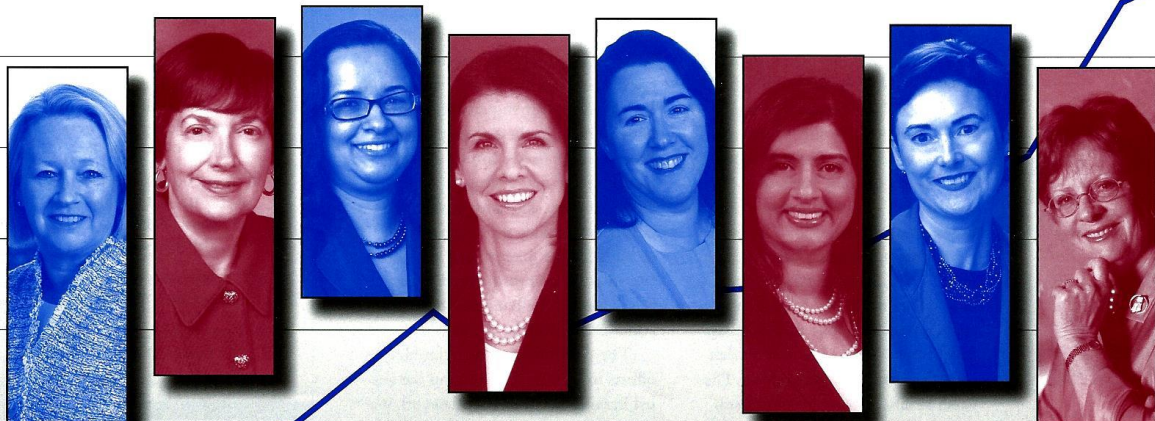


# Perspectives

A Magazine for and about Women Lawyers



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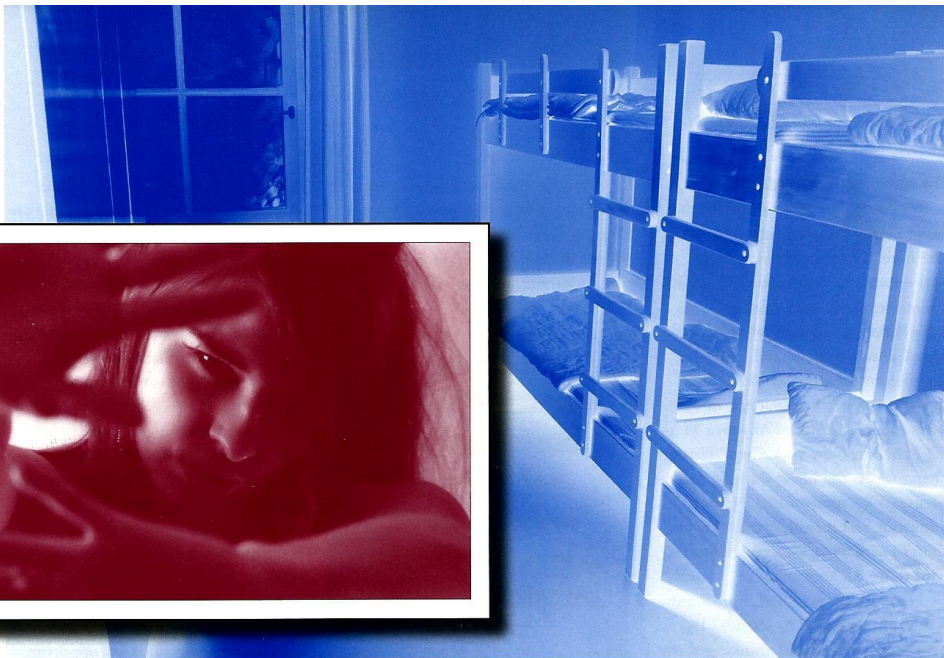


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## Women Lawyers Spur a Call to Action on Campus Sexual Assault

By Cynthia L. Cooper

Ten years ago, when lawyer Lisae C. Jordan founded the Sexual Assault Legal Institute (SALI) near Silver Spring, Maryland, it became one of the few programs in the country to offer direct legal assistance to survivors of rape and sexual violence. Among the first cases to find its way into the office: sexual assault on campus.

