UNTANGLING THE KNOT

Stopping sexual assault is a national imperative. Here’s how colleges are trying to do it, and why it’s proving so difficult.

BY MAGAZINE STAFF

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LIKE A LONG-SIMMERING POT COMING TO A BOIL, the hot topic on U.S. college campuses today is sexual assault. Across the country, students are joining forces to demand that their schools mete out harsher penalties for offenders and provide better support for victims.

Activism against rape and other sexual violence is nothing new: At Stanford, students began to press for educational and prevention programs in the late 1970s. But now as never before, legislators, federal agencies and the White House have stepped up to hold all campus administrations strictly accountable for student safety, while showing students how to put the law—especially Title IX—to work for them. As a result, schools, including Stanford, are hurrying to bolster preventive measures and counseling resources, improve their response to victims and revise disciplinary policies. That in turn is stoking debate throughout academia and well beyond, thanks to national media scrutiny and an echo effect from sexual assault scandals roiling professional sports, the military and other arenas.

There is a dearth of reliable up-to-date data on the incidence of sexual violence, although many schools, including Stanford, will conduct surveys this year. The University of Oregon’s 2014 survey reported that 35 percent of female and 14 percent of male participants had had at least one sexual experience without their consent and that 10 percent of female and 0.3 percent of male participants had been raped. The U.S. Department of Justice’s Campus Sexual Assault Study, published in 2007, reported that 19 percent of female undergraduates were victims of attempted or completed sexual assaults on the two campuses surveyed. Such attacks are criminal offenses and violate campus behavioral codes, but the majority of them are not reported to either campus authorities or police.

The Department of Education’s Office of Civil Rights issued a Q & A-style “guidance document” last April confirming that Title IX protects all students (at institutions receiving federal funds) from sex discrimination, which includes sexual harassment and violence. (The document reaffirmed requirements previously spelled out in 2001 and again in a 2011 “Dear Colleague” letter sent to all institutions.) In brief, a school violates a student’s Title IX rights if an alleged assailant’s conduct creates a hostile environment and the school fails to end the sexual violence, eliminate the hostile environment and prevent its recurrence. (See definitions sidebar, page 55.)

Also in April, the White House Task Force to Protect Students from Sexual Assault published its first report. It called for schools to conduct “campus climate surveys” to determine the extent of the problem; improve prevention efforts specifically by encouraging student bystanders to intervene in risky situations; and institute an effective, comprehensive response to complaints.

This new, more activist posture by the government has schools scrambling to catch up. In May, the OCR announced the names of 55 colleges in 26 states that it was investigating; that number surged beyond 80 in November. Stanford is not among that group, but administrators concede that the issue is not confined to schools in the news, or whose policies have come under official scrutiny. The topic has animated discussion on the Farm for months, and spurred a comprehensive effort to protect students from sexual violence.

“The fact that students are owning this—it’s the talk everywhere—is unlike anything else I’ve seen,” says Vice Provost for Student Affairs Greg Boardman.

How can schools deal both effectively and fairly with criminal behavior, and should they be expected to, particularly on matters as fraught as sexual assault?

Stanford Dean of Law M. Elizabeth Magill has a ready answer. “It’s crystal clear that universities have the obligation to provide a safe environment. It’s also clear that it’s the view of the federal regulator that it’s not sufficient for universities to refer cases to the court system. Campus is the small town that our students live in. It’s a unique environment, and to say that the only way we can deal with sexual violence is if the criminal justice system is going to indict and prosecute and put someone in jail strikes me as too high a standard, with people living down the hall from one another. That doesn’t mean that the criminal justice system shouldn’t or can’t be used in appropriate cases—and it probably should be used more often—but these are cases that prosecutors generally are not going to bring.”

Magill co-chairs a university-wide task force appointed by Provost John Etchemendy last July to review sexual assault policies and practices. “Our discipline systems on campuses grew out of plagiarism,” she points out. “But if we had people vandalizing our campuses, stealing things, and the prosecutor said they weren’t going to do anything, then we would say that’s a violation of the Fundamental Standard and we’re going to do something about it even if the criminal justice system isn’t.”

