

Guidelines for Sanctioning Perpetrators of Sexual Assault

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Statement of the Problem

In the past twenty years there has been a tremendous improvement in the response of Institutions of Higher Education (IHE's) to the problem of sexual assault. The previous norm of ignorance and denial of the issue, re-victimization of women who came forward to report their assaults, inconsistent policy, and inappropriate procedure has been replaced to a large extent with clear policies, specially trained hearing boards, strong victim advocacy and support, and universal prevention/education activities. Bohmer and Parrot (1993) provide examples of past problematic practices that illustrate how the field has progressed.

In spite of these developments IHE's have not fully addressed the difficult task of developing guidelines for the sanctioning of perpetrators. This task is daunting in light of a paucity of research and writing on this topic, the variety of circumstances and motivations characterizing sexual assault, and the unique environment and goals of higher education.

The sanctioning of perpetrators of sexual assault is a complex task that must take into account a number of variables, including: 1) facilitating the healing of victim(s) and ensuring their future safety; 2) protecting the safety of the community; and 3) holding perpetrators accountable for their actions by determining just and fair consequences that will deter repeat violations while also serving an educational and remedial purpose.

While IHE's currently utilize a wide range of sanctions to accomplish these goals guidance is lacking on the subject of determining *how* to apply these sanctions in an individual case. This task is further complicated by research suggesting that perpetrators of sexual assault may differ from each other in relation to a number of variables,

including: motivation for the assault, characteristics of the assault, willingness to accept responsibility, and likelihood of repeat offending.

Furthermore, the process must take into account the culture and educational mission of higher educational institutions, where sanctions intended to provide an educational and therapeutic outcome rather than an exclusively punitive one as is the case in civil court.

In light of these goals, this paper assumes that a rigid formula for determining sanctions is not appropriate. Flexibility in sanctioning is also desirable in light of the complexity of individual cases and the fact that IHE's operate as educational institutions with a broad range of sanctioning options. Thus, rather than apply a uniform, pre-determined sanction when a policy is violated, it is recommended that an appropriate mix of sanctions be determined for each case that will meet the multiple goals of victim/community healing and safety, and perpetrator accountability, education and punishment.

In summary, this paper has been written to help meet the need for guidelines that can be used in sanctioning perpetrators of sexual assault at institutions of higher education. It will provide information on: 1) characteristics of perpetrators of sexual assault in higher education; 2) the role of cultural and identity variables in determining guilt; 3) criteria for determining which sanction is most appropriate for each type of perpetrator; 4) potential sanctions that are considered elements of current practice, and; 5) considerations for using a "restorative justice" approach in certain situations.

Two approaches are employed to accomplish this goal. First, a "person analysis" is provided that will familiarize the reader with likely characteristics of perpetrators in

terms of their personality and methodology. Second, an “incident analysis” is offered which provides an overview of the different patterns of behavior and circumstances associated with sexual assault as well as with perpetrator behavior during the hearing process. Although a hearing board must base its decision on circumstances and evidence rather than on personality characteristics, an understanding of the personality profiles that inform particular patterns of behavior can be helpful to hearing board as they sort out details and testimony and develop an appropriate line of questioning. Thus, both a “person analysis” (of sexual assault perpetrators) and an “incident analysis” (of the incident and of behaviors in hearings) are provided here.

The Person: Characteristics and Types of Sexual Assault Perpetrators

What do we need to know about collegiate perpetrators of sexual assault that can inform the sanctioning process? Perpetrators may differ in relation to their motivation for the assault(s) and the method(s) of committing it, their willingness to accept responsibility for their actions, their ability to empathize with the victim’s trauma, their ability to learn from and prevent future incidents, and the extent to which they feel unfairly treated or falsely accused. In some cases cultural and identity differences may complicate the process of determining guilt. All of these variables are relevant to the sanctioning process and may need to be considered when determining an appropriate institutional response.

Sexual assault perpetrators can be classified based on an extensive clinical research literature suggesting that men who rape are a heterogeneous group who can be divided into sub-groups. This literature relies on research conducted with two populations of men - incarcerated rapists, who often stranger rapists, and perpetrators

who have not been apprehended by the legal system, otherwise called “hidden offenders.” The literature on incarcerated rapists is not as useful for understanding sexual assaults in college, because collegiate assaults usually do not come to the attention of the legal system, more commonly involve acquaintances, and are characterized by less extreme levels of force.

The typology developed in this paper is therefore relies more heavily on the research on “undetected sexual offenders,” along with expert opinion and best practice. From these sources we can generalize to delineate the personality characteristics that collegiate sexual offenders share (defined as “rape proclivity”) and the methods and circumstances of the assault employed by these individuals.

First, let us consider the personality characteristics of men who are “rape-prone.”

Rape Proclivity: Identifying Characteristics Shared by Male College Sexual Assault Perpetrators.

