
School of Law

**2013 OLS winners who were  
erroneously omitted from last  
year's list**

**Julie Houska**  
Saint Louis University  
School of Law

**Kelly Marita Percival**  
Georgetown University  
Law Center

# When leaning into the law leads to burning out

**Think of burnout as an erosion of engagement – unplugging from the things that give you energy and vitality.**

**By Paula Davis-Laack, J.D., M.A.P.P.**

“I fought the law and the law won.” This is not only the lyric from a popular song from the 1960s, but it’s also the phrase I use to describe my seven-year tenure in the legal profession. Today, the buzzword is “lean in,” Sheryl Sandberg’s call to women to push for and aspire to the highest levels of business. Women have been leaning into the legal profession for decades, and the statistics continue to discourage.

While men and women have been entering law schools and law firms as first year associates in roughly equal numbers, the number of women making it to the highest levels of partnership has remained static – and really low. Since the mid-1980s, more than 40 percent of law

school graduates were women. But as of 2013, the number of female equity partners was only about 17 percent.<sup>1</sup> What’s also troubling is that the percentages of female equity partners and female associates in the typical law firm have actually declined slightly in the past two years.<sup>2</sup>

While many reasons for this leaky pipeline have been discussed, I rarely hear job burnout cited as a cause. Little has been written about burnout and women lawyers, both in terms of mainstream articles and empirical research.

## **Burnout defined**

Burnout is frequently defined as the draining of resources caused by chronic job stress. I think of burnout as an



Paula Davis-Laack, J.D., M.A.P.P., is a former practicing lawyer, an internationally published writer, and a stress and resilience expert who has taught and coached resiliency skills to thousands of professionals across the United States, Europe, Asia and Australia. Her articles on stress, burnout prevention, resilience and work/life balance are prominently featured on her blogs in The Huffington Post and Psychology Today, and on Dr. Oz’s website, Sharecare. Davis-Laack works with American Express as part of their Passion Project on Tumblr, and her expertise has been featured in and on US News & World Report, Chatelaine (Canada’s leading women’s magazine), SELF, Women’s Health, Working Mother, The Steve Harvey Show, Huffington Post Live and a variety of radio programs and podcasts. She is the Founder and CEO of the Davis Laack Stress & Resilience Institute, a practice devoted to helping busy professionals prevent burnout, manage stress and build resilience. Her website is [www.pauladavislaack.com](http://www.pauladavislaack.com)

erosion of engagement – unplugging from the things that give you energy and vitality. Over time, lawyers experiencing burnout lose their capacity to make an impact both at home and at work.

The burnout process has three specific dimensions:<sup>3</sup>

**Exhaustion:** Feeling emotionally exhausted, depleted and experiencing a loss of energy.

**Cynicism:** Having a negative attitude toward clients and those you work with, feeling irritable and withdrawing from people and activities you once enjoyed.

**Inefficacy:** Experiencing diminished personal accomplishment, a perceived decline in competence or productivity and expending energy at work without seeing any results.

### Women and burnout

Burnout is neither a women's issue nor a men's issue. Anyone who works must consider it. However, several studies suggest that men and women experience burnout differently.

Specifically, research shows that men and women process the three burnout dimensions differently. Women typically experience exhaustion first, followed by cynicism, then inefficacy – they don't think they are being effective at work so they stop to evaluate, which might mean leaving a firm to go in-house or leaving the profession altogether. Men, on the other hand, typically experience cynicism first, then exhaustion. Interestingly, many of the men in the study kept right on working because they didn't feel as though the symptoms from the first two stages impacted their quality of work. They didn't reach the inefficacy stage because they thought they were still being effective.<sup>4</sup>

A second study examined the association between burnout, depression, anxiety and inflammation as a risk factor for cardiovascular disease. Researchers discovered that for women, there was an association between burnout and inflammation (as measured by specific protein biomarkers), but this same association was not found in men. Interestingly, it was depression, and not burnout or anxiety that produced similarly elevated levels of inflammation in men.<sup>5</sup>

### Burnout prevention

The two big areas that you need to build to prevent burnout are resilience and engagement. These specific strategies will help you:

**Recover from stress.** One of the best things you can do to prevent burnout is manage your energy. That is easier said than done in our addicted-to-busy, 24/7



