FROM THE QUAD TO THE COURTROOM

CAMPUS SEXUAL ASSAULT CASES IN A POST-TITLE IX ERA
CASE STUDY

Title IX and Sex Assault
THE REALITY OF CAMPUS SEX CRIMES

Police often investigate sexual assault allegations.

Delay in outcry to police does not mean delay in outcry on campus...often an administrative investigation and hearing already occurred.

Lack of collaboration and communication between police authorities and campus investigators may jeopardize ability to prosecute a criminal act.
CASE FACTS PER CRIMINAL INVESTIGATION

Victim #1 “Trish”

- Dan is everyone’s BFF
- Dan hangs out with Trish all the time. He knows Trish has a boyfriend who is studying abroad. Dan is always there to comfort Trish. Dan makes drinks for Trish and even lets her crash at his place when she gets drunk.
- Trish trusts Dan and tells him everything. Trish cuddles with Dan when she’s down, Trish stays in the same bed with Dan because they are best friends. Trish knows Dan will never do anything to hurt her.
- Trish wakes up after a night of drinking and Dan’s hand is in her pants. Dan is also masturbating himself. Trish is shocked and disgusted but she tells no one. She feels sick and embarrassed because she trusted Dan.
- She confronts Dan, he apologizes. A second incident occurs later, where she wakes up to him on top of her and masturbating on her chest.
CASE FACTS PER CRIMINAL INVESTIGATION

Victim #2: “Jen”

- Dan is everyone’s BFF
- Dan studies with Jen because they are in the same track at school. Dan and Jen talk about everything when they are studying. Dan even makes Jen her favorite drink after hours of school work. If Jen gets drunk she knows Dan will let her crash at his place.
- Dan tells Jen about hard times in his life. They share lots of personal information during their study sessions. Jen is so lucky to have a friend like Dan. Jen trusts Dan and wishes she could find a nice girl for him to date. Jen knows Dan looks out for her and would never hurt her.
- Jen is later invited to a party by Dan where she is victimized (more on that later).
CASE FACTS PER CRIMINAL INVESTIGATION

Victim #3 “Sarah”

- Sarah has a similar friendship with Dan as the other two girls.
- Sarah comes forward because Dan fondled her when she was drunk, digitally penetrated her and ejaculated on her back but she never told anyone.
- Dan had apologized via Facebook message. She minimized his behavior and forgave him.
- She feels ashamed of herself for trusting Dan but he is still her friend.
CASE FACTS PER CRIMINAL INVESTIGATION

Victim # 4: “Monica”

- Monica fell asleep after a night of drinking in Dan’s bed. When she awoke, her dress and bra had been removed. She had needed help putting the dress on and knew she could not have taken it off by herself.
- Dan and Monica continued to see each other. Dan sexually assaulted Monica when they were dating but she never outcry. She was a recovering alcoholic and he got her drunk and took advantage of her more than once.
- When Monica ended the relationship, he threatened suicide, became verbally abusive and tries to tarnish her reputation among their friends. Monica finds new friends and cuts contact with the social group.
• Months go by and Dan invites a bunch of friends over for a party.
• Trish and Jen meet for the first time. Dan makes a special drink for Trish and Jen. When Trish and Jen get drunk they decide to stay at the party. Trish and Jen fall asleep on the futon. Trish wakes up to Dan putting her hand on his penis. She gets up immediately and leaves the room. Jen later wakes up to Dan fondling her breasts, and digitally penetrating her vagina. He ejaculates on her back. Jen freezes and pretends to be sleeping.
• The next day Jen and Trish get breakfast. They start to talk about Dan. They share secrets about Dan. They worry that maybe Dan has a problem and are aware of Sarah and Monica. The 4 girls are unsure of what to do so they talk to campus security anonymously.
Campus alert is issued and includes allegation of “date rape drug”. Everyone knows about Dan. The victims feel very bad.

Dan now threatens suicide and friends take sides. The campus community is buzzing and friends are divided.

