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# Campus Sexual Assault

## *What We Know and What We Don't*

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**S**exual assault on campuses in the United States is a hot-button issue. How big is the problem? It is hard to know because many assaults go unreported. Surveys of college-age students have the potential to overcome this problem. Unfortunately, as I show in this article, the most widely cited surveys used by policy makers have flaws, and there is disagreement among them when it comes to the incidence of sexual assault on the nation's campuses. Despite the shortcomings of these surveys, the media promote the idea that campus sexual assault is a commonplace and serious problem. In response, based on this incomplete and less-than-accurate data, the federal government has implemented a series of policies that are putatively designed to lessen sexual assault but that impose heavy costs on colleges and potentially undermine due process.

Sexual assault on college campuses has captured the nation's attention. The situation has been characterized by Senator Kirsten Gillibrand (D-N.Y.) and others as an epidemic, driven by what some have called a rape culture (Toffee 2014). To make matters worse, Annie Clark, founder of the advocacy group End Campus Rape Now, maintains that colleges routinely mishandle sexual assault cases. "You hear about Amherst, and then it dies down. You hear about Yale, and it dies down. We're tired of it just popping up and everyone says it's really horrible, then nothing happens," says Clark (qtd. in Kingkade 2015). Congressman Jarod Polis (D-Colo.) stated during a congressional hearing that colleges should be able to expel any student accused of sexual assault *even if* that student is innocent, although he later claimed he misspoke (Burness

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2015). But critics of this position maintain that such charges are largely exaggerated and blown out of proportion. Whichever the case, it is difficult to know exactly how many of these offenses actually occur. Many crimes are seriously underreported, but sexual ones even more so. The vast majority of campus sexual assaults are not reported to either law enforcement or to school officials, which obviously makes it difficult to accurately gauge how many actually occur. In theory, one way to get more accurate readings is to conduct interviews and surveys asking a broader sample of respondents about their experiences on campus.

I begin by examining the two most prominent surveys, which have done the most to shape public opinion and public policy: the Campus Sexual Assault (CSA) Study and the American Association of Universities' (AAU) Campus Climate Survey on Sexual Assault and Sexual Misconduct. Both surveys are aimed directly at college students and for that reason have gained the most attention and are deemed to be important. Then I turn to another relevant though less-prominent survey described in the report *Rape and Sexual Assault Victimization among College-Age Females, 1995–2013* (Langton and Sinozich 2014), based on data from the National Crime Victimization Survey (NCVS). The NCVS is administered every year and focuses on a number of violent crimes, including rape and sexual assault, and some of its findings differ considerably from the CSA Study and AAU Survey. I discuss the results and implications of each of these surveys, with the aim of providing a clearer understanding of what we know and what we don't about campus sexual assault.

## The CSA Study

The CSA Study is a web-based survey developed by RTI International, a private firm, and funded by the National Institute of Justice, the research, development, and evaluation agency of the U.S. Department of Justice. The survey was administered in 2005 at two large public universities in the South and Midwest to students ages eighteen to twenty-five. In all, 5,466 women and 1,375 men took the survey, with an overall response rate of 42.5 percent, which is considered low by the survey's authors. The CSA Study uses *sexual assault* as an umbrella term, which includes a wide range of behaviors from rape (oral, anal, vaginal, and digital penetration) to attempted rape and forced touching of a sexual nature. The results were released in December 2007 and found that most sexual assaults occurred between individuals who knew each other and that alcohol had been consumed. Specifically, 11.1 percent of females indicated an assault had occurred while they were incapacitated by alcohol. A slightly larger number of students (13.7 percent) reported being the victim of a completed sexual assault, and 3.4 percent of female respondents report being forcibly raped. Overall, 19 percent of females had experienced a sexual assault or an attempted sexual assault since entering college. The rate for men was 3.7 percent (Krebs et al. 2007).

The major impact of the survey was not the findings per se but what was emphasized by the media. The finding most commonly cited is that almost one in five

college women were the victims of sexual assault during their time on campus—a figure that does suggest a serious problem. What is often not emphasized is the wide range of behaviors included in the definition of sexual assault. There is obviously a great deal of difference between forced touching and forced penetration. The fact that 3.4 percent of females reported being forcibly raped during their time on campus was seldom emphasized. Instead, all the behaviors are lumped together. The situation was further distorted when some media outlets reported that one in five college females were the victims of rape. As James Allen Fox, a professor of criminology at Northeastern University put it, “This one in five statistic shouldn’t be just taken with a grain of salt but the entire shaker” (qtd. in Contorno 2014).

