

A DEFICIENCY IN ADDRESSING CAMPUS SEXUAL ASSAULT: THE LACK OF WOMEN LAW ENFORCEMENT OFFICERS

KAREN OEHME,* NAT STERN,** ANNELISE MENNICKE***

38 HARVARD JOURNAL OF LAW & GENDER ____ (forthcoming 2015)

Table of Contents

INTRODUCTION.....	1
I. SEXUAL ASSAULT: VIOLENCE AND TRAUMA AFFECTING ONE IN FIVE WOMEN ON CAMPUS.....	3
II. THE FEDERAL RESPONSE TO RAMPANT SEXUAL ASSAULT AT UNIVERSITIES.....	6
III. THE IMPACT OF WOMEN OFFICERS ON SEXUAL ASSAULT REPORTING.....	11
IV. A CALL FOR MORE WOMEN OFFICERS ON CAMPUS.....	15
CONCLUSION.....	21

The federal government has taken a range of measures to combat the scourge of sexual assault afflicting college campuses across the nation. Whatever the efficacy of these policies, however, they fail to address a major obstacle to curbing sexual violence on campus: the chronically low rate of reporting of this crime to the police. Research has produced data showing that reporting of sexual assault against women increases as female representation among officers increases. Yet, most university campus law enforcement agencies include strikingly few female officers. This Article proposes an increase in women's representation in campus police agencies to foster more reporting by victims, and argues that schools failing to demonstrate consistent, ongoing, and genuine efforts to hire female officers are contributing to a hostile environment for complainants in Title IX litigation.

INTRODUCTION

As the country responds to a crisis of sexual assault on college campuses that has reached “epidemic proportions,”¹ a flood of federal policy recommendations and laws to increase prevention, arrest, prosecution, and victim services has taken aim at this widespread crime. Expanded guidelines under Title IX of the Education Amendments of 1972² were promulgated in 2011 so that schools receiving federal funding promptly investigate sexual violence allegations

* Director, Florida State University Institute for Family Violence Studies; Florida State University Distinguished University Scholar.

** John W. and Ashley E. Frost Professor of Law, Florida State University College of Law.

*** Doctoral candidate, Florida State University College of Social Work.

The authors wish to thank Delaney Ellen Anderson for her outstanding research assistance.

¹Kristen Lombardi, *Flurry of New Legislation Targets Sexual Assault on Campus*, CENTER FOR PUB. INTEGRITY (July 30, 2014, 3:38 PM), <http://www.publicintegrity.org/2014/07/30/15185/flurry-new-legislation-targets-sexual-assault-campus> (statement of Congresswoman Carolyn Maloney, D. NY).

² 20 U.S.C. §§ 1681-1688 (2012).

and take immediate steps to address the effects of violence.³ The Violence Against Women Act⁴-which for twenty years has provided funding for innovative programs to reduce rape, interpersonal violence, and stalking--has also improved the ability of universities to create a coordinated response to campus sexual assault and dating violence. The Campus SaVE Act,⁵ an amendment to the Jeanne Clery Act,⁶ expands the duties of universities⁷ to maintain a public record of sexual offenses and other campus crimes.⁸ Just as previous administrations have emphasized the need to reduce campus violence and protect victims,⁹ the Obama Administration weighed in directly on the issue of sexual assault in 2014, calling on campus law enforcement to play a “central role”¹⁰ in responding to sexual assault.

Though all of these recent steps are important, this Article contends that the reporting of the crime to police--arguably the most critical step in reducing it--will remain chronically low unless a significant gap in law and policy is addressed. Part One of this Article describes the prevalence of sexual assault on American college and university campuses, its effects on victims, and the cost of disturbingly low reporting rates for the crime. Part Two describes federal efforts to increase prevention and intervention efforts, along with high-profile Title IX investigations of universities that do not comply with federal requirements. Part Three describes the extraordinarily

³ OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., DEAR COLLEAGUE LETTER (2011), *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>. The Dear Colleague Letter is a “significant guidance document.” *Id.* at n.1 (citing Agency Good Guidance Practices, 72 Fed. Reg. 3, 432-440 (Jan. 25, 2007)).

⁴ Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013).

⁵ Campus SaVE is Section 304 of the 2013 Reauthorization of the Violence Against Women Act. Violence Against Women Reauthorization Act § 304. Campus SaVE updates the Clery Act to address the current national trend of the highest rates of stalking, intimate partner violence, and rape and attempted rape. It includes sections on transparency of campus crime statistics, including providing a written copy of their rights to victims, provides accountability through minimum standards for disciplinary procedures, educational programs, and partnerships with the U.S. Departments of Just. *New Requirements Imposed by the Violence Against Women Reauthorization Act 1*, AM. COUNCIL ON EDUC. (Apr. 1, 2014), <http://www.acenet.edu/news-room/Documents/VAWA-Summary.pdf>.

⁶ 20 U.S.C. § 1092(f) (2012).

⁷ VAWA Reauthorization, CLERY CTR. FOR SEC. ON CAMPUS, <http://clerycenter.org/article/vawa-reauthorization> (last visited Oct. 11, 2014) (noting that these provisions apply to post-secondary institutions that participate in federal financial aid programs under Title IV).

⁸ The 1990 Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act requires colleges and universities that participate in federal financial aid programs to keep information about campus and near campus crimes. *The Campus Sexual Violence Elimination Act of 2013*, CAMPUS SAVE ACT, <http://campussaveact.org/> (last visited Oct. 6, 2014). *See also The Campus Sexual Violence Elimination (SaVE) Act*, CLERY CTR. FOR SEC. ON CAMPUS, <http://clerycenter.org/campus-sexual-violence-elimination-save-act> (last visited Oct. 6, 2014). The requirements of the Clery act include the requirement for campus police to maintain a public log of all crimes reported or known to campus law enforcement officials. *See The Campus Safety and Security Data Analysis Cutting Tool*, U.S. DEP’T EDUC., <http://ope.ed.gov/security/> (last visited Oct. 6, 2014). A proposed Campus Safety and Accountability Act proposes to increase Clery Act violations from \$35,000 to \$150,000. *The Bipartisan Campus Accountability and Safety Act*, MCCASKILL.SENATE.GOV, <http://www.mccaskill.senate.gov/imo/media/doc/CampusAccountabilityAndSafetyAct.pdf> (last visited Oct. 6, 2014).

⁹ For example, President George H.W. Bush signed the Federal Campus Sexual Assault Victim's Bill of Rights, amending the Clery Act, in 1992. *The Federal Campus Sexual Assault Victims' Bill of Rights*, CLERY CTR. FOR SEC. ON CAMPUS, <http://clerycenter.org/federal-campus-sexual-assault-victims%E2%80%99bill-rights> (last visited Oct. 6, 2014). The law defined rights which include survivors shall be notified of their options to notify law enforcement, the accuser and accused must have the same opportunity to have others present, both parties shall be informed of the outcome of any disciplinary proceeding, survivors shall be notified of counseling services, and survivors shall be notified of options for changing academic and living situations. *Id.*

¹⁰ *Fact Sheet: Renewing the Call to End Rape and Sexual Assault*, WHITEHOUSE.GOV, http://www.whitehouse.gov/sites/default/files/docs/fact_sheet_sa_event.pdf (last visited Oct. 6, 2014).

low numbers of female officers in campus law enforcement agencies, research on how women officers respond to victims, and new research on long-term crime data showing that reporting of crimes against women increases as female representation among officers increases. Part Four argues for an immediate increase in women's representation in campus police agencies to promote more reporting by victims, and asserts that schools that do not demonstrate consistent, ongoing, and genuine efforts to hire female officers are contributing to a hostile environment for complainants in Title IX litigation.

I. SEXUAL ASSAULT: VIOLENCE AND TRAUMA AFFECTING ONE IN FIVE WOMEN ON CAMPUS

Sexual violence is harrowingly common in the United States, where a sexual assault occurs about every two minutes.¹¹ According to research, nearly one in five women (18.3%) and one in seventy-one men (1.4%) have been raped.¹² Rape is such a common crime that researchers have hypothesized that women live under a “shadow of sexual assault” that influences how they think about their risk for victimization and crime generally.¹³

The crime is conspicuously prevalent on the nation's university campuses, where studies indicate that one in five women students is the victim of an attempted or completed sexual assault while she is in college.¹⁴ Researchers have estimated that a campus with 10,000 women students could experience more than 350 rapes a year.¹⁵ Moreover, just as sex crimes in the general population are usually committed by someone the victim knows,¹⁶ the same is true of campus sexual assault; most student victims know the perpetrator.¹⁷ Nevertheless, studies of college women indicate that they are more fearful of being victimized by strangers than by acquaintances and intimates who are much more likely to sexually assault them.¹⁸ Despite the disturbingly common incidence of the crime, rape is also the most under-reported of all violent crimes.¹⁹ Victims often do not make formal reports of the crime to police; estimates of formal reports range only from 5% to 33%.²⁰ More frequently, victims disclose the violence to informal support systems

¹¹ *Statistics, RAPE, ABUSE, & INCEST NAT'L NETWORK*, <https://rainn.org/statistics> (last visited Oct. 6, 2014) (noting that there are about 237,868 victims of sexual assault each year).

¹² D. KELLY WEISBERG, *DOMESTIC VIOLENCE: LEGAL AND SOCIAL REALITY* 30 (2012).

¹³ See Bonnie S. Fisher & John J. Sloan III, *Unraveling the Fear of Victimization Among College Women: Is the “Shadow of Sexual Assault Hypothesis” Supported?*, 20 JUST. Q. 633, 634 (2003).

¹⁴ CHRISTOPHER P. KREBS ET AL., *THE CAMPUS SEXUAL ASSAULT (CSA) STUDY 6-3* (2007), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>.

¹⁵ BONNIE S. FISHER ET AL., U.S. DEP'T OF JUSTICE, *THE SEXUAL VICTIMIZATION OF COLLEGE WOMEN* 11 (2000).

¹⁶ See SHANNON M. CATALANO, U.S. DEP'T OF JUSTICE, *CRIMINAL VICTIMIZATION*, 2005, at 9, (June 16, 2011), available at <http://www.bjs.gov/content/pub/pdf/cv05.pdf> (stating that approximately 2/3 of rapes were committed by someone known to the victim: 73% of sexual assaults were perpetrated by a non-stranger, 38% of rapists are a friend or acquaintance, 28% are an intimate, 7% are a relative).

¹⁷ *Most Victims Know Their Attacker*, NAT'L INST. JUST. (Oct. 1, 2008), <http://www.nij.gov/topics/crime/rape-sexual-violence/campus/Pages/know-attacker.aspx> (“About 85 to 90 percent of sexual assaults reported by college women are perpetrated by someone known to the victim; about half occur on a date.”).

¹⁸ Pamela Wilcox et al., *A Multidimensional Examination of Campus Safety Victimization, Perceptions of Danger, Worry About Crime, and Precautionary Behavior Among College Women in the Post-Clery Era*, 53 CRIME & DELINQ. 219, 244 (2007).

¹⁹ W. David Allen, *The Reporting and Underreporting of Rape*, 73 S. ECON. J. 623, 623 (2007).