One in five college women is a victim of sexual assault by a campus peer, although far fewer—only 12 percent—report the violence, according to a comprehensive 2007 study by the National Institute of Justice. “People are very much in denial,” Jordan says. “There is a mythology that sexual violence is committed by some stranger in the alley. They don’t want to believe that it’s their college roommate.”

With an intergenerational mix of women lawyers and student activists leading the way, redress for sexual assault on campus is building unparalleled momentum. In January 2014,

President Barack Obama named the first White House Task Force to Protect Students from Sexual Assault, assigning it to recommend a coordinated federal response in 90 days. “The prevalence of rape and sexual assault at our Nation’s institutions of higher education is both deeply troubling and a call to action,” the president wrote. [Editor’s Note: The task force’s report was released as this issue went into production. See the Short Take on page 16.]

### Sex Crimes on Campuses

Despite prohibitions against sex discrimination in Title IX of the Education Amendments of 1972, students complain about tepid campus responses to reports of sexual violence. The result, they say, is that campuses—from those in the Ivy Leagues to state universities and small private colleges—are hostile environments that deny students equal access to educational opportunities.

The incidents of assault described by women tell of parties with knock-out drugs and male peers who befriended women and trap them in dorm rooms. One woman in Texas testified to the state legislature that she went to a fraternity party during her first week at school. “I was raped by one of the new members while his buddies stood outside,” she says.

Upon reporting, officials disbelieved her. “The school was more concerned about his rights being protected than the fact that he raped me,” she notes.

Required crime reporting under the federal Clery Act showed 3,300 reports of “forcible sex offenses” on college campuses in 2009. In addition to women, 6 percent of college males are victims of sexual assault, according to the National Institute of Justice.

Title IX, along with the 1990 Clery Act—named after a student who was raped and murdered in her dorm room—requires colleges to take action

to prevent assaults; hold perpetrators accountable; and provide information, support, and services to victims. But, for decades, government action to enforce the law was rare.

"It was an area of great legal potential for civil rights," says Diane Rosenfeld, a lecturer on gender violence at Harvard Law School, who writes and consults on campus sexual violence. "The thing that made it change were women lawyers who were committed to it."

A major turning point came in 2011 with a new articulation of a new policy from the Office for Civil Rights (OCR) of the U.S. Department of Education. Taking charge of the 600-lawyer office in 2009, lawyer Russlynn Ali, appointed as assistant secretary for civil rights, decided to take action. "Girls were getting raped at school. That's what this is about, period. And nobody who is associated with schools should be okay [about this happening]," Ali observes.

### Guidance for College Compliance

On April 4, 2011, Ali's office released a 19-page "Dear Colleague Letter," which is defined in the *Federal Register* as a "significant guidance document." Applying Title IX and the Clery Act, the letter took comprehensive aim at the responsibilities of schools receiving federal funding to take "immediate and effective steps to respond to sexual violence."

The letter specifies what schools must do to investigate complaints and pursue grievance proceedings "promptly and equitably." One requirement—and the most contested—holds that perpetrators must be judged by a "preponderance of evidence." According to the guidance, if schools do not comply, they may face a loss of federal funds or a referral to the U.S. Justice Department. So important was the document that it was publicly announced by Vice President Joseph R. Biden Jr., already recognized for his leading role in passing the Violence Against Women Act (VAWA) in Congress.

Commission on Women in the Profession

The Office for Civil Rights continued to follow up by conducting college compliance reviews and opening investigations of complaints. "We just tried to be tireless," says Ali, now chair of the Emerson Education Fund at the Emerson Collective in Palo Alto, California.