Jen, Trish, Sarah and Monica participate in the Title IX investigation but they do not want police involved.
CASE FACTS PER CRIMINAL INVESTIGATION

• Trish and Jen receive advocacy on campus and decide to participate in criminal investigation.
• Title IX coordinator called DPD and told Detective of pending investigation but Detective didn’t realize what this entailed.
• Detective conducts a pre-textual phone call between Trish and Dan. Dan apologizes on the call.
• D gets arrested on the same day he was supposed to give a statement in the Title IX hearing...so no statement given. D also refuses to talk to police.
• Dan gets expelled after the Title IX hearing is complete. Detectives take statements from Trish and Jen. Detectives reach out to Sarah and Monica, who do not wish to participate with investigation.
• The DA office files sexual assault charges naming Trish and Jen as victims. Dan pleads NG and set the case for trial.
CASE TIMELINE

• January 5: Jen, Trish, Sarah and Monica notify campus security about sexual allegations against Dan from year prior.
• Jan 5: Patrol officers respond to campus and take statements from all 4 victims.
• Jan 7: Investigation on campus active, timely warning issued. Interim measures taken: Dan is suspended from school and campus housing.
• Jan 9: Detective gets assigned and begins criminal investigation
• Jan 9: Title IX investigator is concurrently conducting campus investigation
• Jan 11: Detective follows up with friends/witnesses but clearly everyone has already taken sides, lack of cooperation
• Jan 11: Title IX investigator notifies police department that a Title IX investigation is ongoing (Detective not given a report and not aware of what the investigation entails, but documents this notification in his report)
• Jan 11: Dan gets a lawyer and is advised not to speak with anyone. However, he begins contacting the victims and his friends to get stories aligned.
• Jan. 11: Detective conducts a pre-text call with Trish and Dan
• Jan. 14: Campus has interview scheduled with Dan
• Jan 14: Dan misses campus interview because he gets arrested
• Feb 8: Campus investigation complete and Dan expelled
• April 1: DA office files charges
PRETEXT PHONE CALL

TRISH CALLS DAN
During trial prep, prosecutors reach out to Sarah & Monica as potential 404B witnesses.

Sarah moves out of state and does not wish to participate, but provides prosecutors electronic communication with Dan.

Monica meets with prosecutors and has a large report in her hand, which she continuously refers to throughout the meeting to help her answer questions. When prosecutors inquire, Monica says the 42 page document is the Title IX investigation.

Monica will not allow prosecutors to see it, as the front page of the report reads “Confidential Information, not for distribution.”

Prosecutors subpoena the Title IX report from the university.

It includes many admissions by Dan via electronic communication with friends/victims. This is the first time prosecutors have seen this report. The Detectives also were unaware of the report.
INFORMATION LEARNED IN TITLE IX SUMMARY REPORT

• 2 additional victims give statements in the Title IX report but a year has passed and the victims have graduated and moved out of state. Detectives are unable to gain accurate contact information.

• One of these victims is a former girlfriend who despite a healthy consensual sexual relationship, wakes up naked to him rubbing genitals on her and ejaculating on her back. She is disturbed and breaks up with him immediately.

• The report also includes details that become important and helpful impeachment information for the defense.

• The prosecution makes an offer and Dan pleads guilty. Dan gets probation. No additional victims are named due to lack of victim participation and/or information.
NOW WHAT?

• Sexual Assault Interagency Council
  • Denver’s multidisciplinary collaboration dedicated to improving the response to sexual assault
  • Includes a traditional SART team
  • Victim advocate/counseling representatives from colleges located within Denver.
FIRST STEP: TALKING ABOUT THE PROBLEM

Let's have a meeting to discuss the committees who will form the task forces, who will then have more meetings.
PARTICIPANTS: HIGHER EDUCATION

- Auraria Campus
  - University of Colorado Denver
  - Metropolitan State University of Denver
  - Community College of Denver
- Johnson & Wales University
- Regis Jesuit University
- University of Denver

- Victim Advocates or Counseling Center representatives
- Title IX Investigators
- Title IX Coordinators
- Campus PD
- Campus Safety
- General Counsels
PARTICIPANTS: EXTERNAL STAKEHOLDERS

• Denver Police Department
  • Sex Crimes Unit
  • Victim Assistance Unit
  • Domestic Violence Unit

• Denver DA’s Office
  • Sex Crime Unit

• The Blue Bench
  • community-based rape crisis center

• SART Coordinator
  • All meeting logistics
FIRST STEPS: COLLABORATION 101

1. Define the problem

2. Cross-Train
   - ½ Day cross-training
   - Walkthrough of criminal justice investigation/prosecution
   - Walkthrough of each institution’s Title IX process
CAMPUS SAFETY AND SECURITY
WHY DO WE DO THIS?