The other problems with the CSA Study are methodological. First, critics pointed out that the survey was not based on a national sample but involved just two universities, which should have sent a signal to interpret the findings with some caution. The other issue is what researchers call self-selection bias, which occurs when individuals select themselves into a sample, resulting in a biased sample; it is a large problem with survey research in general. In this case, students who had experienced some form of sexual assault are more likely to complete the survey than those who had not experienced sexual assault. Although men are less inclined to participate in surveys, the fact that men are far less likely to be victimized does suggest why they were less likely to take the survey. Much the same is probably true for females. As one female student at the University of Kentucky told National Public Radio in speaking of taking a sexual assault survey, “Personally, that’s not something that’s affected me at this point in my life so I really wouldn’t feel the need to take it” (qtd. in Smith 2015).

Despite the problems, the one-in-five figure became firmly imbedded in the nation’s understanding of sexual assault on campus, along with the idea that something needed to be done. Accordingly, the Center for Public Integrity, a nonpartisan news organization, began an investigation of campus sexual assault. Its report, issued in 2010 and titled *Sexual Assault on Campus: A Frustrating Search for Justice*, found that most victims of sexual assault did not report it, particularly if drugs and alcohol were involved, and many females did not consider the incident in question a sexual assault. The report concluded that when victims did report the assault, their lives were “turned upside down,” an effect caused by a system that left victims woefully underserved while those responsible for the assault were seldom punished (Center for Public Integrity 2010).

At about the same time, the Center for Public Integrity teamed with National Public Radio to air a report on campus sexual assault, which also used the one-in-five figure. The broadcast focused on a University of Wisconsin female student who waited fifteen months to report an alleged rape by two male students. By that time, one of the male students had graduated, and the other, still in school, claimed the sex was consensual; in addition, no physical evidence was presented with the report. After investigating the case for nine months, the university took no punitive action, which can typically range from mandatory counseling to expulsion. The female student then filed a complaint with the U.S. Office for Civil Rights claiming that the university had failed

to act promptly and that sexual harassment of her had continued since one of her attackers was still on campus. In the end, the U.S. Department of Education (USED) ruled that the university had acted properly. In retrospect, both the university and the USED had little choice in reaching their decisions, largely because there was no evidence to support the student's allegations and the university could have faced potential legal liability had it ruled otherwise. The report did state that such cases are difficult for schools because there is often little corroborating evidence and the accuser and the accused present different versions of the incident (Shapiro 2010).

The broadcast generated a great deal of national attention and further reinforced the notion that some action was required. In 2011, Russlynn Ali, head of the USED Office for Civil Rights, sent a "Dear Colleague Letter" to the nation's colleges and universities urging them to address the problem of sexual assault. Specifically, the letter reminded schools that under Title IX of the Civil Rights Act of 1964, they had to take immediate and appropriate action (independent of the criminal justice system) to investigate incidences of sexual violence and then take steps to prevent it. These steps included designating a Title IX coordinator to handle sexual assault cases, providing a grievance procedure for students to file complaints, and resolving complaints in a timely manner (sixty days was recommended). In addition, the letter urged, university judicial procedures regarding the complaint must use the preponderance-of-evidence standard rather than the higher standard of clear and convincing evidence to determine the outcome of a case (Ali 2011). What was unusual about all of Ali's prescriptions was that the Administrative Procedural Act of 1946 requires the government to invite public comments and consider them before changes can be made to the rules, particularly when the changes are of such magnitude. If the changes are adopted, opponents can then challenge them in court (Schuck 2016). Apparently, the USED concluded that the "Dear Colleague Letter" provided a way to circumvent the act. However, by doing so, the government left itself vulnerable to possible legal challenges ("Title IX Guidelines Challenged" 2016), and to date one such suit has been filed challenging the preponderance of evidence standard (Green 2017).

In addition to the USED, the White House also got involved. Vice President Joe Biden was soon appointed to head a task force on campus sexual assault. Biden had stated earlier, "One in five of every one of those young women who is dropped off the first day of school, before they finish school will be assaulted in her college years" (qtd. in Kessler 2014). In 2014, the task force recommended colleges conduct "campus climate surveys" to gauge the scope of sexual assault and provide training and educational programs to reduce it, which the Campus Sexual Violence Elimination Act of 2013 also required for all incoming students (Bidwell 2015). The point that needs to be emphasized is that to varying degrees all of these events seem to be rooted in the findings reported in the CPA Study, but as Mary Koss, a professor at the University of Arizona and researcher on sexual violence put it in referring to the CSA, "it is not the soundest data [the White House] could have used" (qtd. in Contorno 2014).