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## *The two big areas you need to build to prevent burnout are resilience and engagement*

culture. Psychologists have looked at five specific after-work activities to determine whether any of them led to successful recovery from the day's stress: work-related activities (e.g., checking emails and doing other work during the evening); home-related activities (e.g., cooking dinner and taking the kids to sports events); social support (e.g., going to see friends and family); physical activity; and low-effort activities (e.g., reading a magazine or watching TV). What they discovered is that, with the exception of low-effort activities, it didn't matter what the activity was, it was how you perceived it. So, if you love your work and work is a source of pride and meaning for you, then working on that brief for a few hours at home will lead to a successful recovery experience. A person's perception of low-effort activities did not influence their recovery experience; so, those *Real Housewives* episodes may or may not help you shed the day's stress.<sup>6</sup>

**Be a FAT thinker.** FAT stands for flexible, accurate and thorough, and it is a critical resilience building skill.<sup>7</sup> Research shows that having a rigid, pessimistic thinking style can lead to many unwanted consequences. Pessimistic thinkers are more at risk for depression,<sup>8</sup> are more likely to give up in the face of challenge,<sup>9</sup> and get sick more frequently.<sup>10</sup>

If you have a counterproductive thought, be your own lawyer and look for specific and measurable evidence that disproves your thinking. For example, if your counterproductive thought is: "*Wow, this is a tough case. I don't think I'm going to be very effective,*" fight that thought by recalling the number of court cases you've won, the number of clients you've helped, or the number of hours you've spent in court trying cases.<sup>11</sup>

**Be authentic.** I spent so much of my career being "Paula the lawyer"; meaning, I often left the best of who I was at home and acted how I thought a lawyer should act. As I tried to do everything perfectly, my authenticity faded away. A bunch of soldiers in the U.S. Army helped to change that. I taught resilience skills to soldiers for many years, and our training involved two things I hate: acting and dancing in public. The fact that I dance like Elaine from *Seinfeld* meant I would look like a goofball in front of the toughest men and women on the planet. But since my job required it, I was forced to be perfectly imperfect. I was mortified at first. I almost had a panic

attack the first time I had to dance. The weird looks I got from the soldiers reinforced the fact that it wasn't pretty. Then something amazing happened. The soldiers started to talk to me about times they got embarrassed and then we started talking about deeper issues. Vulnerability feels like weakness but looks like courage to everyone else. Putting myself out there gave me the confidence to pursue loftier goals, and that feels like freedom.

One of my favorite quotes is from "The Voiceless," a poem by Oliver Wendell Holmes Sr. (father of U.S. Supreme Court Justice Oliver Wendell Holmes Jr.): "Alas for those that never sing/But die with all their music in them!" One of my blog readers suggested that maybe the problem is that people are alive but their music has died. That, my friends, is what burnout feels like. Know that there are skills you can learn to prevent burnout because the world needs more of you – talented women who are ready to lean into life. ■

**Researchers discovered that for women, there was an association between burnout and inflammation (as measured by specific protein biomarkers), but this same association was not found in men.**



**Vulnerability feels like weakness but looks like courage to everyone else.**



## Endnotes

- 1 Stephanie A. Scharf, Roberta Liebenberg and Christine Amalfe, Report of the Eighth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms (3 February 2014).
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## Meet your 2014-15 board

*The Annual Meeting serves as changing of the guard for NAWL officers*

At the 2014 Annual Meeting and Awards Luncheon Deborah S. Froling, left, officially passed the torch to Lisa M. Passante, who will serve as NAWL's 2014-2015 president. In her effort to make NAWL an even greater benefit to its members, Froling put a great emphasis on making connections during her year as president. She spent much of her year on the road meeting with members around the world in an effort to bring members closer together to work on the common goals of NAWL. With an eye toward achieving the NAWL Challenge, in the coming year, Passante says she will focus on refining NAWL's already excellent programming in an effort to prepare, promote and position women lawyers in leadership roles in law firms, universities, corporate and government offices. Additionally, new board members were installed and awards were presented to those who have made a contribution to advancing women in the legal community. ■