Extensive research has been conducted on college men to identify characteristics of individuals who are likely to rape, otherwise described as men with “rape proclivity.” In general, “rape-prone” men are more likely than other men to: view relationships with women as adversarial (i.e., see male-female relationships in terms of conflict); have earlier and more frequent experiences of sexual activity (including consenting sex); see sexual activity as conquest or as a game; be willing to condone violence against women; feel a sense of entitlement to have sex in certain situations; engage in victim blaming; and participate in male peer networks that support objectification and mistreatment of women (Berkowitz, Burkhart & Bourg, 1994; Koss & Leonard, 1984). To the extent that a man

has one or more of these characteristics he is statistically more likely to rape. This profile can thus be used to estimate the probability that an individual will rape, although it cannot be used to make definitive predictions. In addition, it provides a typology of men who are likely to perpetrate and portrays the methods that they are likely to employ in doing so.

The elements of rape-proclivity were summarized in an early literature review by Koss and Leonard (1984) that has been confirmed by subsequent research:

The sexually aggressive men tend to view rape as a crime of lesser seriousness and attempt to justify such behavior by directly or indirectly blaming the victim. The victim is viewed, at best, as not acting responsibly in avoiding a potential rape situation, and at worst, provoking or actually desiring the sexually aggressive actions displayed by the male. Behaviors that are only mildly sexual in nature are viewed as indicating that the female desires intercourse. These sexually aggressive men also believe that relationships between men and women are adversarial or manipulative, with men attempting to convince the reluctant woman to have sexual relations. Finally, these men believe that some amount of force is a legitimate strategy to induce a female to behave according to their desire and that a female will not find this force offensive. (p. 223)

Characteristics of rape-proclivity that have been identified in the research are summarized in Table One.

(Insert Table One here)

Sexual assault offenders can also be distinguished by comparing them to men who are not sexually aggressive. Recent research suggests that most college men - unlike perpetrators - believe that it is important to have consent before engaging in sexual activity, would not use coercion, alcohol, or force to obtain sex, disapprove of men who speak of women or their bodies in derogatory ways, and are uncomfortable with many

stereotypical, normative characteristics of masculinity (Berkowitz, 2002, 2004). These characteristics result in them being less likely to assault and more likely to respect their partners wishes about sexual intimacy.

A Typology of Male Sexual Assault Perpetrators

Male sexual assault perpetrators in collegiate environments are classified here into three groups: unintentional perpetrators, opportunistic perpetrators, and sexual predators. It is best to think of these three groups of perpetrators as existing on a continuum rather than as completely distinct from each other. Individuals may perpetrate more than once and in more than one category.

Table Two summarizes the probable characteristics of unintentional perpetrators, opportunistic perpetrators, and sexual predators.

(Insert Table Two here)

Unintentional Perpetrators. An “unintentional perpetrator” is someone who, for the most part, does not consciously or intentionally commit sexual assault. He or she would probably cease attempts at sexual activity if it became clear that the intimacy was not wanted by the other person. In addition, he would probably feel remorse if he realized that his actions were unwanted and hurtful to his sexual partner. This category of perpetration often results in hearings in which it is difficult to determine responsibility or where the hearing board may feel sympathetic to the perpetrator and reticent to impose sanctions.

A recent study provides some insight into these men. Abbey and McAuslan (2004) surveyed college men on two occasions one-year apart to determine the prevalence of each of the following groups: men who never perpetrated, men who had perpetrated at least once in the past but did not repeat during the year of the study, men who perpetrated for the first time during the year of the study, and repeat perpetrators, i.e., men who perpetrated before and during the study. Men who never perpetrated scored lowest on measures of hostility towards women, while repeat perpetrators had the highest scores, with one-time and past perpetrators falling in between. Twenty-six percent of the men surveyed were found to be past assaulters. These past assaulters accounted for 65% of the men who had ever committed an assault (i.e. in high school, in college prior to the study, and during the study).

Men who perpetrated in the past but who did not repeat during the year of the study were more likely to express remorse about their past assault and state that the experience had caused them to change their behavior in order to prevent future assaults. These men made comments such as the following (Abbey & McAuslan, 2004, p. 754):

“this experience “taught me a lesson very early and I’ve learned to be less aggressive”

“even though she forgave me I still felt dirty... even now I feel like hell when I remember it”

“it was my only time when I used force for having intercourse and since then it never happened. But still, this event made me think and elaborate a set of rules regarding my dating and my actions with dates.”

The term “unintentional perpetrator” describes men who sexually assault without premeditation or planning and without the intent to exploit or take advantage of the victim or her circumstances. The majority of men who assault may fall into this

category, while accounting for only a minority of assaults. While almost no research has been conducted on this group of men, they frequently come before hearing boards.

It is important to emphasize that unintentional perpetrators did not have consent (despite what they may have thought) and have therefore committed sexual assault. They need to be held accountable for their actions. After guilt has been ascertained an appropriate sanction can be determined that takes into account the fact that they are not strongly rape-prone, are more likely to show remorse for their activities, and are less likely to re-perpetrate.