²⁰ Lisa A. Paul et al., *College Women's Experiences with Rape Disclosure: A National Study*, 19 VIOLENCE AGAINST WOMEN 486, 487 (2013).

such as family and friends.²¹ Much research has revealed the importance of a supportive reaction by those who receive the victim's disclosure. In particular, supportive responses by the recipient of the disclosure increase the victim's likelihood of seeking assistance.²² This dynamic is crucial because the damage inflicted by rape does not end with the act itself. Rather, it is common for victims to experience a wide range of significant physical and emotional traumas from the crime: flashbacks, posttraumatic stress, depression, anxiety, sleep disorders, eating disorders, and other negative and enduring consequences.²³ Researchers have described the psychological condition often resulting from the profound suffering of victims as Rape Trauma Syndrome.²⁴ Student victims also frequently suffer academically; many rape victims drop out of school,²⁵ while even those who remain often struggle with substance abuse and suicidal thoughts.²⁶

In addition to the personal devastation wreaked by sexual assault, the crime also exacts an enormous financial price. While the Supreme Court held in *United States v. Morrison* that gender-motivated crimes of violence do not qualify as interstate economic activity subject to federal regulation under the Commerce Clause,²⁷ sexual violence undoubtedly produces high economic costs. Estimates of these costs range from \$87,000 to \$240,776 per rape, and include the cost of medical and victim services such as specialized forensic nurses and counseling, loss of productivity from work and school, decreased quality of life that can extend over months or years, and law enforcement resources for investigations.²⁸

That the overall rate of reporting sexual assault has not significantly increased since the 1990s²⁹ reflects a critical deficiency in the justice system's efforts to reduce this crime. Formal reporting to law enforcement authorities, despite its relatively infrequent nature, is crucial "input" into the system for several reasons. First, reporting is the only way in which an individual victim

²¹ KREBS ET AL., *supra* note 14

, at 5-21; Courtney E. Ahrens et al., *Deciding Whom to Tell: Expectations and Outcomes of Rape Survivors' First Disclosures*, 31 PSYCHOL. WOMEN Q. 38, 38 (2007); Bonnie S. Fisher et al., *Reporting Sexual Victimization to the Police and Others: Results from a National-Level Study of College Women*, 30 CRIM. JUST. BEHAV. 6, 6 (2003); Sarah E. Ullman & Henrietta H. Filipas, *Correlates of Formal and Informal Support Seeking in Sexual Assault Victims*, 16 J. INTERPERSONAL VIOLENCE 1028, 1028 (2001).

²² Lisa A. Paul et al., *College Women's Experience with Rape Disclosure: A National Study*, 19 VIOLENCE AGAINST WOMEN 486, 487 (2013); Ullman & Filipas, *supra* note 22, 1028, 1029.

²³ *Effects of Sexual Assault, RAPE, ABUSE, & INCEST NAT'L NETWORK*, <https://www.rainn.org/get-information/effects-of-sexual-assault> (last visited Oct. 6, 2014).

²⁴ Ann W. Burgess & Lynda L. Holmstrom, *Rape Trauma Syndrome*, 131 AM. J. PSYCHIATRY 981, 981 (1974).

²⁵ Carol E. Jordan et al., *An Exploration of Sexual Victimization and Academic Performance Among College Women*, 15 TRAUMA, VIOLENCE, & ABUSE 191, 197 (2014).

²⁶ Burgess, *supra* note 23, at 985.

²⁷ *United States v. Morrison*, 529 U.S. 598, 617-18 (2000).

²⁸ WHITE HOUSE COUNCIL ON WOMEN & GIRLS, OFFICE OF THE PRESIDENT, RAPE AND SEXUAL ASSAULT: A RENEWED CALL TO ACTION 2 (2014), available at http://www.whitehouse.gov/sites/default/files/docs/sexual_assault_report_1-21-14.pdf. See also Kathryn E. McCollister et al., *The Cost of Crime to Society: New Crime-Specific Estimates for Policy and Program Evaluation*, 108 DRUG & ALCOHOL DEPENDENCE 98, 98-99 (2010) (discussing the costs of crime); Kristin Jones, *Sexual Assault on Campus: Laura Dunn Interview, Part One*, CTR. FOR PUB. INTEGRITY (May 19, 2014, 12:19 PM), <http://www.publicintegrity.org/2010/02/25/4375/sexual-assault-campus-laura-dunn-interview-part-one-0> (providing an individual account of the long term impact of campus sexual assault); *Sexual Assault on Campus: Margaux J. Interview Part I*, CTR. FOR PUB. INTEGRITY, <http://www.publicintegrity.org/2010/02/24/4361/sexual-assault-campus-margaux-j-interview-part-i-0> (last visited Oct. 11, 2014) (providing an individual account of the long term impact of campus sexual assault).

²⁹ Kate B. Wolitzky-Taylor et al., *Is Reporting of Rape on the Rise? A Comparison of Women With Reported Versus Unreported Rape Experiences in the National Women's Study-Replication*, 26 J. INTERPERSONAL VIOLENCE 807, 821 (2011).

can pursue legal action against a perpetrator. If the perpetrator will ever be held accountable for the crime, it will likely only be through the legal system.³⁰ Second, in a global sense, victim reporting increases the probability that authorities will detect perpetrators, while *not* reporting reduces the probability of detection; thus, officials are prevented from gaining essential information to apprehend offenders. Under this economic model of crime in which a victim possesses a scarce resource--information about a rape--that she can give up only at significant cost to herself,³¹ underreporting weakens the link between crime and perpetrator accountability.

With respect to sexual assault on campus, the model has a very practical application because the common assumption that men who commit sexual assault in college make a single bad decision is erroneous. Instead, repeat predators³² may account for as many as nine out of every ten rapes.³³ Thus, reporting can benefit not only an individual victim who seeks justice and may experience the salutary effects of knowing that her perpetrator has been punished for his crime against her.³⁴ More broadly, increased reporting can eventually create an environment in which serial perpetrators have a disincentive to committing the crime--their fear of getting caught.³⁵ Individual victims possess crucial information about perpetrators, and the reporting of sexual assault to police can have the very real consequence of deterring future crime against other women. As the Rape, Abuse, and Incest National Network's website informs victims: "Reporting to the police is the key to preventing sexual assault: every time we lock up a rapist, we're preventing him or her from committing another attack. It's the most effective tool that exists to prevent future rapes."³⁶

Unfortunately, many colleges and universities have done an inadequate--even abysmal--job of dealing with sexual assaults that are reported. In 2010 The Center for Public Integrity conducted a study into campus sexual assaults.³⁷ In addition to interviewing experts on campus disciplinary policies and female victims, they reviewed a U.S. Department of Education database on sexual assault complaints filed against colleges and universities.³⁸ Among other findings, the Center reported that students who were found to be responsible for the sexual assault of other students were rarely punished.³⁹ In fact, the perpetrators tended to remain on campus, while the victims often dropped out of school. In addition, universities only expelled a fraction of the

³⁰ W. David Allen, *supra* note 19, at 623 (discussing reporting and underreporting)

³¹ *Id.*

³² David Lisak & Paul Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists Violence and Victims*, 17 VIOLENCE AND VICTIMS 73-84 (2002) (study of undetected rapists showing that many committed numerous rapes and other crimes).

³³ Joseph Shapiro, *Myths that Make It Hard to Stop Campus Rape*, NPR (Mar. 4, 2010, 12:00 AM), <http://npr.org/templates/story/story.php?storyID=124272157>. See also Jennifer Peebles & Kristin Lombardi, *Undetected Rapists on Campus: A Troubling Plague of Repeat Offenders*, CNTR FOR PUB. INTEGRITY (May 19, 2014, 12:19 PM), <http://www.publicintegrity.org/2010/02/26/4404/undetected-rapists-campus-troubling-plague-repeat-offenders>.

³⁴ See *Reporting Rape and Sexual Assault*, AFTERSILENCE.ORG (2007), <http://www.aftersilence.org/reporting-rape.php> (last visited Oct. 20, 2014) (explaining that "rape victims can feel a sense of closure when a rapist is brought to justice and convicted accordingly.").

³⁵ W. David Allen, *supra* note 19, at 623 (2007).

³⁶ *Reporting the Crime to Police*, RAPE, ABUSE, & INCEST NAT'L NETWORK, <https://rainn.org/get-information/legal-information> (last visited Oct. 20, 2014).

³⁷ Kristin Lombardi, *A Lack of Consequences for Sexual Assault*, CTR. FOR PUB. INTEGRITY (Jul. 14, 2010, 4:50 PM), <http://www.publicintegrity.org/2010/02/24/4360/lack-consequences-sexual-assault>.

³⁸ *Id.*

³⁹ *Id.*

perpetrators, about ten to twenty-five percent.⁴⁰ Universities have been sharply criticized campuses for their alleged lack of concern for victims.⁴¹ Reflecting the magnitude of this issue, media outlets and newspapers in 2014 published countless articles on the issue of campus sexual assault and the government's response to the epidemic.⁴²

⁴⁰ *Id.*

⁴¹ See, e.g., Matthew Albright, *Feds Study UD's Handling of Sexual Violence Complaints*, NEWS JOURNAL (June 6, 2014, 11:14 PM), <http://www.delawareonline.com/story/news/local/2014/06/06/feds-probe-uds-handling-sexual-violence-complaints/10079821/> (stating that University of Delaware is being investigated for handling sexual misconduct complaints); Walt Bogdanich, *A Star Player Accused, and a Flawed Rape Investigation*, N.Y. TIMES (Apr. 16, 2014), <http://www.nytimes.com/interactive/2014/04/16/sports/errors-in-inquiry-on-rape-allegations-against-fsu-jameis-winston.html> (reporting on the experience of a student who reported her sexual assault by a football player to the Florida State University, including accusations of the university mishandling the case); Walt Bogdanich, *Reporting Rape, and Wishing She Hadn't*, N.Y. TIMES (July 12, 2014), <http://www.nytimes.com/2014/07/13/us/how-one-college-handled-a-sexual-assault-complaint.html> (reporting on a freshman's report of sexual assault by a football player to her college, Hobart and William Smith Colleges); Tyler Kingkade, *Education Department Investigating Claims UC Berkeley Botched Sexual Assault Reports*, HUFFINGTON POST (Apr. 21, 2014, 2:59 PM), http://www.huffingtonpost.com/2014/04/21/uc-berkeley-investigation-sexual-assault_n_5185990.html (stating that University of California – Berkeley is being investigated for Title IX complaints from 31 students); Tyler Kingkade, *Emerson College Slammed in Lawsuit Over Handling of Rape Case*, HUFFINGTON POST (Aug. 12, 2014, 6:59 PM), http://www.huffingtonpost.com/2014/08/12/emerson-college-lawsuit-rape_n_5671580.html (stating that Emerson College is being sued by a student for their mishandling of her sexual assault case, causing her extreme stress that required her to enter a hospital); Tyler Kingkade, *For Years, Students Have Accused Virginia Universities of Botching Sexual Assault Cases*, HUFFINGTON POST (July 1, 2014, 3:49 PM), http://www.huffingtonpost.com/2014/07/01/virginia-universities-sexual-assault_n_5545486.html (stating that a variety of colleges and universities in Virginia are being investigated for mishandling sexual assault cases); Tyler Kingkade, *Virginia Wesleyan College Helped Accused Rapist by Erasing Expulsion from his Record*, HUFFINGTON POST (Oct. 6, 2014, 7:59 PM), http://www.huffingtonpost.com/2014/10/06/virginia-wesleyan-rape_n_5940404.html (reporting on a case in which Virginia Wesleyan College had found a male student responsible for sexual assault and expelled him, but later changed the status to a voluntary withdrawal from the university).

