



# VCU

Virginia Commonwealth University  
VCU Scholars Compass

---

Theses and Dissertations

Graduate School


---

2018

## Prosecution as the "Soul Crushing Job:" Complexities of Campus Sexual Assault Cases

Tammi L. Slovisky  
*Virginia Commonwealth University*

Follow this and additional works at: <https://scholarscompass.vcu.edu/etd>

 Part of the [Criminology Commons](#), [Criminology and Criminal Justice Commons](#), [Education Policy Commons](#), [Gender and Sexuality Commons](#), [Politics and Social Change Commons](#), and the [Public Policy Commons](#)

© The Author

---

Downloaded from

<https://scholarscompass.vcu.edu/etd/5629>

This Dissertation is brought to you for free and open access by the Graduate School at VCU Scholars Compass. It has been accepted for inclusion in Theses and Dissertations by an authorized administrator of VCU Scholars Compass. For more information, please contact [libcompass@vcu.edu](mailto:libcompass@vcu.edu).

PROSECUTION AS THE 'SOUL CRUSHING JOB': COMPLEXITIES OF CAMPUS  
SEXUAL ASSAULT CASES

A dissertation submitted in partial fulfillment of the requirements for the degree of doctor of  
philosophy at Virginia Commonwealth University

by

Tammi L. Slovisky  
MPA, James Madison University 1998  
B.A. Psychology, Indiana University of Pennsylvania, 1996

Director: Sarah Jane Brubaker, Ph.D.  
Associate Professor, Criminal Justice and Public Policy  
Director, Certificate in Gender Violence Intervention  
L. Douglas Wilder School of Government and Public Affairs

Virginia Commonwealth University  
Richmond, VA  
November 6, 2018

## ACKNOWLEDGEMENT

There are many people I wish to thank for their support of my research over the past several years. First and foremost, I would not have enrolled in the PhD program, nor completed this dissertation without the support of my advisor and dissertation committee chair, Dr. Sarah Jane Brubaker. Her research in gender based violence and her kind and patient approach led me to gain the confidence I needed to achieve my goal. Above all, she was thorough in her edits, which demonstrated her commitment to making my research meaningful. Each faculty member who served on my dissertation committee- Dr. Wurie, Dr. Conley, Dr. Rhodes and Dr. Huff, have been immensely supportive and generous of their time. Brittany, my fellow cohort candidate, also helped me stay on track and enthusiastic about the end goal. I would also like to thank my family for their understanding, especially Tatum, who at first was not too happy with my decision to return to school, but has been my biggest cheerleader along the way. My partner listened patiently to my abundant expressions of frustration and self-doubt, while his children understood my need for study time. My Pennsylvania family has also shown their support, and my niece's positive text messages gave me extra boosts. I also value my friend Shannon, who helped with organization and edits especially at the end when it was difficult to gain the energy needed to make some final tweaks. My office mates have also been supportive of my goal to pursue higher education, and I am grateful for my supervisors' flexibility in letting me take the time I needed to research and write. Lastly, I am so thankful for the prosecutors who took their time, which I learned was very limited, to talk with me openly about their work with survivors of sexual assault. I am especially grateful to a prosecutor who helped review my interview questions and codes to help assure I was fully capturing prosecutors' experience in doing what they could within a multitude of constraints to empower sexual assault survivors.

## TABLE OF CONTENTS

LIST OF TABLES.....	vi
LIST OF FIGURES.....	vii
ABSTRACT.....	vii
1. INTRODUCTION TO THE STUDY.....	1
Research Questions.....	2
Statement of the Problem.....	3
Issues in Defining the Problem of Sexual Assault.....	5
Barriers to Reporting.....	7
Criminal Justice Process: Common Law and Case Elements.....	9
Internal Relationships.....	11
Expanded External Relationships, Federal Guidance, and State-Specific Laws.....	12
Theoretical Framework.....	15
Methodology.....	18
Sampling.....	18
Recruitment.....	20
Data Collection.....	20
Data Analysis.....	21
Reflexivity and Ethical Considerations.....	23
Validity.....	25
2. REVIEW OF THE LITERATURE.....	27
Issues in Defining the Problem of Sexual Assault.....	30
Barriers to Reporting.....	34
Victim Credibility.....	36
Characteristics of the Assault.....	37
Victims' Trust in Authority.....	38
Social Location.....	39
Other Challenges to Pursuing a Case.....	41
Institutional Barriers.....	42
Criminal Justice Process: Common Law.....	45
Case Elements: Victim and Offender Characteristics.....	50
Stereotypical Rape Scenarios.....	51
Victim Characteristics.....	52
Offender Characteristics.....	56
Internal Relationships.....	59

Police.....	60
Courtroom Actors.....	66
Expanded External Relationships, Federal Guidance, and State-Specific Laws.....	71
Media.....	72
Public Officials.....	73
Federal Guidance.....	74
State-Specific Laws.....	84
Theoretical Framework.....	89
Symbolic Interactionism.....	90
Grounded Theory.....	92
 3. METHODOLOGY.....	 98
Sampling.....	99
Recruitment.....	101
Data Collection.....	102
Data Analysis.....	105
Validity.....	109
Reflexivity and Ethical Considerations.....	110
Public Policy Implications.....	113
 4. FINDINGS.....	 114
What Makes Sexual Assault Cases Difficult: Extra- and Intra- Legal Factors, Vicarious Trauma, and Emotional Labor.....	116
Extra-Legal Factors.....	117
Alcohol, Acquaintance Rape, and Victim blaming.....	117
False Reporting and “Buyer’s Remorse.....	121
Biases and Stereotypes: Law Enforcement.....	123
Biases and Stereotypes: Judges and Juries.....	126
Intra-Legal Case Factors.....	132
The “Soul-Crushing Job”: Vicarious Trauma and Emotional Labor.....	136
Victim-Centered and Trauma-Informed Response.....	142
The Victim-Centered and Trauma-Informed Movements.....	143
Public Policies: Opportunities and Challenges.....	152
Differences in Definitions and Standards.....	154
Students’ Higher Expectations.....	157
Putting Defendants on Notice.....	160
Transparency and Minimization.....	164
Mandatory Reporting.....	167
Interactions with Campus Officials.....	174
Collaborations with Title IX Coordinators.....	175
Tensions between Title IX Coordinators and Prosecutors.....	178
Interactions Between Campus Police Officers and Prosecutors.....	181
Interactions Between Campus/Community Activists and Prosecutors.....	185
Recommended Models and Practices.....	187
Enhanced Collaboration: SART and MDT Models.....	188

Committed Leadership.....	195
Expanded Criminal Codes.....	199
Strengthening Victims.....	203
Specialized Law Enforcement Training.....	205
5. CONCLUSION.....	208
Case Elements.....	208
Victim-Centered Actions and Emotional Labor.....	210
Public policy opportunities and challenges.....	211
Recommended Models and Practices.....	211
Implications for Future Research.....	214
Theoretical Model.....	217
Limitations.....	220
Reflexivity.....	220
Implications for public policy.....	221
Research on evidence-based practices.....	225
Sexual Assault Response Teams.....	226
Training for prosecutors on campus processes.....	227
Trauma-informed training for campus police.....	228
Mandatory reporting.....	229
Conclusion.....	230
6. REFERENCES.....	231
7. APPENDIX A: INTERVIEW QUESTIONS.....	274
8. APPENDIX B: LIST OF CODES.....	278

## LIST OF TABLES

Interview Questions Organized by Literature Review Themes.....	102
--	-----

## LIST OF FIGURES

- Figure 1. Representation of campus based and criminal justice processes in Virginia, including information sharing of reports and evidence.....81
- Figure 2. A theory of prosecutor decision-making regarding campus sexual assault.....219



## ABSTRACT

### AN EXPLORATION OF VIRGINIA PROSECUTORS' PERSPECTIVES ON TITLE IX, CAMPUS SEXUAL ASSAULT AND PROCEDURAL CONSIDERATIONS

By Tammi Slovinsky

A dissertation submitted in partial fulfillment of the requirements for the degree of doctor of philosophy at Virginia Commonwealth University

Virginia Commonwealth University, Date

Major Director: Sarah Jane Brubaker, PhD.  
L. Douglas Wilder School of Government and Public Affairs

On April 4, 2011, the U.S. Department of Education issued a Dear Colleague Letter on campus sexual assault reaffirming the intent of Title IX, the 1972 law that prohibits discrimination sex-based under any education program or activity receiving federal financial assistance. In response to growing concern over due process rights for defendants, in September 2017 the guidance was rescinded. Public policy continues to evolve, leading to potentially lasting institutional changes on many college campuses. These developments include the formalization of campus investigations and adjudications, the development of campus coordinating committees and expanded support mechanisms for victims. In Virginia, laws passed in 2015 require transcript notations and notification to law enforcement prosecutors' offices of certain sexual assault offenses reported to colleges and universities. To date, no research exists on how prosecutors, as the presumed gateway to justice, make sense of and navigate these emerging developments when making decisions about cases. The present study helps to fill that void by using inductive qualitative methods through a symbolic interactionism theoretical framework. The findings are based on in-depth interviews with prosecutors across

Virginia to examine how they create meaning based on case elements in campus sexual assault cases including legal considerations and victim and offender characteristics, as well as their perceptions of the influence of internal and external relationships on their decision-making. A modified grounded theory approach informed data coding and analysis, which yielded the development of a theory that explains the ways various factors and interactions with campus officials, and survivors that influence prosecutors' action including decisions to charge, to take a case to trial and to collaborate. Results of the study inform the development of public policy to ultimately improve practice, collaboration and information sharing processes in both campus and criminal justice-prosecution systems.

## CHAPTER 1. INTRODUCTION

*Unfortunately in a lot of college campus cases that I do not prosecute, the evidence just isn't there or isn't clear... Whether or not we can prove things as simple as penetration is a big factor when it comes to alcohol because a lot of victims can't recall that, which makes sense if you're unconscious, you wouldn't know...there's a lot of delayed reporting to include delayed PERKS [Physical Evidence Recovery Kits]...if the victim has left things out because that's something they're gonna get beat up on in cross [examination] and there's some things you can come back from but unfortunately there are other things you cannot. – A prosecutor who participated in the study*

From a prosecution standpoint, sexual assault cases are complex, campus incidents even more so due to the nature of the cases. While higher education institutions have increased transparency and dedicated more resources to campus sexual assault intervention and prevention, the structural features of campus investigation and adjudication processes have also presented new challenges and increased tensions between the campus and criminal justice processes. This study explores how Virginia prosecutors make sense of increasingly formalized campus procedures post federal and state public policies relating to campus sexual assault.

I also examine the extent to which various factors contribute to the meanings prosecutors give to campus sexual assault cases in terms of their impact on decision-making. Extra-legal factors, those of which are beyond legal considerations such as evidence, may contribute to a “justice gap” (Lonsway & Archambault, 2012, p. 145) between the number of arrests and the number of convictions. Previous studies have examined factors including victim and offender characteristics; internal relationships with police, judges, and juries; and external relationships with the media and legislators. My study adds to the literature by exploring the role of interactions with higher education officials including Title IX coordinators, campus police and advocates and the ways these relationships influence the work of prosecutors. I also present those features of campus processes that both enhanced opportunities for collaboration as well as

tensions between systems as well as models as recommended by prosecutors for improving overall response to campus sexual assault survivors.

In this chapter, I introduce the proposed study and research questions. I review the literature beginning with a statement of the problem contextualized through research on the prevalence of sexual assault across populations and barriers to reporting that may inform prosecutors' perspectives on the ways victims interface with criminal justice process. I describe the ways criminal constructs of force, threat, resistance, consent and victim and offender characteristics shape the way prosecutors perceive campus sexual assault. I explore the influence of internal relationships with police, judges, and juries on how prosecutors work sexual assault cases. I also review public policy developments over the past decade to examine significant changes to investigation and adjudication procedures on college campuses. In turn, I demonstrate how prosecutors' interactions with campus officials and revised processes appear to influence the meaning prosecutors create and the actions they take in terms of charging and taking cases to trial, as well collaborating with campus officials. Each of these factors- interactions, meanings and action- contribute to prosecutors' meaning- making and decisions in prosecuting campus sexual assault cases. These concepts are key to symbolic interactionism, the framework for my study.

### **Research Questions**

Through semi structured open-ended interviews with prosecutors, I sought to answer the following research questions:

1. How do Virginia prosecutors view new campus sexual misconduct administrative processes?

2. What influence have these new administrative processes had on prosecutor decision making?
3. In addition to Title IX, how do prosecutors perceive Virginia laws on campus sexual assault, in particular *Va. Code § 23.1-806*, the mandatory reporting law, as impacting their decision making?
4. What influence do case characteristics (e.g., case law, characteristics of victims and perpetrators, internal relationships with criminal justice actors, and external relationships with campus officials, the media, and legislators) have on Virginia prosecutor decision making?
5. What other factors influence prosecutor decision making and what effect do those factors have?

### **Statement of the Problem**

In 1972, Congress passed into law Title IX (Public Law No. 92-318, 86 Stat. 235 codified at 20 U.S.C. §§ 1681–1688), which prohibits discrimination on the basis of sex under any education program or activity receiving federal financial assistance. Although initially Title IX was focused on sports (Simpson, 2012), over the past decade federal and state legislators, college administrators, and the media have focused attention on campus sexual assault, notably in the now infamous and retracted *Rolling Stone* article “A Campus Rape” (Erdely, 2014). The ED contributed to the national dialogue by issuing federal guidance first in 2001 and again in 2011, in which some of the latter was codified in the Violence Against Women Act (VAWA) Section 304 in 2013.

In fall 2017, the ED under a new executive administration rescinded the 2011 guidance, citing concerns over campus processes including adequate due process for the accused (ED,

2017). A potential sign of reduced enforcement mechanisms, ED staffing has also reduced by 13 percent between the beginning of the administration and April 2108, officially due to voluntary exits, unofficially due to vacancies not being filled (Kreighbaum, 2018). Meanwhile, victims' rights groups continue to warn against the potential for losing gains made by the previous executive administration. As one policy advocate for victims' rights explained, "I think [this] is just another sign of how they want to stack the deck against survivors and are completely misunderstanding what the Title IX process is about...It's about equal access to education. They're moving towards a quasi-criminal system, which is not what Title IX is nor what it is intended to do" (Peterson, cited in Morris, 2017).

In spite of these fluctuations, VAWA codification and state laws including mandatory reporting, transcript notations and affirmative consent have laid the groundwork for higher education institutions to address sexual assault through expanded policy, support measures, and prevention programs on college campuses. Schools have dedicated considerable resources and implemented procedural changes (Amar, Strout, Simpson, Cardiello, & Beckford, 2014), which may be a challenge to reduce or eliminate in spite of revised guidance. Moreover, experts with the national Association for Title IX administrators (ATIXA) have argued, "the trajectory of Title IX has never been defined – nor will it ever be – solely by the four-year term of any one administration" (Sokolow, 2017, p. 3). The fluid nature of this issue justified the need to look more closely at procedural impacts on the ground from the standpoint of individuals who seek justice beyond the college campus, prosecutors, who served as the focus of my research.

This section first explores scholarly research on prevalence of sexual assault, including the traditional focus on homogenous communities and the persistent issue of under-reporting to authorities. Studies of prevalence defined the scope of the problem and signaled important areas

to address in this study. The ways scholars have presented the issues as well as prosecutors' impressions of how victims interface with the criminal justice system influenced prosecutors' perceptions and understanding of campus sexual assault. Yet, the lack of an intersectional approach (Crenshaw, 1989) to defining the scope of sexual assault as experienced by and across different identities such as race, gender, and class presents a limitation especially from the perspective of groups impacted at higher rates, such as members of the lesbian, gay, bisexual, transgender and queer (LGBTQ) community. The findings suggest that a narrow view of victimization, especially among members of the criminal justice community and courtroom actors affects prosecutors' exposure to these cases, due to minimal reporting, as well as their decision-making.

### **Issues in Defining the Problem of Sexual Assault**

Attempts to measure the prevalence of sexual assault construct specific meanings of this problem and images of typical victims, offenders and incidents. Since research on sexual assault began in the 1970s, the overwhelming focus has been on White heterosexual cisgender (people whose gender conforms their birth sex) female victims (Brodie, DiJulio, Norton, Craighill, & Clement, 2015; Carey, Durney, Shepardson, & Carey, 2015; Fisher, Cullen, & Turner, 2000; Koss, Gidycz, Wisniewski, & Kazdin, 1987, Krebs et al., 2016; Krebs, Lindquist, Warner, Fisher, & Martin, 2007). The literature shows the highest rates of sexual assault among college women, with rates ranging from one in four (Fisher et al., 2000; Koss et al., 1987) to one in five females (Brodie et al., 2015; Krebs et al., 2007), as compared to around 1% of males (Krebs et al., 2016; Krebs et al., 2007). However, results from a recent randomized survey across two colleges in New York found a higher rate of self-reported sexual assault victimization amongst men, 12.5% (Mellins, et al., 2017), which could signify an increase in reporting among male

victims. While rates of sexual aggression are believed to be primarily involve male perpetration against females (Krug, Mercy, Dahlberg, & Zwi, 2002), sexual minorities have also been shown to experience sexual violence at high rates (Blosnich & Bossarte, 2012; Blosnich & Horn, 2011; Cantor et al., 2015; Coulter et al., 2017; Krebs et al., 2016; Langenderfer-Magruder, Walls, Kattari, Whitfield, and Ramos, 2016, Martin, Fisher, Warner, Krebs, & Lindquist, 2011; Mellins, et al., 2017; Munson & Daniels, 2015).

A singular focus in research and public policy on demographics of victims and perpetrators appeared to influence the meaning of sexual assault for prosecutors of the “typical” campus case and ultimately their decision of whether or not to forward cases to trial. Prosecutors practice within a culture of generalized stereotypes and biases that shape perceptions of victims and offenders. Prior research suggests that meanings prosecutors create based on these constructs may in turn contribute to fewer convictions (Tempkin & Krahe, 2008). When prosecutors face victims who are not representative of the archetypal “true victim” who is White, chaste, and without culpability, this may also cause them to look downstream at potential perceptions of jurors who may be less inclined to convict (Fischel, 2016; Frohmann, 1991, 1998). As O’Neal, Tellis and Spohn explained in a 2015 qualitative study, which reviewed prosecutors’ charging decisions in case files,

Because these predictions are inherently uncertain, prosecutors develop “perceptual shorthand” that incorporates stereotypes of real crimes and credible victims. As a result, prosecutors consider not only the legally relevant indicators of case seriousness and offender culpability, but also the background, character, and behavior of the victim, the relationship between the suspect and the victim, and the willingness of the victim to cooperate as the case moves forward (p. 1239).

Analysis of prosecutors statements indicate that they have limited experience working with victims who do not fit the stereotypical perception of male perpetration against female assault. Several prosecutors also suggested that people who are LGBTQ were more likely to



receive scrutiny, for example by police and judges, which presented additional legal challenges for prosecution.

### **Barriers to Reporting**

Further complicating our understanding of the problem of sexual assault, research consistently demonstrates overall low reporting of sexual crime as compared to other types of victimization (Cantor et al., 2015; Fisher et al., 2000; Orchowski & Gidycz, 2012, Planty, Langton, Krebs, Berzofsky, & Smiley-McDonald, 2013; Rennison, 2002; Tjaden & Thoennes, 2006), which appears to contribute at least in part to a low rate of prosecution and conviction. Various factors influence victim's decision to report including a tendency to disclose to social contacts vs authorities due to shame, guilt, embarrassment and fears of retribution, institutional barriers and concerns that their case lacks key evidence. These factors in turn may impact prosecutors' perceptions on whether to forward a case to trial.

Studies have shown that students primarily reached out to friends and family for support (Sabina & Ho, 2014). Orchowski & Gidycz (2012) found that just over 50% of college aged women disclosed incidents of sexual assault primarily to female peers (94.5%), followed by male peers (45.9%), their mother (13.5%) and other family members (10.8%). Sable, Danis, Mauzy, & Gallagher (2006) also found shame, guilt, and embarrassment were primary reasons offered by female college students for under-reporting as well fears of experiencing retaliation by the offender. Male participants also shared additional concerns that others would perceive them as gay or that the offender would not be successfully convicted (Sable, Danis, Mauzy, & Gallagher, 2006). Previous research has shown college students as less likely to report to college officials due to lack of clarity on where to submit reports and confusion about the process. They have

also reported concerns that their case lacked evidence required for investigation (Karjane, Fisher, & Cullen, 2005).

The criminal justice system also receives a low number of reports overall, as supported by the literature and in my study findings. Previous research has shown victims' fears that members of the criminal justice system would not believe them as a main reason for not coming forward (Stewart, Dobbin & Gatowski, 1996). Rates of reporting to authorities are especially low among marginalized groups such as people who are transgender (Grant, et al. 2011 and Munson & Daniels, 2015). Sinozich and Langdon (2014) found 80% of sexual assaults against college students were not reported to police, as compared to 67% of nonstudents, with fears of retribution from the offender again offered as a main reason for not reporting. Once victims make a report, their continued engagement may influence prosecutors' decisions to charge and take cases to trial. The availability of evidence as well as the willingness of victims to participate in the process have been shown to be an important mediating factor in both convictions and dismissal of charges (Spohn & Holleran, 2001).

In one qualitative study that reviewed documents for case rejection rationales, prosecutors were more likely to reject charges when victims demonstrated low cooperation in case prosecution or when they did not show up for an initial interview (Spohn, Beichner, & Davis-Frenzel, 2001), and to dismiss a case when a victim refused to testify (Spohn & Tellis, 2013). In addition to willingness to cooperate, prosecutors have been found to charge more often when the victim is under the age of 18 and when there is no apparent motive for the victim to fabricate a report (Spohn and Tellis, 2018). Rejection has also been seen during initial screening, where prosecutors use knowledge of previous criminal behavior to discredit the reporting witness' narrative (Frohmann, 1991). A cycle develops whereby cases with reluctant victims

result in fewer criminal charges and fewer still achieving successful convictions. With few cases coming through the criminal justice system, my findings revealed how prosecutors made sense of low reporting, especially the reasons for victims' reluctance to cooperate. Prosecutors spoke to the need to consider victims' wishes to proceed as well as their emotional capacity to withstand the courtroom experience as influencing their decisions to forward a case to trial. Next, I explore case elements including intra-legal considerations and characteristics of victims and offenders, i.e. extra-legal factors, as contributors to prosecutors' meaning making.

### **Criminal Justice Process: Common Law and Case Elements**

Laws are symbolic of the ways a culture views and labels acts as harmful to individuals and society. Traditional constructs established through common law for rape have persisted, but also evolved over time. As a result, the way prosecutors view case elements needed to prove guilt in rape cases may also change during shifts in public policy and other external pressures from media (including social media), legislators, and campus officials. For example, the need for corroborating evidence to demonstrate resistance against attack remains; however, previous exemptions for marital rape have largely been removed. Rape shield laws, introduced in the 1980s, prevent (but do not rule out) evidence of previous sexual behavior of victims (McNamee, 2001). As recent example of a public policy adaptation, legislators in California revised criminal codes to expand the definition of rape to include penetration by a foreign object, in response to a high profile sexual assault by Brock Turner in California in 2016. Legislators also revised sanctioning to prevent judges from sentencing offenders to probation after they receive a conviction for assaulting someone who is unconscious or incapable of giving consent. Prior to the change, only those convicted of rape by force would be required to serve time in prison (Ford, 2016).

As indicated by the literature, victim and offender characteristics appear to be important case elements for consideration by prosecutors. An intersectional lens (Crenshaw, 1989) suggests specific characteristics related to identities of race, ethnicity, class, and gender may also play a role in decision-making. Prior research has shown that participants viewed victims as more blameworthy if the victim was Black and the offender was White (George & Martínez, 2002). In studies using vignettes, victims from lower socioeconomic backgrounds have been shown to receive more scrutiny as well as to be viewed as promiscuous and responsible for the assault (Spencer, 2016). Other scholars have also found victim characteristics such as age, occupation, and level of education to influence the likelihood of prosecution (McCahill, Meyer, & Fischman, 1979). Based on the findings from my study, prosecutors also indicated juror bias especially as influencing the perceptions of victims' culpability and credibility.

The research examining offender characteristics include the identification of predatory behavior such as isolating victims, repeat offending, and use of alcohol or other drugs to incapacitate (Lisak & Miller, 2002), while other studies have called attention to evidence of offending that does not always fit this profile (Swartout et al., 2015). Offender demographics including race, ethnicity, and gender and the relationship of offenders to victims also have been found to influence punishment and conviction. For example, data showed more severe sanctions in studies where the offender is Black and Hispanic (Steffensmeier & Demuth, 2000; Steffensmeier, Ulmer, & Kramer, 1998). Prosecutors were also found less likely to continue prosecution of cases involving female defendants (Albonetti, 1986), and females were more likely to receive lenient sentences (Steffensmeier et al., 1998; Ulmer, Kurlycheck, & Kramer, 2007). Although specific references to the impacts of race and gender on decisions to prosecute were minimal during interviews, most likely due to a lack of awareness and/or reluctance to

discuss implicit bias, prosecutors who participated in my study nevertheless referenced cases that tended to fit the male perpetrator role, with cases citing predatory behavior as being more prosecutable.

Acquaintance sexual assault does not fit the traditional cultural stereotype of the stranger assault. Therefore, prosecutors may be less likely to forward those cases. The most recent National Crime Victimization Survey (U.S. Department of Justice, 2015) administered by the Bureau of Justice Statistics, showed that three out of four sexual assaults are committed by someone known to the victim. Similarly, college students have been shown as more likely to be assaulted by their peers or people within the university community than by those outside the community (Krebs et al., 2007). Since prosecutors' views of campus sexual assault are also shaped by cultural notions of the true victim and the primary perpetrators (i.e., strangers or predators), they may be more likely to move cases to prosecution and trial if they meet the stereotypes of typical cases. My study supports this notion and previous studies have shown that stranger rape as more likely to be prosecuted than cases where the offender was known to the victim (Battelle Memorial Institute, 1977; Loh, 1980; Spohn et al., 2001). Literature has also explored the influence of internal relationships with police, judges, and juries as impacting prosecutorial decision making, described next.

### **Internal Relationships**

Internal relationships with other criminal justice actors including police, judges and juries also appear as pivotal in influencing decision making of prosecutors (Eisenstein, Flemming, & Nardulli, 1988; Frederick & Stemen, 2012). Eisenstein et al. (1988) pointed to the impacts of “court communities” with strong emotional undercurrents, high interaction, and information exchange on decision-making. Among courtroom actors, shared meaning and perspectives were

found to emerge about the importance of cases, appropriate case outcomes, and how other criminal justice actors will respond in the future (Ulmer, 1997). To illustrate, prosecutors who “continually pursue cases that should have been rejected outright may lead judges to question the prosecutor's competence as a member of the court” (Frohmann, 1991, p. 215). Previous research is limited regarding external relationships, especially those involving campus officials and processes. My study focuses on these interactions and the ways they have changed since public policy developments have unfolded. I explore the scholarly research on external relationships in the next section.

### **Expanded External Relationships, Federal Guidance, and State-Specific Laws**

Public policies and intensified scrutiny by media and legislators may serve as important factors in how prosecutors perceive and act upon campus sexual assault cases. Research on relationships with external actors, such as media and legislators, is limited to studies of how prosecutors should communicate with the press (Hooker & Lange, 2003) and the media and legislators at large (Bennett, 1996). Research on the influence of external relationships with campus officials is not available, but according to my findings, these interactions appear to influence prosecutors’ decision- making across several areas including decisions to collaborate, to charge and to bring cases to trial. I describe in brief the federal and state guidance that has given way to expanded relationships and the ways prosecutors perceive these developments as affecting their work.