Opportunistic Perpetrators. Stereotypical masculinity promotes the idea that men will never refuse sex and will “take advantage” of any “opportunity” that presents itself. Part of this ethos is that men should strive to be hypersexual with women as a way of affirming normative heterosexual masculinity. This hypersexual, opportunistic ideology also occurs within gay male culture. While most straight, bisexual, and gay men may not actually adhere to this ethos, men who do are at greater risk of committing an assault.

Opportunistic perpetrators are on the “lookout” for opportunities to be sexually active within or outside the context of a personal relationship with their victim. They assume that a woman or man who becomes vulnerable by getting drunk or incapacitated has provided implicit permission to be sexual and believe that they are entitled to, or have been given permission, to have sex based on these circumstances. An opportunistic perpetrator does not plan an assault or target his victim in advance. Rather, he will be alert to circumstantial events that he can exploit in an opportunistic way to gain or coerce

sexual access. Following the assault he will justify his actions by interpreting the victim's behavior in a blaming and self-serving manner.

This pattern of being “on the lookout” or “on the prowl” distinguishes opportunistic from unintentional perpetrators. These men are willing to have sex “for sex's sake” – i.e. outside the context of an intimate emotional relationship.

An opportunistic perpetrator is more likely to blame the victim; reject responsibility for his actions; commit more than one assault; and feel angry when charges are brought. Unlike unintentional perpetrators, his behavior results from personality characteristics that are triggered by circumstantial events (i.e., “a good opportunity”). This category may include some men who commit an assault only once, others who engage in opportunistic non-consensual sex more than once, and a third group who also engage in predatory behavior described below. Because an opportunistic perpetrator may commit more than one assault, fewer men are responsible for more assaults in comparison with unintentional perpetrators.

Sexual Predators. A sexual predator intentionally identifies vulnerable women (or men) and creates situations in order to sexually exploit them. He is willing to be coercive and use force if necessary and may do this in concert with other men. His strong need to be sexual means that he will also seek and exploit opportunities to have consenting and opportunistic sex. Predators use a variety of “rape tactics” to increase their chances for coercing a potential victim into unwanted sexual intercourse and to decrease the likelihood of her reporting his behavior (Cleveland, Koss & Lyons, 1999). Warketin & Gidycz (in-press) studied these tactics and divided them into two categories: “covert tactics” (promise for positive consequences, demand for silence, use of isolation,

use of alcohol by the perpetrator and/or victim) and “overt tactics” (alcohol and/or drugs used as a specific tactic, threat of negative consequences, and the use of a weapon or physical force). A naïve view of college life denies the existence of these aggressive men who intentionally perpetrate multiple sexual assaults on our campuses.

Abbey and McAuslan (2004) noted that repeat offenders had more extreme scores “on hostile gender-role beliefs, callous attitudes towards women, acceptance of verbal pressure to have sex, usual drinking prior to consensual sex, and adolescent delinquency” (p. 753). In another study, Abbey and her colleagues (2003) found that use of aggression by the perpetrator was directly correlated with use of alcohol by perpetrator and victim. When perpetrators drank more, they were more aggressive, and the perpetrators use of aggression was correlated with greater resistance on the part of victims.

In one study of 1,882 college men Lisak and Miller (2002) found that 6% of their sample had committed rape. Among these men, two-thirds (i.e., 4% of all those surveyed) reported committing multiple rapes, usually without physical violence. These men were responsible for 91% of the rapes documented in the study, and averaged 5.8 rapes or attempted rapes each. They perpetrated other forms of interpersonal violence in addition to sexual assault – averaging fourteen incidents each (Lisak & Miller, 2002). In the Abbey and McAuslan (2004) study, repeat assaulters comprised 21% of those who had assaulted and committed an average of ten assaults each.

These statistics suggest that sexual predators are likely to perpetrate more than once, thus many are also serial perpetrators, who are likely to commit other forms of violence as well.

Sexual predators engage in a variety of behaviors that indicate premeditation, including identifying vulnerable women, securing private rooms in order to commit the assault, using verbal coercion and threats, and attempting to incapacitate or isolate their victims (Lisak & Miller, 2002). Premeditation also occurs in assaults that involve multiple perpetrators. Cumulatively, these studies suggest that a small percentage of college men are predatory, violent, and likely to commit multiple rapes.

On many college campuses these men are identified when publicity surrounding a rape results in new victims coming forward who have been previously raped by the same perpetrator. In light of this pattern of serial predation it is important for college judicial systems to develop ways to track cases in order to determine if and when victims have been perpetrated by the same individual.

Similar to opportunistic perpetrators, sexual predators are more likely to blame the victim, reject responsibility for their actions, commit more than one assault, and react with anger when charges are brought. They are also more likely to use coercion, force and intentionally incapacitate their victims – although most of their assaults occur without force.

Sexual predation is an ingrained behavior pattern based on personality characteristics that are hard to change. In the Abbey and McAuslan (2004) study, serial perpetrators were less likely than other perpetrators to express remorse and more likely to blame the victim. Serial perpetrators in this study made the following comments:

“I felt as if I had gotten into something that I was entitled to, and I felt that I was repaying her for sexually arousing me.”