In the summer of 2013, Catherine E. Lhamon, former director of impact litigation at the Public Counsel Law Center in Los Angeles, succeeded Ali as assistant secretary for civil rights. The National Women's Law Center sent her a 10-page letter in November 2013, urging her to be proactive in implementing the "Dear Colleague Letter" guidelines.

The "Dear Colleague Letter" was "unprecedented," says Saundra Schuster, a lawyer and a partner in the Malvern, Pennsylvania-based NCHERM Group, LLC, which advises hundreds of colleges on risk management. "College and university administrators began getting the picture: The federal government is no longer going to allow colleges to ignore incidents of sexual assault in your environment," Schuster says.

"Sexual assault is a tremendous problem, and it has lingering impact on the recipient of the assault," adds Schuster, a former college dean in Ohio who later worked for the state attorney general. One basic misunderstanding of college administrators, Schuster says, is seeing Title IX as affecting only sports. She helps colleges understand the scope of the laws and develop structures for addressing sexual assault.

### What Campuses Can Do

Sexual assault is an area of "acute sensitivities on campus," the American Council on Education advised its membership in an April 2013 memo. But a March 2014 survey by Gallup and *Inside Higher Ed* found that none of the 846 college presidents surveyed believed their institution had inadequate response to sexual assault—although 70 percent thought that colleges, in general, need to improve.

Statistics from the Office for Civil Rights offer a different view. In a sharp upward trend, it had 26 investigations of campus noncompliance on sexual assault underway as of November 19, 2013, according to lawyers Rebecca Lacher and Pedro A. Ramos of Schnader Harrison Segal & Lewis LLP in Philadelphia, compared with three or four per year in the 1990s and early 2000s. The government levied \$1.45 million in Clery Act fines in 2013, the lawyers note, nearly equal to the fines in the previous 22 years.

Newly added to the toolbox in March 2014 is the Campus Sexual Violence Elimination (SaVE) Act, passed as part of the 2013 Violence Against Women Reauthorization Act. It codifies parts of the "Dear Colleague Letter"; requires a "prompt, fair and impartial" process for addressing sexual violence; and updates Clery crime reporting to include stalking, dating violence, and domestic violence. See the box below for statutory highlights.

(Continued on page 14)

## Legal Requirements for Colleges to Combat Sexual Assault

Combined, the laws discussed in this article require schools, at a minimum, to do the following:

- publish antiviolence policies;
- adopt a clear grievance procedure;
- train employees;
- offer prevention and awareness programs;
- take immediate steps to address sexual violence;
- have a Title IX coordinator who manages complaints and initiates immediate investigations;
- advise victims of their right to report to police;
- keep the victim informed throughout the investigation and grievance process;
- act promptly to accommodate a complainant's needs by making changes to housing, classes, or schedules;
- seek a "no contact" directive to prevent an accused student from interacting with a complainant; and
- prevent retaliation.

# WOMEN LAWYERS SPUR A CALL TO ACTION ON CAMPUS SEXUAL ASSAULT

(Continued from page 9)

This attention followed the path of women lawyers who had been ramping up complaints. Wendy J. Murphy, a professor and former sex crimes prosecutor in Boston, began to focus on the “incredible underutilization” of Title IX in campus sexual assault as early as 2000, she says, and has filed OCR complaints against three top-tier universities.

In 2002, she took the rare step of filing a complaint without a specific rape incident to challenge a Harvard College policy requiring sexual assault victims to produce “sufficient independent corroboration”—a standard long outdated in the criminal justice system and not required for other types of civil rights complaints.

“It was so bizarre to me—a big step backward from the tremendous rape reform movements,” Murphy says. After OCR opened a file, Harvard withdrew the language, she notes. But Murphy still worries that the muscular “preponderance of evidence” standard in the 2011 “Dear Colleague Letter” is undermined by the SaVE Act, which skips mention of the standard of evidence. “Schools will have more discretion to do the wrong thing,” Murphy says. “I’m hopeful the federal courts won’t allow that to happen.”