## AAU Campus Survey

The AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct was also web based and directed at college students but was significantly more comprehensive than the CSA Study. This survey was administered during the spring semester of 2015 at twenty-seven schools, with 779,170 students receiving the survey but only 19.3 percent responding. Rather than the term *sexual assault*, the survey used the term *nonconsensual sexual contact*, which included rape (oral, anal, vaginal, digital penetration) and nonconsensual touching, kissing, grabbing, groping, and rubbing in a sexual way. The survey investigated four tactics used to accomplish sexual assault, including physical force or a threat of physical force, incapacitation, coercion (nonphysical threats or promise of rewards), and absence of affirmative consent. The authors of the survey noted that absence of consent may or may not constitute a criminal offense but can be a violation of student codes of conduct (Cantor et al. 2015). That said, the survey appeared to confirm many of the CSA Study findings.

The survey found that in the 2014–15 school year, 10.8 percent of undergraduate females reported penetration or sexual touching by force or incapacitation. (Non-heterosexual students reported the highest rate, at 12.4 percent.) Only 28 percent of the most serious incidences were reported, and much of the nonconsensual contact involved alcohol or drugs. However, the finding that grabbed the media’s attention was that 26.1 percent or roughly one in four senior females reported nonconsensual contact either by penetration or touching over the course of their college careers (for males the figure was 6.3 percent). A headline in the *New York Times* read, “1 in 4 Women Experience Sexual Assault on Campus” (Perez-Pena 2015). An official for the advocacy group Know Your Title IX told the *Times*, “This survey is significant confirmation of a major problem, and it confirms what we’ve been saying about the mind-set on campus” (qtd. in Perez-Pena 2015). Indeed, for some years various advocacy groups had maintained that a rape culture existed on campuses, and now there appeared to be proof of it (McElroy 2016). However, the authors of the survey warn that the one-in-four and one-in-five figures should not be considered a “global rate.” According to the authors, using those figures oversimplifies the issues and can be misleading because the AAU Survey was not nationally representative and because rates varied widely from campus to campus, indicating different social environments and risks (Cantor et al. 2015).

The higher one-in-four figure was undoubtedly related to the fact that the survey included the category “absence of consent.” Indeed, 11.4 percent of undergraduate females reported that nonconsensual sexual contact had occurred under these circumstances. Research indicates that most incidences of sexual misconduct on campus start with consensual contact because the individuals involved know each other and have been drinking (Langton and Sinozich 2014), but then at some point that consensual contact turns nonconsensual. The problem with absence of consent is that it becomes extremely difficult for an alleged perpetrator to know exactly when the turning

point occurs. The AAU Survey was also hampered by the same problems as the CSA Study. A wide range of behaviors were included, and self-selection bias remained a problem because the survey was voluntary. To their credit, the authors acknowledged that those who had not experienced nonconsensual sexual contact were less likely to complete the survey.

## Rape and Sexual Assault: The NCVS

The NCVS is administered by the U.S. Bureau of Justice Statistics and is based on a nationally representative sample. The survey dates back to 1972 and was developed in part to address the underreporting of crime. Currently, about 90,000 randomly selected households comprising 160,000 individuals twelve years or older participate. Each household is interviewed twice a year for three years and is asked if any household members twelve years and older have been the victim of crime in the past six months. The NCVS covers not only rape and sexual assault but also other crimes such as robbery, theft, burglary, and physical assaults and has a response rate of 74 percent (U.S. Bureau of Justice Statistics 2014). An advantage of the NCVS, besides being based on a large nationally representative sample, is that it is longitudinal, so trends can be identified. Just as important, because it does not focus solely on sexual assault, the problem of self-selection bias is mitigated to some degree.

In December 2014, the Bureau of Justice Statistics issued a special report based on NCVS data, *Rape and Sexual Assault Victimization among College-Aged Females: 1995–2013* (Langton and Sinozich 2014). The NCVS defines sexual assault from a legal and criminal justice perspective. Rape includes various types of penetration by force or threat as well as attempted rape, and sexual assault involves unwanted sexual contact such as grabbing and fondling. Although penetration due to coercion is included, the survey does not specifically ask about the inability to provide consent due to drug or alcohol consumption. One of the most important findings of the survey described in the report was that between 1997 and 2013 no significant differences were found in the incidence of rape and sexual assault among females age eighteen to twenty-four attending higher education institutions. In addition, the incidence of sexual assault was slightly lower for females attending college than for females who do not. Specifically, the reported rate of rape and sexual assault for females attending college was 6.1 per 1,000 or about 1 in 164 over a six-month period, which is much lower than the rates given in the CSA Study and the AAU Survey. In about half of the incidences reported in the NCVS, alcohol and drugs were involved. Offenders were almost always male, and in 80 percent of the cases both parties involved were acquainted. Interestingly, NCVS data found that aggravated assault and simple assault were more common crimes against females on campus than sexual assault (Langton and Sinozich 2014).