NAWL's 2014-2015 board from left, Board Member At Large Sandra Ng Cassidy, NY; Secretary Kristin D. Sostowski, NJ; Board Member At Large Jennifer A. Champlin, AR; Board Member At Large Peggy Steif Abram, MN; Vice President Leslie Richards-Yellen, IL; Board Member At Large Diane E. Ambler, Washington, DC; Board Member At Large Karen S. Morris, TX; Board Member At Large Suzan A. Miller, CA; President Lisa M. Passante, PA; Immediate Past President Deborah S. Froling, Washington, DC; Assistant Secretary Jennifer M. Guenther, CA; President-Elect Marsha L. Anastasia, CT; Board Member At Large Kristin L. Bauer, TX; Treasurer-Elect Sarretta C. McDonough, CA; Treasurer Angela Beranek Brandt, MN; Board Member At Large DeAnna D. Allen, Washington, DC. Not pictured: Board Member At Large Susan L. Lees, IL; Board Member At Large Carol A. Robles-Román, NY; Board Member At Large Beth L. Kaufman, NY.



2014 Annual Meeting Awards Photos: Marty Morris/MPM Photography LLC





The Outstanding Member (from left) Stephen Weber (Lesley's father), Marilyn Weber (Lesley's mother), Babette Orenstein, Lauri Damrell, and award presenter Leslie Richards-Yellen.

## OUTSTANDING MEMBERS

*The Virginia S. Mueller Outstanding Member Award is presented to for exemplary contributions to NAWL.*

Lauri A. Damrell practices with Orrick, Herrington & Sutcliffe LLP's Employment Law Group in San Francisco, focusing on complex employment litigation and counseling, particularly in discrimination and wage-and-hour law. She has been involved with NAWL since 2011, co-chairing subcommittees for the 2012, 2013, and 2014 Mid-Year and Annual Meetings. She is also active on the Planning Committee for the Pipeline to Equity Partnership (P2P) program. In addition, she spoke on a panel at the 2014 Mid-Year Meeting entitled, 50 Years After the Equal Pay Act and Title VII: Where We Stand. Contact her at 916.329.7914 or [ldamrell@orrick.com](mailto:ldamrell@orrick.com).

Babette V.E. Orenstein is a senior attorney with the Consolidated Edison Company of New York, where she provides advice and counsel on matters related to information governance, records management, cybersecurity, data privacy, legal hold, e-discovery and social media. She has been active with NAWL since 2006. In 2013, she served as chair of the 9th Annual General Counsel Institute, and this year she is Sponsorship Chair for GCI 10. Orenstein can be reached at 212.460.6209 or [orensteinb@coned.com](mailto:orensteinb@coned.com).

Lesley R. Weber (1975-2013) was a dedicated and respected in-house counsel with the Allstate Insurance Company. She was actively involved with NAWL from 2009 until her death in 2013. Weber was an active committee member working to organize NAWL's Annual General Counsel Institute, including logistics chair for GCI8 and in 2013. She served as vice-chair for GCI 9.



## M. ASHLEY DICKERSON AWARD

*Named after trailblazer Mahala Ashley Dickerson, NAWL's first African-American President (1984-85), this award is presented to lawyers who have promoted and advanced diversity in the legal profession.*

**KIM M. KEENAN** is the ninth General Counsel and Secretary of the National Association for the Advancement of Colored People (NAACP). She serves as the chief advocacy and corporate counsel for the oldest and largest civil rights organization in the world.

The recipient of numerous awards, among them the Lawyers of Color 2014 Power List of the nation's most influential minority attorneys; and the Women's Bar Association 2007 Woman Lawyer of the Year award, her career demonstrates a strong commitment

to important issues affecting women and people of color, public service and improving the legal profession.

Keenan uses teaching as an opportunity to mentor young professionals. For more than two decades, she has served on the Senior Adjunct Faculty of George Washington University Law Center, in Washington, D.C., where she co-teaches Pretrial Advocacy and Trial Advocacy. In 2007, Keenan was selected to teach on the faculty of the National Trial College for the University of Virginia School of Law, Charlottesville, Va. For the past 20-plus years, she has been the Civil Procedure Lecturer for the Charles Hamilton Houston Law Preparatory Course at Georgetown University Law Center.

Keenan is a nationally recognized lecturer on various legal topics and has spoken to numerous organizations including the NAACP, Alpha Kappa Alpha Sorority Inc., the National Urban League, AARP Inc. and the National Education Association. Keenan was a regularly featured attorney on the first season of Fox's *Power of Attorney* television show. Additionally, she has served in various roles for CNN, C-SPAN, Court TV, Fox News and numerous radio programs. More recently Keenan has appeared on *News One Now* on TV One.