Both federal and state public policy impact federally funded educational institutions and accordingly, how they approach reports of sexual assault. In 2011, the ED released a Dear Colleague Letter (ED, 2011), which reaffirmed Title IX, the landmark 1972 federal legislation that prohibits sex and gender-based discrimination in any federally funded education program or

activity. Colleges and universities were advised to expand support and reporting options for victims, and to implement fair and impartial disciplinary processes based on a burden of proof that is lower than that of the criminal justice standard. The *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act*, (34 CFR 668.46 1990) was amended in 2013 under the reauthorization of the Violence Against Women Act (42 U.S.C. sections 13701 through 14040). The amendments further reinforced the ED (2011) guidance, including a mandate for equitable disciplinary proceedings and a focus on reporting options and evidence collection for victims of sexual assault. Higher education institutions have responded to public policy development by adapting their investigation and adjudication models and as well as expanding victim service response via sexual assault response teams (SARTS) that include victim advocates, medical personnel, and police and policy review committees (Amar, Strout, Simpson, Cardiello, & Beckford, 2014).

At the state level, Richards and Kafonek (2016) found twenty-eight states introduced seventy bills relating to campus sexual assault in 2015. Although nine bills included requirements to mandated reports to the criminal justice system (Richards and Kafonek, 2016), only Virginia is unique in its passage of two key laws in 2015 concerning campus sexual assault. First, students found responsible for violating a sexual misconduct policy, or those who withdraw pending a finding of responsibility through a campus hearing process now must receive a transcript notation indicating the misconduct (*Va. Code § 23-9.2:15*, 2015). As might be expected, transcript notations did not appear to significantly impact the work of prosecutors, with the exception of potentially greater involvement of defense attorneys.

Second, *Va. Code § 23.1-806* law requires any responsible employee who has knowledge of an act of sexual violence against a student to report this information to the university Title IX

coordinator “as soon as practicable after addressing the immediate needs of the victim” (Section B). A recent study by Brubaker and Mancini (2017) explored campus advocates and officials, including Title IX administrators, views regarding the Virginia mandatory reporting law. While some expressed concern over victims’ loss of control and choice in deciding to report, 60% responded that reports to campus officials may increase as more students sought support services on campus. Although a rise in reporting to campus officials might appear to translate into higher engagement with the criminal justice system, the findings indicate otherwise. Prosecutors indicated receiving few or no reports and when campuses did provide information, it was too limited in scope for prosecutors to take any meaningful action.

Virginia’s public policies not only dictate communication between campuses and the local criminal justice processes, they also institutionalize a relationship between the criminal justice system including prosecutors and campus-based processes. I explore the extent and nature of information exchange, and the meanings prosecutors have developed in response to interactions with campus officials in order to gain insight into the impacts of these developments on their decisions. Additionally, prosecutors have developed particular meanings for the new ways colleges and universities hold offenders accountable through on-campus investigations and adjudications. They also described their work as influenced in new and different ways by a system external to their own including differences in definitions and standards between processes, student victims having higher expectations for outcomes and campuses placing defendants on notice prematurely. The latter concern was viewed by some prosecutors as negatively affected the criminal case due to greater access to campus case file evidence earlier in the process.



All of the above factors, i.e., case elements, internal and external relationships, as well as additional factors contributed to prosecutors' meaning-making and decisions. Interactions, meanings and action are central to symbolic interactionism, which provided the theoretical framework for my research, as discussed in the following section.

### **Theoretical Framework**

Symbolic interactionism served as the guide to my study design including data sampling, collection, and analysis. My reasons for choosing this framework were a function of both existing literature and my research questions. To date, the influence of new campus processes on prosecutors' decision-making has not been explored. My research questions centered on the meaning these processes had for prosecutors, not easily gained through a positivistic or deductive approach. Symbolic interactionism also recognizes the importance of social relationships and I explored prosecutors' relationships with internal and external allied professionals and the ways these relationships appeared to shape meanings and impact action.

Symbolic interactionism also provides the foundation for grounded theory, which offers rigorous analysis techniques I used to organize and analyze data on prosecutors' values, opinions, knowledge, behaviors and experiences (Patton, 2015) gathered through in-depth interviews. Glaser and Strauss (1967) first conceptualized grounded theory as a method to research subjective experiences of illness. In the more recent *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (Corbin & Strauss, 2008) the authors directly tied symbolic interactionism to grounded theory. This intersection offered a comprehensive and integrated approach to my research.

In the early 1900s, sociologist George Herbert Mead developed symbolic interactionism based on the humanist model of pragmatism, which examines connections between thought and

action. In this view, humans are not passive actors in the creation of reality (Shalin, 1991). Additionally, symbolic interactionism maintains a meso view of society and its material environment as preceding individuals, with each component influencing the other (Charmaz, 2014, p. 269). So, individuals not only respond to external interactions, but give meaning to these, and their future actions are influenced by this interpretation.

Herbert Blumer (1986) offered three core premises for symbolic interaction. First, individuals act toward things depending on the meaning they have for them. Second, the meaning of things originates from social interaction with others. Third, meanings are reinforced and adjusted as needed through an interpretive process. Sanko (1980) argued prosecutors both construct and maintain their perception of victim credibility through interaction with victims who serve as witnesses. My study examined the meaning prosecutors working in Virginia create for campus sexual assault based on internal relationships with police, judges and juries and the ways these have influenced their processes and relationships. External relationships with campus administrators were of particular interest, and also relevant, to symbolic interactionism.

How novel social interactions affect the decision-making of prosecutors is best explored by qualitative methods that seek to develop theory to explain phenomena as opposed to using deductive methods to test hypotheses. Grounded theory is well suited to identify and explain social processes (Bowen, 2006) such as prosecutors' relationships with internal and external actors. Previous research on criminal prosecution has centered on case outcomes (Frederick & Stemen, 2012). During interviews, I attempted to elicit the meaning prosecutors constructed for campus sexual assault and campus processes based on social interactions with victims and campus officials. Also, examined the data from a historical context as with interpretive interactionism (Patton, 2015) public policies are fluid and change in response to legislative

advocacy and social developments. Lastly, I remained attuned to how prosecutors' shaped their perspectives in response to laws, the environment, and relationships with other actors who also work campus sexual assault cases.

Analysis of in-depth interview data using grounded theory methods served to generate patterns, categories, and themes and provided an opportunity for prosecutors to reflect on campus developments. As study participants, prosecutors also offered their own ideas on how and why the system worked or did not work well for campus sexual assault victims, for example through recommended models and practices. As Maxwell (2013) suggested, "Any attempt to interpret or explain the participant's actions without taking into account their actual beliefs, values and theories is probably fruitless" (p. 52). I documented my own conceptualizations of interview narratives via analytical memos I wrote in response to the data, which also offered insight into meanings and perceptions consistent with grounded theory's approach.

In a time of advancing developments on campus sexual assault, how prosecutors perceive, act, and name processes or situations in response to change may have been more apparent and therefore data was more nascent. As Charmaz (2014) explained, "meanings are tied to actions" and the process of how people interpret their world becomes explicit when "people's meanings and/or actions become problematic or their situations change" (p. 271). Since the release of ED guidance, higher education's response has shifted, which appeared to influence perceptions and ways of knowing for prosecutors at a community level.

Also consistent with symbolic interactionism, societal level change may affect the meaning prosecutors give to sexual assaults occurring on college campuses. For example, qualitative interview questions centered on prosecutors' perceptions on how campus processes had changed from their standpoint. Prosecutors also noted the ways national initiative such as

the Me Too movement and high profile cases may shift the narrative and lead to stronger victims who are willing to come forward. The following section describes the data collection and analysis methods, which yielded a more complete representation of prosecutors' understanding of federal and state mandates and how revised campus processes have shaped their local knowledge and procedures. In the next section, I describe the research design that considered the scope of this complexity.

### **Methodology**

My study applied a qualitative research design using semi-structured interviews to examine how prosecutors gave meaning to campus sexual assault during a time of increased public scrutiny and policies and how they perceived the influence of campus processes on their work. Using grounded theory techniques, I analyzed data for insights into the ways various factors including specific relationships and processes influenced the action, i.e. decision-making, of prosecutors. Prior to conducting research, I submitted an application and received approval through Virginia Commonwealth University's Institutional Review Board.

### **Sampling**

As Maxwell (2013) described, historically researchers referred to selection of study participant as sampling as in quantitative research. However, in practice and in comparison to qualitative research, application is not equal. In my study, I sought to understand prosecutors' processes or "evolving nature of events" (Creswell, 2009, p. 178) and the meaning they have created for campus sexual assault cases. This necessarily involved exploring their values, perceptions, and ways of understanding. As such, my research differed from studying behavior pre and post treatment, or the influence of variables on an outcome as in charging or conviction.

Additionally, if I were to obtain a random sample as is expected in quantitative research,

this would have yielded great variability due to chance (Maxwell, 2013). Using randomization methods would have resulted in a mix of prosecutors with experience in property crimes, but not in sex crimes or even more problematic, campus sexual assault cases. Prosecutors with experience in the latter served as “richer’ informants,” (Martin, 1996, p. 523) who were able to speak to processes and relationships involved in working with campus survivors, officials, and other criminal justice actors. For this reason, I was purposeful in my sampling methods so that I could gain insights from respondents who were able to speak to the issue at hand.

My sample included prosecutors working across Virginia who had a college campus within their jurisdiction. Realizing that the politically charged nature of the research issue may have presented challenges to data collection since prosecutors are public figures, I focused on interviewing assistant prosecutors, who are not elected. I realized this approach was also helpful from a data standpoint, since assistant prosecutors were currently working sex crimes, so experienced the routine and challenges of these cases. I first approached known contacts in the Richmond area and those affiliated with the Virginia Commonwealth’s Attorneys’ Services Council (Services Council), which provides training and technical assistance to prosecutors across Virginia. I used a nonprobability snowball sampling technique to identify additional participants. In this process, I asked participants for additional contacts for subsequent interviews (Nardi, 2014).

I attempted to sample a heterogeneous sample of prosecutors per Maxwell (2013), who indicated this type of sampling yields a “range of variation” (p. 98) in contrast to typical cases. According to the literature, (see for example, George & Martínez, 2002) variables including gender, race and years’ experience may influence prosecutorial decision-making. Per Patton (2015), I documented the types of diversity in the sample (gender, age, years’ experience) and examined for patterns, trends, or themes. Participants who responded to my request to meet were

primarily white and female. This could have signified that females were more likely to work sex crime cases, as I later explore further in the results chapter. I was more successful in achieving heterogeneity through geographic setting, since I sampled prosecutors throughout Virginia.

The amount of data required to answer my research questions determines the sample size (Martin, 1996). To achieve theoretical saturation, the point where new data does not appear to yield different themes from those already obtained, I anticipated completing 10 to 20 interviews. This amount is consistent with recommendations for other qualitative research (Fusch & Ness, 2015). Over the course of a year, I was able to obtain 15 participants, two via survey and 13 completed interviews.

### **Recruitment**

I recruited participants through a letter invitation for a face-to-face interview. I then sent follow up e-mails to those who had not responded to increase response rates. For prosecutors who did not respond, I also made phone contacts and in one case, sent a fax per the office manager's request. For all participants, I clearly communicated measures to protect the confidentiality of responses. The Services Council also assisted with recruitment, sending an announcement to approximately 200 prosecutors via a listserv.

### **Data Collection**

I conducted in-depth, semi-structured interviews with sampled prosecutors. I designed questions according to symbolic interactionism's focus on interactions, meaning and action, developments relating to public policy on campus sexual assault, and research on factors related to decision-making in the scholarly literature. To help ensure that interview questions would speak to the experience of prosecutors, I requested a prosecutor who regularly works with campus sexual assault cases to review the questions and provide feedback. I conducted most of

the interviews at prosecutors' offices for the convenience of the participants and in three cases, we met at a public library. I audio recorded and transcribed all interviews, which I believe assisted with analysis, as described in the next section. In order to obtain a larger sample, I received IRB approval to convert my interview into a survey, adding a few questions that helped ensure the participants had experience working sex crimes as well as basic demographic information.

### **Data Analysis**

Grounded theory methods incorporate an iterative process of comparative analysis that occurs throughout the research process, coupled with initial data coding and categorization. This is followed by more advanced levels of coding based on interactions and connections between codes, as well as sensitizing concepts that provide a reference and initial guidance for how to view the data (Bowen, 2006). I followed these techniques to code the data, where I described processes and actions involved the ways prosecutors conducted their work. I then selected core categories that captured primary themes, with the ultimate goal of building theory. I next address each of these steps as they relate to my research.

Organization, role and encounters are key units of data (Lofland, Snow, and Lofland, 2006). I investigated each of these units, specifically the organization and in this case the occupation of prosecutors. I also examined the role of prosecutors, and their encounters with the victims they serve, as well as police, judges, juries and campus officials. Applying Glaser and Strauss' (1965) approach, I also used comparative analysis by reviewing narratives shared by research participants to look for patterns, differences, and similarities. For example, the experiences of a prosecutor working in a high population urban area with a large university

appeared to differ from a prosecutor from a smaller community with jurisdiction over a private or community college.

To begin data analysis, I coded data line by line, using a priori codes that served to categorize data based on what is known in the literature on prosecution including police, campus officials, media, judges, legislation/legislators, jury considerations, victim characteristics, offender characteristics, and discretion/decision making. Each of these factors were also a part of my initial conceptual framework, viewed through the meaning each of these may have had for prosecutors' decision-making. I also reviewed for emergent in vivo codes, words or phrases used by respondents (Charmaz, 2006, 2014).

Based on initial codes, I developed focused codes and categories according to Strauss and Corbin's (1998) open and axial coding procedures. Open coding involves identifying concepts captured as codes in the data, to allow for categorization. Axial coding seeks to identify relationships and meanings between codes and categories to generate themes. Once I identified core issues, I revisited the data or selectively coded, to further develop and refine concepts and categories (Strauss and Corbin, 1998). Comparative analysis of data continued throughout the research process to generate categories that I connected to generate themes (Charmaz, 2014).

During the course of analysis, I used memo writing to conceptualize and record data (Chamberlain-Salaun, Mills, & Usher, 2013). Memos encourage ongoing intellectual conversations while affording "analytical distance" (Lempert, 2007, p. 249) from the data. In this way, I was be less inclined to impose what I wanted to find versus what was present in the data. This technique also serves to enhance data reliability or trustworthiness of the data (Patton, 2015). Memos also support theory development, grounded in connections between categories and assertions that clarified the meaning prosecutors created based on their interactions with



victims they served as well as internal and external relationships. Additionally, I isolated the ways prosecutors made decisions based on their perspectives on campus processes and public policy developments and connected these with factors that appeared to influence decisions points.

Scholars may expand upon my theory to other crimes, other types of decision-making, or perhaps tensions and opportunities that arise when public scrutiny is high on a particular social problem. Additionally, my research contributes to the literature on campus sexual violence by developing a theory about how prosecutors appear to understand and give meaning to new campus processes developed as a result of federal and state public policy and its impact on their decision- making.

### **Reflexivity and Ethical Considerations**

Consistent with symbolic interactionism, individuals create external realities by giving meaning to the world around them based on previous experience and social relationships (Charmaz, 2006, 2014). My previous interactions influence the meanings I have created for my work and scholarship surrounding sexual assault. Realizing this, I understood the necessity of remaining focused on the data vs inserting my presumptions. However, as Charmaz (2006) offered, “We may think our codes capture the empirical reality. Yet it is our view: we choose the words that constitute our codes” (p. 47). Therefore, I continued to check my biases and remained open to data that may not have fit within my conceptual framework.

As I analyzed the data and developed initial themes, I was aware of the social justice lens I apply to my research. However, as Leavy (2014) offered “questioning all assumptions leads to an inability to engage in any form of action” (p. 72). Thus, my vantage point was not necessarily a barrier. While I did my best to avoid errors in interpretation as a result of my values

influencing the analysis, I remained committed to as much objectivity as I could achieve while understanding the perspectives I bring to my research. In addition, memoing helped to make clear the ways I thought about the data. Charmaz (2014) recommended coding memos and incorporating sections and findings in final reports. Thus, I include portions of my memos in the results that helped to support the theory I developed.

Being reflexive in my research not only increased the reliability of my work, but also helped me to maintain an ethical stance. For instance, I was aware of how vulnerable prosecutors may have felt in sharing their thoughts and beliefs concerning a sensitive area. Their views on the ways campuses handled sexual assault may not have been something they were open about in the past, or they may have been cautious when sharing their viewpoints. Leavy (2014) also pointed to feminist critiques of research, where power dynamics may position participants in a secondary position. This can be especially difficult for prosecutors, who may have viewed themselves as having a great deal of power and discretion outside of the research setting. Likewise, Creswell (2009) recommended researchers be careful not to disempower participants, which can occur through deception. To encourage a sense of equity, I strove to be genuine, empathic and kind, letting participants know often that I was grateful for their participation. I also shared the true purpose of my study.

Patton (2015) observed study participants qualitative research methods could impact participants, especially when discussing an area that is sensitive. For prosecutors who are typically judged by their ability to convict, they may have been wary of interview questions relating to the reasons sexual assault cases are so challenging to prosecute, since scholars (see, for example Lonsway & Archambault, 2012) have previously focused on low conviction rates. As a result, I was sensitive to the fact that they may have felt criticized or scrutinized. I was

intentional in my wording of interview questions to remain both open and non-judgmental. I also requested a local prosecutor to review them to help make certain the questions would speak to their experience and the ways I worded the questions would not cause discomfort or defensiveness. Respondents may also have shared things they did not intend to disclose (Patton, 2015), especially as they have an opportunity to reflect on their responses. I offered to share the transcript for their own records only. Only a few asked to have the copy and no one asked to make changes.

Several methods assist in managing ethical issues in qualitative interviews (Patton, 2015). First, I was clear on the study's purpose for participants at the recruitment stage and once again during my interview introduction. I also demonstrated appreciation for their time and was honest about potential risks. To address confidentiality concerns, I informed them of the ways I secured the data, who had ownership (myself) and access (myself, my advisor and another student researcher who coded several interviews). I also avoided using any language that would have identified their office or location, such as a "large urban campus in central Virginia." Finally, I provided an informed consent form developed based on our institution's IRB model that offered options to ask questions and to decline participation. By allowing them to leave the study, I preserved their autonomy, or right to make decisions (Leavy, 2014).

### **Validity**

A primary threat to validity is responder bias (Patton, 2015), where participants may be guarded and not honest in their responses. To address validity concerns, I was forthright about my professional experiences while reinforcing my goal to learn about their experience without judgment. Another threat is reactivity, where my presence affected participant response (Patton, 2015). For example, participants may have attempted to position themselves in a positive light

and avoid sharing potentially controversial comments. Results from the study indicated prosecutors' seemed very open in their expression of feelings and ideas, including frustrations with persistent cultural biases criticisms of aspects and actors within the criminal justice system and the campus process.

Procedurally, using open-ended questions that did not focus on their performance in the courtroom, namely convictions, may have increased prosecutors' willingness to be honest in their responses. I also incorporated questions regarding jurist and judge perspectives, which placed less emphasis on prosecutorial implicit bias. Finally, I was cautious to avoid conveying my responses to their statements by monitoring my facial expressions and body language.

In Chapter 2, I provide an overview of the literature on sexual violence. I organized research around the issues of defining the problem of sexual assault, including the experience of marginalized communities, and barriers to reporting. Additionally, I review studies that have explored specific case elements in prosecuting sexual assault cases including case law and victim and offender characteristics, followed by the impact of internal and external relationships on prosecutorial decision-making. Each of these elements are examined as factors that may influence the meaning prosecutors give to campus sexual assault as they decide to forward cases. Chapter 3 describes the proposed research design, including sampling, data collection and analysis.

## CHAPTER 2. REVIEW OF THE LITERATURE

In order to understand how Virginia prosecutors make sense of changes to campus approaches to investigating and adjudicating sexual assaults, this chapter provides an overview of the literature regarding various factors that may contribute to decision making. First, I present scholarly research and its traditional narrow focus on White heterosexual cisgender women, the rates of violence against marginalized communities, and the barriers to victim reporting to authorities. Next, I explore literature regarding case elements that have been shown to influence prosecutors' perceptions. I then offer a brief history of common law to offer a sociopolitical and legal perspective on rape within the context of force, resistance, and consent.

Case elements such as the legal constructs and victim and offender characteristics provide context and structure for prosecutors' views of sexual assault, which guides action on cases. Factors identified in the literature may influence how prosecutors perceive cases based on their fit with dominant schemas or views regarding typical victims and offenders (Tempkin & Krahé (2008). When victims do not reflect the stereotypical case, prosecutors may opt not to forward those cases to trial. A discussion of the importance of internal relationships with police and other actors within the courtroom environment, including judges and juries, offers insight into the ways these interactions inform prosecutors' work.

Finally, I examine the literature on the extent to which expanded external relationships influence prosecutors. I also present changes to federal and state public policies regarding campus sexual assault and how these may influence interactions with campus officials. By using qualitative methods, including in-depth open-ended interviews, my research offers insights into the unexplored area of emergent campus processes surrounding campus sexual assault and the meaning these have for prosecutors working with student survivors. To understand the scope

and impact of sexual assault, with a focus on the campus landscape, it is important to first explore how sexual assault is understood more broadly and who is most often impacted since this may affect the ways prosecutors make sense of reported cases.

While research has mainly focused on White heterosexual cisgender women, meanwhile sexual minorities have been shown to experience sexual violence at higher rates (Blosnich & Bossarte, 2012; Blosnich & Horn, 2011; Cantor et al., 2015; Coulter et al., 2017; Krebs et al., 2016; Langenderfer-Magruder. Walls, Kattari, Whitfield and Ramos, 2016; Martin et al., 2011; Munson & Daniels, 2015). This focus on cisgender female heterosexual victimization coincides with federal and state laws that have historically only recognized rape as occurring against women. The F.B.I. did not update its definition to include male identified victims until 2014 (Federal Bureau of Investigation, 2014). Such a narrow perspective in research and public policy may influence the meaning of sexual assault for prosecutors of the typical campus case and ultimately their decision of whether or not to forward cases to trial.

There is a wealth of research on victim reporting, specifically barriers to reporting that may also serve as obstacles to participation in the criminal justice process. Low reporting to authorities is especially high among among underserved groups. Victims' reluctance to participate in the criminal justice process may affect perceptions of prosecutors whose efforts to hold offenders accountable continue to be hindered by low rates of reporting. I explore each of these areas within the broader themes of challenges in defining the problem of sexual assault and barriers to reporting.

### **Issues in Defining the Problem of Sexual Assault**

With higher rates of campus sexual violence compared to other crimes, the ways prosecutors create meaning of these cases may be shaped by how often incidents are known to

occur, under what circumstances, and to whom. While other types of crime in the United States have declined by 75% since 1997 (U.S. Department of Justice, 2015) reports of campus sexual assault are on the rise. Between 2001 and 2011, reports for the number of forcible sex crimes increased by 52% on U.S. higher education campuses (Robers, Kemp, Morgan, & Snyder, 2014, p. 96). Annual security reports issued by universities have also shown increases in reporting between 2011 and 2013, particularly those who have been under investigation by the USDE. One of these, Occidental College in Los Angeles, reported 12 sexual assaults for 2011 and 64 reports of sexual violence for 2013 (Kingkade, 2014).

Most research has shown the highest rates of sexual assault among college women, with ubiquitous rates ranging from one in four (Fisher et al., 2000; Koss et al., 1987) to one in five females (Brodie et al.; 2015; Krebs, et al., 2007), as compared to around 1% of males (Krebs, et al., 2007 and Krebs et al., 2016). Piloting a new campus survey in 2016, Krebs et al. reported a prevalence rate of 10.3% for completed sexual assaults, 5.6% for sexual battery, and 4.1% for completed rape experienced by undergraduate females across nine participating schools during the 2014-2015 academic year. For males, the rates were 1.4%, 1.7%, and .8%, respectively. The latter is a slight increase in comparison to a previous survey a decade ago by Krebs et al. (2007) that showed one in 16, or less than 1%, of men reported that they were victims of attempted or completed sexual assault while in college.

Notably, the one in five statistic became part of national discourse following the Obama Administration's citation of the statistic in its 2014 call to establish the Task Force to Protect Students from Sexual Assault. Skepticism soon followed perhaps due to value differences in the way people perceive power, sexuality, and gender. Complexity also exists in the ways researchers examine sexual assault across studies using different definitions, samples, and

methodological strategies. Evaluating numerous prevalence studies, researchers Muehlenhard, Peterson, Humphreys, and Jozkowski (2017) argue there is empirical support for the statistic; yet focusing on sexual assault only may minimize the rates and impact of “lower forms” of coercion that may be just as damaging to victims. Risk also varies across populations of women including high school age women and those not enrolled at a college or university.

Researchers have found social and environmental variables as positively correlated with sexual assault incidents especially during college students’ first year, when they may be naïve to campus surroundings and have increased access to alcohol. The meaning prosecutors gave to these associated factors appeared to influence their view of cases in comparison to other sex crimes committed off campus. They also indicated awareness of juror biases, as supported by studies that indicate jury-eligible participants viewed victims as having lowered credibility when they were drinking at the time of an incident (Schuller & Wall, 1998; Wall & Schuller, 2000) and as more “sexually disinhibited” (Wall & Schuller, 2000, p. 267). Where jurors view these incidents as simply part of the college experience, students may experience heightened scrutiny.

Studies have shown evidence of a “red zone” for an increased risk of sexual violence among women between the first and second year of college (Cantor et al., 2015), and particularly the first weeks of college (Flack et al., 2008; Kimble, Neacsiu, Flack, & Horner, 2008). Carey et al. (2015) explored the increased risk of incapacitated rape and forcible rape at one large private university, with 15% of a sample of nearly 500 female students reporting the former and 9% reporting the latter before arriving to college. By their second year, lifetime prevalence, which included precollege experiences, showed the percentages had increased to 26% and 22%, respectively.



First-year women are more likely to be novice users of alcohol (Gross, Winslett, Roberts, & Gohm, 2006) and to obtain transport and gain access to college parties hosted by fraternities (Armstrong, Hamilton, & Sweeney, 2006). However, risk appears to remain for completed and attempted forced sex not only at parties, but also in other social situations. Interestingly, women are shown to be at a higher risk into their second year, but only in cases when students attend parties (Cranney, 2015). Prior studies have also shown higher risk for second year students because of the Greek organization parties attended during recruitment periods (Flack et al., 2008). However, females attending historically Black colleges and universities (HBCUs) have been found to experience sexual assault at lower rates than undergraduates at non-HBCUs, most likely due to lowered use of alcohol. When differences were narrowed in the study to a sample Black women only, the significance was diminished, which may signify that Black women's use of alcohol is low overall (Krebs, et al., 2011). Research on first-year female students being at increased risk, as well as the presence of alcohol, likely influences the meaning prosecutors create for the typical college case. My study examines how prosecutors viewed campus sexual assault cases' elements, and whether these served to make a case more or less convictable.

Although media attention have focused primarily on White cisgender straight women as the typical victim of college rape, members of marginalized communities experience sexual violence at higher rates overall. This can serve to compound the effects of sexual victimization and the resulting barriers for people who already have limited access to resources and assistance. Likewise, the ways prosecutors make sense of cases that do not fit the traditional male-female case can impact their decision making, especially if they believe judges and juries may not understand the narrative they present during trial. For example, students with disabilities are victimized at twice the rate of students without a disability 21% vs. 11%, respectively (Cantor et

al., 2015). Yet, estimates for the number of reports from the community are as low as three percent (Valenti-Hein, D. & Schwartz, L., 1995). In addition, the 2015 U.S. National Transgender Study found 47% of nearly 28,000 respondents reported having experienced sexual assault in their lifetime (James, et al., 2016). Students who identify as lesbian, gay, bisexual or other (nonheterosexual) are more likely to experience sexual assault than people who are heterosexual (Blosnich & Bossarte, 2012; Blosnich & Horn, 2011; Coulter et al., 2017; Krebs et al., 2016; Martin et al., 2011). One in three female bisexual and one in four transgender students experience sexual assault during their college years.