⁴² See e.g., Robin Abcarian, *New Sex Rules for California College Students Are Long Overdue*, LOS ANGELES TIMES (Sept. 30, 2014, 7:13 AM), <http://www.latimes.com/local/abcarian/la-me-ra-affirmative-assent-sex-on-campus-20140929-column.html#page=1> (reporting on the new Californian legislation requiring California colleges to have a consistent message about consent); Nick Anderson, *Campus Discussions Increasingly Focus on Sex Assault*, WASHINGTON POST (Sept. 26, 2014), http://www.washingtonpost.com/local/education/campus-discussions-increasingly-focus-on-sex-assault/2014/09/26/dfa98ffa-3dd2-11e4-b03f-de718edeb92f_story.html (reporting one college's use of discussions on campus to discuss sexual assault and student's perceptions of the current climate); Nick Anderson & Katie Zezima, *White House Issues Report on Steps to Prevent Sexual Assaults on College Campuses*, WASHINGTON POST (Apr. 29, 2014), http://www.washingtonpost.com/local/education/white-house-issues-report-on-steps-to-prevent-sexual-assault-at-college-campuses/2014/04/28/0ebf1e22-cf1f-11e3-b812-0c92213941f4_story.html (reporting on The White House Task Force to Protect Students from Sexual Assault and its report on that campus sexual assault issue); Bogdanich, *Reporting Rape, and Wishing She Hadn't*, *supra* note 41 (reporting on one student's experience of reporting her rape to her college administration); Eliza Gray, *Colleges Are Breaking the Law on Sex Crimes, Report Says*, TIME (July 9, 2014), <http://time.com/2969580/claire-mccaskill-campus-sexual-assault-rape/> (reporting on survey results that highlight colleges and universities' mishandling of campus sexual assault reports); Eliza Gray, *Why Victims of Rape in College Don't Report to the Police*, TIME (June 23, 2014), <http://time.com/2905637/campus-rape-assault-prosecution/> (reporting on the roundtable discussion hosted by Senator McCaskill about law enforcement involvement in campus sexual assaults); Michael D. Shear & Elena Schneider, *Obama Unveils Push for Young People to Do More Against Campus Assaults*, N.Y. TIMES (Sept. 19, 2014), <http://www.nytimes.com/2014/09/20/us/politics/obama-campaign-college-sexual-assaults.html> (reporting on the President's announcement of the "It's on Us" campaign to encourage young people to prevent sexual assaults on campus); Victor Romano & Laura Finley, *Onus of Changing Campus Rape Culture Lies with Men*, MIAMI HERALD (Oct. 1, 2014, 6:36 PM), <http://www.miamiherald.com/opinion/letters-to-the->

II. THE FEDERAL RESPONSE TO RAMPANT SEXUAL ASSAULT AT UNIVERSITIES

In attempting to stem the tide of campus sexual assault and to protect victims, the federal government has acted in a variety of ways. Among other measures, the government has updated requirements to report crimes on campus, expanded long-standing prevention and victim services, and established new guidelines for victim redress under civil rights laws. The goal of the 1990 Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act was to collect accurate statistics on campus crime to raise awareness about such crime.⁴³ The Act requires colleges and universities that participate in federal financial aid programs to record and disseminate information about crime on and near campus. The U.S. Department of Education monitors compliance with the Act. Violations of the Act can result in financial penalties of \$35,000 per violation⁴⁴ and suspension from federal student financial aid programs. The Act requires a public record of all crimes reported to or otherwise known to campus law enforcement; these include homicide, sex offenses, robbery, aggravated assault, motor vehicle theft, burglary, drug and liquor law violations, arson, and illegal weapons possession.⁴⁵ Commentators agree that the Clery Act, named after a young woman who was raped and murdered by another student in a university campus dormitory,⁴⁶ has brought public attention to the risk of crime on campus.⁴⁷ Clery reports come from a variety of sources and primarily reflect only a statistical accounting of crimes that happen on or near campus.⁴⁸ Coupled with extremely low reporting of campus rape, it is common for campuses—including universities among the largest in the nation—to report very small numbers of sexual assaults in Clery reports.⁴⁹

Although the degree of statistical underrepresentation of sexual assault cannot be calculated with precision, it is undoubtedly large. A majority of victims do not report this crime to police.⁵⁰ The willingness to report can be hindered by several factors. Victims are often

editor/article2438444.html (commenting on the role of men in ending rape culture and the campus sexual assault problem).

⁴³ Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) (2014).

⁴⁴ Adjustment of Civil Monetary Penalties for Inflation, 77 Fed. Reg. 60,047, 60,047 (Jan. 25, 2007) (to be codified at 34 C.F.R. pt. 36). Recent legislation has proposed that these fines are increased to \$150,000. *The Bipartisan Campus Accountability and Safety Act*, *supra* note 8.

⁴⁵ 20 U.S.C. § 1092(f). *See also The Campus Safety and Security Data Analysis Cutting Tool*, *supra* note 8.

⁴⁶ Carol E. Jordan, *The Safety of Women on College Campuses: Implications of Evolving Paradigms in Postsecondary Education*, 15 TRAUMA, VIOLENCE, & ABUSE 143, 145 (2014).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *See, e.g.,* ARIZ. STATE UNIV., ANNUAL SECURITY AND FIRE SAFETY REPORT 44 (2014), *available at* http://www.asu.edu/police/PDFs/Campus_Security_Policy_edited.pdf (reporting fifteen forcible sexual offenses in 2013 for the Tempe campus); OHIO STATE UNIV., 2014 ANNUAL CAMPUS SECURITY REPORT & ANNUAL FIRE SAFETY REPORT 54 (2014), *available at* http://www.ps.ohio-state.edu/campus_safety/Annual_Security_Fire_Safety_Report.pdf (reporting twenty-five forcible sexual offenses in 2013); UNIV. OF MINN., 2014 ANNUAL SECURITY AND FIRE SAFETY REPORT FOR THE MINNEAPOLIS AND ST. PAUL CAMPUSES 41 (2014), *available at* <http://www1.umn.edu/police/docs/clerybroch.pdf> (reporting eighteen forcible sexual offenses in 2013).

⁵⁰ BUREAU OF JUSTICE STATISTICS, U.S. DEPT' OF JUSTICE, NCJ No. 247648, CRIMINAL VICTIMIZATION, 2013 (REVISED) 8 (2014), *available at* <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5111>; *Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases: Hearing Before the Subcomm. on Crime and Drugs of the S. Comm. on the Judiciary*, 111th Cong. 27-28 (2010), *available at* <http://www.gpo.gov/fdsys/pkg/CHRG-111shrg64687/pdf/CHRG-111shrg64687.pdf>; Gray, *supra* note 42.

embarrassed and ashamed; as a result, they may not want anyone to learn of their assault.⁵¹ Some may not understand the definition of rape, or are afraid of police reaction.⁵² The fear of police reaction to a report of rape involves a victim's fear that she will not be believed, or that she will be treated by police with "victim-blaming attitudes, behaviors, and practices."⁵³ These fears are not unfounded; the reporting process includes risk to victims,⁵⁴ and if a victim experiences harsh treatment from law enforcement when attempting to file a report, she may also experience secondary traumatization.⁵⁵

A major source of efforts to improve campuses' response to helping victims has been funds furnished through the Violence Against Women Act (VAWA). Originally enacted in 1994, VAWA was the first comprehensive attempt by Congress to address domestic violence and sexual assault,⁵⁶ and "forms the backbone" of the nation's response to them.⁵⁷ The Act has provided millions of dollars in grants to increase prosecution of violent crimes against women.⁵⁸ Major objectives of the law since its inception have been to improve law enforcement's response to violence against women and to encourage a coordinated community response to domestic violence and sexual assault.⁵⁹ VAWA originally also increased the penalties for rape tried in federal court.⁶⁰ VAWA was reauthorized in 2000 as part of the Victims of Trafficking and Violence Protection

⁵¹ See *id.* at 32; Gray, *supra* note 42; Bonnie S. Fischer et al., *Reporting Sexual Victimization to the Police and Others: Results from a National-Level Study of College Women*, 30 CRIM. J. & BEHAV. 6, 32 (2003) (inferring from study that sexual assault victims believed that "a sexual victimization was something sufficiently embarrassing or shameful that it should even be kept from their families."); see also Ronet Bachman, *The Factors Related to Rape Reporting Behavior and Arrest: New Evidence from the National Crime Victimization Survey*, 25 CRIM. J. & BEHAV. 8, 21 (1998) (stating on basis of survey that a major reason for victims not reporting rape to the police was that it was a "private matter").

⁵² Gray, *supra* note 42.

⁵³ Rebecca Campbell et al., *Preventing the "Second Rape": Rape Survivors' Experiences With Community Service Providers*, 16 J. INTERPERSONAL VIOLENCE 1239, 1240 (2001).

⁵⁴ Karen Rich & Patrick Seffrin, *Police Interviews of Sexual Assault Reporters: Do Attitudes Matter?*, 27 VIOLENCE & VICTIMS 263, 263 (2012).

⁵⁵ *Id.*

⁵⁶ WEISBERG, *supra* note 12, at 530.

⁵⁷ WHITE HOUSE COUNCIL ON WOMEN & GIRLS, *supra* note 28, at 3.

⁵⁸ VAWA provides federal grants to state, local, and tribal law enforcement authorities to investigate and prosecute violent crimes against women. See, e.g., 42 U.S.C. § 3796gg (Services, Training, Officers, and Prosecutors Grant Program or "STOP" Grants) (2012); 42 U.S.C. § 3796hh (Grants to Encourage Arrest Policies and Enforcement Protection Orders). From 2010-2013, Congress authorized over \$600 million dollars for the STOP Grant Program and \$150 million for the Grants to Encourage Arrest Policies and Enforcement Protection Orders. See also Lisa N. Sacco, Cong. Research Serv. R42499, *The Violence Against Women Act: Overview, Legislation, and Federal Funding* 19, 27 (2014).

Albert R. Roberts, *Myths, Facts, and Realities Regarding Battered Women and Their Children: An Overview*, in HANDBOOK OF DOMESTIC VIOLENCE INTERVENTION STRATEGIES: POLICIES, PROGRAMS, AND LEGAL REMEDIES 3, 19 (Albert R. Roberts ed., 2002)

⁵⁹ Nat'l Network to End Domestic Violence, *The Violence Against Women Reauthorization act of 2013: Safely and Effectively Meeting the Needs of More Victims*, NNEDV.ORG, http://nnedv.org/downloads/Policy/VAWAReauthorization_Summary_2013.pdf (last visited Oct. 11, 2014).

⁶⁰ See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, §§ 40111- 40112, 108 Stat. 1796 (1994) (codified as amended at 18 U.S.C. § 2247 and 28 U.S.C. § 994) (increasing the penalties for repeat offenders and mandating enhanced penalties to federal sentencing guidelines in cases of sexual abuse and aggravated sexual asbuse); see also WHITE HOUSE, FACTSHEET: THE VIOLENCE AGAINST WOMEN ACT, *available at* http://www.whitehouse.gov/sites/default/files/docs/vawa_factsheet.pdf ("VAWA has improved the criminal justice response to violence against women by: holding rapists accountable for their crimes by strengthening federal penalties for repeat sex offenders and creating a federal 'rape shield law.'").

Act; it was reauthorized again in 2005, creating the Sexual Assault Services Program--the first federal funding source dedicated to direct services for victims of sexual assault.⁶¹ Most recently, the 2013 reauthorization of VAWA includes additional funding for multidisciplinary sexual assault response teams and funding for Sexual Assault Nurse Examiners (SANE).⁶²

Federal law has also specifically addressed sexual violence on campus. The 2013 reauthorization of VAWA included millions of dollars for training campus law enforcement to respond effectively to domestic violence, dating violence, sexual assault and stalking.⁶³ Additionally, protections for students were part of the Campus SaVE Act, which was an amendment to the Clery Act. The Campus SaVE Act requires colleges and universities to implement a recording process for incidents of dating violence, as well as to formally report crimes that occur on public property near college campuses. In addition, schools are required to create plans to prevent sexual violence and to educate victims on existing advocacy, legal assistance, and mental health programs.⁶⁴ Federal funds through the Grants to Reduce Domestic Violence, Dating Violence, Sexual Assault, and Stalking on Campus Program (also funded through VAWA⁶⁵) have “significantly expanded”⁶⁶ universities’ ability to adopt a comprehensive response to these crimes.⁶⁷

Redress for a school’s improper response to sexual assault can be derived from federal legislation under Title IX of the Education Amendments of 1972.⁶⁸ Title IX was ground-breaking civil rights legislation that banned sex discrimination in schools that receive federal funding. It states that “[n]o 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.”⁶⁹ Sexual violence--rape, sexual assault, sexual battery, and sexual coercion--are all forms of sexual harassment covered under Title IX,⁷⁰ because they “interfere with students’ rights to receive an education free from discrimination.”⁷¹ In 2001 the Department of Education’s Office of Civil Rights (OCR) published a guide explaining that when a student sexually harasses another student, the harassing conduct creates a “hostile environment” if the conduct is “sufficiently serious [in] that it interferes with or limits a student’s

⁶¹ Nat’l Network to End Domestic Violence, *The Violence Against Women Act of 2005: Summary of Provisions*, NNEDV.ORG, <http://nnedv.org/downloads/Policy/VAWA2005FactSheet.pdf> (last visited Oct. 11, 2014).