“Another assaulter justified his behavior by saying: “I knew she had a condom in her purse. Also, someone told me that she liked to f... high” (Abbey & McAuslan, 2004, p. 754)

Because sexual predators are hypersexual they are likely to also have frequent consensual and/or opportunistic sex. They often surround themselves with other men who condone and reinforce their behavior. Predators are often popular, attractive, successful, and interpersonally sophisticated, confounding the image of sexual predators fostered by the media and held by many hearing board panelists.

Other variables distinguishing perpetrators of sexual assault.

In addition to perpetrator typology hearing boards need to understand: 1) the phenomenon of repeat offending; 2) the dynamics of men feeling falsely accused, and; 3) the role of cultural and identity variables. This information can be used to differentiate types of perpetrators from each other and contribute to an organizing heuristic that can be used to sort through and classify evidence.

Multiple or repeat perpetration. Extensive research has documented the phenomenon of repeat or serial perpetration. For example, Loh and her colleagues found that previous perpetration was the strongest predictor of male perpetration in college. In their own prospective study a sample of college men were identified and followed over a seven- month period (Loh, Gidycz, Lobo & Ruthra, 2005). The authors found that:

“Men who reported perpetrating rape during the 3-month follow-up period were approximately 15 times more likely to perpetrate an act of sexual aggression during the 7-month follow-up than men who did not perpetrate during the 3-month follow-up period.” (p.1341)

These statistics suggest that hearing boards need to be aware of the phenomenon of repeat perpetration and take severe action against any men who are found guilty of more than one incident.

False accusation and sexual assault. Men who rape may feel falsely accused when charges are brought against them. This makes sense if we consider that men who commit sexual assault don't think of themselves as rapists and usually believe or argue that they had permission. The extent to which a perpetrator persists in feeling that he has been falsely accused may vary across the different types of perpetrators. Thus, an unintentional perpetrator may initially feel that he has been falsely accused but come to understand that he misread his victim's intent. In contrast, an opportunistic or predatory perpetrator may persist in believing or strenuously arguing that he has been falsely accused. Individuals who feel falsely accused may become emotional, distraught and/or indignant. However, the presence of these strongly-held emotions should not be treated as evidence of innocence. Instead, they may also indicate that the perpetrator does not understand or want to admit the consequences of his behavior.

While actual false accusations can occur, they are rare. It is thus important to understand the emotional experience of a person who feels falsely accused, while acknowledging that his outrage should not be taken as evidence for his version of what happened. Perpetrator denial is exacerbated by a contemporary culture of "false fear of false accusation" among men on college campuses (Berkowitz, 2002, 2004)

An excellent analysis of the problem of false accusation from a law enforcement perspective that includes statistics and definitions can be found in Lonsway, Archambault and Berkowitz (2005).

Considering the role of cultural differences in sexual assault situations.

"Cultural difference" is an inclusive category that may include ethnicity, country of birth, social class, sexual identity/orientation, and other identities. Cultural variables may be

considered when determining what happened in an assault but should not be used to justify or excuse sexual misconduct. They can be considered after guilt has been determined when relevant to determining an appropriate sanction.

Lack of familiarity with cultural identity and different understandings of gender appropriate behavior, sexuality, and communication patterns can lead a perpetrator to think that he has permission when he doesn't. Perpetrators may also claim that the assault occurred unintentionally because of their confusion about these differences. Sexual predators in particular are likely to intentionally take advantage of cultural differences and vulnerabilities to exploit their victims, and then use them to justify their behavior. However, these excuses are not acceptable in light of each person's responsibility to ensure that consent for sexual intimacy is explicitly and clearly given.

Cultural issues can also become a consideration in cases where the perpetrator and victim are from the same identity group. Thus, a perpetrator may silence or blackmail his victim by threatening to talk about the sexual intimacy to others in their group or by disclosing information that would be considered embarrassing within their common culture. In the gay and lesbian community this can take the form of threatening to "out" a victim who is not public about her or his sexual orientation.

Hearing board members also need to be aware of their own cultural conditioning and assumptions and understand how these may influence or bias their perception of a case. Commonly held stereotypes about perpetrators and victims can unconsciously bias panelists to look at the facts of a case in a prejudicial manner, and to assign sanctions differentially on the basis of perpetrator race, social class and/or ethnicity. Panelists thus

need to be aware of these potential biases and be vigilant in preventing them from influencing the outcome of a case.

Incident Characteristics to Consider When Sanctioning Offenders

As noted, perpetrator characteristics and typologies can be used by hearing boards to guide questioning, inform evidence gathering, and provide insight into specific cases. However, the circumstances of an incident and the potential for perpetrator change provide the basis for determining a sanction.