Research of sexual violence against people who are noncisgender or transgender has historically been scant (Munson & Daniels, 2015). However, more recent studies have shown high rates of sexual victimization among this group (Coulter et al., 2015; Coulter et al. 2017; Krebs et al., 2016, Mellins, et al., 2017) yet reporting rates are as low as 9% (Munson & Daniels, 2015) most likely due to discomfort with police (Grant, et al., 2011). A non-inclusive focus in research on sexual violence appears to intersect with a system of accountability that likewise had a narrow focus on the typical case of the White cisgender female victim. Added to this complexity are barriers to reporting, which can be even more marked among members of groups who perceive themselves as outsiders to the system, as discussed in the next section.

### **Barriers to Reporting**

Sexual assault is one of the most under-reported crimes in the United States (Karjane et al., 2005; Fisher et al., 2007) and most sexual assaults committed against females in the United States are not reported (Rennison, 2002; Tjaden & Thoennes, 2006) even more so in cases where the offender is an acquaintance (Fisher, Daigle, & Cullen, 2009 and Rennison, 2002). College students specifically are reluctant to report sexual assault to authorities (Fisher et al., 2000) and

prefer to share the incident with informal support such as friends or family (Orchowski & Gidycz, 2012 and Sabina & Ho, 2014). In cases where drugs or alcohol were used by the victim or offender, reporting was less likely to occur (Fisher, Daigle, Cullen, & Turner, 2003), which is especially challenging since alcohol dependence and abuse have been shown as risk factors for sexual violence for both females and males (Caamano-Isorna, Adkins, Moure-Rodríguez, Conley, and Dick, 2018) and for college women with mental health disabilities (Bonomi, et al., 2018). So, a cycle is formed where drinking enhances risk, and subsequent to an assault, victims may be less inclined to come forward due to self-blame or shame because they were under the influence.

Reluctance to report may in turn impact prosecutors' perceptions on the merits of forwarding the case to trial. The literature shows that prosecutors are more likely to reject charges when victims demonstrate low cooperation in case prosecution or when they do not show up for an initial interview (Spohn et al., 2001). Case dismissal, which can occur postcharge and arrest, has also been found to occur in cases where a victim refuses to testify, or where prior testimony in the preliminary hearing could not be introduced at trial (Spohn & Tellis, 2013). Prosecutors have also been shown to be less likely to forwarding a case where alcohol was involved (LaFree, 1981; McCahill et al., 1979, Spohn, 2001; Spohn & Holleran, 2001; Spohn & Spears, 1996). Factors such as victim credibility, characteristics of the assault, victims' trust in authority, social location, challenges to pursuing a case, and institutional barriers may prove especially relevant for college students who may also choose not to participate due to constraints such as busy schedules or transportation issues.

## Victim Credibility

The question of credibility of the victim's narrative appears to create a barrier to reporting and ultimately obstacles to prosecution. First, victims have been shown as hesitant to view their own assault as rape (Wilson & Miller, 2015) perhaps due to significant shame and self-blame (Edwards et al., 2014; Sable et al., 2006), which may be especially marked amongst African-American women (Tillman, Bryant-Davis, Smith, & Marks, 2010). When victims have a history of sexual activity, or if the perpetrator was intimately known, they are also less likely to label the incident as rape. These factors have lead scholars to suggest that "research has consistently found that a large percentage of women—typically over 50%—who have experienced vaginal, oral, or anal intercourse against their will label their experience as something other than rape" (Kahn et al., 2003, p. 233).

Regarding campus assault specifically, "Student victims (12%) were more likely than non-student victims (5%) to state that the incident was not important enough to report" (Sinozich & Langdon, 2014, p. 1). Victims may also fear loss of confidentiality (Sable et al., 2006) yet having access to confidential reporting mechanisms and victim services on campus appears to mediate these barriers (Brubaker, 2009). Victims may recant or state their initial complainant was false. Being unwilling to accept the incident as a rape and later withdrawing their statement necessarily impacts a prosecutor's ability to forward a case. However, research has shown some prosecutors to understand these difficulties, as one study participant indicated, "Many victims recant because. . .they are tired of dealing with it; they want to go back to normal and they feel responsible for the stress that has emerged" (Spohn & Tellis, 2014, p. 162). My study findings also contain evidence of prosecutors' empathy for survivors.

The timing of the victim's report has also been found to impact prosecutorial decision making (Beichner & Spohn, 2005; Kingsnorth, Lopez, Wentworth, & Cummings, 1999a; LaFree, 1981, 1989; Spohn & Spears, 1996; Stewart, et al., 1996). Namely, delays in reporting may bring a victim's story into question. However, the effects of trauma could result in delays in reporting where memory is impaired. Research has shown the effects of sexual violence on victims' long-term psychological well-being and ability to recall fragmented memories (Halligan, Michael, Clark, & Ehlers, 2003). This can also lead to what appears to be inconsistent statements, which may present a challenge for prosecution efforts. As shown in this study's result, the way prosecutors view victims' narratives appeared to be influenced by their perspectives on the effects of trauma, which indicated greater understanding of why victims recant.

### **Characteristics of the Assault**

The presence of certain case elements not only seems to enhance victims' willingness to report, but to also increase the rate at which prosecutors forward cases to trial. Reporting is more likely when victims are physically injured during the sexual assault (Bachman, 1998 and Spohn, Rodriguez, & Koss, 2008), when they are attacked by more than one perpetrator (Gidycz & Koss, 1990), when there are witnesses to the incident, or when forensic evidence is available (Kerstetter, 1990; Spohn et al., 2008). Research has shown that prosecutors tend to seek convictions in cases deemed more severe and where significant evidence and an offender's prior criminal history is available (Alderden & Ullman, 2012; Frazier, Haney, & Roesch, 1996; Kingsnorth, Macintosh, & Wentworth, 1999b; Spohn & Holleran, 2001; Spohn & Spears, 1996).

Cases where a weapon was used were also more likely to be reported to police (Bachman, 1998) and forwarded, most likely due to the increased case severity and the possibility of

evidence (Kerstetter, 1990). The presence of physical injury as well as the availability of witnesses and evidence also influences law enforcement and prosecutors' decisions to arrest and forward a case to trial. Therefore, a reinforcing dynamic may operate between victims and criminal justice professionals, where victims are reluctant to report cases without these elements and prosecutors may be less likely to seek conviction.

### **Victims' Trust in Authority**

Victims indicating lack of trust in authorities may affect the way prosecutors view victims of sexual assault and the victims' reliability as effective witnesses during trial. This can present obstacles to prosecution, since victims may withhold information such as intimate details of an incident if they do not trust professionals within the criminal justice community. Prior research (Sinozich & Langdon, 2014) has shown victims as reluctant to report because they believe justice to be a low probability. They also report concerns that police would not want to be bothered, not believe the report, or would be hostile in response to the victim (Fisher, et al., 2000).

Males in particular may be less likely to report sex crimes (Holmes, Offen, & Waller, 1997) due to a dominant social construction of masculinity that normalizes a sexually active and dominant male, as well as social stigma and shame associated with those who violate this norm. As a result, men may fear greater negative scrutiny of their role in the assault since "real men don't get abused" (Holmes et al., 1997, p. 78). Sable et al. (2006) found fears of being labeled as gay as another reason male victims did not report as well as assuming their case would not be prosecutable. For gay men who are assaulted by another man, there is an additional layer of anxiety in disclosing the assault due to societal homophobia. Not only does hegemonic

masculinity presume men are at the ready for sexual interactions, but gay and bisexual men are presumed to be even more sexually active (Guadalupe-Diaz, 2014).

Fears of reporting may be even more marked for people who are transgender. As one survivor stated, “I was afraid to go to the police *for the last one* [emphasis added] because my attacker was a woman and I had enough trouble trying to convince them it was a real attack when my attacker was male” (Munson & Daniels, 2015). A 2011 report, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (N = 6,450) showed that just under half of transgender respondents indicated discomfort in reporting to law enforcement (46%), with 30% sharing they has been treated disrespectfully by officers in the past (Grant, et al., 2011).

Reluctance to report are not isolated to police and prosecutors, however. Recent research showed transgender, genderqueer, nonconforming, and questioning students were less likely to report to campus officials and to indicate their university would conduct a fair process (Cantor et al., 2015). The February 22, 2017 rescission of the Obama Administration’s ED guidance on students who are transgender may also affect students’ perceptions of campus support. The guidance required schools to identify students according to gender identity (USDE, 2017).

### **Social Location**

Studies suggest that barriers to reporting are related to individuals’ social locations around race, sexuality, class, and other factors. In the landmark essay, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics” (1989), Crenshaw conceptualized intersectionality as a way of understanding how oppression is experienced by people holding multiple identities (e.g., female and African-American). In *Black Feminist Thought* (2009), researcher Patricia Hill

Collins explored intersectionality across several areas including the family unit, social relationships, and the criminal justice system. Intersectionality moves beyond additive explanations to explore the impacts of racism, sexism, heterosexism, and others forms, which constitute a “matrix of domination” (Collins, 2009, p. 21) across systems.

Forbes-Mewett and McCulloch (2016) suggested female international students attending college hold intersecting identities in terms of race, class, and gender that serve to increase vulnerability to different forms of gender-based violence. Their research reviewed multiple crime types across interviews ( $N = 46$ ) conducted in Australia and the United States. According to the researchers, “the consensus was ‘a lot of crimes don’t get reported. . .’” (p. 348). Gender-based violence such as transactional sex for basic needs such as school tuition, good grades, or other consumer goods and sexual harassment was “kept hidden. . .It is downplayed all the time” (Forbes-Mewett & McCulloch, 2016, p. 348). Brubaker and Mancini’s (2017) survey of campus advocates and officials found 73% of respondents indicated that they were slightly to very concerned about international students’ particular needs and the response of authorities to the community in addition to the LGBTQ community.

For the victim of sexual assault, they likely experience multiple layers of oppression including race, ethnicity, sexual orientation, and gender identity from the first incident of violence to the final stages of prosecution and beyond. By exploring patterns across populations, I requested that prosecutors offer their perceptions on why they were not seeing marginalized and underserved communities come forward. We also discussed how these cases present particular challenges for decisions to prosecute.



## Other Challenges to Pursuing a Case

Once victims decide to report, they may also be more likely to withdraw from the process if they do not trust the system, and this may frustrate prosecutors who have already dedicated time and effort to these cases. As a result, this experience may make them less likely to prosecute a similar case in the future. Scholars have argued the criminal justice process can seem overly burdensome. As Susan Estrich (1987) described in *Real Rape*, “Deciding to report . . . is a step most victims never take. If they do, it is only the first step. The road to conviction and sentencing is long” (p. 15).

Murphy, Edwards, Bennett, Bibeau, and Sichelstiel (2014) suggested public policies be designed to consider the experience and perceptions of victims, since their reasons for deciding to participate in the criminal justice process differ. Students in particular may have considerable time commitments, or may not have access to transportation for court appointments and hearings usually held off-campus. For example, a college student in Georgia, who reported a sexual assault to both campus and police, recently indicated to lawmakers that the campus process was more responsive to her needs and less complicated (Grinberg, 2017). Additionally, students attending university with an offender may fear retribution from their attacker or their peers.

Since college students face unique challenges, prosecutors may find these cases to be even more difficult to work, and perhaps not worth the effort from a cost-benefit standpoint. This reasoning would be consistent with March and Simon’s (1958) theory of bounded rationality, where individuals strive to reduce uncertainty based on limited information, as found in the work Albonetti’s (1986) study of over 4,000 felony cases retrieved from the Superior Court of Washington, DC. Data showed prosecutors as more likely to drop cases when greater uncertainty on a successful case outcome existed. Yet, grounded theory researcher Strauss

(1993) indicated focusing on thought and action from a means to ends perspective cannot fully explain human behavior. My study explored other factors, such as the influence of relationships and the meaning these had for prosecutors, on decision-making. The findings revealed the processes involved in prosecuting sex crimes as more complex than basic rationality.

### **Institutional Barriers**

A traditional culture of silence on college campuses and previous lack of information sharing with the criminal justice system may negatively influence the ways prosecutors view college administrators and campus investigation and adjudication procedures. Prior to the ED (2011) Dear Colleague Letter on campus sexual assault, higher education institutional barriers included unclear reporting lines, as well as students not understanding the process (Karjane et al., 2005). Other research has indicated students' perceptions of campus judicial processes as ineffective may have deterred victims from reporting (Amar et al., 2014). The Center for Public Integrity (Lombardi, 2009) published results of nonrandomized interviews with college administrators, student survivors of sexual assault, and off-campus crisis centers. Arguing campus-based processes were "shrouded in secrecy" (p. 1), the author noted that some students were encouraged to drop reports and sign confidentiality agreements designed to prevent them from sharing the incident with outside sources (Lombardi, 2009). These issues were features in the 2015 *The Hunting Ground* documentary, which followed the stories of student sexual assault survivors and campus' institutional inaction in response to their assaults. The film won several national awards and continues to be accessible to campuses for screening and discussion (Dick and Ziering, 2015).

Legislators have been taking notice of institutional barriers and more recently, due process concerns. In 2014, former prosecutor Senator Claire McCaskill initiated a survey of over

400 U.S. colleges and universities and found just 51% of institutions offered a hotline, and even less permitted online and/or confidential reporting, 44% and 8%, respectively. As for sexual assault training faculty and staff, over 20% received no training, while students at over 30% of colleges and universities received no such training. More than 40% of schools in the national sample had not conducted a single investigation in the past five years. More than 20% of the nation's largest private institutions conducted fewer investigations than the number of incidents they reported to the ED, with some institutions reporting as many as seven times more incidents of sexual violence than they have investigated. (McCaskill, 2015, p. 1).

The Clery Act requires colleges and universities to report information on certain crimes including rape (Yung & Lamb, 2015). Yet, previous research showed that only 37% of colleges and universities reported their data per Clery Act requirements (Karjane et al., 2005). While the ED does not publish statistics on Clery Act compliance (Campus Safety Help, Westat Corporation, personal communication, January 5, 2017), campus report statistics available through its Campus Safety and Security site shows 11,146 records for 2014 (ED, 2016a). Still, a review of Clery data conducted by the American Association of University Women (2017) found that 89% of higher education institutions reported just one rape incident in 2015, the most recent period available. It is unclear whether or not transparency has increased with respect to Virginia colleges and universities especially, where they have mandatory reporting requirements under law. The results indicate that prosecutors did not witness a significant increase in reporting. My research also shed light on prosecutors' views on campus officials' investigation practices and sharing and/or withholding reports and evidence needed for conviction.

Late in 2017, U.S. House members pushed back on colleges and universities apparent due process abuses by introducing the Promoting Real Opportunity, Success, and Prosperity through

Education Reform Act (PROSPER) Act. The Act would have required institutions to provide adequate notice and allow the opportunity to respond to allegations. Campus officials would need to provide access to material information and ensure that no conflicts of interest exist throughout the investigation. Colleges and universities would also be required to institute a standard of evidence “based on such standards and criteria as the institution considers appropriate...so long as the standard is not arbitrary or capricious and is applied consistently throughout all such proceedings” (U.S. House of Representatives, 2017, p. 437).

In sum, what is known from research on prevalence of sexual violence among groups, including marginalized groups and barriers to reporting, may affect the meaning prosecutors create about campus sexual assault cases. Thus, decisions to forward a case would be challenged by case elements such as low or delayed reporting in cases where the offender is an acquaintance or where alcohol use was present. The data from my study supported this notion. Additionally, victims who are unwilling to view the incident as sexual assault or who fear authorities will not believe them would seem to frustrate prosecutors who already facing resource constraints. However, the findings from my study indicated prosecutors as having a great deal of empathy for the challenges of coming forward and participating in the process.

The availability of evidence such as witnesses appears to not only impact victims’ reporting, but prosecutors’ willingness to pursue the case. Victims’ lack of trust in the system, especially among marginalized or underserved groups may create even more barriers to conviction. Finally, prosecutors’ beliefs in campus officials’ ability to effectively investigate and adjudicate sexual assault may have been negatively impacted by a perceived culture of silence of college administrators, which was consistent with my study findings. The ways in which prosecutors view campus sexual assault is also grounded in common laws that shape the way

rape is viewed as a crime. These elements are described in the next section to provide context to how rape has been viewed historically and how laws have evolved and continue to do so over time.

### **Criminal Justice Process: Common Law**

The historical and legal constructs of rape law are key to framing the discussion on the ways prosecutors perceive and create meaning regarding sexual assault as a crime. Knowing that laws directly affect prosecutors' work, I sought to explore how and why legal elements influence their perceptions and ultimately their decision-making. The criminal justice process, like other systems, is affected by cultural viewpoints, social constructions, and notions of what rape is, who commits rape and who is victimized. Thus, laws not only define harmful behaviors, but also are grounded in historical context. Legal scholar Alexander (2009) argued, "Reality shows that rape law has, thus far, been unable to address the societal biases of judges, juries, prosecutors, and other members of the justice system" (p. 45). This section reviews rape law formation and how a number of biases instituted through public policies may continue to influence the perceptions of prosecutors.

Today's rape laws are based on common law, which was formed in England beginning in the Middle Ages and is based on precedent and custom (Regents of the University of California, 2010). Sexual assault criminal statutes in the United States originally mirrored British common law in several ways. First, victims must present corroborating evidence to include evidence of resistance. As previously discussed, this need for evidence can influence a victim's willingness to come forward with an assault. Evidence of resistance also has been shown to influence prosecutor's decision to take cases to trial (Spohn & Horney, 1993; Spohn & Spears, 1996). Second, charging exemptions existed for men who were married to the victim. While these

exemptions have been largely removed, they may continue to lead to higher scrutiny of a case involving married couples. Third, before the institution of rape shield laws in the 1980s, consideration of a victim's sexual history was permitted to determine a victim's credibility (McNamee, 2001) by prosecutors and jury members. Each of these standards may continue to affect the meanings developed by prosecutors and the ways they approach cases, especially concerns with juror perspectives as indicated by prosecutors in my study.

Historically, rape was viewed as a family issue and as a matter of protection of a young "girl's chastity, where laws were aimed to secure the smooth transfer of property rights. . .from her father to her husband" (Fischel, 2016, p. 88). Additionally, during Ancient Roman rule, only certain people of status and social standing were seen as potential victims of sexual assault, including virgins, widows, and boys. In their view, sex workers, innkeepers and actresses could not be raped (McNamee & Backes, 2012). Research has shown victim blaming persists (Corcoran & Thomas, 1991; George, Gournic, & McAfee, 1988; Norris & Cubbins, 1992; Sims, Noel, & Maisto, 2007) and these biases, especially among police and jurors seemed to influence the way prosecutors viewed and acted upon sexual assault cases.

Turning to the marital rape exemption, in 1778 Sir Matthew Hale argued in his treatise, *Historia Placitorum Coronae, History of the Pleas of the Crown*, that marriage constituted permanent consent. Although English common law had not held this view prior to his statement, British colonies and states in the United States widely adopted this mandate. In 1993, North Carolina was the first state to remove the marital rape exemption from its statute (Goodwin, 2016). Virginia followed suit in 2002, after a contentious debate with then member of House of Delegates Richard Black who argued,

I do not know how on Earth you could validly get a conviction of a husband-wife rape where they're living together, sleeping in the same bed, she's in a nightie, and so forth, there is no injury, there's no separation or anything. (Portnoy, 2016, para. 14).

When presented with a case involving two parties who are married or in a relationship, prosecutors may be challenged to seek successful conviction where there is an underlying assumption of consent because of prior intimacy. Earlier presumptions on a married man's "right" to engage in sexual activity with his wife likely reinforces the notion that acquaintance sexual assault is less serious, which is relevant to my study since campus assaults primarily feature parties known to each other.

To prove guilt, prosecutors must weigh the actions of the victim prior to and during the incident. Most crimes are recognized through the prohibited act or *actus reus* committed by a defendant or their mental state at the time of the act, *mens rea*, Latin for "evil mind" (Fradella & Fahmy, 2016, p. 143) of the perpetrator. Conversely, in rape cases courts have traditionally evaluated the victim's behavior at attempting to get away or resisting the actions of the offender. Rape, "an accusation to be easily made and hard to be proved," (Hale, 1778, p. 635) has historically been viewed as sex accomplished through use of force, not simply the threat of force, and against a female's will.

Prosecutors must demonstrate lack of consent through victim's marked resistance to activity, where the burden was placed on the person to fight back against their attacker (Buchhandler-Raphael, 2011; Fradella & Fahmy, 2016). In 1886, the Virginia Supreme Court ruling in *Bailey v. Commonwealth* remarked of the victim, "Though she objects verbally, if she makes no outcry and no resistance, she by her conduct consents, and the carnal act is not rape in the man" (82 Va., 111). The need for victims to show significant resistance was later established in the 1906 case of *Brown v. State*. The 16-year-old victim described her attempts to get away

from her neighbor, the defendant, by trying to get up, tugging at the grass on the ground, and screaming until he placed his hands over her mouth until she was “almost strangled” (p. 537). While the defendant was convicted by the lower court, on appeal the decision was reversed due to the perceived absence of “the most vehement exercise of every physical means or faculty. . .to resist the penetration of her person, and this must be shown to persist until the offense is consummated” (p. 538).

Recognizing the additional harm that could result from resisting perpetrators, previous requirements for victims to “display ‘utmost’ or even ‘earnest’ resistance” (Model Penal Code, § 213.1 cmt., 1980, p. 305) were eliminated across U.S. jurisdictions in the 1980s. However, the majority of states continue to require prosecutors to provide both evidence of force *and* lack of consent to meet the legal definition of rape (Buchhandler-Raphael, 2011). As of 2011, only six states in the United States conceptualize nonconsensual sex as rape. For example, New Jersey law recognizes both physical force as well as coercion. Per the landmark case *State of New Jersey in Interest of MTS* (1992), “physical force” requires the absence of affirmative and freely-given permission. . . a person's failure to protest or resist cannot be considered or used as justification for bodily invasion” (p. 450).

In practice, however, the affirmative consent standard is not widely practiced across U.S. jurisdictions at the local level (Buchhandler-Raphael, 2011), although the standard is increasingly applied in campus policies. Title IX experts contend “consent, is affirmative, by definition” (Black et al. 2017, p. 49) while other legal scholars (Cantalupo, 2016a) suggest the affirmative consent standard may not go far enough in protecting victims from sexual acts that are unwelcome. Through the lens of consent, the campus investigator and/or adjudicator reviews behavior of the reporting party for indication of consent, and whether the accused knew or



should have known consent was present. By contrast, the researcher offered a more equitable approach may applied by evaluations of whether the offender's conduct is unwelcome and offensive from a subjective and objective standpoint. So, even if the person initiating sexual contact is not aware it is unwelcome, campus officials may still find the defendant responsible.

The divergence between consent constructs in criminal law and campus policy may bring about tensions between processes. According to a local prosecutor in Virginia, convictions based on the emerging affirmative consent standard remains an obstacle in criminal courts, even as victims are demanding recognition of affirmative consent (Cynthia Micklem, personal communication, November 3, 2016):

More and more victims are stating that they conveyed their dissent by not saying yes. Not saying yes does not immediately nor automatically equate to sexual assault under Virginia law. Obtaining affirmative consent is not a requirement under Virginia law. Not saying yes or not obtaining a yes may equate to sexual misconduct under universities policies and code of conduct. . .case law discusses showing proof of intent, the required intent is established upon proof that the accused knowingly and intentionally committed the acts constituting the elements of rape. The elements of rape . . . consist of engaging in sexual intercourse with the victim, against her will, by force, threat, or intimidation... Without some evidence that the victim expressed unwillingness to engage in sex, a prosecution is unable to proceed.

The extent to which prosecutors viewed differences in evidentiary standards as posing challenges came forth during interviews, especially as they related to victims having higher expectations for justice.

While rape shield laws instituted in the 1980s were passed to prohibit introduction of a victim's sexual history, the image of the innocent female victim persists and realizing this, prosecutors may be challenged to forward a case that does not fit the standard. This perception could be even more of a challenge for prosecutors working campus cases where victims may be scrutinized by jurors based on conservative views surrounding sexual activity and alcohol consumption. Furthermore, the impact of rape shield laws on juror perception is unclear

(Anderson, 2002) and evidence of past sexual behavior is still regularly admitted through application of exceptions in rape shield laws. For example, Virginia's rape shield law §18.2-67.7, Section B states, "Nothing contained in this section shall prohibit the accused from presenting evidence relevant to show that the complaining witness had a motive to fabricate the charge against the accused" and as Alexander (2009) noted, "Once jurors are given an opportunity to hear about the sexual history of the accused, the likelihood is increased that the information will create bias in the mind of the jury" (p. 61).

One might offer modern courts and prosecutors have a clearer understanding of the dynamics and constructs of sexual violence as compared to historical viewpoints. Nevertheless, as precedents, laws serve as foundational legacies that frame the meaning prosecutors create based on elements of force, resistance, and consent in addition to victim typologies such as being single and chaste. This combination of case elements have influenced and continue to influence prosecutors' perspectives in spite of cultural pressures to expand the way laws define sexual violence from an affirmative consent standard.

### **Case Elements: Victim and Offender Characteristics**

Prosecutors may make sense of cases based on larger cultural notions of campus sexual assault, including who is most likely to become a victim and who is most likely to offend. In cases where victims and defendants do not present the typologies of innocent and predatory, respectively, prosecutors' decisions to forward a case may be curtailed. The relationship of the victim and offender may also matter, where acquaintance assaults are viewed as less serious than a stranger attack. The intersection of race and ethnicity in sexual assault convictions has also received a great deal of attention in the literature, and I sought to examine these as potential

factors that prosecutors weigh in their decisions to go to trial. The following discussion centers on each of these areas and the ways they may influence prosecutorial perception and action.

### **Stereotypical Rape Scenarios**

Discourse on the “true rape,” where a victim presents as both innocent and sober, appears to impact perceptions more broadly as well as prosecutorial decision making. Research has shown reluctance on the part of study participants to label sexual assault vignettes as meeting the legal definition of rape. This was even more the case when scenarios involved alcohol consumption, ambiguous consent, and previous sexual behavior (Deming, Covan, Swan, & Billings, 2013). Other research supports the notion that blame is more likely to be assigned to women who had been assaulted while using alcohol (Corcoran & Thomas, 1991; George et al., 1988; Norris & Cubbins, 1992; Sims et al., 2007). Perhaps recognizing this perception as widespread, decisions to prosecute have also been found to be hindered when victims were drinking or using drugs at the time of assault (Campbell, 1998, Campbell, Wasco, Ahrens, Self, & Barnes, 2001; LaFree, 1981; McCahill et al., 1979, Spohn, 2001; Spohn & Holleran, 2001; Spohn & Spears, 1996).

The effects of alcohol and drug use are of particular relevance to college student cases, since the majority of sexual assault offenses involve alcohol consumption by one or both of the involved parties. In a study by Mohler-Kuo, Dowdall, Koss, and Wechsler (2004), data collected from over 100 schools participating in three surveys conducted by the Harvard School of Public Health College Alcohol Study showed 72% of respondents experienced rape while intoxicated. Moreover, a higher risk was seen among women who were under the age of 21, Caucasian, who resided in sorority houses, abused illegal drugs, drank heavily in high school and were enrolled in colleges with high rates of heavy episodic or binge drinking.