⁶² See Violence Against Women Reauthorization Act of 2013, 42 U.S.C. §§ 3796gg(b)(15), 3796hh(b)(17) (2013).

⁶³ See Campus Sexual Violence Elimination Act (“Campus SaVE Act”), 42 U.S.C. § 14045b(3) (2013) (requiring compliance with campus reporting requirements under the Clery Act to be eligible for grants under the Campus SaVE Act); Jeanne Clery Disclosure of Campus Security Police and Campus Crime Statistics Act (the “Clery Act”), 20 U.S.C. § 1092(f) (2012).

⁶⁴ See Nat’l Network to End Domestic Violence, *The Violence Against Women Reauthorization Act of 2013: Safely and Effectively Meeting the Needs of More Victims*, *supra* note 59; *The Campus Sexual Violence Elimination Act*, JEANNE CLERY ACT INFO., <http://www.cleryact.info/campus-save-act.html> (last visited Oct. 11, 2014); *The Campus Sexual Violence Elimination Act of 2013*, *supra* note 8; *The Campus Sexual Violence Elimination (SaVE) Act*, *supra* note 8.

⁶⁵ See *Grant Programs: Discretionary Grants*, OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUSTICE, <http://www.justice.gov/ovw/grant-programs> (last visited Oct. 11, 2014) (listing the Campus Program as one of the grants funded under the Violence Against Women Act).

⁶⁶ Jordan, *supra* note 46, at 145.

⁶⁷ *Id.*

⁶⁸ 20 U.S.C. §§ 1681-1688 (2012).

⁶⁹ 20 U.S.C. § 1681(a) (2014).

⁷⁰ OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., DEAR COLLEAGUE LETTER, *supra* note 3, at 1-2.

⁷¹ *Id.* at 1.

ability to participate in or benefit from the school's program.”⁷² Plaintiffs do not need to show a repetitive series of incidents to successfully prove the existence of a hostile work or educational environment, particularly if the harassment is physical in nature.⁷³ Educational institutions have an unqualified responsibility under Title IX to take immediate and effective steps to end sexual harassment and sexual violence and to create and maintain a learning environment free of such harms and distractions.⁷⁴

The OCR again issued guidelines in its “Dear Colleague Letter”⁷⁵ in 2011 to help universities that receive federal funding navigate Title IX requirements. In this letter, the OCR advises that schools make all attempts to remedy sexual harassment and sexual assault in schools as well as to take proactive measures to prevent this behavior and to work diligently to prevent its recurrence.⁷⁶ These recommendations of responsibilities of educational institutions to address student complaints of sexual assault under Title IX provide that once a school learns of a sexual assault, it must promptly take a number of steps to investigate the incident, help the victim, and remedy the issue.⁷⁷ An example of an institution's assisting the victim is proactively offering services to protect the victim from the alleged offender.⁷⁸ Schools must also use a preponderance of the evidence standard to resolve complaints, and offer equal opportunities for both parties to present evidence and witnesses on their behalf.⁷⁹

Under Title IX, higher learning institutions can be held legally responsible for monetary damages if a student suffers harassment (including sexual assault) committed by staff, faculty, or another student and the school had authority over both the perpetrator and the environment in which the harassment took place.⁸⁰ Title IX claims may also be raised based on the existence of “a hostile educational environment.”⁸¹ As a threshold matter, plaintiffs must show that they subjectively perceived the environment to be hostile or abusive.⁸² In addition, they must demonstrate that the environment objectively was hostile or abusive; this condition is met if the environment was “permeated with discriminatory intimidation, ridicule, and insult sufficiently severe or pervasive to alter the condition” of the educational environment.⁸³ Classification of an environment as ‘hostile’ or ‘abusive’ can be determined only by examining the totality of the

⁷² *Id.* at 3.

⁷³ *Id.*

⁷⁴ *Id.* at 2.

⁷⁵ *Id.*

⁷⁶ *Id.* at 2.

⁷⁷ *Id.*

⁷⁸ *Id.* at 16-17 (clarifying that schools must ensure that the victim is provided with counseling, medical, and support services).

⁷⁹ *Id.* at 9.

⁸⁰ *Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 76 (1992) (holding that monetary damages are available in the implied private action). *See also Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 633, 645 (1999) (explaining that the school must have authority over the perpetrator and the environment); *Cannon v. Univ. of Chi.*, 441 U.S. 677, 717 (1979) (holding that Title IX is enforceable through an implied right of action).

⁸¹ *Hayut v. State Univ. of N.Y.*, 352 F.3d 733, 744 (2d Cir. 2003) (explaining that a Title IX hostile education environment claim is governed by “traditional Title VII jurisprudence”). “Title VII of the Civil Rights Act of 1964 is a federal law that prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion.” Am. Ass’n of Univ. Women, *Know Your Rights: Title VII of the Civil Rights Act of 1964*, AAUW.ORG, <http://www.aauw.org/what-we-do/legal-resources/know-your-rights-at-work/title-vii/> (last visited Oct. 12, 2014). “Title VII also applies to private and public colleges and universities, employment agencies, and labor organizations.” *Id.*

⁸² *Papelino v. Albany Coll. of Pharmacy of Union Univ.*, 633 F.3d 81, 89 (2d Cir. 2010).

⁸³ *Id.*

circumstances.⁸⁴ Courts have found liability in instances when the school's response to the harassment was "clearly unreasonable" in light of known circumstances;⁸⁵ sufficient evidence demonstrated that a university acted with "deliberate indifference" to the sexual harassment of which the university has actual knowledge;⁸⁶ and harassment was so severe, pervasive, and objectively offensive that it could be said to deprive the victims access to the educational opportunities or benefits provided by the school.⁸⁷ Even a single sexual assault by a student on a peer can be sufficient to create and sustain a hostile environment claim under Title IX.⁸⁸

III. THE IMPACT OF WOMEN OFFICERS ON SEXUAL ASSAULT REPORTING

The phenomenon of sexual assault is characterized by a striking incongruity between the gender of victims and that of law enforcement personnel charged with their protection. The crime of sexual assault disproportionately affects women.⁸⁹ At the same time, law enforcement personnel assigned to play a "central role" in addressing campus sexual assault⁹⁰ are predominantly men. Statistics from the U.S. Department of Justice reveal that women continue to be underrepresented in campus law enforcement positions.⁹¹ Only about 17% of sworn officers at colleges and universities are women;⁹² even that number represents an increase from a 1990 study that showed male officers outnumbering females 90% to 10% on large midwestern and southeastern residential campuses.⁹³ Much of the paucity of women officers--both generally and on campus--can be ascribed to the simple fact that law enforcement agencies have historically been dominated by

⁸⁴ See *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993).

⁸⁵ *Davis ex rel. LaShonda D.*, 526 U.S. at 630.

⁸⁶ See *Simpson v. Univ. of Colo. Boulder*, 500 F.3d 1170, 1174-79 (10th Cir. 2007).

⁸⁷ *Davis ex rel. LaShonda D.*, 526 U.S. at 633, 638-53.

⁸⁸ See *S.S. v. Alexander*, 177 P.3d 724, 742-43 (Wash. App. Div. 1 2008). See also *Davis ex rel. LaShonda D.*, 526 U.S. at 631 (explaining that a student's allegation of a hostile educational environment can arise from a single incident); *Brown v. Hot, Sexy & Safer Prods., Inc.*, 68 F.3d 525, 541 n.13 (1st Cir.1995) (noting that "a one-time episode is not per se incapable of sustaining a hostile environment claim").

⁸⁹ See WEISBER *supra*, note 12. We do not minimize the impact of rape on male victims. According to the Campus Sexual Assault Study, 6.1% of men were victims of attempted or completed sexual assault in college. KREBS ET AL., *supra* note 14, at 5-5.

⁹⁰ *Fact Sheet: Renewing the Call to End Rape and Sexual Assault*, *supra* note 10.

⁹¹ Many campuses also employ women in non-sworn positions, but these employees, who do not have the power of arrest, are not the subject of this article. See BRIAN A. REAVES, U.S. DEP'T. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CAMPUS LAW ENFORCEMENT, 2004-2005, at 1 (2008).

⁹² *Id.* at 5 (finding also that 31% of sworn campus officers were of a racial or ethnic minority).

⁹³ John J. Sloan, *The Modern Campus Police: An Analysis of Their Evolution, Structure and Function*, J. OF POLICE, 1992, at 96 (studying large, residential campuses in the Midwest and Southeast (the universities that participated in the study included Auburn, UF, FSU, University of Kentucky, University of Mississippi, Vanderbilt, Indiana University, Michigan State, Ohio State, and Northwestern)).

men.⁹⁴ A significant increase in female police began only with the enactment of legislation prohibiting discrimination in employment on the basis of sex.⁹⁵

This discrepancy is magnified by the disproportionate representation of women on American college campuses.⁹⁶ While in 1947 male students outnumbered female students by more than two to one,⁹⁷ women's increased enrollment has reversed that gender gap on campus steadily ever since.⁹⁸ Today, more than half of students on college campuses are women: public universities have a male-female ratio of about 43.6 to 56.4%,⁹⁹ and private institutions tend to have even a larger percentage of women, about 40.7% to 59.3%.¹⁰⁰ Studies on the widening gender gap in college attendance have produced multiple theories for the phenomenon: e.g., the higher age of first marriages for women and the increases in girls' expected economic returns from college

⁹⁴ See SUSAN EHRLICH MARTIN & NANCY C. JURIK, *DOING JUSTICE, DOING GENDER: WOMEN IN LEGAL AND CRIMINAL JUSTICE OCCUPATIONS* 51 (2d. ed. 2007) ("Before the 1970s, nearly all police officers in the United States were white men; women comprised less than 2 percent of sworn personnel, and "policewomen" served in specialized positions."); see also *id.* at 77-82 (asserting that law enforcement agencies have resisted hiring women); Philip E. Carlan, Lisa S. Nored, & Ragan A. Downey, *Officer Preferences for Male Backup: The Influence of Gender and Police Partnering*, 26 J. POLICE & CRIM. PSYCH. 4, 5 (2011) ("The longstanding and ingrained hostilities of policemen toward policewomen have been elsewhere well-documented. It has been suggested that male officers construct barriers to keep women in subordinate roles as a means to protect the masculine integrity of police organizations."); Kimberly Lonsway et al., *Hiring & Retaining More Women: The Advantages to Law Enforcement Agencies*, NAT'L CTR. FOR WOMEN & POLICE (2003), <http://womenandpolicing.com/pdf/newadvantagesreport.pdf> ("In 1968, the Indianapolis Police Department made history by assigning the first two female officers to patrol on an equal basis with their male colleagues. Since that time, women have entered the field of law enforcement in increasing numbers and played a critical role in the development of modern policing. Yet the number of women in law enforcement has remained small and the pace of increase slow.").