Sanctions can be determined based on the circumstances of the assault, behavior during the hearing, appropriate restitution to victim and/or community, and future safety issues. For example, a remorseful individual who has learned from a single mistake is less of a threat to community safety than a serial perpetrator who blames his victim, harmed and entrapped her, and seems unwilling to change. Among perpetrator typologies, unintentional perpetrators are less of a danger to the community and more amenable to change than are sexual predators, with opportunistic perpetrators ranging in between. Although sanctions cannot be determined by formula, a number of variables that can be considered when deciding appropriate punishment in relation to the circumstances of the assault and the perpetrators response to them.

These variables exist on a continuum of severity. Behavior in the most severe end of the continuum justifies more severe sanctions— for example, expulsion or suspension with strict conditions for re-entry. When some or all of these variables are less severe, milder sanctions are appropriate – for example, allowing the perpetrator to remain on campus if certain conditions are met and victim safety is ensured.

Variables that can be used to assess severity of perpetrator behavior include the following:

Acceptance of responsibility versus blame. To what extent is the perpetrator willing to accept responsibility for his actions and admit that they were wrong or misinformed? Is he remorseful and does he understand the emotional and possibly physical harm that he has caused? If he is a member of a community group that is affected by his actions and behavior, is he aware of the harm he has caused to this group and its reputation? Or, does he blame the victim, refuse to accept responsibility, and minimize the harm caused?

If he is upset, is he more concerned about himself and his future than with harm caused to the victim? Perpetrators may show remorse for getting in trouble without also showing remorse for their actions and the trauma it causes. It has been noted that the degree of a perpetrator's emotional upset is not predictive of innocence or guilt. Personality characteristics and hearing behavior (such as denial, remorse, and or empathy) can provide panelists insights that will be helpful when deciding upon a sanction.

Unplanned versus premeditated. Was the assault unplanned and unintended? Was it a one-time event that is not likely to be repeated? Or, is it part of a pattern of attitudes and behavior that may lead to other incidents? Was more than one perpetrator involved? Finally, was the incident premeditated and facilitated? Any evidence of premeditation is extremely serious and warrants equally serious consequences, such as separation from the institution.

The nature of the evidence for non-consent. Was the evidence for lack of consent subtle or overt? To what extent could the perpetrator be expected to know that consent was not given? How overt was the non-consenting behavior? Was there any verbal or physical resistance? The more overt the evidence for incapacity, the less plausible is a perpetrator's claim that he had permission.

Use of force. Force is a clear indicator of non-consent, including as when the victim was incapacitated, subjected to force, intimidation and/or coercion, and/or harmed during the assault. Did the perpetrator intentionally exploit differences in power and freedom to act, such as body size, or use threats and intimidation? Lisak and Roth (1988) note that the willingness to use force or threatening force represents a threshold that differentiates men whose attitudes and behavior are much more severe. Perpetrators who use force should be considered for separation from the institution.

Reliability and consistency. Was the perpetrator reliable and honest in his accounting of what happened? Is his version of the event consistent with information provided by the victim and corroborating witnesses, or are his "facts" contradicted by other evidence? Does he selectively enhance information that supports his innocence while leaving out information that will undermine it? Is there evidence not related to the incident that supports or contradicts his claims? What does this evidence say about his motivations and attitudes insofar as they are relevant to perpetration? Finally, has he engaged in post-event actions to silence or intimidate his victim? Any evidence that undermines the reliability of the perpetrator and his story must be considered and evaluated.

Evidence of previous assaults. Any evidence of previous assaults should be taken extremely seriously and requires that the most severe sanctions be considered. Multiple perpetrators are an extreme danger to our communities and have a very high risk of re-perpetrating and of violating the conditions of their sanctions.

Potential Sanctions for Perpetrators of Sexual Assault

A well-designed sanction will meet the goals of: providing consequences to encourage perpetrator change, insuring safety for the victim and the community, and facilitating healing for the affected. Current practice offers a number of options that can be graded in terms of severity, from sanctions allowing the perpetrator to remain on campus with appropriate limitations, to sanctions separating the perpetrator from the community temporarily or permanently.

Whatever the sanction, a few guidelines must be considered. First, the hearing board or administrator deciding the final sanction should have the entire student record to consider. Although previous behavior and problems may be excluded from consideration of a particular event, this information should be made available to the hearing board when defining a sanction. Thus, someone who engaged in previous incidents should be treated differently from someone who has shown exemplary behavior. However, because because most perpetrations never come to light, lack of evidence for previous incidents or problems is not as relevant.

Sanctions should be carefully monitored and evaluated to ensure that they are being followed because a perpetrator with an opportunistic or predatory personality style will try to resist consequences and is likely to re-offend. A process for monitoring the fulfillment of sanctions should include opportunities for the victim to report any

violations. If sanctions are violated, the perpetrator should be subjected to new and more serious sanctions, to include time away from campus

Current practice offers a variety of sanctions for violators of campus policy, ranging from sanctions that can be fulfilled on-campus, with or without restrictions in his activity, to sanctions requiring time off-campus.