A 2018 study by Caamano-Isorna, Adkins, Moure-Rodríguez, Conley, and Dick explored several risk factors associated with sexual assault. Across a two-cohort sample of 5,170 university undergraduates, the data showed that alcohol abuse and dependency were associated with increased risk in males, and dependency on its own was associated with a higher risk for females. Increased risk for females was also found for those who use marijuana. Overall, previous victimization appeared to yield greater risk for both men and women. Sexual orientation and race also showed a relationship, whereas males and females who identified as bisexual were shown as having higher risk at different points during their college years. Identifying as female and mixed race was also associated with higher risk (Caamano-Isorna, et.al, 2018). When faced with these case elements, prosecutors appeared to weigh the views of police, whose preexisting bias and stereotypes impacted actions during investigation, as well as judges and jurists who held conservative views on sexuality and the role of alcohol.

### **Victim Characteristics**

In considering perceptions of judges and juries, prosecutors have been shown to evaluate the behaviors of victims leading up to an assault (Spears & Spohn, 1997, Stewart, et al., 1996). If victims are seen as somehow responsible for a sexual assault in contrast to other types of crime, prosecutors may be less successful in convincing a jury member of offender guilt. Spohn and Horney (1993), reviewed a sample of 24,000 court record data from six jurisdictions on all rape cases presented for trial from 1970 through 1984. Their research was an attempt to understand the impacts of rape law reform from the previous period. Hypothesizing that post reform more cases would represent fewer victims consistent with stereotypical images, the data instead showed a higher proportion of cases involved questions on the victim's moral character, on victims who were acquainted with the defendant, and on perceived victim risk-taking

behavior (Spohn & Horney, 1993). The latter may include walking alone at night, going to the suspect's home, and being in an area where illicit drugs are sold, which were also found to reduce the likelihood of prosecution (Beichner & Spohn, 2005).

Spohn and Tellis (2013) conducted qualitative interviews with 30 Los Angeles County District Attorney's offices, where one participant explained a tendency to seek probation in lieu of a prison sentence for suspects who rape "party girls" (p. 46). In these circumstances, the offender appeared to take advantage of an opportunity with women known to be sexually active rather than as a predator "like the guy grabbing the girls off the streets" (p. 46). Additionally, Frohmann (1997) argued prosecutors may use categories to classify victims, especially the morality value placed on their behavior leading up to an assault. In this way, they would justify their rejection of the case. First, prosecutors used inconsistencies in the victim's story or between the victim's narrative and prosecutors' notions of stereotypical assaults in rejecting cases. Second, prosecutors were also shown to attribute hidden agendas to the complainant, or suggesting a false complaint by elevating the victim's behavior at the time of assault as well as their relationship with the offender.

Spohn and Holleran (2001) explored the intersection of victim behavior and race, where in cases involving White victims and Black offenders, risk-taking behavior on the part of victims resulted in lower convictions and dismissal of charges. In a study by George and Martínez (2002), the researchers found both White and Black women were deemed more blameworthy in rape scenarios where the perpetrator was of a different race. Black women were judged as more culpable if the perpetrator was White, while a White woman raped by a Black man was found more blameworthy. As explained by researcher Gail E. Wyatt (1992), "The credibility of Black women as rape victims has never been established as firmly as it has for White women" (p. 86).

Foley, Evancic, Karnik, King, & Parks (1995) found that vignettes presenting the assault of a Black woman were viewed by participants as less severe, and more akin to acts of intimacy than as a crime. This bias may explain why African- American women have been shown as less likely to have their case forwarded to trial and result in conviction (LaFree, 1980). Although it will be shown that prosecutors who participate in my study were reticent to discuss the influence of race and ethnicity, they indicated awareness of overall biases against underserved communities.

The complexity of overcoming powerful bias and judgment against victims was exemplified by a prosecutor interviewed by Spohn and Tellis (2013, p. 182).

Do I file things I think will be hard to prove? Yes. If I interview a victim I find incredibly compelling and there's a richness to the detail, a believability and ring of truth to how she describes things, then I will file it, explaining to her that the odds are really low and is she still willing to go forward? I tell her we have problems here and we could very well lose. If I have a go-ahead from the victim then I will go forward. It's all about the victim. She is on trial. All the legislation we have about not revictimizing the victim, but at the end of the day we are putting her on trial; why she wore what she wore, went where she did, and so on. She is being judged.

The relationship the victim has with the offender has been shown to influence decisions to forward cases. First, both police and prosecutors have been found more likely to agree on the level of a charge when the suspect is a stranger (Holleran, Beichner, & Spohn, 2008). Second, several studies have shown stranger rape is more likely to be prosecuted than cases where the offender is known to the victim (Battelle Memorial Institute, 1977; Loh, 1980; Spohn, Beichner, & Davis-Frenzel, 2001), where convictions are also less likely in acquaintance cases (Lonsway & Archambault, 2012; Spohn & Spears, 1996; Williams, 1981). As Bryden and Lengnick (1997) described:

Afraid that losing cases will look bad on their records, prosecutors are excessively reluctant to prosecute acquaintance rapists. When they do prosecute, the system puts the

victim rather than the defendant on trial. Juries, motivated by the same biases as other participants in the system, often blame the victim and acquit the rapist. (p. 1196)

In more recent studies (Ellison & Munro, 2010) where attitudes of mock rape trial participants appeared to accept the commonality of acquaintance assault, “this recognition has done little to ameliorate reluctance to convict perpetrators, particularly in the absence of signs of physical resistance and/or injury” (p. 800) on the victim.

Race also appears to play an important role in how the court views the victim and offender relationship. Bouffard (2000) showed conviction as more likely when a Black offender and White victim had a previous relationship and when the case met other criteria, such as the availability of forensic evidence, and the severity of the incident including the use of a weapon or in cases where crime took place outdoors. Since most campus sexual assaults involve peers (Krebs et al., 2007), these cases may present more marked challenges for prosecutors since they may be less likely to have a successful conviction. The race of the offender may also interplay with the way a prosecutor makes sense of a case presented before them by police. Although the data obtained through my study did not confirm the latter, I was likely due to disinclination to name race as an important factor, prosecutors did offer accounts regarding the challenges in prosecuting acquaintance cases.

Examination of victims’ actions and the ways they are perceived to have contributed to an assault may continue to impact prosecutors charging decisions and seeking sanctions and convictions. My study sought to understand this complexity, particularly in the ways prosecutors created meaning for college cases based on biases and stereotypes. I asked questions relating to the types of decisions prosecutors make, and what factors they took into account as well as how they weighed the perceptions of judges and juries in their assessment to forward a case to trial. I also explored the ideal prosecutable case from the study participants’ perspectives to reveal

insights into this area, as well as characteristics of offenders, where the presence of a stereotypical predator may have been more likely to go to trial.

### **Offender Characteristics**

In this section, I review the research on perpetration as another perspective on potential impacts of offender characteristics on prosecutors' perceptions. Namely, a case with an offender that meets the stereotypical notion of a predator may be more prosecutable than cases where an offender holds a higher status or position in society. I explore this relationship, beginning with the motivation of perpetration, which was studied initially through psychological theoretical frameworks (Gebhard, Gagnon, Pomeroy, & Christenson, 1965; Karpman, 1975; Maniglio, 2012) to understand individual pathology and maladjustment. In the 1970s, feminist theory elevated the literature to a political and sociocultural analysis of offending (Brownmiller, 1975; Medea & Thompson, 1974; Russell, 1975). The ways perpetration is understood by prosecutors, for example how they view the typical rapist, may impact their decision to take a case. For example, Lisak and Miller's (2002) research on the undetected rapist, who repeatedly commits acts of sexual assault, may give rise to prosecutors' perception of a small percentage of offenders on a college campus committing multiple acts.

Conversely, conflicting research on the typical offender may give rise to different viewpoints of the notion of the predatory rapist for prosecutors. Swartout et al. (2015) found 72.8% of men who committed college rape only offended during one academic year versus repeated acts across college years. As a result, the researchers offered, "Exclusive emphasis on serial predation. . . is misguided" (p. 1148). Additionally, if the criminal justice system directs its attention solely on rapists who exhibit a pattern, this may tempt judges and juries to overlook single acts committed by persons without a previous criminal history. Findings from my



research showed that prosecutors viewed cases matching the predatory profile as serious and warranting prosecution, although actual conviction rates were not explored.

During a high profile 2016 Stanford University rape trial, a judge convicted defendant Brock Turner of three felony counts of sexual assault. However, Turner only received three years' probation in spite of testimony from witnesses who discovered the defendant lying on top of the victim's unconscious, partially nude body behind a dumpster. The bystanders intervened and detained the defendant until police arrived. Subsequently, the victim impact statement became national news, as a "7,244-word cri de coeur against the role of privilege in the trial and the way the legal system deals with sexual assault" (Stack, 2016, para. 4). Questions also arose concerning extralegal factors of gender, race, and class privilege, which may have operated in the case since Brock Turner is a White, cisgender, upper class male (Stack, 2016). Subsequent to heightened scrutiny, California legislators passed AB-2888, later signed into law in September 2016. The law "prohibit[s] a judge from handing a convicted offender probation in certain sex crimes such as rape, sodomy and forced oral copulation when the victim is unconscious or prevented from resisting by any intoxicating, anesthetic or controlled substance" (Section 1203.065, Chapter 863, 2016).

Previous research has examined the impact of race and ethnicity on prosecutors' decision-making and the rate in which convictions occur (Kingsnorth et al., 1999a; LaFree, 1989). In 1975, Susan Brownmiller (1975) remarked, "No single event ticks off America's political schizophrenia with greater certainty than the case of a black man accused of raping a white woman" (p. 230). It is important to continue to examine this perception, to learn the ways it persists or declines over time. The literature has demonstrated the race and ethnicity of offenders affects prosecutors' decision-making on plea agreements, case dismissal, and seeking mandatory

prison sentences as well as judges and jurors' conviction and sanctioning. Between 1930 and 1989, 80% of the 453 men executed in the United States for rape were African-American (LaFree, 1989). Of a sample of 343 African-American men who had been wrongly convicted since 1970, Free and Ruesnick (2012) found that 15 percent of rape and sexual assault cases could be contributed to misconduct on the part of prosecutors. Sommers, Goldstein, and Baskin (2014) analyzed 541 violent crime cases across five jurisdictions and found minority males, predominantly Black males, as less likely to receive a plea agreement and therefore avoid a more serious sanction regardless of the sex, race, or ethnicity of their victim in lieu of going to trial. Likewise, where the victim was White, minority males (Hispanic and Black) were less likely to receive a plea agreement.

Harsher penalties for Blacks and Hispanics have also been seen across studies (Steffensmeier & Demuth, 2000; Steffensmeier et al., 1998). In a study by Ulmer et al. (2007), prosecutors were found to be nearly twice as likely to seek mandatory sentences against Hispanic defendants as White defendants. Scholars have also explored the ways the impact of race may have shifted over time. In a meta-analysis of a sample of 68 studies since 1970, Free (2002) initially found no differences in the relationship between decision to prosecute and race. However, Free suggested the findings do not necessarily reflect courtrooms are free from discrimination. Free references prior research on higher arrest rates for African-American males (for current example, see Kirk, 2008) in his argument, "If police use different arrest standards for African Americans and whites, then racial equity requires higher dismissal rates for African-Americans than for Whites" (Free, 2002, p. 211). Nevertheless, this was not seen in the research. Also, in pretrial decisions to release and bail amounts, a clear pattern of bias emerged across studies and appeared to persist over time (Free, 2002). A complicated interaction also exists

when the race of both offenders and victims vary. Chandler and Torney (1981) found charges to be significantly more likely in sexual assaults involving minority suspects and White victims in contrast to cases where the victim was a minority and the suspect White, or where victims and offenders were of the same race.

Research on prevalence and reporting, especially amongst marginalized communities, provides context for how prosecutors' perceptions of sexual violence might be influenced by a narrow White, heterosexual, and cisgender lens. I also reviewed case elements including legal constructs and victim and offender characteristics and impacts of intersectionality, which raised important issues for data analysis. I sought to examine these factors through questions on how prosecutors anticipated and considered jurors' perceptions. I also designed interview questions to elicit responses on the ideal prosecutable case, factors involved in decision making and perceived patterns across groups. In the end, I found that study participants were less inclined to discuss their views on race, which is consistent with Gooden's (2014) *Race and Social Equity: Nervous Area of Government*.

Internal relationships with other criminal justice actors, from police who first respond to victims and collect evidence, to juries and judges who issued findings of guilt and sanctions, also appeared to influence the work of prosecutors. In the next section, I discuss these relationships and their potential impact on the meaning prosecutors created for campus sexual assault cases, which in turn influenced their decision-making.

### **Internal Relationships**

As social actors, prosecutors may create meanings about their environment based on interactions with others, in particular their work with other individuals including police, defense attorneys, judges and juries. This section reviews existing literature on these interactions and the

potential influence they may have on prosecutors' decision-making. Starting with police, their involvement in a case is a critical first step in sexual assault prosecution. I explore the research on police perceptions, biases, and response, which is important since police officers' actions may affect prosecutors' decision-making. I also review the ways relationships have become more formalized through the development of specialized roles in evidence collection and collaborative teams designed to coordinate an effective response to sexual assault cases. Finally, I discuss the ways prosecutors may consider the perceptions of other courtroom actors such as judges and juries since they hold the key to successful conviction and sanctioning.

### **Police**

Police officers and specialized investigators are responsible for the timely and effective collection of evidence. The manner in which officers question victims and how they document those responses affects prosecutors' ability to seek successful conviction. Using qualitative methods including observations and interviews, Frohmann (1991) found prosecutors to justify their discrediting of forwarded reports based on questioning victim's motives for reporting such as concealing an extra-marital affair. They also discredited victim accounts in an apparent attempt to rectify apparent inconsistencies in police reports; for example, a change in the victim narrative between the initial police report and when the prosecutor conducts an interview.

In a more recent qualitative study with prosecutors (Spohn & Tellis, 2013), one participant noted the way police detectives interpret and document victim statements may generate the appearance of inconsistency when in fact, it is an "artifact of questioning" (p. 182). Since every interview is discoverable (must be given to the defense attorney for the accused prior to trial), the words a victim used to describe an act that was reported differently by the officer was brought to light, damaging the victim's credibility. Thus, inconsistent statements forwarded

to the prosecutor can be both damaging to the case and a variety of institutional and procedural interventions impacts the ways reports are handled.

Law enforcement officers appear to be influenced by cultural bias, which may result in low arrest rates, such as assumption of gender role stereotypes (Campbell, 1995) coupled with a belief in the “real rape” stereotype of the stranger attack (Mennicke, Anderson, Oehme, & Kennedy, 2014; Veneme, 2016). Studies have also shown police as exhibiting persistent societal rape myths that minimize sexual assault such as women “asking for” an assault or lying about being raped (Brown & King, 1998; Edwards, Turchik, Dardis, Reynolds, & Gidycz, 2011). Survey results across 11 police and sheriffs’ departments ( $n = 891$ ) showed 19% of officers reported being unlikely to believe a woman who reported being raped by her spouse, while 44% were unlikely to believe a prostitute (Page, 2008). These biases may also influence an officer’s decision to mark a case as unfounded, or as a false report:

If the police officer investigating the crime believes the victim’s account of what happened and determines that the incident constitutes a crime, the case becomes one of the ‘crimes known to the police’ that will be included in the jurisdiction’s crime statistics. If, on the other hand, the officer does not believe the victim’s story. . .the case is unfounded. (Spohn & Tellis, 2012, p. 173).

Although police should label cases as unfounded only when an investigation determines no crime has occurred, studies have shown police may label a case as unfounded due to bias based on the victim’s behavior such as drug use or the victim having a previous sexual relationship with the offender (McCahill et al., 1979). Police also tend to deem stranger attacks as more serious and therefore, less likely to be labeled as false. After analyzing incident-level data of over 15,000 incidents across 824 city and county law enforcement agencies from 37 states, Pattavina, Morabito and Williams (2016) found acquaintance cases were more often cleared or marked unfounded. When the offender is an acquaintance, law enforcement has been

shown as less likely to mark a case unfounded if the suspect is already in custody, if the victim experienced physical injury, if the victim did not engage in alcohol or drug use, and if the victim did not have a mental illness nor a history of false complaints (Kerstetter, 1990).

Additionally, Venema (2016) found study participants were more likely to perceive a story as false in cases where the officer believed the subjects to be engaging in infidelity or where the victim was a prostitute. Martin (2006) confirmed previous research, where victim behavior such as previous sexual relationship with the offender, prostitution, or drug use was shown to impact decisions to label cases as crimes. Finally, the literature reveals sexual assault cases may also be cleared due to being declined by the prosecutor (Spohn & Tellis, 2011), again revealing the important connection between officers and prosecutors in forwarding cases.

The way a victim presents also appears to impact officer perceptions and this may deter officers from forwarding cases to the prosecutor. For example, Venema's (2016) study found victims who reported elaborate stories of assaults were viewed as less credible by police participants. In addition, reluctant or emotional victims also negatively impacted officer decisions to move a case forward for prosecution (Martin, 2006). Kerstetter (1990) found police officers deterred victims from moving forward if they believed the case was unable to be solved. For instance, they communicated to victims "the personal costs involved by emphasizing such things as the repeated trips to court, the inevitable delays at court, and the humiliating cross-examination by defense counsel" (Kerstetter, 1990, p. 309).

In one review of 569 cases of sexual assault in a U.S. police department located in the U.S. Midwest, Frazier et al. (1996) found just 22% of the cases were referred to the prosecutor. Conversely, Venema's (2016) study showed officers as more willing to treat cases with the same level of investigative effort on cases that seemed ambiguous or false. This may point to greater

acknowledgment of the seriousness of sexual assault in police work, which may also transfer to the ways prosecutors create meaning on sexual assault. To illustrate, the International Association of Chiefs of Police (IACP) issued guidance to law enforcement agencies on when to label cases as unfounded. The directive presents indicators that on their own do not indicate a false report including a reluctant victim, insufficient evidence, victim intoxication, inconsistent statements, or delayed reporting (IACP, 2005). The guide also references inconsistent statements as a potential result of trauma, shown to impact memory (Halligan et al., 2003).

In 2013, Spohn and Tellis conducted a mixed methods study in Los Angeles with city and county law enforcement officials to further explore decision making on arrests and officers' relationship with prosecutors. During qualitative interviews with nearly 80 detectives, the researchers found officers often presented "problematic" or "he said/she said" (p. 47) cases to the local prosecutor prior to making an arrest. These cases, where a suspect alleges consensual sexual activity and the victim makes an assault claim, were shared in anticipation that the prosecutor would refuse to charge the offender. Thus, instead of applying discretion independently to make an arrest, the officer double-checked with the prosecutor, lending support to the importance of interactions between police and prosecutors (Spohn and Tellis 2013, 2018).

Stemen and Frederick (2012) explored the impact of legal and extralegal factors on a variety of prosecution processes including screening, charging, plea offers (including sentence recommendations), and dismissals in two U.S. county jurisdictions. Using both quantitative and qualitative research methods, prosecutors were found to navigate interdependent relationships with other criminal justice professionals in addition to internal rules and resource limitations. For example, the quality of evidence presented by police was key to prosecutors' determination to move a case forward. In addition, if police officers were weak in the area of testifying,

prosecutors hesitated to request the officer testify and would therefore be inclined to dispose of a case. Also, newer prosecutors were found to be more likely to yield to pressure from police to accept even weak cases that they knew would be difficult to prove. My study explored these interactions. As one example, during the interview, I asked respondents to describe their working relationship with law enforcement to understand the ways they collaborate on sexual assault cases and how this impacted decision-making.

Over the past few decades, innovations in evidence collection and increased collaboration through the establishment of specialized teams have emerged. I explored the relationships formed through these programs in my study, especially in the ways prosecutors view campus sexual assault based on inter-professional relationships, including Sexual Assault Nurse Examiners or SANEs (also known as forensic nurse examiners) and SARTs.

SANES receive highly specialized training as first responders to victims of sexual assault. SANES have showed rapid growth over the past two decades and have fostered the development of positive relationships among police and prosecutors (Campbell et al., 2005). SANES collect forensic evidence, conduct exams, and maintain the chain of evidence, which involves preserving evidence for presentation at court. My study findings indicated that having this data was an important evidence component for prosecutors as they decided to forward cases.

SARTs are collaborative teams that include victim advocates, SANEs, police, and prosecutors. Colleges and universities are becoming more active in SARTS (Amar et al., 2014), and this was also supported in my research. The goals of SARTs are to “provide interagency, coordinated responses that make victims' needs a priority, hold offenders accountable, and promote public safety” (U.S. Office for Victims of Crime, 2011). Reviewing the effectiveness of both SANE units and SARTs across 262 programs, Nugent-Borakove et al. (2006) found sexual



assault cases were reported more quickly by victims and were also more likely to have more evidence, including DNA evidence. This is important since the existence of DNA evidence has also been found to increase the likelihood of a case to move forward through the criminal justice process (Campbell, Patterson, Bybee, and Dworkin, 2009). Victims were also shown to be more likely to participate in the criminal justice process. In areas with a SANE, and no SART, there was less participation.

In relationship to convictions, cases were also more likely to be charged. However, effects of SANE/SART intervention on penalty and sentence length were not significant (Nugent-Borakove et al., 2006). Greeson and Campbell's (2015) more recent literature review of the effectiveness of community SARTS also determined that although positive relationships formed as a result of SARTS, and SART members perceived SARTS as reducing the potential for re-traumatization of victims by the system, conviction and length of incarceration sentences were not impacted. SARTS also faced challenges such as confusion of roles and organizational barriers such as not having specialized law enforcement units that handled sexual assault.

Specialization can also be seen in the creation of prosecution units that focus on sexual violence. However, the extent to which these are effective is unclear. In a study of charging decisions and case outcomes by Beichner and Spohn (2005) in two separate jurisdictions, one with a specialized prosecution unit and one without, they found "regardless of whether decisions are made in a specialized unit or not, victim credibility is a real focal concern of the prosecutor in sexual assault cases" (p. 491). Charging rates were also not found to be higher in the latter unit. Therefore, the anticipated improvements in charging and outcomes in the office with a specialized unit were not realized (Beichner & Spohn, 2005).

While advancements have been made in the criminal justice response, including the creation of collaborative SARTs and SANE units, specialized prosecutor and police teams and forensic evidence collection advances, research has shown limited improvements in reporting, arrest, and prosecution rates (Lonsway & Archambault, 2012; Spohn & Tellis, 2012). My study examined the extent to which prosecutors believed the availability of SANE evidence and SARTs influenced their approach to campus sexual assault cases.

### **Courtroom Actors**

The role of internal relationships with other courtroom actors, including their perceptions and biases, how these form, and how they affect the work of prosecutors has been examined by criminal justice scholars. Ulmer (1997) suggested common viewpoints form among courtroom actors including prosecutors, defense attorneys, and judges about the importance of cases, appropriate case outcomes, and how other criminal justice colleagues will act in the future (Ulmer, 1997). Eisenstein et al. (1988) referred to these interdependent “court communities” as featuring a common workplace and residence, strong emotional undercurrents and “grapevines carrying gossip and information” (p. 25). Additionally, in *Sex and Harm in the Age of Consent*, Fischel (2016) argued powerful cultural narratives such as the stereotypical victim continue to operate in the courtroom. These biases inform the actions and responses of its actors, including prosecutors. In other words, internal relationships appear to be powerful and influence the way individuals give meaning to sexual assault.

Internal relationships have been found to influence the actions of prosecutors. For example, prosecutors appear to base their decisions on judges’ expectations. Maintaining positive relationships with defense attorneys and engaging in practices that rewarded or punished defense attorneys were also indicated. Prosecutors also depend upon “‘going rates’ for offenses

when making decisions” (Frederick & Stemen, 2012, p. 79). In other words, internal processes may be created to improve efficiency and move cases quickly through the system and prosecutors may yield to norms surrounding cases.

In one qualitative study that used observation and open-ended interviews, Frohmann (1991) found the environment to play a key role in decisions to forward cases, where promotions were dependent on more convictions and rejection of cases that were not likely to result in a finding of guilt. So, the ways internal actors viewed campus sexual assault and their convictability appeared to influence the perceptions of some of the prosecutors, but not others. In other words, the study findings indicated levels of discretion as varied across participants.

After an initial decision to prosecute, prosecutors may also consider how their decisions impact the viewpoints of juries who hold the key to a successful conviction and judges who determine sentencing (Fischel, 2016; Frohmann, 1991). Study findings indicated that Prosecutors recognized that members of juries may or may not identify with the victims’ culture and this may have impacted their decision to forward a case. For instance, if jurists are from predominantly middle class or wealthy backgrounds, they may not believe the victim’s account. Studies have shown female victims with lower socioeconomic status were viewed negatively and participants believed the victim “to be more culpable, and more promiscuous” (Spencer, 2016, p. 1).

Storytelling theory suggests juries deliberate through story construction. Knowing this, prosecutors must “paint a picture” that clearly delineates the story account, which is evaluated based on accuracy, solid reasoning, and connection of narrative facts to the end result. As Frohmann (1997) suggested, “The ability to construct a credible narrative for the jury and the jurors’ ability to understand what happened from the victim’s viewpoint are pivotal in

prosecutors' assessment of case convictability" (p. 536). Furthermore, facts convey meaning confirmed through jurors' previous experience. Thus, a person with a personal history of sexual assault may have a different perspective than someone who has no such experience.

Kalven and Zeisel (1966) first offered in the *The American Jury* the latter weighs victim behavior in addition to consent to sexual activity. "It closely, and often harshly, scrutinizes the female complainant and is moved to be lenient with the defendant whenever there are suggestions of contributory behavior on her part" (p. 249). The research surrounding Kalven and Zeisel's claim would later be cited in a significant court decision, which barred the admissibility of the complainant's previous sexual behavior unless deemed material to establishing prior sexual conduct with the defendant or that which refutes physical or scientific evidence (*State Ex Rel. Pope v. Superior Court*, 1976).

Rape shield laws would continue to be passed at the state level through the 1980s although their impact on juror perception is unclear (Anderson, 2002). Likewise, traditional perceptions of victims appear to persist where "jurors have concerns about the victim's character, reputation, and behavior at the time of the incident" (Beichner & Spohn, 2005, p. 491). Furthermore, if a prosecutor's narrative is not consistent with a stereotypical victim-rapist schema, where the victim is single, chaste, physically fights back, and reports immediately the juror may be less likely to convict. As Estrich (1987) explained in *Real Rape*, there is a perceived difference in the cultural narrative of the "aggravated, jump-from-the bushes stranger rapes and the simple cases of unarmed rape by friends, neighbors, and acquaintances" (p. 29) and is more likely to be punished by the courts (Buchhandler-Raphael, 2011).

Attorney Andrew Taslitz (1999) bemoaned the power of patriarchal tales, such as the chaste and vulnerable victim, in prosecuting rape cases. Namely, cultural myths tend to grab the

attention of juries more than the accounts of victims, so prosecutors are encouraged to perpetuate stereotypes. Therefore, traditional patriarchal and racist cultural narratives continue to hold power and persist regardless of reform in the criminal justice process (Taslitz, 1999). Women's voices especially are silenced in a courtroom marked by male-defined rules for witness examination. The situation may be even more problematic for Black women, who face a "race-based catch 22" whereby using more relationally based:

'women's language' will make them appear less credible than white women who may adopt the same style. But if black women appear more assertive, white jurors will perceive them as rude, hostile, out of control, and hence less credible. (p. 79)

Categorizing certain populations as rapists may be incorporated into the criminal justice process; this can impact the way courtroom actors create meaning for the typical offender such as sex offender registries "which in effect mark out a certain group of people" (Lacey, 2007, p. 244) as rapists, and presumptively criminal in character. Therefore, juries who view the defendant as violent and dangerous will be more likely to convict. In addition, the narrative of the Black man raping the innocent White victim has served as a powerful trigger for conviction and sanctioning. The "usual presumption is that a suspect is. . .a victim of the lying woman. . .this presumption is turned on its head when there is a black defendant and a white victim" (Taslitz, 1999, p. 31). Nearly a century ago, this prejudice was present in ordering the death penalty for a Black man who raped a "simple, good unsophisticated country girl" (Estrich, 1987, p. 35) in *Hart v. Commonwealth* (1921). Contemporarily, the cultural view persists that White women are more likely to be the victims of Black men (Donovan, 2007). While again, prosecutors did not specify race as a factor in their decision-making, their interactions primarily included white females attending the local college or university.