The NCVS has been criticized on the grounds that it underreports the number of assaults because it does not ask questions that explicitly define what constitutes rape and

sexual assault. Interviewers ask respondents if they have been forced to engage in unwanted sexual activity. If a respondent answers “yes,” then he or she is then asked for more detailed information about the incident. In contrast, both the CSA Study and the AAU Survey use a long list of questions about varying types of sexual contact. As a result, females may not always identify their experiences as a rape or sexual assault, but the two surveys will classify them as such. For its part, the Bureau of Justice Statistics has stated that the NCVS may underestimate rape and sexual assaults.

## What We Know

Although the three surveys have different results, particularly when it comes to the rate of incidence, they do share some common findings, none of which is surprising or unexpected. For instance, alcohol is associated with at least half of the incidences of sexual assault, which suggests, at the very least, that drinking is a major contributing factor. In this regard, studies indicate that about half of college students binge drink (National Institute on Alcohol and Alcoholism 2014). Combine this finding with the difficulty in discerning the difference between intoxication and incapacitation, and it is easy to understand why incidences occur. For years, colleges have attempted to mitigate the problem. Every year schools take part in Alcohol Awareness Month, when students participate in various activities designed to reduce consumption, but with little effect. Put simply, drinking is a part of the undergraduate social environment, and the problems associated with it will continue.

Another common finding is that males are almost always the perpetrators, which to some indicates the presence of a rape culture—a label often associated with fraternities, where unsuspecting coeds are plied with alcohol and then assaulted. As one study on the subject put it, college fraternities “create a social cultural context in which the use of coercion in sexual relations is normative” (Martin and Hummer 1989, 462). There are of course thousands of fraternity chapters across the country, and some may be “coed traps,” but research suggests that a small percentage of college males commit the vast majority of rapes (Rape, Abuse, and Incest National Network 2014), which doesn’t mesh with the idea of a rape culture in which sexual assault is a way of life for a large fraction of college males. In addition, surveys given at Florida State University indicate that 90 percent of males maintain they always obtain consent and that males who intervene to stop sexual violence are admired (Staley 2016). Hence, one promising way to reduce sexual assault is to have bystanders intervene when they see things getting out of control, which apparently does not happen very often, at least according to the AAU Survey. Indeed, President Barack Obama urged young men on campus “to recognize sexual assault and stop it” (qtd. in Bidwell 2015). In this regard, a program developed at the University of Kentucky that trains students to intervene has reportedly reduced sexual assaults in Kentucky high schools that implemented the training (Zimmerman 2016).

The other area where the surveys are in agreement is underreporting, which, as mentioned, is the major reason these surveys were conducted in the first place. Data from the NCVS reveal at least 80 percent of rapes and sexual assaults are not reported (Langton and Sinozich 2014). Many suggestions have been made over the years about ways of encouraging more reporting. However, when one considers that the persons involved usually know each other and that there is embarrassment and some confusion about whether a given act constitutes an assault, the lack of reporting is understandable. Moreover, confusion about what constitutes a sexual assault begs the question, Would most college females consider something such as a forced kiss a sexual assault, let alone report it?

## What We Don't Know

The major area of disagreement between the surveys is rate of incidence, which has and will continue to be the subject of debate and disagreement. Each survey has its limitations, but on balance the NCVS has fewer of them, making its results more credible. To reiterate, although the NCVS may underestimate sexual assault, it is based on a large national random sample, is less prone to self-selection bias, has a high response rate, and is conducted twice each year, which allows trends to be identified. In this regard, the fact that the incidence of sexual assault did not increase over a sixteen-year period is noteworthy. If college sexual assaults were of epidemic proportions, one would have expected some uptick in incidence. Advocacy groups such as End Campus Rape Now would argue that there has always been an epidemic; hence, no change would be expected. Yet other studies indicate that the incidence of sexual assault has declined. For instance, the Rape, Assault, Abuse, and Incest Network (2015) notes that, according to NCVS statistics, sexual assaults for the general population declined by more than half between 1994 and 2014, which suggests that whatever the actual situation is on campuses, the term *epidemic* is not an accurate portrayal of it.