⁹⁵ Amalia R. Miller & Carmit Segal, *Do Female Officers Improve Law Enforcement Quality? Effects on Crime Reporting and Domestic Violence Escalation* 1 (2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2335990 (last visited Oct. 1, 2014). See *Simpson v. Univ. of Colo. Boulder*, 500 F.3d 1170 (10th Cir. 2007). Sue Carter Collins, Book Review, 32 CRIM. JUST. REV. 480 (2007) (reviewing SUSAN EHRLICH MARTIN & NANCY C. JURIK, *DOING JUSTICE, DOING GENDER: WOMEN IN LEGAL AND CRIMINAL JUSTICE OCCUPATIONS* (2d. ed. 2007)), available at <http://cjr.sagepub.com/content/32/4/480.full.pdf>. SUSAN EHRLICH MARTIN & NANCY C. JURIK, *supra* note 94. See also *U.S. v. City of Chicago*, 853 F.2d 572 (7th Cir. 1988) (holding where women were not eligible to take the agency's examination for "patrolmen" that barring females from a certain type of examination that would determine eligibility for employment and placement was improper and discriminatory). A more recent example is *Lewallen v. City of Beaumont*, 394 Fed. Appx. 38 (5th Cir. 2010) (finding that Plaintiff successfully provided evidence to show that the City had a practice of sex discrimination in its hiring procedures and that such discrimination was imbedded in the Department's hiring practices).

⁹⁶ See Mark Hugo Lopez & Ana Gonzalez-Barrera, *Women's College Enrollment Gains Leave Men Behind*, PEW RESEARCH, (March 6, 2014), <http://www.pewresearch.org/fact-tank/2014/03/06/womens-college-enrollment-gains-leave-men-behind/> (reporting "By 2012, the share of young women enrolled in college immediately after high school had increased to 71%, but it remained unchanged for young men at 61%.").

⁹⁷ *Id.*

⁹⁸ See, e.g., Tamar Lewin, *At Colleges, Women Are Leaving Men in the Dust*, N.Y. TIMES, July 9, 2006, http://www.nytimes.com/2006/07/09/education/09college.html?pagewanted=all&_r=0 (stating that men made up only 42 percent of the nation's college students); Mark H. Lopez & Ana Gonzalez-Barrera, *supra* note 96.

⁹⁹ Daniel Borzelleca, *The Male-Female Ratio in College*, FORBES (Feb. 16, 2012, 3:26 PM), <http://www.forbes.com/sites/ccap/2012/02/16/the-male-female-ratio-in-college/> (citing THOMAS D. SNYDER & SALLY A. DILLOW, *DIGEST OF EDUCATION STATISTICS* 2010 (2011)).

¹⁰⁰ *Id.*

attendance;¹⁰¹ the presence of more men in the military;¹⁰² and even boys' higher incidence of "non-cognitive," negative behavior creating barriers to college admission.¹⁰³

The presence of overwhelmingly male police forces at predominantly female universities is especially striking in light of studies showing that female officers make distinctive contributions to police culture. In general, women officers display better communication skills, use less excessive force, and receive fewer citizen complaints.¹⁰⁴ Some campus law enforcement leaders recognize the special contributions that women officers can make. The police chief of Kent State University told reporters that having both men and women on the force was important, and that women "generally are better at oral and written communication." Kent State officer Nancy Shefchuk, a member of the Kent State force for two-and-a-half years, said the public views female officers differently: "The public perceives females as kinder and gentler. This ... makes them more willing to talk."¹⁰⁵

Most notably, research indicates that women officers often respond more effectively to incidents of violence against women, a crime that represents approximately half of all violent crime calls to police.¹⁰⁶ Those researchers studying the impact of female police officers who investigate gender-based crimes have found that women can be especially effective when working with those victims.¹⁰⁷ A variety of explanations have been offered for this finding. For example, female

¹⁰¹ Claudia Goldin et al., *The Homecoming of American College Women: The Reversal of the College Gender Gap*, 20 J. ECON. PERSP. 133, 134 (2006).

¹⁰² Brian A. Jacob, *Where the Boys Aren't: Non-Cognitive Skills, Returns to School and the Gender Gap in Higher Education* 3 (Nat'l Bureau of Econ. Research, Working Paper No. 8964, 2002), available at <http://www.nber.org/papers/w8964.pdf> (finding that disciplinary incidents have a substantial impact on the probability of enrolling in college, even after controlling for cognitive ability, family background, and high school achievement).

¹⁰³ *Id.* at 4; See also Shannon Moon Leonetti, Letter to the Editor, *Why More Black Women than Men Go to College*, N.Y. TIMES, May 19, 1990, available at <http://search.proquest.com/docview/108560532?pq-origsite=summon> (stating that black men may lack the father figures or mentors whose leadership would increase their chances of going to college). We have no doubt that our families and communities would benefit from having more men participate in higher education, but that issue is beyond the scope of this paper.

¹⁰⁴ See National Center for Women & Policing, *Hiring & Retaining More Women: The Advantages to Law Enforcement Agencies* 2, Feminist Majority Foundation (2003) available at <http://womenandpolicing.com/pdf/newadvantagesreport.pdf>; Christina DeJong, *Gender Differences in Officer Attitude and Behavior*, 15 WOMEN & CRIM. J. 2, 4 (2005) ("Female officers have, however, reported higher self-ratings on effective listening skills and consideration for others, while male officers report higher self-ratings on physical strength and use of physical force.").

¹⁰⁵ Jeff Schooley, *'Unique Style' Makes All Officers Valuable*, DAILY KENT STATER, September 4, 2001, available at <http://infoweb.newsbank.com/resources/doc/nb/news/10F88381CD83FDD0?p=AWNB>.

¹⁰⁶ Kimberly Lonsway et al., *Hiring & Retaining More Women: The Advantages to Law Enforcement Agencies*, NAT'L CTR. FOR WOMEN & POLICE (2003), <http://womenandpolicing.com/pdf/newadvantagesreport.pdf>; Nat'l Centr. for Women & Policing, a Div. of the Feminist Majority Found., *Recruiting and Retaining Women: A Self-Assessment Guide for Law Enforcement*, <https://www.ncjrs.gov/pdffiles1/bja/185235.pdf> (last visited October 2, 2014).

¹⁰⁷ Kimberly Lonsway et al., *supra* note 94; see also Regina Shuller & Anna Stewart. (2000). *Police Responses to Sexual Assault Complaints: The Role of Perpetrator/Complainant Intoxication*. Law and Human Behavior, 24(5), 535-551. Retrieved from <http://www.jstor.org/stable/1394395> (last viewed Oct. 22, 2014) (study revealed gender differences in the beliefs, biases, and responses of police officers on college campuses have towards victims of sexual assault. Male officers were more likely to view perpetrator's claim of innocence as credible and less likely to view the complainant as credible compared to female police officers. Male police officers also attributed greater blame to the victim. Male officers were more likely to believe that the complainant was interested in having sex, was sexually provocative and was lying). See also, *Women in Law Enforcement*, Kentucky Law Enforcement 50 (Summer 2009), available [for download at https://docjt.ky.gov/Magazines/Issue%2030/KLE%20Summer%2009%20Feature_Changing%20the%20Letters%20](https://docjt.ky.gov/Magazines/Issue%2030/KLE%20Summer%2009%20Feature_Changing%20the%20Letters%20)

victims may find discussing the specific and graphic details of a violent crime more difficult when interacting with male officers.¹⁰⁸ In addition, female victims may perceive women officers to be less inclined to blame victim blaming and to be more sensitive.¹⁰⁹ Or it may simply be that many victims of sexual assault feel that other woman will have shared experiences and common values and may be more empathetic.¹¹⁰ These studies are consistent with investigations finding that women who have been victimized report forensic physical evaluations to be less traumatic when the examiner is a woman.¹¹¹ Even in their choice of physicians, studies have suggested that women generally report higher satisfaction when being treated by women doctors in emergency room care.¹¹²

Nor is the greater willingness of female victims to talk with women officers the only benefit that researchers have linked to the increased presence of women in police forces. Some studies indicate that female officers may be more supportive of victims because they have lower levels of acceptance for male aggression than male police officers.¹¹³ Female officers may also be less accepting of rape myths than male officers.¹¹⁴ Those myths include beliefs that sometimes a man cannot control himself because the victim is too sexy, that women enjoy rape, that men are allowed to rape certain kinds of women, that the victim brought on the rape by her own carelessness, that

of%20the%20Law.pdf (last viewed Oct. 22, 2014) (“‘There are a lot of things that we actually can do [because of our gender],’ Spies said. ‘Rape victims feel more comfortable talking to a female; we kind of display that motherly image. Sometimes we can help calm a situation more.’”).

¹⁰⁸ CASSIA SPOHN & KATHARINE TELLIS, *POLICING AND PROSECUTING SEXUAL ASSAULT IN LOS ANGELES CITY AND COUNTY: A COLLABORATIVE STUDY IN PARTNERSHIP WITH THE LOS ANGELES POLICE DEPARTMENT, THE LOS ANGELES COUNTY SHERIFF’S DEPARTMENT, AND THE LOS ANGELES COUNTY DISTRICT ATTORNEY’S OFFICE* (2012), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/237582.pdf>.

¹⁰⁹ See Kenneth J. Meier & Jill Nicholson-Crotty, *Gender, Representative Bureaucracy, and Law Enforcement: The Case of Sexual Assault*, 66 PUB. ADMIN. REV. 850, 852 (2006), available at <http://www.jstor.org/stable/4096602>.

¹¹⁰ *Id.*

¹¹¹ Researchers indicate that women, and even some men, who are sexually assaulted prefer to be examined by women health professionals. Some male victims of sexual assault prefer to be examined by female nurses, and others express no preference for the gender of the examiner. See JO LOVETT, LINDA REGAN, & LIZ KELLY, HOME OFFICE RESEARCH, DEV. AND STATISTICS DIRECTORATE, *SEXUAL ASSAULT REFERRAL CENTRES: DEVELOPING GOOD PRACTICE AND MAXIMISING POTENTIALS* 30-31, 37 (2004), available at <http://webarchive.nationalarchives.gov.uk/20110314171826/http://rds.homeoffice.gov.uk/rds/pdfs04/hors285.pdf> (last visited October 6, 2014); *Id.*; see also Linda E. Ledray, *Evidence Collection and Care of the Sexual Assault Survivor: The SANE-SART Response*, MINNESOTA CENTR. AGAINST VIOLENCE AND ABUSE (2001), <http://www.mincava.umn.edu/documents/commissioned/2forensicevidence/2forensicevidence.html> (last visited October 6, 2014).

¹¹² Kathryn Pitkin Derose, *Women Prefer to See Female Doctors When They Visit the ER, but Men Have No Preference* (2001), available at <http://www.docstoc.com/docs/60113974/Research-Activities-250-June-2> (last viewed Oct. 22, 2014).

¹¹³ See Jennifer Brown & Joanne King, *Gender Differences In Police Officers’ Attitudes Towards Rape; Results of an Exploratory Study*, 4 PSYCHOLOGY, CRIME, & LAW 265, 275 (1998), available at <http://dx.doi.org/10.1080/10683169808401760>.