- Universities are obligated to investigate cases of sexual harassment because of federal mandates and statutes.

- Applies to educational institution that receives federal monies, including grants

- Department of Education Office of Civil Rights 2001 Guidelines
- Dear Colleague Letter – April 2011
- Office for Civil Rights: Questions & Answers on Title IX and Sexual Violence

- Mandates and Statutes:
  - Clery/Campus Safety and Security Act
  - Violence Against Women Act
  - Title IX
CLERY/CAMPUS SAFETY AND SECURITY ACT

• Annual Statistic Reporting requirements (specific crimes)

• Requirements Apply to:
  • Location frequently used by students
  • Controlled or owned by University – agreement for control of specific space
  • Proximity around campus
  • Repeated use:
    • Hotels
    • Property owned or controlled by University
    • Student’s rooms, Public areas, Entrance. Where students are or could be.

• Requirements to issue Timely Warnings:
  • Campuses are required to issue an alert about Clery Crimes that pose a serious or ongoing threat to students and employees.
CLERY CRIMES

- Crimes that campuses are required to report in their Annual Security Report include:
  - Sex Offenses - Forcible
  - Forcible Rape
  - Forcible Sodomy
  - Sexual Assault With An Object
  - Sex Offenses - Non-Forcible
  - Incest
  - Statutory Rape
  - Dating Violence, Domestic Violence and Stalking (VAWA Reauthorization Act of 2013)

The definitions of these crimes may not be the same as state law definitions.
TITLE IX

■ Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 prohibits discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance, including sexual harassment, gender-based discrimination and pregnancy discrimination.

Clery concerns are about geography or “where”, Title IX concerns are about individuals or “who”.
• Terminology:
  • Complainant=Victim & Respondent= Suspect
• Campuses are required to:
  • Conduct a separate and independent investigation.
  • Provide interim measures to provide for the Complainant's safety during and after the investigation.
  • Ensure certain employees report any information they have regarding a Title IX concern to the Title IX Coordinator.
• The complainant (victim) may report to the campus Title IX Coordinator before they report to police.
• In some cases, a Complainant can remain confidential.
• Parties can have a representative (including attorneys) present during any stage of the Title IX process.
• Campuses have a 60-day timeline to complete an investigation.
  • Campuses can delay an investigation for the criminal investigation, but not for a long period.
• Title IX due process makes it possible for the complainant and respondent to have access to the summary of findings, other reports, witness statements, and evidence before a criminal proceeding takes place.
• The standard of evidence is a preponderance of the evidence - more likely than not.
HOW DOES TITLE IX AFFECT LAW ENFORCEMENT?

- The assault may have happened in your jurisdiction but is reported to the campus, no matter where they are located, even if the campus is located out of state.
- Title IX Guidance suggests campuses have an MOU with local law enforcement agencies.
- Communication between law enforcement and campus investigators is key.
- Title IX also mandates how public schools handle reports of sexual harassment. Title IX applies to K-12, too!
- Not all investigators have law enforcement/investigation experience.
CHALLENGES: TIME IS OF THE ESSENCE

• Campuses must act fast!
  • 60 day guideline and interim safety measures required
  • Victims/witnesses graduate, move away and may be less likely to participate in either process

• Parties are tipped off
  • Can hinder suspect cooperation & investigation (i.e. pretext call or detective interview)
  • Friends/witnesses tipped off
    • Dan’s witnesses: friends take sides once word gets out. Friends less willing to talk to police once timely warning issued

Law enforcement detectives must have a sense of urgency to counteract campus complexities
CHALLENGES: INFORMATION SHARING & COMMUNICATION

• Information sharing
  • Co-occurring investigations can jeopardize the integrity of evidence – collaboration/communication is critical.
  • Title IX Investigations may be pending or concluded when victim reports to LE.
  • Law enforcement and prosecutor have no way of knowing of campus investigation unless they screen for it.