One thing that is clear is that incidence is very much dependent on how sexual assault is defined. If the definition includes a wide range of behaviors, as in the CSA Study and AAU Survey, then the one-in-four and one-in-five figures will be found. For instance, a voluntary survey at the University of Michigan used a wide range of behaviors to describe sexual assault, and so 22 percent of females on campus reported being sexually assaulted. But if the definition is narrowed, fewer incidences are reported. At the University of Kentucky, students were required to complete a sexual assault survey, an approach that basically eliminates self-selection bias. The survey had 24,300 respondents; it asked students about any “unwanted sexual experiences” defined as attempted or completed sexual intercourse (anal, oral, or vaginal) and used federal guidelines to define physical force, the threat of force, and incapacitation. This survey found that 4.9 percent of students had experienced a sexual assault in the previous year (New 2015). (The university did not release separate figures for men and women [New 2015].)

Advocates maintain that a broad definition of sexual assault allows schools and researchers to understand the larger range of experiences students encounter. Unfortunately, when such a broad definition is used, a less-than-clear picture can emerge. As John Foubert, a professor at Oklahoma State University who studies campus sexual assault, stated in speaking of the AAU Survey, “When we throw ‘unwanted sexual contact’ into the mix, we risk equating a forced kiss (which is a bad thing) with rape (which is a fundamentally different act)” (qtd. in Wallace 2015). One also wonders if the general public understands what actually constitutes sexual assault. The word *assault* generally denotes a physical attack, but that is only part of how the surveys define sexual assault. Unfortunately, the “campus sexual climate surveys” that the USED may ultimately mandate will in most cases use the broader definitions used by the CSA Study and the AAU Survey (“Campus Surveys” 2015), which may provide a distorted impression and perhaps spawn overreactions by college administrators who want to avoid a federal investigation and fear losing federal funds. This fear appears to be justified. Consider that 55 schools were under investigation in May 2014 for mishandling sexual assault investigation, but by June 2016 the figure had climbed to 195 (Kingkade 2016).

A closely related issue is the change in how college judicial proceedings are conducted, which usually involves a review board consisting of administrators, faculty, and students, who determine the outcome of sexual assault cases. As mentioned, the USED now requires the preponderance-of-evidence standard (i.e., the accused probably did it) instead of the more rigorous clear-and-convincing standard previously used during investigations. The change was tied to the belief that many of the guilty escape punishment, which may be true given the tenuous nature of these cases. Although lawyers may be present, cross-examination during a hearing is not allowed, presumably to protect the alleged victim from being retraumatized. Both of these changes do raise the question, Is it now more likely that innocents will be punished? One critic quoted in the *New Republic* claims the new standard represents “a cavalier disregard for the civil rights of the accused,” and other critics, including members of the Harvard Law faculty, have expressed similar concerns about that school’s new sexual misconduct policy (Shulevitz 2014). Although some commentators are claiming innocents are already being punished, resulting in more lawsuits being brought against schools, it is probably too early to tell if this will be a significant trend. One can only hope this doesn’t happen, for if it does, little will be gained.

In summary, there is nothing inherently wrong with drawing attention to sexual assault or, for that matter, to other types of crime on campus. However, policies need to be based less on media hype and political rhetoric and more on sound and comprehensive data that will provide a clearer picture of what is actually occurring, which to this point has not happened with sexual assault. Fortunately, more comprehensive data are just beginning to emerge, which it is to be hoped will allow colleges to better access their campus climates, indicating that policy makers are aware of the lack of research available (Krebs et al. 2016). Nonetheless, the federal government decided to intrude and require higher education to devote considerable amounts of time and money to

implement policies that are based on questionable data and assumptions. Initial estimates put the costs of these policies at \$500,000 per year for large universities, the cost of an individual inquiry at higher than six figures, and the cost of a lawsuit in the millions (Hartocollis 2016). The fact that colleges and universities were not permitted to comment on the required changes regarding sexual assault is especially troubling and, as mentioned, may lead to a series of legal challenges. It would be best if at some future point more judicious policies emerge. What these policies should be is open to question. Ensuring due process to the accused would seem to be an essential element to any sound policy. Another potentially fruitful option has been suggested by Samuel Staley (2016), who urges colleges to teach self-defense to potential victims. Whatever emerges, one can only hope that any prudent modifications are made sooner rather than later.

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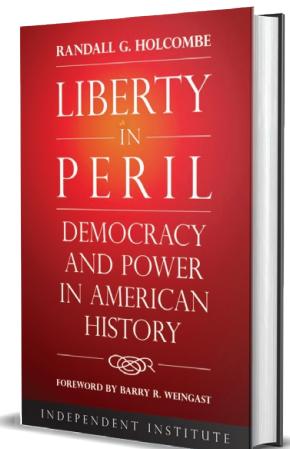
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