¹¹⁴ See Amy Dellinger Page, *Behind the Blue Line: Investigating Police Officers’ Attitudes Toward Rape*, 22 J. OF POLICE & CRIM. PSYCHOL. 22, 24 (2007) (stating female officers adhere less to rape myths); Karen Rich & Patrick Seffrin, *Police Interviews of Sexual Assault Reporters: Do Attitudes Matter?* 27 VIOLENCE & VICTIMS 263, 264 (2012), available at <http://www.oaesv.org/wp-content/uploads/2013/02/Police-Interviews-of-Sexual-Assault-Reports-Do-Attitudes-Matter.pdf>; See also Kathryn B. Anderson, Harris Cooper, & Linda Okamura, *Individual Differences and Attitudes Toward Rape: A Meta-Analytic Review*, 23 PERSONALITY & SOC. PSYCHOL. BULL. 295, 298 (1997) (stating that men are more accepting of rape myths than women).

the victim lied because she regretted having consensual sex, that the rapist did not mean to rape the victim, and that he was entitled to have sex with her.¹¹⁵

Although the experiences and culture of individual agencies may differ,¹¹⁶ large-scale studies indicate that the presence of women law enforcement officers actually increases the number of reported sexual assault cases.¹¹⁷ In 2006, a study analyzed a pooled time series of 60 urban areas over an eight-year period. The study found that the percentage of women police officers in law enforcement agencies positively correlates with the number of reports of sexual assault and with the number of arrests for sexual assault. More recently, a 2014 study of domestic violence crime data from the National Crime Victimization Survey indicates that increasing the number of female police officers tends to raise reporting of crimes against women. (Additionally, the data also led to the conclusion that such an increase actually improves police quality.)¹¹⁸ Like the earlier study, this study of policing from the late 1970's to early 1990's showed that as the number of female police officers increased in an area, violent crimes against women there were reported at higher rates.¹¹⁹

IV. A CALL FOR MORE WOMEN OFFICERS ON CAMPUS

In this Part, we argue that to reduce the hostile environment for women students--who suffer a heavily disparate impact from sexual crimes--and to offer them the full benefits of higher education, colleges and universities should make meaningful efforts to hire more women officers.¹²⁰ Substantial evidence that the heightened presence of female police officers tends to

¹¹⁵ See Diana L. Payne, Kimberly A. Lonsway, & Louise F. Fitzgerald, *Rape Myth Acceptance: Exploration of Its Structure and Its Measurement Using the Illinois Rape Myth Acceptance Scale*, 33 J. OF RES. IN PERSONALITY 27, 28 (1999), available at <https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espy=2&ie=UTF-8#q=rape%20myth%20acceptance%20scale> (last visited September 28, 2014). The Updated Illinois Rape Myth Acceptable Scale can be viewed here: <http://www.hhs.gov/ash/oah/oah-initiatives/paf/508-assets/conf-2011-herman-irma.pdf>.

¹¹⁶ But see Meghan A. Alderden & Sarah E. Ullman, *Gender Difference or Indifference? Detective Decision Making in Sexual Assault Cases*, 27 J. OF INTERPERSONAL VIOLENCE 3, 4 (2012), available at <http://dx.doi.org/10.1177/0886260511416465>. This 2012 study in Midwestern city found that after a report of rape female detectives were significantly less likely than male detectives to arrest suspects in a sexual assault case, and that efforts to hire more women may “undermine efforts to improve victim experiences with the criminal justice system.” We do not find that study compelling for several reasons. First, it examined arrests, which come after the actual report of the crime. We have argued here that an increase in reporting is an essential first step in reducing crime. Second the authors had no information about the type of training that officers received at the one agency, and we have made the case that training is essential to avoid victim blaming once an officer investigates a report.

¹¹⁷ See Meier & Nicholson-Crotty, *supra* note 109, at 850 (stating that based on a pooled time series of 60 urban areas over an eight-year time frame, the percentage of women police officers is positively associated with the number of reports of sexual assault and with the number of arrests for sexual assault).

¹¹⁸ Amalia R. Miller & Carmit Segal, *Do Female Officers Improve Law Enforcement Quality? Effects on Crime Reporting and Domestic Violence Escalation* 4 (2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2335990 (last visited Oct. 1, 2014).

¹¹⁹ *Id.*

¹²⁰ We neither recommend nor suggest specific quotas, which are constitutionally impermissible at public institutions. See *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 507-508 (1989) (disapproving of the city's use of a quota system for minority employment in the construction industry); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 319-20 (1978) (opinion of Powell, J.) (medical school's set-aside for designated number of minority students in admissions process violated the Fourteenth Amendment); see also *Gratz v. Bollinger*, 539 U.S. 244, 270-76 (2003) (rigid point system giving preference to minorities in university's admissions process violated Equal Protection Clause). By contrast, race- and gender-conscious recruiting efforts have been upheld. See, e.g., *Peightal v. Metropolitan Dade County*, 26 F.3d 1545, 1557-58 (11th Cir. 1994) (approving district court's characterization of fire department's

increase the reporting of violent crimes against women¹²¹ should provide major incentive to universities to boost the hiring and retention of female officers. These data justify hiring women not simply to ensure that the demographics of agencies reflect the population they serve, but more importantly to improve the agency's ability to protect women. Moreover, genuine efforts to maintain a significant number of women on their police force can bolster the legal position of universities when facing charges of violations of Title IX.

Even the simple fact of increase alone in representation of women on a campus police force inures to the benefit of female victims of sexual assault. First, women students who see women law enforcement officers engaging in routine policing activities may be more inclined to turn to the agency after a rape. Women students are undoubtedly familiar with the demographic makeup of the campus police force simply because they routinely interact with police throughout their college experience. Students observe campus police patrolling campus, traffic and parking enforcement, building lockup, responding to calls for service by other students reporting crimes, and are aware of police presence at campus special events such as commencement, sports competitions, concerts, large club proceedings, public meetings, and public safety programs.¹²² Studies have also suggested that women are especially aware of the gender mix in their environment.¹²³ Before a rape even occurs, then, women students will have noticed that the campus law enforcement agency includes many women officers. By seeing women law enforcement officers patrolling, responding, and investigating, women who are victimized may be more inclined to report their experience because of the belief that their experience is shared and represented by officers within the agency, regardless of the gender of the actual responding officer.¹²⁴ As researchers have found, there is empirical support for the value of representation, as more female police officers in an agency correspond with higher reports of sexual assault.¹²⁵ The fact that police forces with larger percentages of women officers filed reports of sexual assault at a greater rate¹²⁶ supports the conclusion that the very presence of women in law enforcement matters in combatting campus sexual assault. Thus, just by improving the representation of women in law enforcement, female officers on campus help to make the agency more approachable to women.¹²⁷ It is true that training for campus officers--both male and female--is crucial to effective and appropriate responses to sexual assault charges,¹²⁸ and all police need to communicate the

recruiting program targeting women and minorities as "race neutral"); *Weser v. Glen*, 190 F.Supp.2d 384, 399 (E.D.N.Y. 2002) ("[E]ven if the Law School's recruiting and outreach efforts were 'race conscious' in being directed at broader recruiting of minorities and women, such efforts would not constitute discrimination."); *Com. of Pa. v. Flaherty*, 760 F.Supp. 472 (W.D. Penn. 1991) (noting that city could continue actively recruiting women and minorities for positions on the police force).

¹²¹ See *supra* Part III.

¹²² Meier & Nicholson-Crotty, *supra* note 109; see also BRIAN A. REAVES, *supra* note 87, at 4.

¹²³ See Marco Castillo, Gregory Leo, & Ragan Petrie, *Room Effects 2* (Interdisciplinary Ctr. for Econ. Sci., Working Paper No. 13-17, 2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2280217 (last visited September 28, 2014).

¹²⁴ Meier & Nicholson-Crotty, *supra* note 105 at 852.

¹²⁵ *Id.* at 856.

¹²⁶ See *id.*

¹²⁷ *Id.* at 852.

¹²⁸ See Laura M. Monroe et al., *The Experience of Sexual Assault: Findings from a Statewide Victim Needs Assessment*, 20 J. OF INTERPERSONAL VIOLENCE 767, 770-71 (2005) (stating that about half the victims surveyed in the study were dissatisfied with police interview, and some victims recommended improvement to police services); see also INT'L ASSOC. OF CHIEFS OF POLICE, SEXUAL ASSAULT INCIDENT REPORTS – INVESTIGATIVE STRATEGIES 5 (identifying the importance of police officers being aware of the impact of trauma on a victim's behavior and how to utilize this knowledge in methods of interviewing victims. Information is based on national best-practices); see also Campbell et

message of zero tolerance for sexual assault at every opportunity. Still, as data show, the presence of a significant number of female officers is an essential ingredient to increasing reports of sexual violence.

The case for increasing the number of women police officers at universities is also supported by the theory of representative bureaucracy.¹²⁹ Representative bureaucracy theory holds that when bureaucratic agencies are made up of individuals who represent the people they serve on important demographic and social indicators, the agency makes decisions that benefit the marginalized people they serve.¹³⁰ Used frequently to explain the importance of including racial diversity in bureaucratic structures,¹³¹ bureaucratic representation¹³² has more recently been applied to gender. Bureaucratic representation occurs at two levels: passive representation and active representation. Passive representation is the process of simply having a bureaucracy that has adequate representation on demographic characteristics of the people the bureaucracy serves.¹³³ By doing so, clients are more inclined to access the bureaucratic services because they know the agency comprises in significant part individuals who resemble them; clients see a visible connector and are more likely to use the services because of an observable similarity.¹³⁴ Commentators have pointed out, for example, that the recent problems in Ferguson, Missouri stemming from a white police officer shooting a black man could have had roots in the stark racial divisions of the community and police force.¹³⁵ The implication is that police agencies can benefit from simply being more representative of the communities they serve. Under the theory of representative

al., *supra* note 53, at 1254 (“[O]ur findings highlight the need for additional professional training for service providers...Service providers must be aware of the variety of services that they should be offering rape victims, and they must be challenged on their implicit beliefs that only certain victims need particular services.”); *see also* Rebecca Campbell, *What Really Happened? A Validation Study of Rape Survivors Help-Seeking Experiences with the Legal and Medical Systems*, 20 VIOLENCE & VICTIMS 55, 65 (2005) (finding that police officers’ responses indicated that they were not aware of the experiences of data; one finding illustrated that “[i]f victims stated that they felt blamed or depressed after interacting with legal or medical system personnel, more often than not police officers or doctors did not think the survivors were feeling such distress.”).

¹²⁹Meier & Nicholson-Crotty, *supra* note 109, at 851

¹³⁰ *Id.*

¹³¹ *Id.* at 855.

¹³² This concept differs from the “community policing” movement promoted by the Department of Justice for the last two decades. Community policing focuses more on community outreach, organizational change, and increasing police legitimacy than on agency diversity. *See* U.S. DEP’T. OF JUSTICE, COMMUNITY POLICING DEFINED (2014), available at <http://ric-zai-inc.com/Publications/cops-p157-pub.pdf>. *See also* Charlotte Gill, David Weisburd, Cody W. Telep, Zoe Vitter & Trevor Bennett, *Community-oriented Policing to Reduce Crime, Disorder and Fear and Increase Satisfaction and Legitimacy Among Citizens: A Systematic Review*, J. OF EXPERIMENTAL CRIMINOLOGY (2014). This a meta-analysis of 25 different reports, including 65 different measures, that evaluated the effectiveness of community policing. The researchers found community policing effective in increasing community satisfaction and perception of police, but less not as effective in reducing actual crime rates or the fear of crime. Community policing focuses more on community outreach, organizational change, and increasing police legitimacy than on agency diversity.

For a discussion of community policing, *see* Christopher Moraff, *Why Community Policing is Still a Good Investment*, NEXT CITY (Sept. 15, 2014), <http://nextcity.org/daily/entry/community-policing-efforts-success-failure>.

¹³³ *See* Meier & Nicholson-Crotty, *supra* note 105.

¹³⁴ *Id.* at 854.

¹³⁵ *See, e.g.*, Braden Goyette, *Stark Racial Disparities In Ferguson, Missouri, The Town Where Michael Brown Was Shot*, THE HUFFINGTON POST (Aug. 13, 2014, 12:59 AM), http://www.huffingtonpost.com/2014/08/12/racial-disparities-ferguson-missouri_n_5671891.html>

(emphasizing that Ferguson, Missouri population is completely a white city. According to census and other studies there is a higher chance of blacks getting more attention from the police rather than whites. The city is completely divided; whites work in mostly all high occupations.).

bureaucracy, then, a university law enforcement agency can best serve the school's women students when the agency's makeup reflects to an appreciable degree the gender composition of the student population.¹³⁶

Second, when a campus has a larger number of women officers, the likelihood increases that a rape victim's first contact with the law enforcement agency will be with a female officer. What happens after the report is also crucial, so it is essential that beyond being "comfortable," a victim must be sensitively and effectively served by a well-trained officer who does not adhere to myths about rape.¹³⁷ Thus, this preference by many women to interact with other women on issues related to women's sexual health¹³⁸ is consistent with the expressed importance of the presence of women to assist with both forensic nurses¹³⁹ in the rape crises setting, and more generally on non-emergency women's health issues.¹⁴⁰

Another advantage of hiring more women police officers is the effect their presence may have on the practices and explicit policies and procedures of the agency. This phenomenon is known as active representation within representative bureaucracy theory¹⁴¹: when bureaucracies are composed of disenfranchised members who have power and autonomy within the agency, decisions are made that positively impact the disenfranchised population. Well-documented in the case of minority representation within bureaucracies, the theory has more recently been applied to professions that are comprised of a majority of one gender.¹⁴² As such, a meaningful increase in women's representation within law enforcement agencies has the potential to positively impact rape victims. For example, women officers' presence may influence their male colleagues' views of rape. Researchers have theorized that the presence of more women officers at law enforcement

¹³⁶ See Meier & Nicholson-Crotty, *supra* note 109.