Table 3 contains a list of potential sanctions that are commonly used on college and university campuses for individuals found guilty of sexual misconduct/sexual assault.

(Insert Table 3 Here)

Sanctions in each category are summarized below.

Sanctions that allow the perpetrator to remain on campus.

A perpetrator may be allowed to remain on campus if his presence will not re-traumatize the survivor, or make the community un-safe.

Educational sanctions. Educational sanctions can include writing a paper, attending relevant educational activities, and in some cases, community service.

Community service is rarely an acceptable option because the perpetrator is not a good candidate for service activities by virtue of his actions. In addition, his placement may be unfair to the agency. Educational sanctions are mild and should rarely be the only sanction. Some campuses offer a psycho-educational group for individuals who have been violent, harassing or abusive to others. Others place them in an environment where they will be exposed to men who have more positive, affirming and respectful relationships with women.

Psychological treatment or intervention. In addition to perpetrator treatment, students may be referred for substance abuse treatment if appropriate. This treatment will usually occur off-campus, but in some cases this treatment can be received while a student remains in school. Pollard (1994) has provided an overview of on-campus perpetrator treatment protocols. An off-campus certified perpetrator treatment program is the preferred mode of treatment, and is rarely available on campus. However, a clinician with specialty experience in treating violent and/or sexual offenders may also be an appropriate treatment provider (on or off-campus).

Effective perpetrator treatment takes into account the gendered nature of intimate violence, requires specialized training for its providers, includes mechanisms to protect victims and monitor contact with them, and utilizes individual and group treatment - often with graduates of the program in supportive role. Many states certify perpetrator programs that provide services to court-mandated referrals and others.

Campus mental health professions disagree about the appropriateness of mandated treatment. However, outside of college and university settings mandated treatment is standard practice for drug dependency and abusive behavior, and some campuses are willing to impose sanctions of this nature.

Loss of on-campus privileges. A student convicted of sexual misconduct should not serve in leadership capacities. Restrictions may be placed on where he lives and what classes he attends to prevent contact with the victim. He may be required to avoid or leave events or situations that would put him in contact with the victim.

Restitution to the victim and/or community. A victim can be compensated for physical, psychological and/or financial harm suffered from the assault. S/he can also be

compensated for property damaged by the perpetrator(s). Other forms of restitution can be considered if the perpetrator's behavior was harmful to campus and community groups, ranging from a formal apology to community service.

Suspended suspension. An additional consequence can be a probationary period that allows the student to remain on campus as long as he does not violate other terms of his sanction. Students on probation must be monitored. If they violate the terms of their sanctions it is imperative that suspension be imposed. Any demonstrated lack of respect for the process places a perpetrator in the category of individuals who are most likely to re-perpetrate.

Temporary or permanent separation from the institution

Perpetrators may need to be separated from the university temporarily or permanently. When separation is temporary, conditions need to be stipulated to be fulfilled prior to returning to campus and a process should be created to determine if these conditions have been met. "Time-off" by itself, without additional activities such as treatment or involvement in relevant programs is not appropriate because it does not create an opportunity for the perpetrator to understand and change his behavior. Separation from campus can incorporate many of the on-campus sanctions reviewed above, including psychological treatment, participation in educational activities, and restitution to the victim and/or community. The goal is to help the perpetrator accept responsibility for his behavior and prevent its reoccurrence.

Participation in psychological treatment while off-campus. As noted, there are a number of considerations related to psychological treatment of perpetrators. A perpetrator can be presented with a set of alternatives for the fulfillment of sanctions

which includes treatment. For example, the offender could be given a choice between permanent separation or provisional return based on completion of an effective treatment program. Someone who violates a policy will often voluntarily accept treatment as a condition of return to school.

Participation in psychological treatment should be implemented in the same manner as if a student was granted a leave from school for psychological reasons, with a campus mental health professional monitoring the clinical part of the sanction. At the beginning of treatment permission should be provided to give all relevant information to the clinician or agency treating the perpetrator. Return to school should be contingent on a positive recommendation, and the school clinician should talk to the individual conducting the evaluation before a decision on readmission is made.

Other off-campus sanctions. Off-campus sanctions can incorporate a variety of educational activities and efforts to help the perpetrator understand the severity and consequences of his actions.

Other considerations. Men who perpetrate, especially opportunistic and predatory perpetrators, have a significant risk of repeating their behavior, either on campus or elsewhere. For example, a perpetrator who has been separated from an institution may seek admission to another college where he may re-perpetrate. Pollard (1994) argues that IHE's have a responsibility to inform other institutions when perpetrators transfer. He recommends that colleges and universities establish guidelines to prevent perpetrators who have not completed treatment from transferring to other institutions (Pollard, 1994, p. 52). When legally permissible this can be accomplished by placing a statement on a perpetrators' transcript (such as "suspended for social

misconduct” or “suspended for sexual misconduct”) that will be removed when sanction requirements have been fulfilled.