Keenan's commitment to the community extends beyond the legal profession. She is a member of the Capitol City Chapter of the Links Inc., Alpha Kappa Alpha Sorority Inc., the International Women's Forum of Washington, D.C., and the Barristers. Keenan served as the appointed chair of the American Lung Association's national Diversity Committee and was a member of its National Assembly. She lives in Washington, D.C., with her husband, Joseph Blackburne, and son, Jordan Blackburne. ■

## PUBLIC SERVICE AWARD

*The Public service award is presented to a lawyer dedicated to exemplary public service.*

**KATHRYN H. RUEMMLER** recently rejoined Latham & Watkins as a partner in the Litigation Department and a member of the White Collar Defense and Investigations Practice Group, after serving as counsel to U.S. President Barack H. Obama for three years. As his chief lawyer, Ruemmler was one of the president's most senior advisers, providing strategic advice on all legal matters implicating domestic and foreign policy and national security. During her tenure as White House Counsel, Ruemmler was credited with the president's historic diversification of the Federal Bench, including his nomination of an unprecedented number of women.

Earlier in her career, Ruemmler worked for six years as a federal prosecutor, during which time she handled a wide variety of criminal investigations and prosecutions ranging from violent crimes to securities fraud and insider trading. Notably, Ruemmler was one of the lead prosecutors in the high-profile securities fraud prosecution of former Enron CEOs Ken Lay and Jeff Skilling. Prior to that she served as Associate Counsel to U.S. President William Jefferson Clinton.

In 2011, Ruemmler was named Lawyer of the Year by the Bar Association of the District of Columbia. She was named one of the 50 Most Powerful People in Washington by GQ Magazine (2012) and one of Washington's Most Influential Women by both the National Law Journal (2010) and Washingtonian Magazine (2011). ■

2014 Annual Meeting Awards Photos: Marty Morris/MPM Photography LLC





## LEAD BY EXAMPLE AWARD

*This award is presented to a male practicing lawyer who is a leader in his law firm, company, government unit or public interest entity and supports the advancement of women. He works in a company, firm or government/public interest unit that demonstrably supports such advancement. In his own department, measurable metrics support the award.*

**ROBERT J. GREY JR.**, is a partner with Hunton & Williams LLP and serves as vice chair of the firm's Pro Bono Committee. Grey's practice is focused on representing businesses in administrative, regulatory and legislative matters. He also serves as a neutral in commercial mediations.

In 2010, Grey was selected to be the executive director of the Leadership Council on Legal Diversity. Also in 2010, he was appointed by President Obama and confirmed by the Senate to the Board of the Legal Services Corporation.

Grey was elected as an officer in the ABA, serving as chair of the ABA House of Delegates in 1998 and later as president of the ABA in 2004. During his term as president of the ABA, he worked for better justice through better juries via the America Jury Initiative. Grey received his J.D. in 1976 from Washington and Lee University, in Lexington, Va., where he currently serves on its Board of Trustees. ■

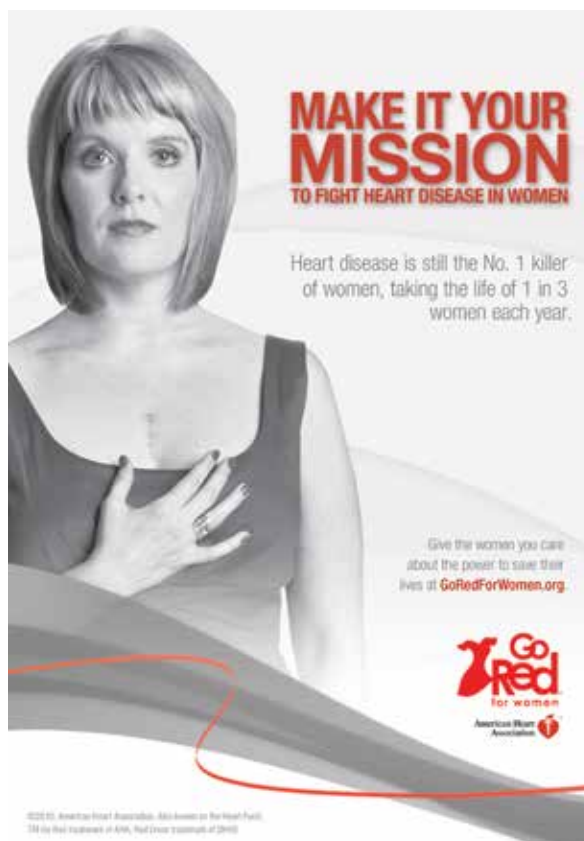
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## ARABELLA BABB MANSFIELD AWARD