¹³⁷ See, e.g., Karen Rich & Seffrin, Patrick. (2012). *Police Interviews of Sexual Assault Reporters: Do Attitudes Matter?* Violence and Victims, 27(2). <http://www.oaesv.org/wp-content/uploads/2013/02/Police-Interviews-of-Sexual-Assault-Reports-Do-Attitudes-Matter.pdf> (stating that training, and rejection of rape myths matter most; it is possible that a female officer with poor skills could make a rape reporter feel comfortable initially, but engage in discouraging behaviors and fail to collect good information on the crime)

¹³⁸ See generally, *Survivor Services, Women Helping Women*, available at <http://www.womenhelpingwomen.org/services/survivor-services/> (listing several services offered by women to other women who have survived sexual assault encouraging initial reporting, intervention for the immediate after-effects of assault, and ongoing support groups. *Career as a Victim Advocate*, [CareersinPsychology.org](http://careersinpsychology.org/career-as-a-victim-advocate/), <http://careersinpsychology.org/career-as-a-victim-advocate/> ("Sexual assault victims, for instance, will often be more open to working with a female victim advocate than a man.").

¹³⁹ See Linda E. Ledray, *Evidence Collection and Care of the Sexual Assault Survivor The SANE-SART Response* (2001), available at <http://www.mincava.umn.edu/documents/commissioned/2forensicevidence/2forensicevidence.html> last viewed October 22, 2014) (citing studies in which women expressed a strong preference for medical treatment and counseling by a woman); Rima Chowdhury-Hawkins et al., *Preferred Choice of Gender of Staff Providing Care to Victims of Sexual Assault in Sexual Assault Referral Centres (SARCs)*. 15 JOURNAL OF FORENSIC AND LEGAL MEDICINE 363-367 (2008), available at <http://www.sciencedirect.com/science/article/pii/S1752928X08000164> (last viewed Oct. 22, 2014) (Most victims (78.6%, male and female) preferred Sexual Assault Referral Centre (SARC-UK model) staff to be female. Almost 100% of victims would continue with the examination if carried out by a female doctor, whereas 43.5% of victims said they would not if the doctor were male. SARCs should continue to consider female staff at the primary gender of staff providing services as part of their recruitment policy.)

¹⁴⁰ Fiona Brooks & David Phillips, *Do Women Want Women Health Workers? Women's Views of the Primary Health Care Service*, 23 JOURNAL OF ADVANCED NURSING, 23, 1207-1211 (1996), available at <http://onlinelibrary.wiley.com/doi/10.1046/j.1365-2648.1996.12519.x/pdf> (findings indicating that for specific 'women's health issues' gender of the health care worker is clearly important for women).

¹⁴¹ *Id.*

¹⁴² *Id.*

agencies works to sensitize male officers to the issues involved in sexual assault and its impact on victims.¹⁴³ The actual effects of greater representation of women on male officers' attitudes within agencies have not been studied extensively.¹⁴⁴ It seems clear, however, that an individual agency's mere touting of its decision to hire a handful of additional women police officers is not likely to result in meaningful change throughout the agency or campus.¹⁴⁵ Indeed, those few officers may simply absorb the well-established male-dominated agency culture¹⁴⁶ and reflect that culture in their attitudes and behaviors. At any rate, a token number of female officers would not fulfill the purposes of attaining ample representation of women in campus (and other) law enforcement agencies. To attain these goals, agencies must endeavor to hire, train, and retain women at every level of the organization. Women law enforcement officers who represent a small minority of the force--despite making up approximately half the population (more on most campuses)--have not reached the critical mass¹⁴⁷ necessary to influence culture and policy within the institution.¹⁴⁸ When the number of women reaches a critical mass, women officers may help shift the agency toward more effectively addressing sexual violence against women. This representation also needs to be incorporated throughout the ranks, so that women officers hold positions of power within the agency that can influence policy and procedural decisions.¹⁴⁹ This is particularly relevant to the issue of sexual assault, because officers routinely hold much discretion in deciding whether to make an arrest,¹⁵⁰ and an officer's use of discretion is undoubtedly linked to agency culture and

¹⁴³ Meier & Nicholson-Crotty, *supra* note 109 at 853.

¹⁴⁴ *Id.* at 858.

¹⁴⁵ See, Lael R. Keiser, Vicky M. Wilkins, Kenneth J. Meier, & Catherine Holland, *Lipstick and Logarithms: Gender, Institutional Context, and Representative Bureaucracy*, 95 AM. POL. SCI. REV. 553 (2002), available at <http://teep.tamu.edu/pubs/lipstick.pdf> (stating that if women police officers are relegated to low-level patrol positions, they lack the discretionary power to influence policy changes).

¹⁴⁶ See Karen Rich & Patrick Seffrin, *Police Interviews of Sexual Assault Reporters: Do Attitudes Matter?*, 27 VIOLENCE & VICTIMS 263, 265 (2012) ("Some generalizations about police culture that may be relevant to sexual assault victim interviewing include (a) law enforcement organizations are hierarchically organized and tend to be male dominated...."); see also Mary Dodge, Laura Valcore, & David A. Klinger, *Maintaining Separate Spheres in Policing Women on SWAT Teams*, 20 WOMEN & CRIM. JUST. 218, 224 (2010) ("Many observers have asserted that regular...policing is infused with a large dose of masculine values that shape how and why police work is performed and that the 'right' way to maintain social order and control is to have men perform police work"); see also DEBORAH PARSONS & PAUL JESLOW, *IN THE SAME VOICE: WOMEN AND MEN IN LAW ENFORCEMENT* 31 (2001) (stating that police work is perceived to "require characteristics usually attributed to men, for example, physical prowess, logic, and stability of emotions. Characteristics commonly considered feminine, such as compassion, empathy, nurturing, and strong emotions, are frequently perceived to be weaker, less appealing, less successful and especially in terms of policing, possibly dangerous and life-threatening").

¹⁴⁷ The concept of a critical mass originates in science, specifically atomic reactions. As Thomas Schelling wrote, there has to be some minimum amount of fissionable material to create self-sustaining nuclear fission; at some point, an atomic pile "goes critical." THOMAS C. SCHELLING, *MICROMOTIVES AND MACROBEHAVIOR* 89 (1978). The idea of a critical mass is central to social science in discussions of collecting enough resources to accomplish some goal. GERALD MARWELL & PAMELA OLIVER, *THE CRITICAL MASS IN COLLECTIVE ACTION: A MICRO-SOCIAL THEORY* (1993).

¹⁴⁸ Lael R. Keiser et. al, *supra* note 128 (stating that a critical mass may be needed for minorities to take an advocacy role).

¹⁴⁹ *Id.*

¹⁵⁰ Kerstetter, W. A., *Gateway to Justice: Police and Prosecutorial Response to Sexual Assaults Against Women*, 81 J. CRIM. LAW & CRIMINOLOGY 267-313 (1990) (stating that officers make a whether decision to arrest in sexual assault cases), available at <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6661&context=jclc> (last viewed Oct. 22, 2014).

attitudes about rape and rape victims.¹⁵¹ Adequate representation of trained women officers has the potential to sway this discretionary power toward victim-centered practices and away from the victim-blaming attitude so prevalent today.¹⁵²

Further, increases in reporting can produce results that will ultimately effect a reduction in sexual assaults on campus. A higher number of reports can lead to better data on the prevalence of assault, more investigations, more arrests, and thus more consequences for offenders. Colleges and universities, then, can achieve tangible gains by immediately increasing their efforts to hire more women police officers. As the number of female officers rises, students will more frequently report sexual assaults. As the rate of reporting goes up, universities will be able to garner more resources such as advocates and officers, conduct more campus trainings and programs, and work to overhaul the campus environment to reduce commission of the crime.

A further long-term benefit of more reporting of rape is that it provides campus authorities with better campus crime data.¹⁵³ An increase in the number of sexual assault reports by victims to police can lead to better assessment of the specifics of the crime (e.g. where the assault was perpetrated), as well as a statistical chance there will be an increase in the number of arrests (regardless of the gender of the officer). Increased reporting will make Clery reports more accurate, while also providing helpful information to police for investigative purposes. Because most rapes are committed by serial rapists,¹⁵⁴ stopping one perpetrator of sexual assault has the potential to not only obtain justice but also prevent future rapes. It is likely that only with this data can agencies tailor specific local policies and programs for prevention and intervention. Such data will help agencies advocate and gain support for the financial resources they need to put those specific programs and policing into place.¹⁵⁵ One example of a specific policy decision that could result from increased reporting to police of campus sexual assault is the increase in the number of victim advocates hired by universities to support victims. These are advocates trained to support victims with obtaining emergency medical care, guidance on reporting sexual assaults to local law enforcement, information on their legal rights, availability of counseling, and other services.¹⁵⁶

¹⁵¹ Annelise Mennicke, et al., *Law Enforcement officers' Perception of Rape and Rape Victims: A Multimethod Study*, 29 VIOLENCE AND VICTIMS 814-827, see also Kimberly Lonsway & Jaonne Archbolt, *Dynamics of Sexual Assault: What Does Sexual Assault Really Look Like?* (2014); available at <http://olti.evawintl.org/images/docs/DYNAMICS%2001-25-13.pdf> (last viewed Oct. 21, 2014) (reviewing rape myths and how the criminal justice system respond to rape).

¹⁵² Rebecca Campbell et al., *supra* note 53, at 1240 (2001).

¹⁵³ See BONNIE FISHER, ET AL., *supra* note 15, at 23 (“Few incidents of sexual victimization were reported to law enforcement officials. Thus, fewer than 5 percent of completed and attempted rapes were reported to law enforcement officials. In about two-thirds of the rape incidents, however, the victim did tell another person about the incidents.”).

¹⁵⁴ See *supra* note 35.

¹⁵⁵ See *Climate Surveys: Useful Tools to Help Colleges and Universities in Their Efforts to Reduce and Prevent Sexual Assault* 1, NOTALONE.GOV, <https://www.notalone.gov/assets/ovw-climate-survey.pdf> (last visited Oct. 6, 2014) (stating that “decades of research show that victims rarely report sexual assault to law enforcement.”). “Many victims do not even access formal services, like crisis centers. Thus, official statistics underrepresent the extent of the problem on any one campus. Further, campus response, intervention, and prevention efforts will be more successful if they are tailored to the needs of each campus community.” *Id.*

¹⁵⁶ See *Key Components of Sexual Assault Crisis Intervention/Victim Services Resources* 1, NOTALONE.GOV, <https://www.notalone.gov/assets/intervention-resources.pdf> (last visited Oct. 6, 2014) (“Survivors need a confidential space for disclosure, either in the form of a crisis center on campus whose staff members are protected by confidentiality statutes, or a representative from a community based center with such privileges who works part time on campus.”).