Title IX complaints on sexual assault cases have been filed in the past year against more than a half dozen colleges by Gloria Allred of Los Angeles-based Allred,

Maroko & Goldberg. “There are plenty of cases to be done, and I would encourage more,” Allred says. “We’re acting as private attorneys general—a lot of pioneering work. These cases are very important. Many young women are being let down.”

In at least two cases, Allred filed claims in federal court. In November 2013, five plaintiffs sued the University of Connecticut for emotional distress caused by “deliberate indifference” in response to their sexual assaults; the university, in its answer, denies that it acted inappropriately, but the lawsuit quickly prompted state legislative hearings on the subject.

Other lawyers focus on seeking support for distressed sexual assault victims. The Victim Rights Law Center (VRLC), located in in Massachusetts and Oregon, has 12 lawyers on staff—all women. “We could probably use 12 more lawyers,” says Colby Bruno, senior legal counsel in the Boston office. The program is aided by 100 active pro bono lawyers.

VRLC began in 2000 as an outgrowth of a rape crisis center in Boston and now handles 400 cases a year, 98 percent women. The group provides college rape survivors with representation at disciplinary hearings; seeks restraining orders; and helps survivors transfer classes to avoid contact with an assailant, get tuition reimbursements, and negotiate financial loans if medical leave is needed.

“There is so much that you have to know about. And then there is that person who’s been traumatized,” Bruno points out. “Saying, ‘I’m here to support you and I want to validate this’—that goes farther than a lot of the legal pieces. A lot of survivors feel that they can’t turn to anyone.”

## Law Students Lead the Way

As the issue of sexual assault spurs a fresh wave of campus activism, women law students are taking leading roles, too. Alexandra Brodsky, a first-year student at Yale Law School, became a founding co-organizer of Know Your IX, a website of legal information on campus sexual violence. And Laura Dunn, a third-year student at the University of Maryland Carey School of Law, stood side by side with congressional members in advocating for stronger laws.

Cari Simon, a 2011 graduate of Harvard Law School, is working as an inaugural fellow at the Harvard Gender Violence Program. She’s joined listening calls held by the White House Task Force and is tracking proposed regulations on the SaVE Act. “It’s a watershed moment in the movement to end campus sexual assault,” Simon says. “It’s a huge moment in time.”

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## **White House Issues Guidelines to Combat Campus Sexual Assault**

Reporting that one in five women is sexually assaulted while in college, the White House Task Force to Protect Students from Sexual Assault issued new guidelines on April 29 to combat campus assaults. (See Cynthia Cooper's article on this topic on page 8.) The guidelines are intended to help assault victims; help schools identify the scope, investigate, and respond effectively to sexual assaults; and provide strategies and resources to help schools implement effective prevention programs. The task force also launched a national reporting system, which asks schools to survey students about their experiences, and announced initiatives to strengthen federal enforcement efforts to better address the problem of "chronically underreported" assaults at the nation's schools.

The task force's report is titled "Not Alone" (<https://www.notalone.gov/assets/report.pdf>), which is also the name of a new dedicated website, [www.NotAlone.gov](http://www.NotAlone.gov), created by the administration as a resource for schools and the victims of sexual assault to obtain information on

students' rights; enforcement data; filing a complaint; legislation; and assistance from outside the government, such as hotlines and mental health services, classified by zip code. Established in January, the task force was headed by Vice President Joseph R. Biden Jr.'s office and the White House Council on Women and Girls, led by Tina Tchen. Several federal agencies, including the Departments of Education, Justice, and Health and Human Services, contributed to the task force's work.

The report includes the following recommendations, among others: sexual assault victims should be able to communicate confidentially with a trained advocate who would not be required to report all the details of an incident to school officials; questions about an assault victim's sexual history with anyone other than the alleged perpetrator should not be permitted; an accuser and the accused should not be allowed to cross-examine one another personally; and bystanders should be encouraged to intervene in situations where someone is at risk of an assault. The new website includes a national school-by-school enforcement map noting resolved cases that involved the U.S. Departments of Education and Justice. 📄