*The Arabella Babb Mansfield Award is the oldest award given by the National Association of Women Lawyers. The award is given in recognition of professional achievement, positive influence and valuable contribution to women in the law and in society. The award is named after the first American woman admitted to a State Bar in the United States.*

**ANITA F. HILL** is senior adviser to the provost and professor of Social Policy, Law and Women's Studies at Heller Graduate School of Policy and Management, Brandeis University, Waltham, Mass. Professor Hill is also Of Counsel at Cohen Milstein Sellers & Toll PLLC. She began her career in private practice in Washington, D.C., where she also worked at the U.S.

Education Department and Equal Employment Opportunity Commission. In 1989, Hill became the first African-American to be tenured at the University of Oklahoma College of Law, where she taught contracts and commercial law. Not long after, Hill was thrust into the public arena when she testified about the sexual harassment she experienced working for then Supreme Court Nominee, Clarence Thomas. Currently, at Brandeis University, she teaches courses on gender, race, social policy and legal history. Along with Provost Steve A. N. Goldstein, Hill is responsible for implementing "Fulfilling the Promise: The Brandeis University Strategic Plan." As counsel to Cohen Milstein, she advises on class action workplace discrimination cases.

Hill's latest book is *Reimagining Equality: Stories of Gender, Race and Finding Home* (Beacon Press, 2011). For the City Arts & Lecture Series of San Francisco, she has interviewed author Anna Quindlen and filmmaker Spike Lee, among others. Time Inc., Newsweek, The New York Times, The Boston Globe and Ms. Magazine have published Hill's commentary, and she has made numerous appearances on national television programs.

Hill is the recipient of numerous awards, grants and honorary degrees. Her professional and civic contributions include chairing the Human Rights Law Committee of the International Bar Association, and membership on the Board of Governors of the Tufts Medical Center, the Board of Directors of the National Women's Law Center, and the Boston Area Lawyers Committee for Civil Rights. Hill is the subject of Freida Lee Mock's documentary, *ANITA*, which premiered in January 2013 at the Sundance Film Festival and is scheduled for theatrical release by Samuel Goldwyn Co. in 2014. ■



## NAWL PRESIDENT'S AWARD

*This special recognition award is given to an organization that has championed policies, programs and procedures for advancing women attorneys.*

The President's Award was presented to **HONEYWELL** and accepted by Tanya D. Holcomb, chief corporate litigation counsel, assistant general counsel. Honeywell is a \$40 billion global, diversified Fortune 100 leader with more than 131,000 employees. Honeywell invents and manufactures technologies to address some of the world's toughest challenges linked to global macro trends such as energy efficiency, clean energy generation, safety and security, globalization and customer productivity.

Holcomb is responsible for strategic direction and management of domestic and international litigation including corporate, commercial and product liability matters.

Holcomb has worked closely with Kate Adams, senior vice president and general counsel, to focus on diversity as a success factor for Honeywell's business performance. Honeywell's Women's Council drives enterprise approaches to retaining and developing female talent and its Diversity Council works to ensure the company meets the evolving needs of its customers and communities, while also attracting and retaining the best talent globally. Diversity also is a goal in hiring and internal promotions. ■

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# Networking Roster

The NAWL Networking Roster is a service for NAWL members to provide career and business networking opportunities within NAWL. Inclusion in the roster is an option available to all members, and is neither a solicitation for clients nor a representation of specialized practice or skills. Areas of practice concentration are shown for networking purposes only. Individuals seeking legal representation should contact a local bar association lawyer referral service.

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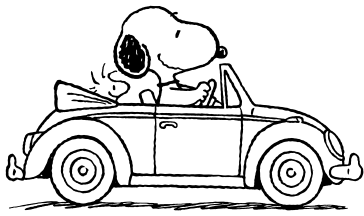
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