The Fundamental Standard, a student code of conduct
dates to the earliest years of the university (it was written by the first president, David Starr Jordan), is the basis for adjudicating any sexual assault claim. The Title IX coordinator and/or the Office of Community Standards investigates each claim to determine whether there are grounds for action. If so, a five-member panel composed of three students and two staff judges whether the respondent is responsible for the allegations and what disciplinary measures should be taken. That procedure, called the Alternate Review Process, is not a substitute for criminal prosecution but provides a guarantee that claims will be heard, since many cases referred to the police aren’t prosecuted, mostly because of lack of sufficient evidence.

Mechanisms put in place for dealing with sexual assault claims vary from school to school, but such cases have one thing in common: They are inherently vexing. Often, both the alleged perpetrator and the alleged victim were under the influence of alcohol or drugs, which can lead to hazy or confused recollection of events later. Physical evidence is often unavailable. In the absence of witnesses or evidence beyond “he said/she said,” it’s difficult to determine what actually happened.

There are significant differences between campus and criminal justice processes. First, whereas a prosecutor must prove guilt beyond a reasonable doubt in a criminal matter, all universities are now legally required to use a lower evidentiary standard, “preponderance of evidence.” This means a campus judicial board can ascribe responsibility if it’s “more likely than not” that an assault took place. The government asserts that setting this lower threshold will encourage more victims to come forward and act as a greater deterrent against sexual violence on college campuses.

Also, campus judicial boards do not have the same legal tools available that lawyers would have in a court proceeding. For example, they cannot subpoena witnesses or cross-examine testimony.

In theory, the fact that judicial panels use the “preponderance of evidence” standard of proof makes it easier for them to find offenders responsible. Even so, say critics, the sanctions that panels impose are too lenient. Expulsions are rare, so most perpetrators ultimately remain part of their community. Nationally, measures to combat sexual violence have fallen short, critics add, because of lack of support for victims, inconsistent or ineffectual efforts to change campus cultures, and judicial procedures that can be as confusing and emotionally damaging as the offenses they seek to remedy.

There are no clear-cut rules from the Office of Civil Rights regarding how boards should discipline students found responsible for sexual transgressions. The Columbus Dispatch reported in November that its investigation of campus judicial proceedings nationwide revealed wildly disparate penalties, and offered a few examples. “The University of Wisconsin-Oshkosh found a student responsible for sexual assault and gave him a written reprimand, kicked him out of his dorm for a month and ordered him not to have any minors as guests,” the paper said. “After Miami University found a student responsible for assaulting one woman and stealing another woman’s pizza on the southwestern Ohio campus, it placed him on probation and ordered him to write an essay.”

Punishments considered too lenient were at the crux of several recent highly publicized cases. Last April 23 students filed federal complaints against Columbia University saying their assault cases were poorly handled. One of them, senior Emma Sulikowicz, undertook a protest of her own, carrying a mattress around campus and pledging to do so until her assailant was expelled from school.

And at the University of Virginia, allegations of a gang rape at a fraternity two years earlier were partially discredited but raised new questions after statistics showed that

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lesser transgressions such as cheating on a paper produced harsher punishments than did sexual assault.

Meanwhile, across the country, the accused are striking back with accusations of their own, claiming that the process discriminates against them because of the lower evidentiary threshold and what they see as a bias toward alleged victims. Lawsuits by students found responsible by their school’s judicial boards have been filed against Duke, Columbia and others. At Harvard, 28 law professors last fall issued a statement protesting that school’s new sexual harassment policy, saying it lacked “the most basic elements of fairness and due process,” and was “overwhelmingly stacked against the accused.”

Undeniably, the plethora of procedures and offices involved in sexual assault cases, on and off campus, bewilders students, particularly in times of personal crisis.

Given the thicket of constraints, legal and otherwise, confronting campus judicial boards everywhere, how do they approach their roles? Jasmine Williams, a fifth-year PhD student who serves on Stanford judicial panels, says, “It’s important to remember that the Stanford judicial system isn’t about law, it’s about what kind of a community we want.” In other words, the criminal justice system judges whether an act is criminal; Stanford judges whether the Fundamental Standard—its own criterion for community citizenship—has been breached.

That criterion was the basis for a claim at Stanford last June that galvanized debate about adjudication matters. Senior Leah Francis went public to decry the way the university had handled her rape complaint, made against a former boyfriend who she said had assaulted her at his home in Alaska during a college break. The fact that the incident in question happened off campus was irrelevant, according to the Office of Civil Rights’ interpretation of Title IX: since both people involved were Stanford students, the university is required to respond. (The accused man was found responsible and punished; Francis protested that his punishment should have been expulsion.)