This Article's proposal comes at a time of apparently heightened receptivity to the greater inclusion of women in law enforcement agencies. Even though it may be difficult for some agencies to attract women recruits, evidence points to a growing recognition of the need for more women officers on campus.¹⁵⁷ Several universities and student groups have realized the problems of campus rape, the underreporting of the crime, and the need for more women police officers. The University of Rochester issued a statement to the local newspaper when a sexual assault survivor complained that she was never offered the chance to speak with a female officer after she was assaulted at a fraternity party.¹⁵⁸ The university said it was training new female officers "who will be able to investigate and respond to complaints of sexual misconduct."¹⁵⁹ In 2013, the Student Government Association (SGA) of Connecticut College responded when the college's Campus Safety Officer Search Committee sought to hire a new police officer.¹⁶⁰ The SGA created a resolution emphasizing the importance that the new officer identify as a woman, since over half of the college's student body is female (55%).¹⁶¹ Recently only 17% of officers on staff at the University of West Virginia were female, but in a newspaper article the police chief expressed the desire for more female officers.¹⁶² "In our environment on campus, I think having a large amount of female officers works well," the chief said. "People can relate and interact better with some of our female officers because they have different skill sets."¹⁶³ Just a few months earlier, the student newspaper at Stony Brook University opined that "some solutions" to sexual assaults on campus included hiring more police female officers, re-orienting a portion of the police force to focus on helping victims, increasing self-defense training, and creating bystander awareness workshops.¹⁶⁴

It is important to bear in mind that the proposal to increase the number of women in campus law enforcement agencies in order to increase reporting of sexual assault is intended as a complement to, not substitute for, the proper training of officers in dealing with sexual violence. Indeed, training is essential for all officers on the various dimensions of sexual assault: the incidence and prevalence of such assault,¹⁶⁵ communication skills for working with victims,¹⁶⁶ the

¹⁵⁷ See JEREMY M. WILSON & CLIFFORD A. GRAMMICH, *POLICE RECRUITMENT AND RETENTION IN THE CONTEMPORARY URBAN ENVIRONMENT: A NATIONAL DISCUSSION OF PERSONNEL EXPERIENCES AND PROMISING PRACTICES FROM THE FRONT LINES* (2009) (includes information about the difficulty of recruiting women, as well as how agencies have made efforts to make police careers appeal to women and minority applicants).

¹⁵⁸ James Goodman & Neeti Upadhye, *Campuses Struggle With Sexual Assault Cases*, DEMOCRAT & CHRON. (AUG. 26, 2014, 10:41 AM), <http://www.democratandchronicle.com/story/news/2014/08/23/colleges-university-rochester-sexual-misconduct/14466731/>.

¹⁵⁹ *Id.*

¹⁶⁰ Ryan Friend, *Students, SGA push for Hiring of Woman Campus Safety Officer*, THE COLLEGE VOICE (Nov. 19, 2013), available at <http://thecollegevoice.org/2013/11/19/students-sga-push-for-the-hiring-of-woman-campus-safety-officer/> (last viewed Oct. 20, 2014).

¹⁶¹ *Id.*

¹⁶² Hannah Wigal, *Morgantown Law Enforcement Agencies Report Few Female Officers on Staff*, THE DAILY ATHENAEUM (Sept. 2, 2014), http://m.thedaonline.com/news/article_ee86c730-29b0-11e4-bf49-0017a43b2370.html?mode=jqm

¹⁶³ *Id.*

¹⁶⁴ Paul Grindle & Alexandra Miller, *Sexual Assault Increases on Campus*, THE STATESMAN (March 6, 2014), <http://sbstatesman.com/2014/03/06/sexual-assault-increases-on-campus/>. See also Joshua Lim, *OUPD Hired Second Female Officer, Still Desires Diversity*, THE POST (October 6, 2104, 6:32 AM), http://www.thepostathens.com/news/article_9b4e047e-4cde-11e4-a653-0017a43b2370.html.

¹⁶⁵ Molly Smith, Nicole Wilkes, & Leana A. Bouffard, *Sexual Assault on College Campuses: Perceptions and Approaches of Campus Law Enforcement Officers*, CRIME VICTIMS' INST. 1, 7 (2014), available at http://dev.cjcenter.org/_files/cvi/Campus%20Sexual%20Assaultfor%20web.pdf.

¹⁶⁶ Rich & Seffrin, *supra* note 54, at 266.

legal elements of the crime under state law,¹⁶⁷ the low estimate of false rape claims,¹⁶⁸ working with victim advocates to combat stereotypes of a what a “real victim”¹⁶⁹ looks or acts like,¹⁷⁰ dispelling other myths about sexual violence, and developing a culture of sensitivity toward rape victims is essential for all campus law enforcement--women and men--to appropriately respond to a victim’s report.¹⁷¹ Such training is crucial to ensure that when a victim does report to police, she is not re-traumatized by the responding officer.

Likewise, the role of victim advocates¹⁷² and campus mental health professionals is an essential one, and we support their status as confidential assistants to victims.¹⁷³ It is vital for victims to have a trained advocate who can provide trauma-informed assistance¹⁷⁴ in a confidential environment,¹⁷⁵ and victims must retain the ability to decide whether or not to report to campus law enforcement. If victim advocates lost their confidentiality privilege, reporting numbers would sink even lower, making the fight against sexual assault even more difficult.¹⁷⁶ Our proposal instead is to encourage women to feel comfortable reporting to trained campus police, which in turn will trigger victim assistance services, hold perpetrators accountable, and better enable universities to obtain the resources they need to combat this crime. Thus, reporting rates and

¹⁶⁷ Rebecca Campbell & Camille R. Johnson, *Police Officers’ Perceptions of Rape: Is There Consistency Between State Law and Individual Beliefs?*, 12 J. INTERPERSONAL VIOLENCE 255, 271 (1997).

¹⁶⁸ See, e.g., Kimberly Lonsway, *False Reports: Moving Beyond the issue to Successfully Investigate and Prosecute Non-stranger Sexual Assault*, 3 THE VOICE 1-11 (2009) (stating that only about 2 to 8% of rape allegations are false); see also EVIDENCE-BASED CRIME PREVENTION EVIDENCE-BASED CRIME PREVENTION 109 (DAVID FARRINGTON ET AL. EDS. 2002) (“According to FBI statistics, false accusations of rape are no more common than for other crimes”).

¹⁶⁹ Janice Du Mont et al., *The Role of “Real Rape” and “Real Victim” Stereotypes in Police Reporting Practices of Sexually Assaulted Women*, 9 VIOLENCE AGAINST WOMEN 466, 477 (2003).

¹⁷⁰ Jan Jordan, *Beyond Belief? Police, Rape and Women’s Credibility*, 4 CRIM. JUST. 29, 37 (2004) (citing factors that officers say diminished a victim’s credibility, such as a victim being drunk/drugged, delaying reporting, having had a previous sexual relationship with the offender, or a previous report of rape).

¹⁷¹ Jan Jordan, *Will Any Woman Do?: Police, Gender and Rape Victims*, 25 POLICING: AN INTERNATIONAL JOURNAL OF POLICE STRATEGIES & MANAGEMENT 319-344, 340 (2002) (“This suggests that not only is it possible for some male officers to be sensitive victim interviewers, but also that being female does not automatically denote possession of the key attributes required for victim interviewing. Some rape complainants, however, expressed a strong preference for women officers. This places the onus on the police not simply to provide a woman officer--the ‘any woman will do’ scenario--but to ensure the availability of trained and experienced women and men officers.”)

¹⁷² *What is a Victim Advocate?*, NAT’L CTR. FOR VICTIMS OF CRIME, <http://www.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/what-is-a-victim-advocate> (last visited Oct. 19, 2014).

¹⁷³ See OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., QUESTIONS AND ANSWERS ON TITLE IX AND SEXUAL VIOLENCE 22-23 (Apr. 29, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (stating that professionals with licensure that requires confidentiality include “mental health counselors, pastoral counselors, social workers, psychologists, health center employees, or any other person with a professional license requiring confidentiality” and supporting that schools designate “all individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women’s centers, or health centers” as confidential resources).

¹⁷⁴ See Rebecca Campbell, *Rape Survivors’ Experiences With the Legal and Medical Systems: Do Rape Victim Advocates Make a Difference?*, 12 VIOLENCE AGAINST WOMEN 30, 30 (2006) (finding that survivors who had the assistance of an advocate were significantly more likely to have police reports taken, less likely to be treated negatively by police officers, less distressed after their contact with the legal system, and given more medical services).

¹⁷⁵ See OFFICE FOR CIVIL RIGHTS, *supra* note 172, at 23 (“These non-professional counselors or advocates are valuable sources of support for students, and OCR strongly encourages schools to designate these individuals as confidential sources.”).

¹⁷⁶ See Campbell, *supra* note 174, at 30-31 (stating that victim advocates support victims through legal process by helping them through the process and helping to prevent secondary victimization from law enforcement that occurs when officers display victim-blaming attitudes).

assistant services are mutually reinforcing; as reporting rates rise to accurately reflect the true incidence of the campus crime, so will the use and availability of services.¹⁷⁷

Finally—and of considerable legal significance—universities should recognize that hiring and appropriately training more women police officers can serve their own institutional interest well as the interests of their students by helping to bring schools into compliance with Title IX. The sheer horror of frequent sexual assault on campus reflects a hostile environment that traumatizes women students every day. Schools have a duty to take prompt and effective action to stop the victimization and prevent its recurrence.¹⁷⁸ If the school fails to take the necessary steps, it has engaged in discrimination, because its failure to act has allowed hostile environment that denies or limits the student's ability to benefit from the school's program to continue.¹⁷⁹ In our view, a plaintiff's evidence of a university law enforcement agency's lack of consistent, ongoing, and genuine effort to hire sworn female officers contributes to a plaintiff's allegation of a hostile educational environment under Title IX. Such lack of effort can help demonstrate that the school has not taken the type of appropriate steps it needs to increase resources for women on campus. Conversely, a university's demonstrably consistent, ongoing, and genuine effort to hire and retain female officers should be used to establish that a university has sought to address the effects of campus assault and prevent its recurrence under Title IX. According to the OCR, schools that take prompt action avoid violating Title IX.¹⁸⁰ Given the disparate impact of sexual assault on women students, the large percentage of women students at most co-educational colleges, and research indicating that increases in the number of women officers results in increased reporting of sexual assault and crimes against women, universities can demonstrate that they have worked to remedy or prevent a hostile environment by hiring, training, and retaining women officers. Failure to do so represents a missed opportunity that may well come back to harm a university and the students whom it is charged to protect.

CONCLUSION

The scourge of sexual assault continues to afflict university campuses across the nation. Though the vast majority of victims are female, women are generally woefully underrepresented in campus law enforcement agencies. We do not argue, however, that the ranks of women in these agencies should be increased simply for the sake of attaining a more demographically reflective police force as an end in itself. Rather, we assert that a demonstrable connection exists between the disproportionately low number of women among campus police and the troublingly low reporting rates for sexual assault, and that these chronically low rates in turn severely impair universities' ability to grapple with this crime. Conversely, research shows that a higher proportion of female officers tends to increase women's reporting rates. On college campuses, this effect would improve efforts to curb and punish sexual violence.

¹⁷⁷ See, e.g., Daniel Wood, *Could California State Become National Model to Stem Sexual Violence on Campus?* (+video), CHRISTIAN SCI. MONITOR (Sept. 23, 2014), <http://www.csmonitor.com/USA/Education/2014/0923/Could-California-State-become-national-model-to-stem-sexual-violence-on-campus-video> (discussing the recent decision of California State University, which enrolls 447,000 students, to appoint victim advocates to all 23 of its campuses).

¹⁷⁸ OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES TITLE IX, § 2, (Jan. 19, 2001), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

We also believe that a university's failure to take reasonable measures to address sexual assault can contribute to a hostile environment for women as that term is defined by Title IX of the Education Amendments of 1972. Accordingly, we would propose that the Department of Education Office of Civil Rights take immediate steps to recommend that publicly funded colleges and universities demonstrate consistent and ongoing efforts to hire and retain sworn women law enforcement officers. Such efforts would serve as a vital tool in the effort to ensure that women students increase reporting of sexual violence on the nation's campuses. This increase would help to produce justice in individual cases, serve as a deterrent to potential perpetrators, and thus ultimately help secure to women students that equality on campus which is their legal and moral right.