As active members of organizations, courtroom actors including judges, juries, and prosecutors may unwittingly contribute to reproduction of expected case outcomes depending on the sex, race, sexual orientation or class of the victim and/or offender (Acker, 1990). This could have the effect of instilling a “durability of inequality” (Ridgeway, 2013, p. 3) in access to resources, including the ability to hold offenders accountable, to seek restitution, or to simply stop further sexual violations. Thus, people holding higher status would benefit from greater protections and interventions than people holding membership in classes of perceived inferiority, such as marginalized communities.

Exclusive knowledge of how to navigate the criminal justice system as a “gateway” (Ridgeway, 2013, p. 10) organization is another privilege that may influence the ability of victims to proceed successfully through the process. For example, “implicit interactional rules are better understood and more familiar to middle-class petitioners” (p. 11) than low-income groups. Understanding the process, privileged persons may simply communicate their needs more clearly, and with more power, than the less privileged. In turn, jury members from privileged backgrounds may also better understand or make sense of the similarly situated victim’s narrative. Some evidence of bias against people from low-income communities was found in my study, where a prosecutor described an unsuccessful case that in their view, should have resulted in a conviction.

It has been argued that relationships with courtroom actors, as well as their biases and stereotypes of victims and offenders influence the way prosecutors develop their arguments and strategy. However, Bryden and Lengnick (1997) offered that while bias of criminal justice actors “has played an important role, most rape-case attrition appears to be due to a combination of the victim's unwillingness to seek legal redress, the prosecution's burden of proof in criminal

cases, and jurors' attitudes (p. 1384). While prosecutors may not be able to impact crime reporting directly, understanding their own biases and those of other internal actors could increase awareness of the ways they perhaps unknowingly create barriers once victims decide to participate.

According to the results of my study, the ways prosecutors made decisions were not straightforward; rather, they were influenced by case-level factors, several internal and external constraints, and balancing of several practical goals of prosecution. “Understanding the black box in which prosecutorial decision-making exists requires further evaluation of this multitude of factors and the contexts in which prosecutors make decisions” (Frederick & Stemen, 2012, p. 286). My study followed this approach by examining the impacts of these factors as well as understanding the extent to which prosecutors are aware of their own biases, and those of jury members. Realizing it was unlikely that participants would reveal their own latent prejudices, I my interview centered on barriers to convictions and jury considerations. For the prosecutor, navigating a system grounded in a legacy of patriarchy, mistrust of the victim narrative, and normative views on the classic rapist appeared to present significant challenges.

I next explore the role of external relationships on the work of prosecutors. I also describe expanded federal and state policies and examine interactions between campus officials and prosecutors under an umbrella of intensified media and legislative scrutiny.

### **Expanded External Relationships, Federal Guidance, and State-Specific Laws**

My study examines the relationship of newly developed public policy on campus sexual assault and the ways prosecutors, as justice gateways, are impacted by increased interaction with external systems including the media, policy makers, and campus officials. Consistent with symbolic interactionism, these interactions may form a basis of meaning for prosecutors in how

they view campus sexual assault, specifically the developing campus based processes, in addition to the victims they serve. This section begins with a brief overview of the limited research available on external relationships with media and legislators. While I explored these interactions during interviews with prosecutors, I had a specific interest in examining relationships with campus officials, an area not yet explored. Federal and state public policy on campus sexual assault appeared to have influenced these relationships. Furthermore, differences in definitions of rape and standards for evidence seemed to create a tension between the criminal justice and campus processes. Therefore, I also center the discussion on key developments in these areas.

## **Media**

Beginning with the influence of media, studies in this area are limited to the ways prosecutors should communicate with the media on high profile cases. For example, prosecutors are expected to curb discussion to the media that might prejudice a trial. However, some scholars advocate free speech that would benefit their clients as defendants (Hooker & Lange, 2003). Likewise, attorney Robert Bennett (1994) suggested that mediating high profile cases in particular is akin to a "Bermuda Triangle"—the cross-currents and winds generated by a criminal investigation, the media, and Congress. (p. 13). He argued that effective press advocacy can help to mitigate outside pressures to prosecute cases where “prosecutors use journalists to publicize their ongoing investigations, while journalists, through their news stories, can generate public and congressional demands for investigations and indictments from prosecutors” (p. 14). In turn, legislators may be faced with constituency pressures to seek convictions for offenders (Bennett, 1996), which could be intensified in cases that fits the narrative of stranger attacks, or where victim and offender characteristics fit the traditional paradigm. While prosecutors in my study



did not mention experiencing this form of external pressure, they did express hope that high profile cases would strengthen victims' resolve in coming forward to authorities.

### **Public Officials**

Public officials are increasingly aware of sexual assault victims' lack of trust for the criminal justice system. At a U.S. Congress Senate Hearing in 2010, then director of the Office on Violence Against Women, Susan Carbon, stated that victims' distrust of the criminal justice system served as a barrier to reporting (U.S. Congress, 2010). This distrust has led some researchers (Murphy et al., 2014) to argue for public policy approaches that remove barriers based on fear and lack of faith in the process and create a victim-centered system (Edwards et al., 2014).

Nevertheless, initiating changes to a century's long approach could face challenges. First, prosecutors' discretion in charging criminal cases has been said to be immune from review (Spohn & Tellis, 2013), with one researcher describing prosecutors as being "the most unregulated actor in the entire legal system" (Butler, 2009, p. 106). While rules of discovery require prosecutors to share favorable or exculpatory evidence with defense attorneys, from charging, to determining plea agreements, to taking cases to trial, prosecutors have been viewed as having considerable flexibility in decision-making.

Second, the demographic makeup of prosecutors has traditionally been homogenous, with few people of color and women in these roles (Barak, Leighton, and Cotton, 2015) which may impact the ability of prosecutors to view crimes from a social justice lens. Lastly, while media attention, regulation, and research has focused more often on other criminal justice actors such as police, prosecutors have traditionally received less scrutiny (Frederick & Stemen, 2012) and may be resistant to external pressures to introduce new ways of knowing. While my study showed

that prosecutors claimed a variety of levels of discretion, their decision-making appeared to be influenced by a variety of constraints. In addition, my sample was homogenous, but several participants' demonstrated an awareness of biases and the ways these potentially impacted marginalized communities.

### **Federal Guidance**

In spite of the level of discretion prosecutors may retain, I sought to explain how external relationships, particularly with campus officials, may influence the ways prosecutors make sense of new campus sexual assault processes that have unfolded as a result of federal guidance and how their decisions are impacted. In 2011, the ED altered the course of higher education's response to sexual violence by issuing directives through its Dear Colleague Letter (ED, 2011). The ED released this significant guidance document (U.S. Office of Management and Budget, 2007) subsequent to students publicly filing complaints against their colleges and universities for reported negligible response to sexual violence (Lombardi, 2009). The letter reaffirmed Title IX, the landmark 1972 federal legislation that prohibits sex and gender-based discrimination in any federally funded education program or activity. The guidance also made clear that "sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime" (ED, 2011, p. 1). Interim measures designed to enhance safety were to be offered to students to ensure their continued participation in educational programs. These included academic measures such as schedule adjustments or no-contact directives between parties.

In spite of its rescission in 2017 (ED, 2017), the Dear Colleague Letter has influenced ways campuses provide support to victims. Using a self-report survey of higher education institutions, a recent study (Amar et al., 2014) showed institutions increasingly moved away

from previous models of hearing boards featuring campus officials, employees, and students to determine a finding of responsibility to a single investigator model. Campuses have also establishing 24-hour response systems and dedicating positions to assist victims of sexual assault. Universities have establishing SARTS that include victim advocates, medical personnel, and police as well as committees that regularly review campus response and protocol.

The previous guidance also impacted campus investigation and adjudication of sexual assault. For instance, the Dear Colleague Letter included a recommendation to apply the preponderance of evidence, which is a lower burden of proof than the criminal justice process, similar to other civil rights violations. Impartial, fair, and thorough investigations and adjudications were to be conducted without extensive delays. Sanctions were also recommended to be commensurate with the severity of the violation (ED, 2011), including expulsion.

Once the Dear Colleague Letter was released, colleges and universities moved swiftly to come under compliance. In 2014, Assistant Secretary Catherine Lhamon of the Department of Education's Office for Civil Rights, the enforcement arm of the ED, congratulated colleges and universities for revising sexual violence policies and procedures, stating, "We applaud these schools for taking the initiative to keep their students safe without waiting for enforcement intervention from my office or from the Department of Justice" (Svrluga, 2016, para. 12).

Others have argued that higher education institutions scrambled to come under compliance (Kelderman, 2014) or have increasingly paralleled the criminal justice system in ways that may not necessarily benefit victims. Cantalupo (2016a) suggests this "conflation fundamentally undermines Title IX's central purpose: to protect and promote equal educational opportunity for all students, including both the alleged perpetrators and the victims of gender-based violence" (p. 284). Finally, restorative justice researchers have indicated concerns with

system changes, “given the uncertainty about facts in many cases, coupled with lower evidentiary standards than are used in criminal courts, zero-sum resolutions may lead to more appeals, federal complaints, lawsuits, and dissatisfaction by both survivors and accused student” (Karp, Shackford-Bradley, Wilson, and Williamsen, 2016 p. 9). These counterarguments are important, and were supported in part by my research since prosecutors welcomed the changes in some cases and in others, viewed them as getting in the way of their cases.

Changes have also been seen in the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act*, (34 CFR 668.46), originally passed in 1990. The law, known as the Clery Act, requires colleges and universities to report information on certain crimes including rape within core geography and areas close to campus. In 1992, the Act was amended to include a bill of rights for victims and a mandate for colleges and universities to inform both parties of reporting options and information on the overall process including disciplinary proceedings. Students must also be made aware of support services and alternatives for living arrangements (“Campus Sexual Assault,” 1992). As one researcher (Brubaker, 2009) offered, the Act “improved greatly upon the historical trend of institutional cover-up with respect to sexual assault, which worked to both deny potential future victims information about risks, as well as to allow perpetrators and institutions to avoid blame” (p. 66).

The Act was once again amended by the Campus SaVE Act in 2013, as a component of the *Violence Against Women Act (VAWA) Reauthorization*. The amended law requires colleges and universities to report a broader range of sexual violence incidents occurring on campus, as well as incidents of domestic violence, dating violence, and stalking. The law also reinforces Title IX regulations by requiring equitable disciplinary proceedings. In addition, higher education institutions are required to offer education and awareness programs on campus.

Finally, procedures for reporting sexual violence, information on preservation of evidence of the crime, and resources for reporting must be clearly published (“Know Your Rights,” n.d.).

By expanding options for reporting, this could result in more interactions with prosecutors as more victims come forward. However, the findings indicated that prosecutors did not witness and overall increase in reports.

Prior ED guidance also recommended that colleges and universities establish clear policy definitions relating to prohibited behaviors including sexual misconduct. While some victim advocates have challenged use of phrase “sexual misconduct” as minimizing the seriousness of rape, Title IX experts suggest the definition “is more expansive than just about any state’s criminal definition of the act. It requires more respect and more communication and is clearer about the role of alcohol and other drugs” (Black et al., 2017, p. 14). Definitions vary by policy, but usually involve unwanted sexual contact and/or penetration and coercion. To illustrate, James Madison University in Virginia defines sexual assault in its policy (J34-101, para. 5) as “any physical contact of a sexual nature that is forced on another person, including unwelcome sexual touching of any kind” and goes on to describe these actions in further detail:

This includes engaging or attempting to engage in any unwelcome sexual intercourse (oral, anal or vaginal) or penetration, however slight, with any object or body part without consent, or intentional touching (either of another person or when the person is forced to touch) of a body part in a sexual manner without consent, directly or through clothing. Sexual Assault includes nonconsensual attempted or completed sexual intercourse, penetration with any part of the body or an object, touching or forcing another person to touch in a sexual manner, kissing, physical contact with any part of the body for sexual purposes or forcing another to touch himself or herself in a sexual manner (James Madison University Handbook, 2018, J34-101, para. 5).

Similar to the above definition, colleges and universities nationally have altered the ways they view requirements for force and resistance. This stands in contrast to criminal statutes that typically require these elements. Beginning in 2016, a small number of states passed

amendments to their education laws on affirmative consent, as with New York's Article 129-B (State of New York Education Law, EDN §129-B, 6439 – 6449), Connecticut's Public Act No. 16-106 (State of Connecticut General Statutes Section 1. Section 10a-55m) and California's Section 67386, which describes:

Affirmative consent means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity (State of California Code, Education Code EDC § 67380, 2016).

Differences in the criminal justice process and the ways campus officials assist victims and hold offenders accountable through investigations and adjudication on the campus grounds appeared to influence prosecutors' perceptions and decision-making. In criminal court, victims are represented by the state or commonwealth's attorney during adversarial proceedings where offenders may face incarceration. In the campus process, a hearing may or may not be held, and the highest punishment is expulsion. Additionally, while force continues to be a necessary component of criminal codes to prove guilt in many states, higher education institution definitions often do not require the presence of force or resistance, and instead focus on whether affirmative consent is present.

Another significant departure from the criminal justice process is the standard of proof used in campus disciplinary proceedings. The 2011 ED guidance clarified the need for application of the preponderance of evidence standard, where an incident is viewed as more likely than not to have occurred. Prior to the guidance, many universities had applied the slightly higher standard, clear and convincing. Preponderance of evidence is applied in other civil rights court cases and "gives as equal as possible presumptions of truth-telling to both parties. . ." in contrast to criminal standards, where there is a ". . .heavy presumption in favor of the accused to both parties" (Cantalupo, 2016a, p. 288-289). Preponderance is thus a lower burden of proof

than the criminal justice standard, beyond a reasonable doubt where “no other logical explanation can be derived from the facts except that the defendant committed the crime, thereby overcoming the presumption that a person is innocent until proven guilty” (West's Encyclopedia of American Law, 2008). The latter may also be justified since criminal sanctions are higher than those of educational institutions (Cantalupo, 2016b).

As Assistant Secretary for Civil Rights Russlynn Ali offered at the time of the Dear Colleague Letter's release:

Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation. In addition, a criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably. (Grasgreen, 2011, para. 13)

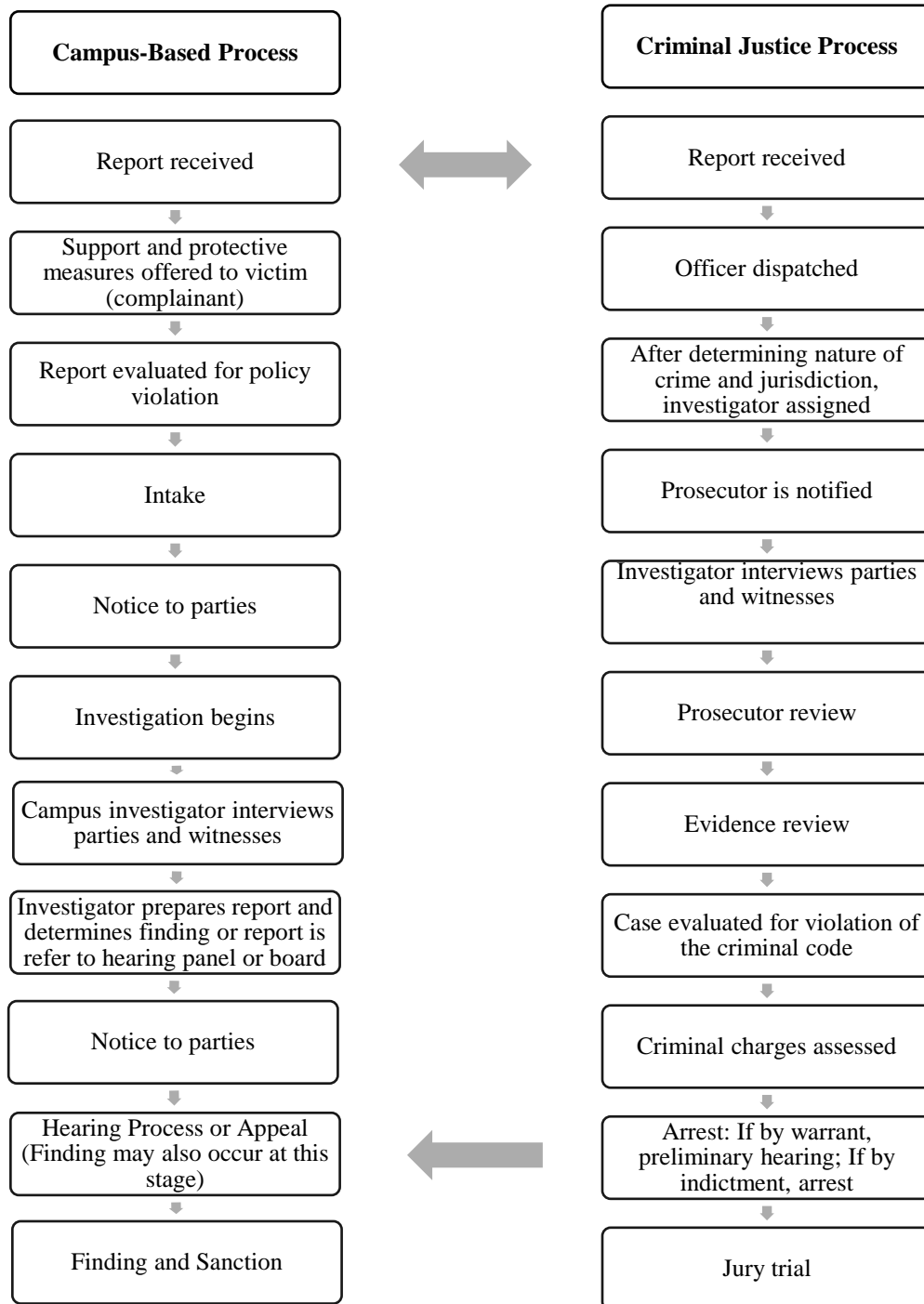
Thus, colleges and universities were expected to stop, remedy, and prevent sexual misconduct in spite of whether there was a pending criminal investigation. Although the ED (2011) guidance was rescinded in 2017 and schools were advised in the interim to use either the preponderance or the clear and convincing standard of evidence, efforts were made to retain the former standard. In January 2017, U.S. Senators Robert Casey and Patty Murray submitted a letter to then President-elect Donald Trump urging him to retain the policies implemented under ED over the past several years, including the preponderance standard (Casey & Murray, 2017). The ways prosecutors viewed the application of a lesser standard in civil proceedings on campus did not appear to be a concern for my study participants, which was consistent with their desire for greater offender accountability.

In response to public policy developments in campus investigations and adjudication, the perceptions of prosecutors reflected both positive and negative views of the newer ways campuses are intervening in campus sexual assault. Both systems intersect at different stages

between processes. Each approach also presents similarities and differences, with campus procedures becoming increasingly tribunal (Safko, 2016) and perhaps more criminalized (Cantalupo, 2016a). Discussing the differences in the procedures, Cantalupo (2016b) described the victim as a complaining witness who provides testimony. The prosecutor represents the state, not the victim and “therefore the victim does not receive equal procedural rights, such as the access to evidence or privacy protections that the defendant receives. . .” (p. 194); by contrast, “Title IX requires that victims and accused students be treated as equal parties to a grievance proceeding” (p. 194). On the following page, Figure 1 provides a side by side comparison of both processes.



Figure 1. Representation of campus-based and criminal justice processes in Virginia.



My study explores the different approaches to holding offenders accountable and offering support measures for victims as well as how these complex systems may present barriers to coordination and goal alignment. Each step in the process provides opportunities for prosecutors to assign meaning to information, depending on interactions with other professionals and review of the available data. At the same time, limits to information seemed to add constraints on prosecutors' decision-making. Localities also developed different processes for information exchange and collaboration between campuses and the prosecutors' offices, depending on campus and local procedures. My research revealed contrasts across jurisdictions.

Additionally, the two processes unfold at different paces and lengths of time vary between each step and procedure. This could be relevant for students who may elect to participate in one process over the other if they perceive one to take less time overall. Overall, prosecutors did not indicate experiencing frustration at students electing the campus process vs. the criminal justice process. However, some did mention receiving more reports from students who were increasingly aware of ways to report outside of campus. While campus police are typically required to report to the Title IX coordinator, local police are not required to share reports with campus administrators (John Venuti, personal communication, November 28, 2016). Therefore, local police and the prosecutor were able to receive reports unknown to the college. Additionally, in order to obtain the campus investigation report (as indicated by the second arrow), prosecutors may need to issue a subpoena due to the Family Educational Rights and Privacy Act (1974). The results of criminal prosecution are public, and therefore campus officials may obtain this information from the prosecutor's office. Although prosecutors did not mention seeing the subpoena as a barrier, they were concerned about defendants' increased

requests for and access to campus investigation reports, which provided them with more information in preparation for trial.

With the campus-based process and criminal justice system relying on different standards to achieve an end goal of offender accountability, conflicts may surface in process and application. Namely, increased communication instituted through new laws may bring two systems together that approach the same social problem differently. The way prosecutors viewed and described this tension between different standards, based on the meaning they have created for them were explored during interviews. Likewise, federal guidance has also undergone changes with more to come. These fluctuations in public policy may also impact the perceptions of prosecutors, especially those who may already view aspects of the campus processes as a conflict with their approach to working with victims and holding offenders accountable.

The tension that can result from applications of different consent standards in criminal law and higher education policy was brought to light in a University of Minnesota sexual assault case. The story reached national headlines in December, 2016 after football players boycotted games in response to apparent due process concerns for fellow teammates suspended for sexual misconduct. Campus officials fired the football coach for supporting the boycott the following month. While the local police failed to bring charges, and the local prosecutor reaffirmed the decision not to bring charges, the university was able to suspend the students due to different definitions and lower burden of proof. A statement by university officials after Freeman's announcement read, "We respect the County attorney's decision. As he notes, the university's athletic suspension decision rests upon different standards and different policies" (Moini, 2016, para. 18). Contrasts in the ways colleges and universities define consent and coercion may influence the way prosecutors perceive student cases. For example, prosecutors pointed to

victims and their families who were confused by the differences in processes from a policy, process, and legal standpoint. My study explored these perceptions, in addition to prosecutors' perspectives on ways to manage or address these system differences.

### **State-Specific Laws**

In the case of Virginia, the media and legislators centered their attention on campus sexual assault in 2014. The high profile article "A Campus Rape," in *The Rolling Stone* (Erdely, 2014) may have contributed to this heightened scrutiny. Although the alleged victim's narrative in the article was later retracted, the public's attention was also drawn that same year to a case involving predatory-style behavior that merged with the stereotypical roles of Black male offender and White female victim. Virginia resident Jesse Matthews was reported to have committed multiple sexual offenses, abductions and homicides both as a college student and after leaving two Virginia colleges (DePompa, 2014).

At the state level, then Virginia Governor Terry McAuliffe appointed a task force chaired by the attorney general to combat campus-based sexual violence. The task force relied on extensive subcommittee work with experts representing areas from criminal justice, higher education, students and victim services professionals. The resulting report (Herring, 2015) highlighted 21 recommendations across several themes including prevention, addressing barriers to reporting, engaging a trauma-informed and coordinated community response, enhancing campus policies and instituting compliance; and ways to sustain collaboration and the efforts of the task force.

According to a 2015 Virginia survey of Virginians conducted by the Commonwealth Educational Policy Institute (Virginia Commonwealth University, 2015a) 64% of respondents agreed college administrators could significantly decrease the occurrence of sexual assault.

Moreover, 92% of participants supported the statement that colleges and universities should be mandated to report campus sexual assaults to the police. Months later, the Virginia General Assembly enacted laws designed to increase reporting and accountability for repeat offenders. The first, *Va. Code § 23-9.2:15. academic transcripts; suspension, permanent dismissal, or withdrawal from institution*, (2015) mandates transcript notations for those who may have committed sexual offenses. New York passed a similar law the same year (New, 2015). In December 2016, U.S. Congresswoman Jackie Spier introduced the Safe Transfer Act (2016), which would amend the Family Educational Rights and Privacy Act of 1974. The Act, if passed into law, would have required a notation on the academic transcript of any student found by a college or university to have violated sexual violence policies.

The second law, *Va. Code § 23.1-806*, requires any responsible employee who has knowledge of an act of sexual violence against a student to report this information to the university Title IX coordinator “as soon as practicable after addressing the immediate needs of the victim” (Section B) (“Reporting of Acts,” 2016). The Title IX coordinator is then required to provide the information to a review committee consisting of the Title IX coordinator and representatives from law enforcement and student affairs. If upon review the committee:

determines the disclosure of the information, including personally identifiable information, is necessary to protect the health or safety of the student or other individuals...the representative of law enforcement on the review committee shall immediately disclose such information to the law-enforcement agency that would be responsible for investigating the alleged act of sexual violence. (“Reporting of Acts,” 2016)

A survey (Brubaker & Mancini, 2017) of institutions in Virginia found campus officials used the following criteria to determine threats to health and safety, the use of a weapon (83%), instances of strangulation or other known types of assault (72%) , the presence of injuries (61%) or prior offenders (62%). Additional responses included instances where there was alcohol or drug

facilitated the assault or where the responding party had a prior record. Also under the law, if the act of sexual violence constitutes a felony, the law enforcement representative is required to share the report, including personally identifying information (where a threat is deemed to be present) with the local prosecutor. As originally drafted, the senate bill would have required campus employees to report any allegations of sexual assault to the police. However, the law was revised due to criticism from victim advocacy coalitions who maintained it infringed upon confidentiality rights and would discourage victims from reporting to authorities (Brubaker & Mancini, 2017; Erard, 2015).

With these new public policy approaches, I explored the ways prosecutors viewed them as having an impact on repeat offending or the crime of campus rape more generally. I also sought to understand whether current public debate on whether higher education institutions are well suited to respond to sexual assault in comparison to the criminal justice system (DeMatteo, Galloway, Arnold, Patel, & Lamb, 2015) has influenced prosecutors' perspectives. Cantalupo (2016a, 2016b) similarly shared concerns with designing a newer campus process that mirrors the criminal justice process. In the latter, findings of guilt may result in incarceration; therefore ensuring innocent defendants are not punished becomes primary in lieu of a civil rights model based on procedural equality for both parties. Title IX experts also caution against overcorrection in campus investigations, where overzealous administrators might ignore the rights of the accused under increased pressure for accountability. As attorney Scott Lewis (as cited in Whitford, 2018) explained "Historically, those who brought sexual assault cases forward were not given the appropriate attention...Conversely, if you swing the pendulum too far the other way and you deny rights to those accused of harassment or assault, the overcorrection could result in yet another overcorrection the other way" (Whitford, 2018, para. 10)

Legal experts have also argued that ED unlawfully expanded “how colleges must define and respond to allegations of sexual assault and harassment” (New, 2016a, para. 1). The special interest group, Foundation for Individual Rights in Education (FIRE), has also raised due process concerns over definition expansions in policy statements (FIRE, 2014). Of relevance to my research question regarding transcript notations, a 2016 *Washington Post* opinion piece written by prominent attorneys who have represented hundreds of college students in sexual assault cases likened transcript laws to a scarlet letter (Dillon & Keiser, 2016).