Restorative Justice. Restorative justice is gaining popularity on college campuses as an alternative approach to sanctioning that reduces recidivism and fosters individual and community healing. A recent edited book provides examples of restorative justice case studies and applications to a wide variety of student life problems (Karp & Allena, 2004). Information is provided on restorative justice in Appendix One.

Table 4 summarizes the potential relationships between perpetrator behavior and characteristics of the assault in relation to type of sanction.

(Insert Table 4 Here)

Summary

Sexual assault harms the very fabric of a community. Colleges and universities have developed clear policies and guidelines regarding permissible behavior of students, including policies to promote and ensure that all sexual intimacy is consenting. When these policies are violated appropriate sanctions can be applied to repair the harm and prevent re-occurrence.

This paper has provided an overview of issues involved in the sentencing process in order to provide hearing boards with guidelines for determining a sanction. A typology of perpetrators was presented along with variables to consider in the sentencing process. With these perpetrator characteristics and variables in mind, appropriate sanctions can be chosen from among the options described.

It is my hope that this paper will help IHE's take new steps in the direction of a safe, inclusive, and just community for all.

About the author:

Alan Berkowitz is an independent consultant who helps colleges, universities, public health agencies and communities design programs that address health and social justice issues. His expert opinion is frequently sought by the federal government and professional organizations, and he is well-known for scholarship and innovative programs addressing issues of substance abuse, sexual assault, gender, and diversity

Dr. Berkowitz frequently conducts workshops for State health departments and sexual assault prevention coalitions on men's responsibility for preventing rape and on effective prevention programs. He has pioneered the development of social norms media to prevent men's violence, is a frequent presenter and keynote speaker at conferences on sexual assault prevention, and was the founder and editor of The Report on Social Norms. In addition, Alan has been a presenter and on the planning committee for all three National Sexual Assault Prevention Conferences hosted by the Centers for Disease Control, and serves on the Board of Directors of Ending Violence Against Women International..

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Table One

Factors Associated With Men's Increased Risk of Sexual Assault Perpetration*

- I. Perpetrator characteristics
 - A. Attitudes and socialization experiences
 - 1. Belief in rape myths
 - 2. Adversarial view of gender roles
 - 3. Traditional gender roles
 - B. Personality characteristics
 - 1. Hypermasculinity
 - a. Hostility towards women
 - b. Acceptance of violence against women
 - c. Need to dominate
 - 2. Antisocial orientation
 - a. Lack of social conscience
 - b. Irresponsibility
 - c. Immaturity
 - C. Sexual style and early sexual experiences
 - 1. Earlier and more frequent sexual experiences
 - 2. Dissatisfaction with sexual experiences
 - 3. Greater sexual response to depictions of rape
 - 4. Previous perpetration
- II. Situational risk factors
 - A. Date location and activity
 - B. Man initiates and pays for date
 - C. Alcohol and other drug use
 - D. Ongoing relationship between victim and perpetrator
 - E. Peer-group support and participation in close-knit all-male groups that emphasize the components listed under IA & IB.
 - F. Dress
 - G. Power differential
- III. Misperceptions
 - A. Misperception of peer support for rape myths
 - B. Misperception of peer sexual activity
 - C. Misperception of sexual intent based on:
 - 1. Friendliness
 - 2. Attractiveness
 - 3. Situational risk factors listed above

*Table adapted from Berkowitz AD, Burkhart, BR & Bourg, SE, "Research on Men and Rape" Chapter 1 in AD Berkowitz: Men and Rape: Theory, Research and Prevention Programs in Higher Education. New Directions for Student Services (65), Spring 1994. Jossey Bass, San Francisco.

Table 2**Potential Characteristics of Unintentional Perpetrators, Opportunistic Perpetrators, and Sexual Predators***

<i>Characteristics of the Assault or the Perpetrator</i>	Unintentional Perpetrator	Opportunistic Perpetrator	Sexual Predator
<i>Degree of premeditation</i>	Usually not planned, i.e. not “looking for an opportunity”	Impulsive and situational in the context of “looking for an opportunity”	Planned and pre-meditated
<i>Reaction to being accused</i>	Confusion, Remorse	Denial, victim-blaming, feels falsely accused	Denial, victim-blaming, feels falsely accused
<i>Empathic ability</i>	Able to empathize with victim	Narcissism and inability to understand victim experiences	Narcissism and inability to understand victim experiences
<i>Use of force</i>	Unlikely to use force	May or may not use force	Willing to use force if necessary
<i>Ability to accept responsibility</i>	May accept responsibility	Denies responsibility or accepts it as a strategy for reducing sanctions	Denies responsibility or accepts it as a strategy for reducing sanctions
<i>Cultural issues</i>	Unaware of or misinterpreted	May use to justify behavior	May use to justify behavior
<i>Attitude toward women</i>	More willing to see women as friends or equals	Sees women as adversaries, objects, or temptresses	Sees women as adversaries, objects, or temptresses

*Note: This table summarizes trends documented in the literature but is not a comprehensive template that will account for all situations. In addition, some individuals may perpetrate all three forms of assaults. Thus, the information in the table should be used only as a potential guideline for summarizing patterns of perpetrator behavior.