• Admissions in Title IX report are admissible in criminal case
  • Title IX investigators may have more ability to get statement from the suspect/respondent
    • Less intimidating than “the cops”
    • It’s in the respondent’s best interest to talk
  • Admissions to friends may be included in Title IX report
    • Dan’s case: admissions could have led to additional charges but police/prosecutors were not aware of this information.
  • Additional victims may be included in the Title IX report

• Timing:
  • Dan gave no statement in Title IX process because he was arrested on date of hearing. Cooperation with timing is critical
CHALLENGES:
TITLE IX SUMMARY OF FINDINGS

- Title IX Findings Report
  - Report may include characterizations of facts and not direct quotes
  - Interviews may or may not be recorded
  - Inconsistencies in statements
  - Dissemination of the report creates challenges with witness sequestration
  - Confidentiality, privacy and privilege of these reports are unclear
  - Defense likely has Title IX findings but does not have to share with prosecution

College students share information from Title IX investigation and that encourages other victims/witnesses to come forward (campus BUZZ may have evidentiary value)
CHALLENGES: VICTIM-CENTERED RESPONSE

- Victim Centered Practices
  - Victims are confused about both processes
  - Victims confuse personnel
    - (i.e. Campus Safety with Law enforcement)
      - “I already talked to the Police”
  - Multiple Victim Interviews
    - Can be re-traumatizing
    - Conflicting statements/victim credibility concerns by Defense
  - Creates frustration and a lack of trust of both criminal justice and campus systems
    - Appears responders “don’t know what they’re doing” when they aren’t on the same page.
TITLE IX WORKING GROUP:
LESSONS LEARNED WE ARE LEARNING
STARTING YOUR COLLABORATION

• Start with the basics
  • Multidisciplinary collaboration may be new concept in higher ed
    • i.e “closed door meetings”
    • Key word: multidisciplinary
  • Find allies on campus to help get people to the table
  • Where do we agree?
    • What are our desired outcomes?
    • What are our shared values?
      1. How can we interface without interrupting each respective investigation?
      2. All parties involved in an investigation should be treated with fairness, dignity and respect.
      3. Victims/Complainants of a sexual assault should be empowered to make decisions regarding participation with law enforcement.
THE FACE I WANT TO MAKE DURING COLLABORATIVE MEETING DISCUSSIONS
DISCUSSING SENSITIVE TOPICS

• Apply victim advocacy skills
  • “Meeting a client where they’re at” works with meeting participants, too.
    • What is this person’s role and what perspective are they operating from?

• Educate & Validate
  • i.e. “In my experience...”

• Trust has to be earned
  • i.e. Trust of law enforcement may be lacking
    • Perception that law enforcement wants to “take over” the campus domain.
DISCUSSING SENSITIVE TOPICS

- Maintain awareness of campus climate
  - Hierarchy
  - Pending OCR investigations or lawsuits
  - Do campus advocates feel safe speaking frankly about these issues?
- Expect typical group dynamics
  - Who speaks and how often, who doesn’t and why?
- Priorities may shift often

Do not give up, the beginning is always the hardest.

Progress take time, patience & perseverance.
IDEAS FOR DISCUSSION/POLICY DEVELOPMENT

- Communication
  - Process for informing each other of pending investigations—earlier the better!
  - Process for sharing information: Title IX summaries and criminal justice information
  - Process for requesting a delay in Title IX investigation during fact-finding phase of criminal investigation

- Conducting Investigations
  - Recommended practices for conducting Title IX interviews
    - Audio recordings, trauma-informed interviews, etc.
  - Recommended practices for Title IX summaries
    - Use of direct quotes, parties review summaries for accuracy, etc.
    - Summary distribution
GROUP PROGRESS (SO FAR)

**Expected Outcomes**
- MOU between law enforcement and each campus
- A process for streamlining communication between campuses and law enforcement
- Established best practices in co-occurring investigations
  - i.e. process for delaying Title IX investigation during fact-finding portion of criminal investigation
  - Recorded interviews in campus investigations

**Reality of Outcomes**
- DPD Sex Crimes Unit appoints Title IX Liaison
  - Det. Franklin=Title IX Liaison
- Information sharing policy—in progress
  - Includes informed victim consent
  - Warm referrals to resources
  - Sharing DPD victim/suspect interviews with Title IX investigators
  - Increased understanding of co-occurring processes
If you know who to call when there’s a problem, you’ve made progress.
QUESTIONS?

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