In a footnote in its guidance document last spring, the Office of Civil Rights said it “discourages schools from allowing students to serve on hearing boards in cases involving allegations of sexual violence.” Williams adamantly opposes that recommendation. “As a student, you know what you want the Stanford community to look like and act like—the standard to uphold—and I think it’s crazy that you’d ever not want to include current student opinion in a process like this.” When two other panelists were asked their opinion, one was ambivalent and the other said that panels should consist of professional staff only.

Vice provost Boardman thinks that removing students as panelists would “take away from our Fundamental Standard. It’s part of the culture here. It would be a huge shift.”

On the other hand, the controversial “preponderance of evidence” standard can put a difficult burden on panelists. Says Boardman: “The preponderance of evidence standard has leveled the playing field in terms of making people more comfortable coming forward. On the other side, it’s put our judicial panels in a more difficult situation when it comes to the sanction.

“If we move to a situation where expulsion becomes the default, my fear is that panelists, who are only human, will find fewer of our students in violation—if they’re only 50.1 percent sure and the only sanction is, in effect, the university’s death penalty.”

Statistics over the past 18 years tell the story: From 1997 to 2010, before the new evidentiary standard went into effect, four of 175 reported sexual assaults resulted in judicial board hearings, and two respondents were found responsible. Since the new standard was implemented in 2010, there have been 105 reports, of which 14 were adjudicated and 8 respondents found responsible. There has been only one expulsion in those 18 years.

Gary Pavela, an attorney who managed the student judicial system at the University of Maryland for 25-plus years, concurs with Boardman’s fear. He recently wrote in a Chronicle of...

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Alongside concerns about how to improve adjudication are questions surrounding prevention: How do you strengthen a culture to further discourage sexual misconduct? Stanford is making an unprecedented drive, across all facets of campus life, to do exactly that.

“There’s a sense that there’s a revolution happening right now,” says Williams.

In April, student executives created an ASSU task force on sexual assault and relationship violence. In May, Stanford hired a full-time Title IX coordinator—Catherine Criswell, an experienced attorney with the Office of Civil Rights, which oversees Title IX—specifically to handle investigations of sexual violence and ensure the university’s compliance with the law.

Over the summer, all incoming undergraduates completed a new, two-hour interactive online program integrating training about sexual assault with education about alcohol and drugs. Much more was to come.

In September, California governor Jerry Brown signed a bill requiring universities to define consensual sex as “an affirmative, conscious and voluntary agreement to engage in sexual activity.” That standard has long been in effect at Stanford, but the catchphrase “Yes means yes” caught on at once and has been widely adopted in campus publicity.

As the new school year began, there was a noticeable change in the campus climate at Stanford. Starting at New Student Orientation (NSO) and continuing through the fall, sexual assault issues pervaded talks in dorms and fraternities, town hall meetings, student-produced videos and dramatic productions, student government agendas, official pamphlets, Daily editorials and op-eds. There were training sessions and guest speakers. The university promoted its new website, notalone.stanford.edu. Vaden Health Center began offering urine tests for students wanting to find out if they’d unwittingly ingested drugs or spiked drinks. Under the federal Clergy Act, Stanford campus police notify the entire community by text and email when they receive crime reports; as of October, whenever those incidents involve sexual assault, the email reiterates advice about prevention and response.

Title IX coordinator Criswell observes, “One of the things I’ve been impressed with in arriving is that the students at Stanford are very passionate and very caring. They want to talk about this issue... and that includes talking about areas

**SEXUAL MISCONDUCT:** The commission of an unwanted sexual act, whether by a stranger or non-stranger and regardless of the gender of any party, which occurs without indication of consent.

**SEXUAL ASSAULT:** Sexual misconduct as defined with an additional wrongful act(s); that is, the unwanted sexual conduct is accomplished: (1) against a person’s will by means of force (express or implied), violence, duress, menace, fear or fraud, or (2) when a person is incapacitated due to unconsciousness, sleep and/or intoxicating substances or is unaware of the nature of the act.