Table 3

Potential Sanctions for Individuals Found Guilty of Sexual Assault*

Warning: A notice in writing to the student that the student is violating or has violated institutional regulations, with likely consequences if the behavior re-occurs.

Probation: A written reprimand for a specific violation, for a designated period of time, with the likelihood of more severe sanctions if the student violates the terms of the probation or any other institutional policy.

Loss of Privileges: Denial of specified privileges, such as participation in institutional activities or performance of a leadership role, or from being present at certain places or for certain activities (such as the victims' residence or at events the victim may attend), for a designated period of time.

Fines: Fines may be imposed.

Restitution: Compensation to the victim for loss, damage, or injury. This may take the form of appropriate service, monetary or material replacement, or reimbursement for medical and psychological services.

Discretionary Sanctions: Work assignments, essays, service to the community, or other assignments that have the goal of either restitution or creating a learning experience for the individual sanctioned. Participation in treatment to reduce the chance of recidivism. These sanctions can occur while in attendance or while separated from the University.

Residence Hall Suspension: Separation of the student from the residence halls for a specified period of time, or permanently.

Suspension: Separation of the student from the institution for a specified period of time, with the conditions for a return enumerated.

Expulsion: Permanent separation from the institution.

Revocation or Withholding of Degree.

***Note:** These sanctions are not mutually exclusive and more than one can be imposed. Adherence to sanctions should be strictly monitored with additional consequences to be imposed if they are violated. This list was adapted from Stoner and Lowery (2004).

Table 4

**Potential Sanctions in Relation to
Characteristics of the Assault***

<i>Assault-related variables</i>	Consider on-campus sanctions	Consider suspension or expulsion
<i>Evidence for consent</i>	Fails to actively ascertain consent or overlooks evidence of non-consent that may be subtle or ambiguous	Ignores explicit evidence of non-consent including verbal and/or physical resistance
<i>Intentionality</i>	No evidence of intentionality or pre-meditation	Evidence of intentionality and/or pre-meditation
<i>Force/aggression</i>	No force is used	Force is used
<i>Accountability</i>	Evidence of sincerity and willingness to accept responsibility and follow through on sanctions	Unwilling to accept responsibility and persistence in blaming victim. Resistance to sanctions.
<i>Reliability and consistency</i>	Perpetrator statements are corroborated by other evidence. Accurate account of what happened	Perpetrator claims are illogical or contradicted by other evidence. Evidence is reported selectively or in a self-serving manner.

*The purpose of this table is to provide general guidelines for use in determining an appropriate sanction. It is not to be used as a formula, and each variable needs to be considered separately.

Appendix One **Restorative Justice as an Alternative Sanctioning Process**

The goal of the restorative justice process is to provide healing to all those affected by an incident. This approach views an offense as affecting the whole community and thus incorporates community involvement into the sanctioning process. All relevant parties must agree to participate in the process and accept a common framework for conducting conferences and determining consequences.

Mary Koss and her colleagues argue that a restorative justice process overcomes many of the disadvantages of a judicial proceeding, which often leaves victims unsatisfied and which results in a high rate of recidivism for offenders. It can provide greater healing and restitution for the victim, the offender, and their communities (Koss et al, 2003; Koss et al 2004). In this process the perpetrator is held accountable not only due to sanctions imposed, but by virtue of his relationships with significant others within and outside the institution.

The underlying philosophy of restorative justice is compatible with the educational role and communal nature of higher education. A restorative justice model requires that all those affected by the event – including family and/or significant others of the perpetrator and victim, community members, and secondary victims – agree to participate in the process. A requirement is that the perpetrator accept responsibility for his actions. Sanctions are decided with the involvement of all relevant parties, including the victim. These discussions take place in a series of conferences with various combinations of the relevant parties to determine appropriate measures.

The sanctions are outlined in a “redress agreement” and their implementation is the responsibility of a community review board. This board monitors the sanctions, meets with the perpetrator, and ensures that victim safety is maintained. In this model the perpetrator is held accountable to the community both morally and procedurally. The restorative justice process requires remorse and acceptance of guilt on the part of the perpetrators and special training for the facilitators. For examples of current best practice in the use of restorative justice for sexual offenses, see Koss et al (2003; 2004).

Oles (2004) describes the restorative justice approach as follows:

The approach permits everyone involved in the process to articulate the harm a student’s behavior causes and to request some form of restitution. The conferences bring affected parties together with a focus on articulating harm and developing ways to repair that harm. Providing an opportunity for everyone involved too participate in the conferences increases community confidence in the process and it has reduced the number of appeals students and parents launch. (p. 261).

A restorative justice model is especially suited to situations where the assault impacts an intact community, such as a residence hall, members of an athletic team, or other group. Therefore it is recommended that IHE’s develop pilot programs to test the use of restorative justice when the perpetrator and victim are both members of a definable campus group or community.

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