As Black et al. (2017) forewarned, students accused of sexual assault and punished by their colleges are becoming increasingly litigious and successful in their due process claims in the courts. On October 2016, the U.S. Office of Civil Rights issued a letter following an investigation of Wesley College in Delaware. The letter informed the college it had disregarded the rights of students accused of committing sexual misconduct, citing inadequate investigation, and wrongful expulsion. Specifically, Wesley “denied the accused student procedural protections to which he was entitled under Title IX, and under the College’s own written procedures” (ED, 2016, p. 2). Recent court cases cite judges who chastise campus officials for not permitting adequate cross-examination, as District Judge James Graham stated, “universities have perhaps, in their zeal to end the scourge of campus sexual assaults, turned a blind eye to the rights of accused students” (*Doe v. Ohio State University*, 2:15-cv-2830). Ohio State subsequently dismantled its sexual assault advocacy unit (Cherelus, 2018).

High profile cases such as University of Southern California may continue to impact public distrust of campus response to sexual assault. A former university physician, Dr. George Tyndall, reportedly engaged in repeated sexual misconduct beginning in 1990 through 2016,

when he resigned. In June 2018, The ED OCR launched a targeted and system-wide investigation of USC's handling of sexual harassment complaints, stating:

OCR currently has an unrelated monitoring agreement with USC as a result of OCR's investigations into the university's handling of allegations of sexual harassment and sexual violence that spanned from August 2010 through May 2015...OCR's requests for documents and information from USC during the investigation of these matters covered all reports and complaints against staff and faculty during the 2010-2013 academic years. However, at no time during the investigation or negotiations did USC provide OCR with any information regarding reports or complaints allegedly received against Dr. Tyndall. Based on these new compliance issues raised by the information disclosed by USC in public statements and through recent media reports, OCR is opening a new directed investigation (ED, 2018, para. 5).

My research included interview questions designed to explore prosecutors' views on Title IX and specifically Virginia laws and in what ways they may impacted the meaning they have created for campus sexual assault cases, including whether the mandatory reporting law has resulted in prosecutors receiving more reports. While the former showed varied results, with a handful of campuses reporting more and some not reporting at all, prosecutors indicated minimal concern with due process rights, most likely since they presented themselves as victim-centered, as I explore further in the results chapter.

Spohn and Tellis (2013) point to unanswered questions in prosecutorial decision-making in the scholarly literature. While the severity of the assault and the availability of evidence appear to weigh heavily in decisions to charge and forward for conviction, other extralegal variables such as race, sex and, other victim characteristics yield mixed findings. For example, in cases where there is a prior relationship between the offender and victim, this has impacted the decision to drop cases in some studies (Spohn, Beichner, & Davis-Frenzel, 2001) but less so in others although length of sentence was reduced in acquaintance cases (Kingsnorth, MacIntosh, & Wentworth, 1999b; Spohn & Holleran, 2001). When race is introduced, even more variation exists (Bouffard, 2000). Stemen and Frederick (2012) agreed factors beyond legal



considerations “may trump evaluations of strength of the evidence, severity of the offense, and defendant criminal history” and researching additional factors “should inform and expand both research and practice” (p. 82).

While previous research has explored internal relationships with police and courtroom actors, campus sexual assault cases did not appear to signal heightened pressure for prosecutors from the media and public officials, but did result in tensions between processes. Examining interactions with campus officials, and the meaning prosecutors created for campus sexual assault cases as a result, adds to the scholarly literature on the importance of both internal and external relationships. These areas are also consistent with the following discussion on the theoretical frameworks that guided my research and methodology, symbolic interactionism and grounded theory.

### **Theoretical Framework**

The novel interaction of higher education public policy on campus sexual assault and the work of prosecutors offered unexplored territory for research. Previously, scholars primarily used quantitative methods to explore prosecutorial decision making through hypothesis testing on variables such as race, gender, and case outcomes (Stemen & Frederick, 2012). To understand more fully the scope of prosecutors’ perspectives on public policy developments and subsequent campus process changes relating to colleges and universities, my study applied an inductive approach using symbolic interactionism and modified grounded theory techniques during data analysis that emphasized openness, flexibility, and creativity.

A positivistic approach to my study would have been less effective in examining the ways **interactions** with campus officials have affected the **meaning** prosecutors created for campus sexual assault and the ways this has influenced their **action**, namely decision-making on

cases, which are key elements of symbolic interactionism. Furthermore, while traditional qualitative research generally asks “what” and “how” questions to understand phenomena, grounded theory includes “why” questions that helped me to develop more comprehensive theory of experiences and processes (Charmaz, 2014). My study explored not only what decisions were made and how they were made, but why they approached the cases in particular ways based on the meaning they have formed for sexual assault and campus based processes.

### **Symbolic Interactionism**

Symbolic interactionism and grounded theory have been viewed as a complete package by some researchers (Clarke, 2005) because of the constructivist lens both approaches offer in explicating action and meaning. Symbolic interactionism serves as the epistemological and ontological foundation of grounded theory and offers important assumptions that guide grounded theory methodology (Chamberlain-Salaun et al., 2013). Symbolic interactionism offered value for my research because of its focus on the impacts of societal and environmental influences. Changes in campus processes and public policy surrounding campus sexual assault appeared to impact prosecutor’s actions in diverse ways. “Actions arise out of social interaction. . . It is a cyclical and fluid process, in which participants continually adapt or change their acts to fit the ongoing acts of one other” (Chamberlain-Salaun et al., 2013, p. 6).

Symbolic interactionism assumes individuals are preceded by society and its material environment. At the same time, a reciprocal relationship exists between the individual, the collective, and the environment. Actors “enact meanings and make them real through interaction - and that action may be with other beings, objects, and conditions” (Charmaz, 2014, p. 269). Through symbolic identification, individuals define the meaning of their work through its purpose. Individual identity is communal or structured by the greater society. Identities also

organize meaning for individuals as well as their roles that organize their function (Castells, 1997).

Using a symbolic interactionist framework opened several lines of inquiry. How did prosecutors view their role in prosecuting campus sexual assault? How did they account for or justify their actions or decisions? How has this meaning been shaped by changing campus based processes? “Linguistic devices” (Scott & Lyman 1968, p. 46) also emerged during interviews, which explained apparent discrepancy in actions and expectations or helped to make sense of the decisions they made in response to sexual assault cases. For example, prosecutors pointed to the biases of jury members in their decisions not to prosecute a campus case especially where victim culpability was in question, for example if the victim consumed drugs or alcohol prior to an assault.

By applying symbolic interactionism, I remained sensitive to structural and institutional contexts, boundaries, and constraints that shaped meaning of processes for participants. I explored the extent to which prosecutors’ decision-making was impacted by the meaning they created on internal and external relationships by asking questions that focused on the ways prosecutors worked with other professionals and how these relationships inform their action. As Acker (1990) explained, “Organizations are one arena in which widely disseminated cultural images. . .are invented and reproduced” (p. 140) so prosecutors’ perspectives may not only reflect, but solidify these narratives. Prosecutors’ statements also revealed themes that reflect cultural symbols and images such as previously described notions of the typical victim and offender. In the end, I developed a theory that reveals the “complex nature of understanding human action and interaction” (Chamberlain-Salaun et al., 2013, p. 8) by demonstrating how the

emergent emphasis on Title IX and campus sexual assault influenced prosecutors' views on campus sexual assault cases and their decision-making.

### **Grounded Theory**

Given the emergent nature of campus sexual assault, new public policies and the potential impacts on prosecution, an inductive approach was the best fit to explore the issues since no existing theory fully explained these relationships. Furthermore, a theory was needed to help understand why and how each of these elements influence each other and potentially impact case processes and outcomes on campus sexual assault specifically. Grounded theory offers this framework and guided my approach, specifically during data analysis in coding and category and theme development that ultimately lead to my theory.

As grounded theory co-creators Barney Glaser and Anselm Strauss described, deductive methods are inferior to exploring socially complex issues. "In social science research generating theory goes hand in hand with verifying it, but many sociologists have been diverted from this truism in their zeal to test either existing theories or a theory they have barely begun to generate" (Glaser & Strauss, 1967, p. 2). This viewpoint came as a result of Glaser and Strauss' first collaboration, *Awareness of Dying* (1965), which explored emotionally challenging and complex experiences of terminally ill patients. Their work inspired countless researchers over the past several decades to replicate their methodology to generate new theories that fit the experiences of study participants. Key features of empirical study and theory generation include credibility, originality, resonance, and usefulness. Originality is brought forth in work that offers new conceptualizations, refinements, and insights (Glaser & Strauss, 1967). For the purposes of my research, I coded data for emergent concepts not previously developed or defined (Charmaz,

2014), including prosecutors' views on increased external pressures and understanding of campus-based processes.

Grounded theory provides analytic power to generate theory on how meanings, language, action, processes, and social and institutional contexts are constructed (Charmaz, 2014).

Criminal prosecution is a complex social, political, and organizational field, with long held standards and institutions. Grounded theory's flexible and adaptable approach helped me to elicit the ways public policy created and influenced environmental constraints such as institutional and political relationships and how these in turn influenced action. For instance, emergent themes included case elements such as victim and offender characteristics.

Prosecutors are also social actors, and Frederick and Stemen's (2012) research pointed to the influence of relationships with other criminal justice professionals as influencing action. My research examined these internal interactions as well as other relationships instituted through SARTs and how these have influenced the ways prosecutors made sense of campus sexual assault. I also explored the meaning of external relationships with campus officials especially by posing questions about reporting and communications and how these have shifted over time. Through these increased interactions, I sought to understand how prosecutors made sense of this information exchange, finding variety in the ways participants viewed them helpful to their process or of little value or influence to their work. Some prosecutors indicated minimal knowledge of campus processes, which points to lowered potential gains achieved through public policies surrounding campus sexual assault.

In assessing the credibility of research, Charmaz (2014) considers the breadth and depth of interviews and observations and a strong link between an argument and data. Researchers demonstrate resonance by calling forth implicit meanings that could indicate problematic

processes or patterns and a full representation of participants' experience. For example, guiding interests or "sensitizing concepts," (Charmaz, 2014, p. 40) lead to points of departure in the data, which lead to the development of additional interview questions, to data review. Sensitizing concepts serve two purposes. First, they aid in framing and understanding how people operate in their daily lives and work and how they respond to and handle issues, problems, and routines. Second, they offer a language for shared meaning that builds knowledge across the scholarly community (Corbin & Strauss, 2008). Kelle (2010) offered concepts that may also "serve as heuristic devices for the construction of empirically grounded categories" (p. 208). For example, I applied the sociological construct such as identity to understand how prosecutors' identities were shaped by their work in addition to expectations and structures that constrain actions (Kelle, 2010).

Symbols such as how sexual assault is viewed as a systemic crime or as the fault of the individual victim due to their behavior or place in society, are also important signifiers that contribute to the generation of new meanings (Chamberlain-Salaun et al., 2013). Research on victim-blaming attitudes (Corcoran & Thomas, 1991; George et al., 1988; Norris & Cubbins, 1992; Schuller & Stewart, 2000; Sims et al., 2007) points to the power of meaning given to the reasons for sexual assault. Namely, if a prosecutor perceives that victims have a personal responsibility to avoid certain behaviors they believe to be a causal factor in assault, this would influence the ways they create meaning and action.

Conversely, a prosecutor who takes a victim-centered approach or a macro view of sexual assault as a sociological or systems issue may alter or adjust their processes with a strategic lens that focuses on a future end goal of reducing violence. Several prosecutors alluded to this forward thinking during interviews and were more willing to forward cases based on weaker case

elements. They reported seeing value in the act of trying the case for other reasons beyond conviction such as giving a victim the opportunity to speak their experience. After all, actions also have emotional factors (Dewey, 1929).

Corbin and Strauss (2008) also explored action in their research, which built upon the work of Dewey and Bentley (1960). The researchers held that both overt and covert actions may be influenced from their beginning to their ends by reflexive interactions. Essentially, a prosecutor's own actions or those of others tend to feed back into one another. They may also review their own actions and those of others they serve. This review can then serve as the basis for projecting future actions. "Especially important is that in many actions the future is included in the actions" (Dewey, 1929, cited in Chamberlain-Salaun, Mills, and Usher, 2013, p. 3).

Prosecutors in my study appeared to anticipate the perceptions and meaning judges and jury members had formed on sexual assault in deciding what further steps to take, which was consistent with the literature (Kalven & Zeisel, 1966). Additionally, I was especially interested in how and why interactions with campus officials might have influenced prosecutors' actions given my own work as a campus Title IX Coordinator. Changes in campus-based processes, by spilling over into the traditional criminal justice system, seemed to impact prosecutors' perceptions and as a result their actions in processing campus sexual assault cases.

Additionally, prosecutors needed to adjust their work in response to external constraints and pressures. Anticipation of ends, as in jury perceptions and ultimate convictions likely added an additional layer of constraint to prosecutors' actions. Anselm Strauss (1959) also stressed the important link between naming, or the labels and language used, and knowing. The language that prosecutors used to describe their work was informative for analysis in terms of both individual and shared meaning.

My study moved beyond a simplistic description or summary of prosecutors' perceptions. Instead, I examined the data for common themes rooted in the narratives and responses of participants. I then connected themes analytically to develop substantive theory that explained the ways factors influenced decision-making (Glaser, 2007). I connected codes through themes such as contexts, causes, consequences and conditions in keeping with a Glaserian approach. Yet, a simplistic list of thematic categories is not a goal to grounded theory, it is to "tell us something about those categories" (Corbin & Strauss, 2008, p. 148). Categories form "the theoretical bones of the analysis, later fleshed out by identifying and analyzing in detail their various properties and relations" (Dey, 2007, p. 168). Subcategories also emerge that provide a foundational structure for the overriding category. In Kelle's (2010) research on loss, for example, low to high degrees of social loss and apparent versus learned attributes of significance are building blocks for the broader category of social loss. For my study, subcategories such as jury considerations were foundational in determining whether to forward a case to trial.

Categories are a study's core variables that lead to substantive and formal theory, which holds broader implications. Formal theory is generated through application of substantive theory across other areas or processes (Glaser, 2007). For example, a formal theory might apply across other areas such as different crime types or other factors that may influence the way prosecutors make sense of other processes or events. To first develop substantive theory, I analyzed categories for their relation to the phenomena "at which the actions and interactions in the domain under study are directed" (Kelle, 2010, p. 202). This process began with identification of the core issue or central phenomena that touches all other categories. Also, I reviewed the causal and intervening conditions that influence the phenomena, individuals' actions, and interactional methods to deal with the phenomena along with the consequences of those actions



(Kelle, 2010). Finally, I examined relationships among categories for patterns, directions, and meanings to form the basis of theorizing prosecutors' actions in response to changing public policy in the area of campus sexual assault.

This chapter has provided a broad to narrow review of sexual violence and the potential importance of several factors that may influence prosecutor's' decision making including case elements, and internal and external relationships. I also presented the theoretical frameworks of symbolic interactionism and grounded theory as inductive approaches that permitted the emergence of theory in an area previously underdeveloped in the literature. The next chapter delineates the qualitative methodology, including research design and modified grounded theory coding techniques that guided my analysis and theory construction.

### CHAPTER 3. METHODOLOGY

This chapter provides a discussion on the methodology of the study, including research questions and design, sampling and recruitment, followed by potential limitations. As mentioned in the previous chapter, grounded theory permits both flexibility and creativity as an inductive method. As such, each phase of the research was iterative and adaptive as I collected the data, with the intention of developing theory that informs both researchers and practitioners. Throughout the data collection process, I remained centered on one goal, to understand the meanings of campus assault for prosecutors, including the ways they made sense of victims and their social-emotional environments, the constraints and challenges involved in processing cases and finally, their perspectives on public policy and campus administrative processes.

I applied Herbert Blumer (1986)'s theory of symbolic interaction to explore how prosecutors' actions were impacted by the meanings they gave to cases, which every participant agreed were difficult and as one prosecutor described, "*not your run of the mill burglary.*" Prosecutors constructed meanings from their social interactions with the victims they served, along with investigators, judges, defense attorneys and to a lesser extent, campus officials. Through an interpretive process, the social and political environment appeared to influence prosecutors by shaping the meanings they created in their work (Blumer, 1986) as they sought justice for victims and the greater community. I applied a qualitative research design to gain in-depth understanding of the meaning prosecutors' have created in response to campus sexual assault process developments and how these affected decision-making. My research addressed the following research questions:

1. How do Virginia prosecutors view new campus sexual misconduct administrative processes?

2. What influence have these new administrative processes had on prosecutor decision-making?
3. In addition to Title IX, how do prosecutors perceive Virginia laws on campus sexual assault, in particular *Va. Code § 23.1-806*, the mandatory reporting law, as impacting their decision-making?
4. What influence do case characteristics (e.g., case law, characteristics of victims and perpetrators, internal relationships with criminal justice actors, and external relationships with campus officials, the media, and legislators) have on Virginia prosecutor decision-making?
5. What other factors influence prosecutor decision-making and what affect do those factors have?

I submitted an application to the Virginia Commonwealth University Institutional Review Board late Spring 2017. I collected data through in-depth interviews, a list of which is located in Appendix A.

### **Sampling**

Based on my experience as a practitioner, I recognized that the experiences, student populations and approaches of four-year institutions were not readily comparable to community and technical colleges. The latter are typically two-year programs that do not provide campus housing. A higher proportion of low-income students attend community colleges in comparison to students from higher income families. First generation students, those whose parents did not graduate from a college or university, are also more likely to attend community college (The National Center for Public Policy and Higher Education, 2011). Community colleges also feature higher enrollments of minority students. In 2014, 39 percent of White student attended

community college, as compared to 56 percent of Hispanic and 44 percent of Black students (Ma and Baum, 2016). Therefore, I focused my overall sample on prosecutors who had experience working with four-year public and or private universities in their jurisdictions. In conducting the study, I found this sampling approach was consistent with participant discussions regarding differences in the student populations.

According to Maxwell (2013), being intentional in selection of participants provides researchers with the needed information to answer research questions and therefore is “the most important consideration in qualitative selection decisions” (p. 97). This method helped me obtain rich data on local knowledge of experienced prosecutors. The ‘logic and power of purposeful sampling lies in selecting information-rich cases for study. Information-rich cases are those from which one can learn a great deal about issues of central importance to the purpose of the research, thus the term purposeful sampling’ (Patton, 1990, p. 169).

Realizing that the politically charged nature of the research issue may have presented challenges to data collection since prosecutors are public figures, I focused on interviewing assistant prosecutors, who are not elected. This approach was also helpful from an information standpoint, since I found that supervising prosecutors assigned assistant prosecutors to work sex crimes. Additionally, purposeful sampling was an appropriate method for this research since collecting a random sample would not have yielded an adequate number of responses from prosecutors who both work sexual assault cases and prosecute cases originating from a college campus.

The results of the study present analysis of in-depth interview data collected from a non-probability sample of 15 participants who either currently served or had served as a prosecutor within the past five years. Four prosecutors responded to the online survey, although only two

completed the survey in full and therefore yielded useful data. Participants represented five urban, two rural, and seven areas that are a combination of urban and rural areas across the Commonwealth. One survey respondent did not select a category. Years of experience prosecuting cases ranged from two years to 33 years, a combined total of over 170 years of experience represented by all participants. The sample identified primarily as female, with two male identified interviewees, which may have indicated females were more likely to participate and/or be assigned sexual assault cases; in fact a participant noted females were more likely to work these cases. To protect the identity of respondents, I use singular “they” the results chapter. Age of participants ranged from 33 to 62. In terms of race and ethnicity, most participants identified as White (12), two as African-American/Black (2), and one as Asian (1).

### **Recruitment**

I recruited participants through a letter invitation for a face-to-face interview. I then sent follow up e-mails to those who had not responded to increase response rates. For prosecutors who did not respond, I also made phone contacts and in one case, sent a fax per the office manager’s request. For all participants, I clearly communicated measures to protect the confidentiality of responses.

The Services Council proved very helpful for my recruitment strategy. During fall 2017, I received permission to attend the Services Council’s annual “Trauma to Trial” conference, where prosecution of sexual assault cases is the programmatic focus. I designed a research poster that contained the goals of my research, abstract and research questions for the attendees to view. During opening remarks, the conference organizer endorsed my study and invited me to share the goals of my research.

## Data Collection

In qualitative research, operationalizing research questions is not a necessary goal. Instead, data is collected as a “means to answering” research questions (Maxwell, 2013, p. 100). I designed interview questions to reflect symbolic interactionism theory, i.e. the meaning prosecutors place on recent public policy developments, and the ways case elements and relationships with internal and external actors influenced their work. I also requested the assistance of a prosecutor to review and provide feedback on the interview questions, located in Appendix A, to help ensure they spoke to the experience of prosecutors.

Interview questions focused on prosecution procedures in sexual assault cases, challenges in prosecuting these types of case, patterns, and trends. Areas of prosecutorial discretion in decision-making were also explored, and jury considerations, consistent with prior research on these variables. Questions also addressed how processes may have shifted as a result of new public policy developments, and whether the work of prosecutors was impacted, and if so, how and why. I also explored the relationships between campus officials and prosecutors. I viewed these questions as significant since effective collaboration may enhance services for victims and accountability for offenders. The chart on the next page organizes interview questions by themes addressed in the literature review.

Literature Review Themes	Interview Questions
Issues in defining the problem of sexual assault	Have you seen any changes in reporting rates from campuses in say, the past three years? Have reports increased or decreased?  Do you see any patterns to the reports you receive? For example, are you seeing any trends across particular groups?
Barriers to Reporting	Research has consistently shown rape to be underreported. Based on your experience, why

	are victims reluctant to report and participate in the criminal justice process?
Common Law and Case Elements	<p>In your experience, what have been the main challenges/obstacles you've faced in your role in prosecuting campus sexual assault cases?</p> <p>Are there particular challenges in prosecuting cases where the victim or offender are from marginalized communities, e.g. LGBTQQ or underrepresented minority groups?</p> <p>Are there any processes that differ for handling cases where college students, rather than community members, who are victims?</p> <p>Please discuss areas where you believe you have the most discretion in sexual assault cases. What kinds of decisions do you make, and what factors do you take into account?</p> <p>Think of a time when you successfully prosecuted a college campus sexual assault case. What were the features of that case that made it "prosecutable?" If there was no such case, what features could have led to a conviction?</p> <p>What directions and/or changes do you anticipate for commonwealth's attorneys with respect to campus sexual assault? What changes would you like to see?</p>
Internal Relationships	<p>I'd like to learn more about your working relationship with law enforcement. What are some of the ways you collaborate in sexual assault cases? How might your relationships be strengthened or enhanced?</p> <p>In preparing juries for sexual assault cases, what are some important considerations? Have you noticed any trends or changes in their perceptions of offenders, victims or other case elements over time?</p>
External Relationships, Federal Guidance and State-Specific Laws	I am interested in learning more about your perspective on how college campuses have addressed sexual assault in the past and what they are doing now. How have their processes changed from your standpoint?

	<p>Can you tell me about your relationship with the media and public officials as it relates to prosecuting sexual assault cases?</p> <p>Can you tell me about how you interact with campus officials/administrators? How if at all has this changed over time, especially more recently, and why?</p> <p>Please tell me about your jurisdiction's Sexual Assault Response Team and the relationships you've developed with Team members. How has the SART affected your processes?</p> <p>In your view, how do laws requiring mandatory reporting and transcript notations influence your work?</p> <p>If you could change one thing about campuses' approaches, what would it be?</p>
--	---

Table 1. Interview Questions Organized by Literature Review Themes. Created by researcher.

I conducted semi-structured interviews between June, 2017 and July, 2018. Each in-person interview lasted between 40 and 70 minutes. I audio recorded and transcribed each interview, which I believe brought me closer to the data and permitted thoughtful analysis throughout the process. Although I initially set out to conduct interviews only, I recognized that the sensitive nature of the topic and prosecutors' workload demands might have inhibited participation in a face-to-face meeting. Therefore, I requested and received IRB approval in February 2018 to translate my interview questions to a survey format using REDCap, a secure electronic data capture tool hosted at Virginia Commonwealth University (Harris, Thielke, Payne, Gonzalez, Conde, 2009).

The survey contained interview questions as well as a few added screening questions. For example, one question asked if they had a college campus or university in their jurisdiction and the extent to which they had experience with prosecuting campus sexual assault cases



specifically. This also helped me to meet my objective to obtain a purposive sample that featured key informants (Martin, 1996). I intentionally left out the question identifying the area of the state where they worked, to reassure participants of their anonymity. Once again, the Services Council assisted in recruitment, as they announced the survey via listserv twice during spring 2018 to over 200 Virginia prosecutors.

### **Data Analysis**

I conducted data analysis in two phases, using QSR International's NVivo 10 software (QSR International, 2012) to store, manage, and analyze the data. First, I used a modified grounded theory approach to analyze interview and survey data to identify patterns, categories, and overall themes. In this way, I introduced a priori codes to help categorize the data (Charmaz, 2006, 2014) while documenting and conceptualizing the respondents' statements. Originally, I posited the following a priori codes, rooted in the literature and my conceptual framework: police, campus officials, media, judges, legislation/legislators, jury considerations, victim characteristics, offender characteristics, and discretion/decision making. As shown in my presentation of research questions by themes (Table 1), I incorporated and built upon these concepts as I analyzed interview and survey data and made comparisons among participants.

According to Charmaz (2006), codes work best when "they capture and condense meanings and actions" (p. 48) and are based on the actions each line of data represents. I analyzed interview and survey data via open coding, line by line, followed by axial coding to build connections and themes amongst the codes (Strauss and Corbin, 1998). The second stage of analysis incorporated Corbin and Strauss' theoretical sampling, or collecting and analyzing data based on concepts that emerged during coding (Corbin and Strauss, 2008), another important grounded theory process.

During the process of documenting and building out themes, I collected new data with those themes in mind. As interviews proceeded, I realized prosecutors had little familiarity with transcript notations. As indicated in chapter one, in Virginia, *Va. Code* § 23-9.2:15 requires that students found responsible for violating a sexual misconduct policy, or those who withdraw pending a finding of responsibility through a campus hearing process, receive a transcript notation indicating the misconduct. Because of their limited knowledge of the law, I altered the way I asked the question about transcript notations to first, provide context and second, to share other prosecutors' perspectives on due process and fairness (another theme connected to the transcript code).

In grounded theory, analysis “begins with collection of the first pieces of data” (Corbin and Strauss, 2008, p. 57) and persists throughout the study. Using grounded theory methods, I coded the data line by line based on emerging themes and a priori codes, which helped to categorize the data. The initial codes were consistent with the literature and included police, campus officials, media, judges, legislation/legislators, jury considerations, victim characteristics, offender characteristics, discretion/decision. I also ordered codes in hierarchies where main themes such as mandatory reporting law contained sub codes such as no change in prosecution rates.

As I organized codes, I continued to conceptualize themes that I tested through further analysis. Specifically, I examined new lines of data in each case to determine if they were a good fit to existing themes or if they warranted a new theme. I also revisited the codes and data throughout the research process, fine-tuning codes that were comparable and inter-related. For example, I included defense attorney tactics and promiscuous victim under the theme factors that make cases difficult to prosecute, based on statements made by the participants. “In vivo” codes,

phrases or words used by participants, were also developed through the coding process as I labelled important themes from participants' statements (Kelle, 2010, Charmaz, 2006, 2014). For instance, the theme, "*he said-she said*," was an emergent in vivo remark made by a participant. This phrase indicated a lack of evidence beyond two individuals' statements about what occurred during the reported incident.