**RELATIONSHIP VIOLENCE:** Relationship violence, including dating and domestic violence, is physical violence relating to a current or former romantic or intimate relationship regardless of the length of the relationship or gender of the individuals in the relationship. Relationship violence also includes conduct that would cause a reasonable person to be fearful for his or her safety.

**STALKING:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to a) fear for his or her safety or the safety of others or b) suffer substantial emotional distress.

**CONSENT:** An affirmative act or statement by each person that is informed, freely given and mutually understood. It is the responsibility of each person involved in a sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. Lack of protest or resistance does not mean consent, nor does silence mean consent. Consent to one act by itself does not constitute consent to another act. The existence of a dating relationship between the persons involved, or the fact of past sexual relations, should never by itself be assumed to be an indicator of consent. If coercion, intimidation, threats and/or physical force are used, there is no consent. If a person is mentally or physically incapacitated so that the person cannot understand the fact, nature or extent of the sexual situation, there is no consent; this includes conditions due to alcohol or drug consumption or being asleep or unconscious. Whether one has taken advantage of a position of influence over another may be a factor in determining consent.
where they think the university can improve" such as "making sure if there's a no-contact letter [to an alleged assailant] that it has teeth and is being enforced.”

The arrival of new students brought parents to campus, too, and some of them voiced their fears. "During NSO, the parents of young men were concerned that their son would meet the wrong person," Boardman recounts. "So they were basically telling their sons, 'Don't. Don't engage in anything of any sort, especially if you've been drinking.' I concur. That's good advice."

Given the prominent role of fraternities in campus social life, at Stanford and elsewhere, they are frequent targets in debates about sexual assault. Indeed, Dartmouth professors recently voted to ban them, and there have been similar calls in other places. Boardman notes that it's been made clear to fraternities at Stanford that they are expected to monitor their members; the provost has reached out to Greek organization presidents, and in September he announced a new policy. Any housed fraternity that incurs one major or three minor violations will lose its house, with no presumption of ever getting it back. (Major violations include sexual assault by a member, and drugging or spiking drinks served at the house.)

There have been "good, respectful" responses from fraternities in discussions of sexual assault, Boardman says, and considerable soul-searching. "Some fraternities are coming forward and saying, 'We're seriously considering that we'll no longer have open parties. Do we want to take ownership of what happens when all those people we don't know come to our house?"' Maybe that's a great idea, says Boardman, but the downside is that they'd risk confirming an elitist stereotype. And one potential unintended consequence could be a diminishment of campus social life overall. As an educator, the vice provost says, he finds the students' struggle to figure these things out a healthy one.

Still, he has concerns. "Some of the sorority leaders are afraid that the new housing policy will inhibit women from coming forward—it's no longer just a complaint about 'John,' but if he's a frat member, the whole house will get punished.

For ASSU president Elizabeth Woodson, the flood of educational outreach this year is only the beginning. She wants the kind of training new students receive to reach "every student, every year, throughout the year" and to include graduate students. (Criswell expects online training geared specifically to graduate students to be up and running in November.) Woodson, '15, claims that the vast majority of students are not offenders, so that "if you can get 90 percent of students to recognize sexual assault when they see it [and intervene], you can have a huge army for good."

Woodson, co-chair of the provost's task force, already sees change. "The social scene now is drastically different than what it was 10 months ago," she says. "It's significantly more conservative, with fewer parties and important precautions taken for safety, such as reminders about affirmative consent on Facebook party pages, parties being held outside with multiple entrances and exits, and ample lighting."

Preoccupation with sexual assault will only intensify at Stanford as the year progresses. The ASSU task force has already published its “Proposal to the Administration,” approved by the Undergraduate Senate in November. Among its 24 recommendations is this: “By fiat of the President, expulsion should be made the default sanction for students found responsible for sexual violence (sexual assault, relationship violence, and stalking).” The document explains that expulsion would not be mandatory “so as to allow for case-by-case review essential to any fair judicial process. Panelists would be asked to consider lesser sanctions only in the presence of compelling evidence for a mitigating factor.”

President Hennesey and Provost Etchemendy commissioned a “campus climate” survey to be conducted during winter quarter; those results are bound to be compared to the much-cited federal figures stating that one in five college women are assaulted. The provost's task force will present its recommendations, some of which will address controversial judicial issues and draw further debate.

Whatever the outcome of these initiatives, Boardman agrees that this is a "sea change moment."

Comments or questions?
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