I applied Strauss and Corbin's (1998) open and axial coding procedures to develop categories. First, I asked questions of the data, including temporal questions such as frequency, rate, duration, and timing as well as spatial, i.e. open or closed. Once I created categories, I reviewed lines of data and placed them into the category of best fit. I also "placed" or situated the data by asking questions such as "what is going on here?" and "what are the structural conditions that gave rise to those situations?" (Dey, 2007, p. 100) and used constant comparison to determine "according to which criteria do the incidents vary?" (Kelle, 2010, p. 196).

Dewey and Bentley (1960) and Strauss (1993) also recommend focusing on routine situations in contrast to the problematic. The latter involve thought, or where others are involved, discussion, which may include debate on the best approach or action (cited in Chamberlain-Salaun, Mills, and Usher, 2013). In coding the data, I focused on statements where prosecutors describe their thinking behind a novel situation. I also centered on discussions regarding prosecutors' interactions with other actors including campus officials and police.

While initial codes help to organize the material, it is important to understand the relationship of categories, or substantive/theoretical categories. As Corbin and Strauss (2008) argued, "theorizing is interpretive and entails not only condensing raw data into concepts but also arranging the concepts into a logical, systematic explanatory scheme" (p. 56). Substantive theory results from analysis, which can lead to additional comparative research to generate

formal theory that applies across realms (Glaser, 2007) beyond prosecution. Substantive categories go beyond description to explain the meaning and context- what the participants “actually did or meant” (Maxwell, 2013, p. 107).

Axial coding is another tool used in grounded theory to identify relationships and meanings between categories. This process starts with identification of the core issue or central phenomena that touches all other categories with frequency and may give rise to an explanation or a general theory that applies across circumstances (Strauss and Corbin, 1998). A “researcher negotiates divergent perspectives within the data to produce an integrated theory” (Chamberlain-Salaun, Mills, and Usher, p. 8). The resulting substantive or theoretical categories must go beyond description to explain the meaning and context of processes (Maxwell, 2013). As indicated in the findings, categories included factors that make cases difficult to prosecute, public policy developments and model practices, which influenced the decision-making of prosecutors across a number of actions. As such, I linked emerging patterns and categories to generate theory that not only speaks to the data, but also to those actors who generate and are influenced by it.

To help organize and analyze the data, I used QSR International’s NVivo 10 software (QSR International, 2012) and memo writing, a tool commonly used in grounded theory to reflect upon data and encourage thoughtful analysis. Memos facilitate development of initial categories, and subsequent theory development (Birks and Mills, 2012). Questions such as “What is this an example of? When does it happen? Where is it happening? With whom? How? Under what conditions does it seem to occur? With what consequences?” (Lempert, 2007, p. 251) helped to generate insightful memos.

Memos encourage intellectual conversations while affording an “analytical distance” (Lempert, 2007, p. 249). This feature is important since it reinforces conceptualization as opposed to simple description of what is occurring within the data. Memos not only “capture...analytic thinking...but also facilitate such thinking, stimulating analytic insights” (Maxwell, 2013, p. 105). Clark (2005) refers to memos as “intellectual capital in the bank” (p. 85) that can be revisited later while reviewing category iterations and how they connect (Charmaz, 2000 and 2014). In my study, memos formed the basis for initial categories and subsequent theory development (Birks and Mills, 2012).

### **Validity**

Due to the sensitive and politically charged nature of this campus sexual assault, a potential limitation posed by my research is response bias. I sought to minimize threats to validity by exhibiting a non-judgmental stance to encourage the participants to provide honest feedback during interviews. The participants’ openness in their responses enhanced the study’s validity since the participants did not appear to be withholding their true beliefs on a variety of matters. For example, several were critical of their own system and actors within such as law enforcement and judges in addition to campus officials and processes.

Another method used to address validity is member checking, where researchers elicit feedback of key informants on the interpretation of data (Creswell and Miller, 2000). I requested a prosecutor with many years’ experience prosecuting campus sexual assault cases to review my codes and themes for accuracy, namely that the codes speak to their work. I also reviewed participant statements across cases (individual responses) to establish triangulation of data sources. Prosecutors tended to state similar viewpoints, such as the difficulties in prosecuting campus sexual assault cases and the ways that juries differed in terms of cultural perspectives on

student behavior especially partying and drinking. Broadly speaking participants also wished campus officials would be more transparent and do more to prevent sexual assault.

I also collaborated with a research partner from another institution to review and code three separate interviews using a codebook I created. To explore consistency in our coding, I examined the percentage agreement in our coding, which yielded 93% agreement. In areas where we disagreed, I realized my codebook should have been clearer in defining the parameters for each code, which was a helpful learning opportunity as I conduct future research and collaborate with others.

### **Reflexivity and Ethical Issues**

Although a researcher's preconceptions were discouraged in classical grounded theory, Dey (2007) offered complete elimination is not possible. All researchers approach data with existing knowledge and theoretical lenses. As such, "the point is not to avoid preconceptions, but to ensure that they are well-grounded in arguments and evidence, and always subject to further investigation, revision and refutation" (p. 176). Therefore, transparency is even more critical, and can be met through the use of memos and diagramming, all be stored within the NVivo program. As Chamberlain-Salaun, Mills, and Usher (2013) suggested, "During initial coding and categorization of data, the researchers negotiate their own perspective of the substantive area of inquiry with that of the participant's to make meaning of raw data and assign codes" (p. 8). Thus, my own background and interests intersected with those of prosecutors to create substantive theory.

Chamberlain-Salaun, Mills, and Usher (2013) offered, "grounded theory research process is not an objective process. Instead it is an interwoven process that integrates the phenomenon under study, with the study participants' and the researchers' perspectives and interpretations" (p.

8). Credibility in qualitative research is further enhanced by reflecting on my background in approaching this area of study (Patton, 1999) and my theoretical sensitivity (Glaser and Strauss, 1967), or personal and intellectual history in approaching my research. Prior to working in Title IX administration, I served victims of gender-based violence for over 20 years at the state and local non-profit level and most recently in higher education. My career appeared to be happenstance, as I began volunteering on a crisis hotline as an adolescent. However, a history of sexual assault led to interests in psychology and sociology and continuing work in victim services. On a personal level, applying a systems and structural lens to gender-based violence both demystifies and empowers a researcher to remove the self from a cultural issue. In other words, my work and my research help me to understand sexual violence from a macro level and to understand and heal from the effects of trauma.

As a student of public policy, I seek to understand the structural, institutional, social and political forces that influence and shape laws and social norms. Individual acts occur within a cultural framework that influences ideas and actions, including those of service providers who work to stop acts of harm to persons such as prosecutors. I have worked with several Virginia prosecutors on criminal cases including sexual assault, and collaborated on prevention programming, educational workshops for first responders and resource development with many individuals who share a passion for changing culture and using research to improve interventions.

Throughout my research, I was intentional in remaining open to the data, which helped to lessen my inclination to begin analyzing the data prematurely or to assign preconceived notions (Charmaz, 2006). I also wrote post-interview memos, which helped me to both conceptualize the data (Chamberlain-Salaun, Mills, & Usher, 2013) and to narrate my initial ideas around

developing theory. Memo writing also encouraged reflexivity (Charmaz, 2014), and awareness of personal biases, perspectives and responses to participants' viewpoints. For instance recognizing my tendency towards viewing information from a social justice standpoint, I did not make assumptions that participants would know the meaning of "LGBTQ" and "marginalized communities" from interview question items. Instead, I made the concepts clear and provided examples. I also did not interject my own views regarding marginalized communities, although participants may have been aware of my perspective simply by my inclusion of this content in data collection.

As I proceeded in conducting interviews, I increasingly understood prosecutors' frustrations with campus sexual assault cases overall and was impressed with their consideration of victims' needs and fears, including the impacts of trauma in proceeding through a trial. I also identified with their frustration over society's tendency to blame victims and had greater understanding of their desire to bring forth justice even when a not-guilty finding was unlikely. Their concerns over defense attorney tactics that damage the victims' credibility were also evident. Finally, prosecutors indicated a strong wish that colleges would do more to prevent at-risk behaviors and to help all students understand consent.

Each of the aforementioned insights arose as I strived to remain completely open to their perspective, values, and feelings. This approach also addressed ethical standards in being forthright about the nature of my research and being kind and respectful to participants. Although the topic of sexual assault is highly sensitive, the participants appeared comfortable discussing the issues most likely because they deal with a variety of violent crimes on a regular basis. Some participants expressed being happy someone was asking for their viewpoint. As



one prosecutor stated, *“I think I’ve got it all off my chest finally. I’ve been wanting somebody to know all this stuff. It’s been so frustrating.”*

### **Public Policy Implications**

My study contributes to and expands upon the literature in sexual violence on college campuses and research on prosecutorial decision-making. I developed a theory that helps to explain the ways prosecutors understand and give meaning to campus processes developed since the introduction of federal and state public policy and their impact on decision-making. I also examined prosecutors’ perspectives on definitions of campus sexual assault, barriers to victim participation and victim and offender characteristics and how these factors influenced their decisions to forward cases. I explored the extent to which internal and external relationships both increased communication and collaboration and became strained due to competing and overlapping procedures.

Providing a clear and rich picture of the meaning prosecutors created in response to the ways higher education institutions were intervening to hold offenders accountable lends insights into the impact of ED’s guidance as well as Virginia mandates. The insights may help practitioners understand increased collaborations between campuses and prosecutors’ offices and the ways increased tensions and conflicts that may diminish relationships. The results of the study also shed light for prosecutors on the “working” of sexual assault cases across Virginia for victims attending a college or university and how public policy developments have influenced other prosecutors’ processes.

Campus administrators including Title IX administrators may benefit from learning about prosecution in an environment of heightened media scrutiny, expanded public policies, and bureaucratic development in Virginia (Svrluga, 2016). Legislators may gain insight on how

public policies in higher education, such as the mandatory reporting and transcript laws, have impacted a critical component of the criminal justice process. Finally, identification of deficits in resources and knowledge yield opportunities for collaboration and education to improve overall response to sexual assault crimes in the criminal justice system and sexual misconduct policy violations in the campus environment. In chapter four, I present the results of my research, followed by my analysis and theory, which has additional implications for public policy.

#### CHAPTER 4: FINDINGS

*They're [sexual assaults] as complicated if not more than homicides and I'll take a homicide any day because a homicide, I don't have to prove if there's a murder, I just have to prove who did it usually. [With] sexual assault I gotta prove there was a crime before I can even talk about it, then the details, and that's a very different way to have to function that we don't teach very well. – A prosecutor who participated in the study*

In this chapter, I present the results of my study in three sections based on primary themes that emerged from the data: 1) what makes sexual assault cases challenging to prosecute in general; 2) public policy opportunities and challenges associated with federal guidance and state mandates; and 3) recommended models and practices. Through interviews (N =13) and surveys (N = 2), prosecutors offered their views in response to the following research questions:

1. How do Virginia prosecutors view new campus sexual misconduct administrative processes?
2. What influence have these new administrative processes had on prosecutor decision-making?
3. In addition to Title IX, how do prosecutors perceive Virginia laws on campus sexual assault, in particular *Va. Code § 23.1-806*, the mandatory reporting law, as impacting their decision making?

4. What influence do case characteristics (e.g., case law, characteristics of victims and perpetrators, internal relationships with criminal justice actors, and external relationships with campus officials, the media, and legislators) have on Virginia prosecutor decision making?
5. What other factors influence prosecutor decision making and what effect do those factors have?

Symbolic interactionism provided the theoretical framework for how I conceptualized and analyzed themes that emerged in my study. I have structured the findings according to the theory's main tenets, where social interactions give rise to individuals adapting their behaviors to correspond with the actions of others (Chamberlain-Salaun et al., 2013). Symbolic interactionism also assumes reciprocal relationships between the individual, groups, and the environment (Charmaz, 2014). As such, I analyzed the data in each chapter according to **interactions, meanings and action**. Of importance are interactions with victims, internal system actors (police, defense attorneys, judges) and external actors (campus officials, the media, and legislators), the meanings prosecutors subscribe in response to these interactions, and the ways these meanings influence their actions.

In the next section, I present data that offers evidence of the shared meanings prosecutors give to sexual assault cases, especially those involving college students. They primarily identified the cases as difficult to prosecute based on extra-legal factors such as biases on the part of law enforcement, judges and juries and intra-legal factors, or those elements that are incorporated in case law. Prosecutors also presented the cases as emotionally difficult, potentially leading to vicarious trauma and emotional labor beyond that required of prosecutors who handled cases involving other crimes. Additionally, prosecutors indicated a victim-centered

philosophy, in their work with survivors. In the following section, I explore each of these areas through analysis of participants' narratives from a symbolic interactionism perspective.

### **What Makes Sexual Assault Cases Difficult: Extra- and Intra-Legal Factors, Vicarious Trauma and Emotional Labor**

*I think you have to think a lot more strategically than in your run-of-the-mill burglary case –*

Former prosecutor who participated in the study

According to prosecutors, sexual assault cases are uniquely challenging. Similar to prosecutors who handle burglaries and homicides, sexual assault prosecutors operate under conditions where they are under-resourced and overwhelmed by high caseloads according to study participants. Unlike their peers, they are involved with emotionally taxing and complex cases that required greater expertise and knowledge of the complicated dynamics of trauma. Because of these added dynamics, they also dedicate more time and effort to help prepare a victim for what is to come and to provide them with victim/witness advocates, support and information throughout the process.

There were many factors a prosecutor must consider in weighing the decision to take a sexual assault case to trial including extra-legal, such as victim blaming on the part of police, judges and juries and intra-legal factors, e.g. corroborating evidence. Nevertheless, some prosecutors chose to forward a case in spite of these barriers based on the victim's wishes to proceed and to offer them an opportunity to provide their narrative in the courtroom. In addition, cases were emotionally challenging for several participants and for some, appeared to be associated with symptoms of secondary or vicarious trauma. Prosecutors also appeared to engage in emotional labor, first by managing their emotions in an environment where expression of feelings was typically discouraged and second, through empowering and supporting victims in

a number of ways to achieve their desired outcome, the latter of which has not been explored previously in the literature. Finally, prosecutors exhibited high concerns for the needs of their victims; *victim centered and trauma informed* emerged from the data more often than any other theme. I discuss each of these themes in the sections that follow.

### **Extra-legal factors.**

In this section, I begin with extra-legal factors that prosecutors weigh in taking a case to trial that are outside of written law and procedure. Prosecutors shared additional factors that make campus cases challenging especially those that involve alcohol and offenders who were acquaintances. Judge and juror perceptions of victim credibility and culpability for the assault, i.e. victim-blaming, and beliefs surrounding allegedly high numbers of false reports or students having “buyer’s remorse” or regret sex, also contributed to difficulties in gaining convictions.

### ***Alcohol, acquaintance rape, and victim-blaming.***

Examining the role of alcohol, a prosecutor described in depth why campus cases in particular pose a challenge because of substance use and its impacts on victim recall. Judges and jurors potentially blaming a victim for drinking prior to an assault was the primary obstacle:

*They’re never easy. What makes them difficult is they **almost always involve alcohol**. I think people are somewhat dismissive of the role alcohol plays in a prosecution because I think they see it as well, you know the victim was drinking so **they must’ve asked for it**. That’s way too simplistic as to what really is going on for a prosecutor **because alcohol makes them a good victim** because they are compliant. They are foggy. They can’t resist. Their memory is bad. They have low motor skills, low recall. All of those things make them a great victim. **It makes them horrible witness.***

The importance of extra-legal factors mentioned by this prosecutor, drinking and resultant blame for that behavior, is consistent with previous research that showed jury members tend to focus on the moral character of the victim, as well as their perceived reputation, and actions leading up to

an assault (Beichner & Spohn, 2005, p. 491). Factors were also additive as one prosecutor explained,

*These types of sexual assault cases still tend to be those that the general public will victim-blame. If the victim and offender knew each other as they typically do or if alcohol was involved it lends to the public's victim-blaming tendencies.*

For this participant, the subthemes involving acquaintance rape and alcohol use intersected as factors that made it even more difficult to prosecute. Prior studies have found prosecutors as less likely to charge a case where the victim was drinking (Beichner & Spohn, 2005; Campbell, 1998; Campbell et al., 2001; Campbell, et al., 2009; Spohn & Holleran, 2001) and that jury eligible study participants have judged victims as having diminished credibility (Schuller & Wall, 1998; Wall & Schuller, 2000). Victims have also been shown to receive more scrutiny within the courts when they were acquainted with the defendant and where they engaged in perceived risk-taking behavior (Spohn & Horney, 1993) such as walking alone at night and visiting the home of the defendant (Beichner & Spohn, 2005).

However, more recent literature suggests that sexual assaults involving intimate partners may be taken more seriously by the criminal justice system than they have been in the past. Daly and Bouhours (2010), for example, reviewed a small subset of stranger sexual assault cases (n = 13) between the 1970s-1980s and 1990s-2010 across several countries including the U.S. The authors found that the proportion of reported cases involving stranger attacks as significantly higher in the earlier decades (48 percent) than in the more recent period (26 percent). These results potentially signified acquaintance assaults as more likely to be reported in contemporary culture, which showed greater acknowledgement of this more common type of rape (Daly and Bouhours, 2010). Likewise, a 2009 study (Campbell, Patterson, Bybee, and Dworkin, 2009) of adult sexual assault cases in one county showed cases involving intimate partners were more

likely to yield a higher disposition (i.e. progress further through the criminal justice system to include prosecution of the case and/or conviction). The researchers offered that their study “may reflect the substantial efforts of the domestic violence advocacy community to have intimate partner crimes recognized and prosecuted by the criminal justice system” (Campbell, et al., 2009, p. 723).

According to participants, defense attorneys continued to build upon long held cultural notions of the “real rape” (Estrich, 1987). Armstrong, Gleckman-Krut and Johnson (2018) summarized the literature on this paradigm, as the “violent vaginal penetration of a chaste, unmarried, wealthy, cisgendered, heterosexual, white woman by a stranger, typically portrayed as an African-American man” (p.104). As such, defense attorneys were in a position to question the credibility of victims who do not fit within this framework. Victims were the ones on trial, according to the following prosecutor:

*With sexual assaults overall there’s a lot of blame put on to the victim, I mean that’s what they have to destroy that person’s credibility. That’s the main defense... You are on trial. Everything about you, every decision you make, everything... it feels to me, like beyond all doubt **your victim is on the trial and not the defendant.***

These prosecutors’ meanings of sexual assault include notions of unfairness and perhaps injustice, since victims carry the burden of exhibiting cultural standards of innocence. Victims’ appearances also impacted juror perception, as described by several prosecutors, “*most of these people [jurors], some of them maybe had similar experiences, but most of them look at it and ‘well, I mean she got to choose wearing a short skirt, what did she expect to have happened?’*”

Harsh judgments against women who were sexually active and engaged in “risk-taking” behaviors can also make a conviction less likely, as another prosecutor described:

*She’s a beautiful young woman. She’s capable, you know, from a good family, whatever that means... **she lives a partying lifestyle.** She was honest with us about that. So, when we got her cell phone dump, we found a lot of videos that would be extremely*

*embarrassing to her. And, that's going to cause us to have to plead out her case. Is that fair? I don't think so, specifically because **women like that are the ones that are targeted... These sexual assaults happen in a certain petri dish and it frequently is women who engage in risk taking behaviors so nobody should be shocked when they discover risk-taking behaviors in their victims and they are and that's one of the things that irritates me.** I don't think most people have a concept of that.... all the really crappy stuff is, did they know each other, were they dating, had they ever had sex before, are you a virgin, you know...**was she drinking? Was she consuming drugs?** Because all those things, because necessarily that **character of the victim is going to be on trial, even more so than the defendant.** We always know that. In a rape case, it's going to be, do we believe her? And unfortunately in our society it's the only **we believe her is if she is an angel or a nun.***

Thus, the prosecutor agreed that the cultural narrative on what does and does not constitute sexual violence comprises drinking, partying, and previous sexual activity, but also argued these factors should not be construed as reasons to blame the person who experienced an assault. This alternative viewpoint would shift the lens from one that places responsibility on the victim to one that examines the ways perpetrators target people that meet a certain profile. In an article that explored the influence of individual, relational and institutional factors on campuses that increase probability of sexual assault, Armstrong, Hamilton and Sweeney (2006) suggested, “party rape occurs at high rates in places that cluster young, single, party-oriented people concerned about social status. Traditional beliefs about sexuality also make it more likely that one will participate in the party scene ...” (p. 494). These beliefs include men as the assumed initiators of sexual activity and women as the receivers. As the prosecutor above noted, these persistent stereotypes heavily influenced the ways females were perceived in the courtroom.

Additionally, a prosecutor shared that in spite of rape shield laws designed to protect victims' sexual history from introduction at trial, defense attorneys appeared to tap into long held biases as a way to introduce the sexually promiscuous narrative:

*A lot of these cases have issues. I mean you have victims that are targeted because they, they're really drunk where they got **mental health problems** or maybe **they are a little more loose or well, so 'she's sexually free and I can do whatever I want to her.'** And*



*that's always used against them because we have a rape shield statute, but then it gets used for' well because she had sex with other people during the week, that could of accounted for her injury here so we can slip it in,' but **what we're really offering it for is the fact that she's loose, you know.***

The above statement is consistent with previous research (Anderson, 2002) that questioned the extent of protection that rape shield laws actually offer. Courts permit exemptions and therefore, defense attorneys are able to introduce previous sexual acts during trial.

Realizing the extent to which courtroom actors will judge the victim, another prosecutor expressed frustration as they admitted to considering victim-blaming factors when they weighed the decision to move forward:

*I'll just be honest with you... One of the first things I look at is, how does the victim present? And that can be everything from **tattoos, attractiveness, how they dress, how they speak, and all the trash talk** that necessarily comes along with it because even as a prosecutor I hear the trash talk that comes from other side about the character of the victim... I had this case that broke my heart and this young lady was, I guess dressed kind of **slutty, a little trashy**... She had facial piercings and when I got her pictures from the SANE exam [Sexual Assault Nurse Examination], she had a **nipple piercing**. She had **tattoos** under her bathing suit areas and she was shaved, so **she didn't have any pubic hair**. And when I saw those, I thought damn, that's really gonna hurt my case, which is crazy, but the **fact that she looks like a sexual being even when she was an adult, I knew that was gonna hurt my case**... We have another [college case]. **This lady is drop dead gorgeous, and she knows it. She dresses very provocatively**... and I can guarantee you that that case will be plead out because of that, which is a shame.*

Therefore, the same cultural lens of bias against victims appeared to influence prosecutors' actions, based on previous interactions with courtroom actors including defense attorneys. In turn, this may have reinforced victims' silence if they did not have the opportunity to proceed in sharing their account.

#### ***False reporting and "buyer's remorse."***

The persistent belief that there are a high number of false sexual assault reports created challenges for prosecutors: "you know the studies have shown that the incident of false reporting for sexual assault is no higher than it is for any other crime and yet we put this impossibly high

*burden for victims of sexual assault.”* This narrative likely contributes to jurors’ decisions, as prosecutors shared that jurors were less likely to convict in campus sexual assault cases as compared to other types of crimes.

The in-vivo/grounded theme, *buyer’s remorse, don’t want to ruin boy’s life*, illustrated further below captures the role of disbelief in negatively swaying judges and jurors’ decision to convict a student of a violent crime. Two prosecutors described this phenomenon:

*No hard proof on this, but the overall feeling is that it’s the **buyer’s remorse by the victim**. So’ she did this and now she just doesn’t like that she made a bad decision and was holding him accountable’ or ‘**boys will be boys**’ attitude. Or ‘**they’re just young, they made a mistake.**’ You don’t want to saddle him with this horrible felony, felony sexual assault for **just going to a party and having fun**.*

In the above scenario, judges and jurors seemed to view the victim as flawed for having made an error, regretting sex, vs. seeing the offender as accountable. However, another prosecutor pointed to the perpetrator as bearing primary responsibility for the offense.

*So, you have to deal with... ‘oh college, **I don’t want to ruin this person’s life.**’ Well, if this person is an assailant, he has done this himself. That is nothing for you to be concerned about and so you try to hit that during the voir dire process of jury selection.*

The sixth amendment to the U.S. Constitution guarantees a defendant’s right to an impartial trial by jury. Thus, this prosecutor indicated reviewing jurors for potential bias and removing them during initial jury selection, a process known as voir dire, translated from the French language "to speak the truth" or "to see what he or she says," (Suggs, Sales, Barclay, & Grisso, 1978, p. 368). Nevertheless, as will be shown later, participants recognized this process is not fully effective in achieving a neutral jury. Before reaching trial, however, prosecutors expressed concerns with the ways law enforcement officers’ biases towards sexual assault victims impacted their cases, as well as those of judges and juries. In the following section, I first address how these interactions/meanings with law enforcement influenced prosecutors’ work.

### ***Biases and stereotypes: Law enforcement.***

In terms of making an initial report to the police, the literature consistently demonstrates sexual assault is the most under-reported crime (Karjane et al., 2005; Fisher et al., 2007) due to shame, guilt, and embarrassment (Sable, Danis, Mauzy, & Gallagher, 2006) as well as fear of offender retaliation (Sinozich and Langdon, 2014) especially among college students. Overall, students tend to seek out support from friends and family (Sabina & Ho, 2014). In addition to barriers based on their emotional response to a sexual assault, victims may also interface with officers who exhibit a negative response. Five prosecutors shared concerns regarding biases on the part of law enforcement, especially the perception of a high rate of false reports and victim blaming. Participants also noted officers' movement towards a trauma-informed and inclusive approach as gender diversity within the police force has grown, yet a significant lack of understanding of the needs of people who are transgender remained.

During an interview, a prosecutor recognized the influence of cultural norms, and the persistent narrative of false reporting, on officers:

***I don't think it's because law enforcement is against rape victims, but they've built this belief that there's more people out there that are making false claims of sexual assault. They have analyzed it from the only way they've ever been taught, which is how you interrogate people and how to evaluate suspects because nobody trains on victimology and trauma. So we've got to [offer] as much training on victims and how to work with victims as how we do on how to work with suspects.***

Prosecutors identified lack of adequate training as the reason for ongoing bias and the need to increase law enforcement officers' knowledge on the impacts of sexual assault:

*You have law-enforcement officers who aren't specifically trained in the dynamics of sexual assault and who understand these cases are different. Their responses are continuing to be informed by their preconceptions about what rape looks like...*

Next, the prosecutor then turned to the ways cultural biases influence law enforcement response:

*All the public law enforcement officers were actively trying to prove that it didn't happen...I can't think of any other type of criminal case where you would see law-enforcement officers starting from the premise that their job is to disprove that a crime took place or you know the kind of questions that they would ask in a sexual assault case cast aspersions on the victim in the way... You don't ask somebody who's had something stolen from their house 'what were you wearing?' Or, 'well you didn't lock the front door, what did you expect was going to happen?' I think that's a barrier.*

Prosecutors perceived that officers in these cases constructed meanings of sexual assault victims as dishonest (since these crimes “didn't” occur) and culpable, meanings that were different from any other crime.

A prosecutor explained how just one criminal investigator's victim-blaming approach negatively impacted a high number of cases:

*We had this one specific detective...he was very vocal about his opinions about rape and sexual assault. They were really 'old school' and upsetting. Essentially, he believed that if you've been drinking, you couldn't prosecute a sexual assault...He would send his cases to me through direct indictment review, which is a way of sandbagging the case and he was doing it routinely. We would get the case and there would basically be nothing in the file. I would contact the victim and say, you know, 'what's up, why don't you want to [proceed]?' ...He would present the case, 'they don't want to prosecute.' I would talk to the victim and the victim would be like, 'detective so and so said it was gonna be impossible and it was going to screw up my life so why am I going to do that?' So, you know **I hope that those types of detectives are fewer and farther between. But, it's just, it was shocking to me just how one detective in an area...and I got tons of these cases through him...so even one bad apple can affect the way that rapes are prosecuted.***

To mitigate the attempts of the investigator to prevent the case from proceeding, the prosecutor employed an alternative strategy by contacting victims in the case to explain the process and to gauge their willingness to move forward. Through this interaction, the prosecutor sought to alter the meaning of the case the victim has created from one that was not prosecutable (based on the biased perspective of the detective) to one that was viable.

Conversely, a prosecutor with many years' experience noted that law enforcement attitudes have shifted over time, likely due to increased training and inclusion of female officers:

*I was trying to remember it was the last one [training] that we did... talking about interviewing and re-interviewing [survivors] over time and it was a little touchy-feely for our officers, but they sat through it...I think that they heard at least some of what was being said. And I'm kinda joking about that, but I do think that officers in my [many] years of doing this have changed a lot in their understanding. And you know we sometimes have more female officers that can be involved in it as well and I think that's probably helpful. Although, you know that's sort of a stereotype too because.... you know some of our big, burly men, if it's a female who is kind of frightened, do I want the 6 foot two, broad shouldered, looks like he plays football, sit by me, got my back versus some nice handholding female officer?*

In the scenario the prosecutor shared, the introduction of female officers may have influenced attitudes about and behaviors toward victims. From a symbolic interaction perspective, police interactions with other officers, both male and female, and law enforcement trainers affected the meanings officers constructed of sexual assault cases, and subsequently their actions. At the same time, it appears cultural stereotypes were also embedded in the meanings that prosecutors and from this prosecutor's perspective, survivors, created regarding which gender was the more suitable protector.

Lack of gender diversity in police departments in terms of people who are non-binary or transgender may contribute to the dynamic where transgender victims fear physical and sexual violence, arrest and negative interactions with law enforcement (Panter, 2017). In my study, participants also noted disparate treatment of members of the transgender community by the criminal justice system. In the following account, a former prosecutor shared their dismay of the ways police and judges in one jurisdiction interacted with individuals from this community:

*Often law-enforcement officers don't have an understanding of marginalized communities, they misgender members of our trans communities...I saw several members of the criminal justice process, including judges, intentionally humiliate trans people, asking them things like 'okay, Ms. So and So is this is your name? But, I'm looking at your criminal history and I see an a.k.a. and here is a male name. Do you want to tell me about that?' So, making that trans person explain that in front of the courtroom full of people and then have the deputy turn and say 'it doesn't matter what gender you identify with, your going into the male population even though you're a*

*trans woman.’... It’s hard to mitigate those because there’s lots of pieces you don’t control.*

Even though the prosecutor reported feeling troubled by these situations, they felt constrained in their ability to help in the moment. Witnessing these interactions may also result in an acknowledgement that taking cases to trial that involve a transgender victim would be fruitless or worse, harmful to the survivor. Another participant confirmed they had minimal interactions with people who are transgender, even though they realized the prevalence is higher than what is reported, consistent with previous research (Blosnich & Bossarte, 2012; Blosnich & Horn, 2011; Cantor et al., 2015; Coulter et al., 2017; Krebs et al., 2016; Martin et al., 2011; Munson & Daniels, 2015):

*We’ve had a couple of transgendered [sic], or people in transition, or transsexuals here, but they’re kind of rare and people still treat them as if it’s a spectacle unfortunately. I’m sure that same sex sexual assault happens all the time, we just don’t see it yet...*

This prosecutor’s lack of experience with this population is further reflected in their uncertainty in the appropriate identification of their clients (i.e., transgender vs. transsexual vs. same sex), which provides further justification for the need for education on gender diversity. Greater understanding of these dynamics, perhaps through training and recruiting members of the transgender community, could yield a more welcoming and inclusive justice system response. In turn, reporting rates from the community may increase.

To summarize, study participants shared frustrations with individual officers, but signaled a trend towards a shift in victim blaming attitudes as training and gender diversity has increased. However, gains are still needed in this area, especially in understanding the needs of people who are transgender or gender non-conforming. The next section focuses on the role of judges and jurors’ biases in influencing the ability of prosecutors to obtain a successful conviction, which may influence their decision to try a case.

### ***Biases and Stereotypes- Judges and Juries.***

A common theme across interviews was the presence of biases amongst judges and juries and the ways this frustrated prosecutors' work. Beginning with judges, one participant shared, "Making this kind of [sexual assault] case is difficult because you have inherent biases. It doesn't matter what you say about putting on the black robe, they're still there." Juries also bring forth lived experiences, including stereotypes that influence their decision-making, as argued by a prosecutor who described two cases from different jurisdictions:

***The factfinder, whether it's the judge or the jury, they just don't get it. I mean this one judge who found a guy not guilty when he [defendant] admitted it in a text to raping this woman, because they're caught up in all these old stereotypes, 'well she had too much to drink, she wore provocative clothing'... You know, it's like really guys? Let's get our heads into the 21st century.***

This case was especially frustrating for this prosecutor since the courtroom actors found the defendant not guilty because of stereotypes in spite of solid intra-legal evidence- an admission of guilt. In the next example, the prosecutor discussed how a campus sexual assault trial turned because of docket scheduling and juror fatigue, the former of which appeared to be in the judge's control:

*We had a rape allegation. It was a campus sexual assault... We went forward with it, our prosecutor put it on and, I'm still angry at the judge for doing this. It was a jury trial. The judge had a full docket the next day and he didn't want to bump those cases, so he let the jury go on and on and on. Well by the time the jury was given the case to deliberate, it was 11 o'clock at night. And he's telling them, he's instructing the jury, now if you find him guilty, don't pass sentence because we have more information for you. You know, so within 10 minutes they find this guy not guilty.*

In other words, the prosecutor believed that the jury decided against conviction so they could go home. A prosecutor who dedicated this much time and effort to a case, only to have it fail, likely carried this negative experience forward. These interactions may have affected the ways they approached future cases, especially those involving judges who, in their perspective, made a

questionable decision. Another participant speculated that heightened judicial bias against campus sexual victims was perhaps due to students' youth and lack of experience:

*The judge is gonna say 'well, you both seem believable and nobody has a criminal record,' I mean that's a particular extra layer of issue with these cases is...there's no real factors or background for people because **they are still very young**, to say this person is more credible than that person. So, **I feel like the victims are automatically discounted for being dramatic or having the buyer's remorse, that sort of thing.***

In these circumstances, the demographic of age appeared to be a significant barrier to having one's case taken seriously. Beyond immaturity, however, the tendency to point to the victim's error in judgment remained situated in persistent victim blaming attitudes across populations.

Overall, *jury considerations* appeared as a common theme across the majority of interviews. Cultural beliefs and norms surrounding sexual assault – who is and who is not a victim and offender- reinforced the ways jurors create meanings for sexual assault cases, as one participant noted, “*At the end of any case charged is the possibility of a jury trial so public perception is inevitably relevant.*” Research has demonstrated juries as more likely to convict in cases that fit the schema of a stranger physically attacking a victim (Buchhandler-Raphael, 2011). A participant described how the jurors in their community lacked awareness of the dynamics of the more common sexual assault, where the victim has used drugs or alcohol and is not in a position to resist the offender:

*If you have someone who's just been in a weakened condition because they've been drinking or doing drugs and can't totally function to fight back, they're not mentally incapacitated, they're not physically helpless...they're in a state of mind where they can't react the same way or be as physically stronger...Some of that just may be our community, just the way they interpret these cases, **unless you're acting in a way that would we expect to sexual assault victim to act, I mean kicking and screaming being and saying particular phrases like yes and no and that sort of thing then they [jurors] just don't want it to be sexual assault.***

The phrase, “*they don't want it to be sexual assault,*” reveals a broader meaning. Jurors' unwillingness to accept the realities of sexual violence may have contributed to their disbelief. A



survey respondent appeared to agree with this view, “*I think the average citizen does not want to believe that sexual assault happens as much as it does so you have to take that into account. I think they would rather blame the victim because she was drinking, etc.*”

Cultural notions of rape as normative because of the campus party culture appeared to be a challenge for prosecutors. In response to an interview question regarding successful conviction in a college case, a prosecutor discussed how the juries presented a significant barrier based on images of college life portrayed in the media:

*That’s really sad, I can’t think of one [where] we’ve had a conviction. Probably the last convictions I’ve had for sexual assault involved children or I had a very old case that was a special prosecution in [county] and **there is a different feeling with the jurors out there than here... I think it’s an overall attitude of, there’s kids being wild and crazy and sowing their wild oats and whatever.** I mean, think of even culturally, movies like animal house and stuff where everybody’s wild and crazy and doing lots of wild and crazy stuff. **College is just that time of life, it is what it is and now this one person is just upset, you know.***

Instead of viewing actions as serious crimes of sexual assault, jurors tended to view incidents simply consequences of a partying culture. Again, this prosecutor pointed to the theme *buyer’s remorse*, where the jury assumes the victim to be in error.

In rural communities, local cultural norms and biases may have affected case outcomes even more due to higher acceptance of rape stereotypes, as one prosecutor noted:

*You know none of those things [whether victim was drinking or promiscuous] shouldn’t matter before the sexual act, but I’m in reality. This is a very small community. **Our jurors would never convict on something like that unless it was black out drunk or there was some true element of force that they could pinpoint.***

A reason for these views may have been due to jurors’ acquaintance with people involved in the cases. In a sense, they were less likely to convict a friend because they could not accept that they were involved in a serious and stigmatized crime:

*There are some community related issues as well, um a lot of the ones I saw initially were in the more rural community was that you had offenders and victims that were in close*

*proximity to each other or had community or familial ties...and, so you know **feeling the need to be a part of a cohesive community sometimes trumped the desire to see justice...** This is a family member who sexually assaulted you, you're much less likely to share that information, **you might be afraid people are going to act against you if you do.***

In these cases, being fearful of retaliation among community members living in close proximity was a genuine concern due to less anonymity and separation in a small town. These data suggest a need for greater protections from retribution or perhaps offering alternatives to criminal proceedings especially in smaller communities, such as restorative justice, as described further in my discussion of public policy implications.

Variations emerged in the ways community jurors viewed incidents that occurred amongst college students, especially when they did not share the same socio-economic background. A prosecutor described how local jurors, many of whom lived in poverty, stood in stark contrast to the wealthier position jurors perceived that students held:

*[City/town] in general is a lower socio-economic status. Typically the people I see in the courthouse are very poor. I mean poverty that I didn't even know existed until I started working here. And so, in people who go to [college] are going to be of a higher socioeconomic class and therefore a jury will not see them the same way because our jurors here are of a lower socio-economic class. So, unfortunately...**money and class really go into play. So, I would have to somehow dumb it down, maybe make them dress a little shabby, or I would definitely have to downplay how much money the victim had...** I think a lot of the people that come to the jury pool have family members that have been incarcerated for long periods of time and so here...sex crimes against children they do take seriously, but essentially if...**a victim is still able to go and work and live a life, they don't take is very seriously.***

While college students may experience an assault on campus, in the local courtroom they typically face a jury not of their peers, but of local citizens who had different lived experiences and perceptions of the campus environment, sexuality and consent, and the role of alcohol in facilitating assault. The prosecutor therefore adapted to this reality by recommending that the victim alter their appearance in court, in an apparent attempt to shift the meanings associated

with the victim to “one of us.” As the prosecutor explained, this interaction may have also influenced the ways the victim perceived the courtroom experience within the context of the broader community.

Conversely, cases that took place in a “college town,” where the campus was heavily connected to the community, may have influenced the results of a trial:

*[College] is such a big you know elephant in the room from a jury perspective...I mean it could easily of my prospective jurors be a third of them are connected with [college]. And so, you know I guess I sort of assumed that **they maybe have a broader life experience and cultural experience and get some training...versus you know just your average somebody I pluck out of the county that's lived here forever.** So I don't think that our juries have any particular bias, you know kind of one way or another.*

Because jurors were likely to be an alum, or know someone who was, this prosecutor saw this scenario positively as potentially mitigating the impacts of bias. The prosecutor also presumed that jurors who attended college were more educated and perhaps better able to understand the dynamics of sexual violence. Eisenberg, Hannaford-Agor, Hans, and Waters (2005) explored the influence of higher education on jurors' tendency to convict. The authors replicated an earlier study by Kalven and Zeisel (1966), which explored the convergence of judge and jury's agreement in defendant conviction. Examining data collected by the National Center for State Courts across several jurisdiction in the U.S. between 2000 and 2001, researchers found that jurors with higher levels of education were related to a lower rate of conviction (Eisenberg, et al., 2005). Thus, this prosecutor's perspective has been supported in the literature.

To address juror bias, prosecutors have the opportunity to use *voir dire* to recommend removing jurors who demonstrate bias. For example, a prosecutor described how they attempted to reveal jurors with negative preconceived notions, especially towards the LGBTQ community:

*I think another issue is many cases go to a jury and **you have just actually no control over what preconceptions your jurors come in with.** You could ask questions about it in voir dire, but how many people are going to be honest about what kinds of biases they may have? And **they may not even realize they have these kind of biases.** But, if I asked*

*the question, “who here is uncomfortable trans people or who here thinks same-sex relationships are wrong?” You may get one or two people who are “oh, yeah, yeah,” but there may be five or six who believe that that aren’t going to share that with the court room full of people.*

Even though the prosecutor applied *voir dire*, they recognized it was not a guarantee in eliminating strongly held beliefs, perhaps due to jurors’ concerns with admitting to or being aware of their own biases.

In at least one jurisdiction, a prosecutor avoided jury trials altogether in lieu of a bench trial, where the judge hears and decides the case:

*I don’t pick juries for these [cases] anymore because I find that having 12 people trying to make a decision about this is nearly impossible. Especially when it involves people who know each other and either there was alcohol or drugs. The last two juries I had, one was a mistrial and then I was going to retry it, but then my victim kind of fell apart and couldn’t go through it again. Then the second one, it was not a college campus rape. It was a stranger abduction rape and the jury basically said they didn’t believe anybody and that he had said that it was a cocaine deal and they lived in [lower income neighborhood] and they said they knew that people [there] did drugs... So, it kind of has shaken my little bit of faith in the jury at least on these cases. The unfortunate part is that was a mistrial jury. In the first jury [they] said they knew he was guilty and was planning on convicting him. The second jury didn’t.*

From this scenario, several themes emerged including juror bias and variability in willingness to convict. Jurors demonstrated strong negative bias against the victim, who was from a lower socio-economic community. Most tragically, the victim’s ability to endure both trials was compromised because of the court experience. Although participants’ primary focus was on extra-legal factors, they also discussed their perspectives on the intra-legal factors that influenced decision-making, described next.

#### **Intra-legal case factors.**

Prior research has shown intra-legal case factors such as the level of evidence available (including DNA), the severity of the crime and the likelihood of the defendant’s guilt weigh considerably in prosecutor’s decisions to charge a case (e.g., Albonetti, 1987; Alderden &

Ullman, 2012; Beichner & Spohn, 2005; Campbell, Patterson, Bybee, and Dworkin, 2009; Kingsnorth, MacIntosh, & Wentworth, 1999; Spohn & Holleran, 2001). Intra-legal factors also provide context for prosecutors' approach to cases. As O'Neal, Tellis and Spohn (2015) described, intra-legal factors include corroborating evidence that provides "documented injuries to the victim, witnesses who can corroborate the victim's testimony, or physical or medical evidence that is consistent with the victim's account of the incident (p. 1243)." Because of the violent nature of sexual assault, one might expect victims to fight back or escape from an attack. However, most sexual assaults do not involve physical force (World Health Organization, 2003) even though prosecutors have been shown to weigh absence of resistance, such as physical injury, in their decision to bring their case to trial (Spohn & Horney, 1993; Spohn & Spears, 1996).

A key reason for introducing corroborating evidence is to meet jurors' expectations that if someone is truly fearful, they will run away or fight. A prosecutor described how jurors seemed to discount victims' attempts to leave a dangerous situation because they were not adamant in their refusal and/or did not attempt to escape:

*What's the most common thing with all these cases and makes it difficult, whether it's on-campus or not...is victims who did not want to have sex or sexual activity with somebody, but maybe **they're not saying the magic words, 'no' and 'stop.'** They're saying other things to try to get out of the room, to get away, or they're passed out asleep and somebody wakes them up, but then it's like **you're not scratching and fighting to get away. So people just say, 'oh well, then you wanted to.'** 'How would they have known that you didn't want to?' If all you're doing is telling them 'I just want to go home now,' you know instead of, 'no, stop,' that sort of thing. So, that's a common thing **we have to fight against is trying to make it clear that this is not consensual and he should have known it wasn't consensual by her behavior even though she may not have said particularized statements.***

In these cases, jurors seemed to lack a clear understanding of verbal sexual coercion, which has been found to occur at a high incidence among college women (Edwards, et al., 2014).

In a study by Struckman-Johnson, Struckman-Johnson, and Anderson (2003), 78% of females (n = 381) and 58% of males (n = 275) across several mid-western and southern universities reported experiencing a variety of coercive tactics. These coercive behaviors included repeated attempts by the offender to sexually arouse, deceive and manipulate their victims as well as encouraging the victim to become intoxicated. Study participants also listed threats and physical restraint as additional coercive actions. Unless juries become more aware and educated on the nuances of sexual violence, they may continue to reject cases that do not fit within the narrow meanings they have constructed.

Prosecutors also addressed problems with a lack of credible testimony because of a victim's impaired memory due to alcohol use:

*And with the legal system, we have to have certain things we have to prove and in a lot of the campus cases the victim or the evidence doesn't go to being able to prove any of those elements. **You have a victim who is very cloudy about what occurred, but then you can say 'we all know what happened, but unfortunately that's not enough.'** So, if all the victim can say is someone was on top of them, but they can't describe what that means, we can't prove there is actually a sexual assault. **If the victim says they woke up naked the next morning, but they don't get a physical evidence recovery kit or there's nothing else to corroborate what we know happened that doesn't, we can't prove that...***

In addition to the victim having poor recall, when evidence is not collected through a physical evidence recovery kit, or PERK, these cases were even more difficult to prove according to this prosecutor. This finding is consistent with recent research which found prosecutors valued the availability of PERKs in supporting victim credibility and accurate identification of the offender (Alderden, Cross, Vlajnic and Siller, 2018). Using qualitative research methods to explore investigators' perspectives on the utility of PERK evidence, Menaker, Campbell and Wells (2017) found that 68% of participants (n = 8) who investigated adult sex crimes viewed rape kit evidence as the most valuable type of physical evidence, as compared to other objects such as bed sheets or clothing. PERK evidence was also noted as an effective method to discount

defendants' statements denying their involvement as well as to help corroborate a victim's statement. Nevertheless, just under 40% of participants (n = 5) reported that rape kit evidence was not available in the majority of cases. The experiences and perspectives of the investigators in Menaker, et al., 2017's study is also relevant since cases without such evidence have also been shown as less likely to be forwarded for prosecution (Campbell, Patterson, Bybee, and Dworkin, 2009).

The theme, *he said-she said, little or no corroboration*, represents a barrier to charging a case, where there is no other evidence. Corroboration can include witnesses, to support the victim's claim of sexual assault. However, witness testimony was difficult to obtain in many cases involving an intimate crime:

*If you don't have any corroborating evidence, we typically will not charge...we just tell them 'it's your word against the other person's word and that's it'...we tell them it's hard because **what happened behind closed doors is what matters, your word versus that person's word...***

Perhaps due to biases against victims in the courtroom, the victim's "word" may carry less significance than that of the defendant's, which served to damage victim credibility. Without corroboration, the jurors were left to weigh the statements of both parties, where victims were already under considerable scrutiny.

It was clear during interviews that prosecutors were highly aware of the ways cultural biases and stereotypes influence their work. As discussed, these emerged as not only extra-legal factors, but also seemingly objective intra-legal factors. In the next section, I present another issue that makes sexual assault cases difficult to prosecute, namely the emotional impacts on prosecutors and the ways they attempted to manage their response while supporting victims.

### **The “soul crushing job:” Vicarious trauma and emotional labor.**

In addition to facing significant barriers in the courtroom including victim-blaming attitudes and biases, prosecutors described regular encounters with traumatic narratives and victims who expressed painful emotions not only because of the incident, but also due to frustrations with the criminal justice process. Here, I discuss the psychological impact of handling sex crime cases, namely vicarious or secondary trauma. I also review the literature on emotional labor, based on the work of Hoschild (1993), to explain the ways prosecutors both managed their emotions as a coping strategy and assisted victims in dealing with difficult aspects of the courtroom experience. I discuss how prosecutors as survivors of sexual assault may experience particular emotional challenges. I also explore the potential strategy of assigning females to work sex crime cases possibly due to stereotypical beliefs surrounding their caregiving role. Conversely, females may also be drawn to the work and best positioned to serve survivors. Finally, datum indicates that prosecutors with less experience handle these cases, and therefore may have reduced emotional capacity and confidence in taking chances on cases that are tough to prosecute.

In a 2010 article, clinical psychologist Shiloh Catanese described vicarious or secondary trauma and its implications for professionals including police, prosecutors and probation officers who work with sexual assault victims and offenders. Symptoms of this trauma include feelings of fear and helplessness in response to exposure to painful stories and imagery. Although research on the prevalence of vicarious trauma in prosecutors is scant, several prosecutors referred to how managing the cases can be difficult from a psychological standpoint. One prosecutor described how they had to “toughen up” over time in order to cope with painful emotions seemingly to the point of numbness:



***You develop a pretty thick skin and you get used to saying that. I remember the first time I had to tell a victim it wasn't going to happen [trial] and it was just so gut wrenching and then by the end of it, I'd be like, 'who's next?'***

In this comment, the prosecutor seemed to have been “in a position where the full-blown tragedy of their everyday work is suddenly clear” (Wettergren and Bergman Blix, 2016, p. 29). In response, the prosecutor adjusted their approach so that in the future they would not fully identify with the emotions experienced by victims. From a symbolic interactionism framework, prosecutors' interactions with their environment continually influence the meanings they create. This prosecutor's narrative both lends support for the theory and counters the notion that prosecutors operate rationally and with an abundance of discretion.

The impacts of working cases involving sexual assault presented a unique emotional burden, as the same prosecutor from my study continued the discussion:

*What I tell new attorneys that come to me and say 'I want to be a prosecutor,' 'that's wonderful...it is a soul crushing job.' **You will lose your ability to [feel], you have to lose, you can't take it in all the time.** When Sandy Hook happened, those children were killed and I was chopping vegetables and I was watching the news and...I remember looking at it and thinking, 'I wonder why?, what? so 21 kids got shot, who cares?' I have stuff to do...I remember thinking, that's wrong, that's wrong, but that's what happens. **I'm two years out and I still just feel now like I'm starting to get emotions back...It's the same for prosecutors as it is for police officers I think. We're not necessarily in harm's way, but you definitely feel the impact of those kinds of crimes...you just can't do it for very long.***

In describing how they recently began to “get...emotions back,” the prosecutor may have engaged in the “silent work of evoking and suppressing feeling” (Hoschild, 1993, p.333) in response to ongoing stress, a feature of emotional labor. Balancing emotions in a climate where criminal justice professionals are expected to refrain from expressing feelings may add an additional layer of stress. In a study of Israeli public prosecutors who handled cases, including sex crimes, Leiterdorf-Shkedy and Gal (2018) found prosecutors learned to shield their emotions as a function of “indoctrination” (p. 3) through interactions with other court personnel (2018).

The prosecutors also demonstrated a mixed response in coping with challenging cases, “the exposure of the continuous tension between acceptance and rejection of emotions provides an explanation for the prosecutors' difficulty in acknowledging their emotions in full. This tension negatively impacts the prosecutors' personal and professional lives in ways that resemble psychological symptoms of secondary trauma.”

Building on the research of Hoschild (1994), Wettergrena and Bergman Blix (2016) provided further insight into the strategies prosecutors used to cope with their emotional responses in environments where shared rules regarding portrayal of feelings became tacit during interaction with other courtroom actors. As the authors suggested, “cognition is not only oriented by emotion, but emotions are subject to cognitive regulation—emotion management—with respect to feeling and display rules” (p. 22). Using direct observation and 48 interviews, the researchers specifically explored the role of empathy among Swedish prosecutors throughout a case, from imagining the circumstance surrounding a crime in preparation for trial, to the use of empathy before and during trial to present their case in a way that judges and juries could conceive a crime had occurred. The researchers found that prosecutors expressly engaged in empathy to help calm victims. In some cases, participants reported partially identifying with victims. Thus, prosecutors exposed themselves to a greater sense of closeness with the survivor’s they served. Interestingly, prosecutors in their study also offered that allowing themselves to feel helped to offset cynicism with the system (Wettergrena and Bergman Blix, 2016), whereby they actively engaged in shifting the meanings they created for their cases.

When a prosecutor is also a survivor of sexual assault, this experience is likely to influence the meanings they create for multiple facets of victimization. Having “been there,” and experienced both an intimate violation and loss of control, prosecutors may have even greater

empathy for their victims and as such, be more prone to vicarious trauma. Research in this area is minimal, likely due to the sensitivity of the subject and as shown in Leiterdorf-Shkedy and Gal (2018)'s study, prosecutors seemed to temper discussions of emotions. Nevertheless, in one of my interviews, a prosecutor described how being a survivor provided them with a greater drive to challenge and overcome societal scrutiny of victim credibility:

*I'm personally a victim of sexual assault and I'm a feminist...I feel very strongly that victims of sexual assault are given a terrible representation in the criminal justice system. And their credibility tends to be at the forefront of everyone's analysis and I think it has a very chilling effect, very chilling effect and I don't like that. So, I think I'm pro-victim I guess.*

As a survivor, this prosecutor may have been able to identify more with their victim's experience during trial. In effect, they became a stronger advocate for their clients. Based on the limited research available, prosecutors who have experienced sexual assault may need to engage in emotional labor to a greater degree so they do not succumb to cynicism and despair in a system that is slow to change.

As described, studies on the role of emotional labor involving prosecutors are limited to the ways they manage their own emotions. The existing scholarship primarily has focused on positions with less power and privilege. Notably, Hoschild (1993)'s foundational work focused on service industry workers such flight attendants who were trained to treat passengers as family members, even children, to help them manage the stress of flight. In taking additional measures to help victims experience more support and less apprehension as part of their day-to-day responsibilities, prosecutors also appeared to engage in tasks that implicated emotional labor. These duties "require the emotive work thought natural for women, such as caring, negotiating, empathizing, smoothing troubled relationships, and working behind the scenes to enable cooperation" (Guy and Newman, 2014, p. 289).

As I discuss further in the following section, the emphasis on victim-centered and trauma-informed movements may contribute to prosecutors' overall goal to provide greater support to victims. Yet, as a participant described, implementing victim-centered strategies as a form of emotional labor was challenging in practice:

*One of the things...that I bring into anything I prosecute...is **we take a victim centered approach...[it] can be taxing and it can be difficult, it can be more difficult to do than I probably realized, but that's one of my big ticket items.** That's one of my big philosophies, not just in prosecution but in the investigation of crimes, throughout the prosecution and even if we don't prosecute, we have to take a victim-centered approach to things.*

While this prosecutor acknowledged their own difficulties in delivering victim-centered services, they also recognized it as essential to the work. This could create tensions in situations where being victim-centered is not possible due to other constraints such as a lack of resources and high caseloads. Furthermore, providing ongoing additional support to victims can be tenuous to maintain. A prosecutor described how they relied on victim advocates in the courtroom to help them get the break they needed:

*We had a victim witness advocate that was assigned to me and the detective, and it got to the point where one of us would bond with the victim. **I would reach times where I'd say I can't, I can't comfort this person, I can't do it anymore.** So victim witness [advocates] would kind of take it on.*

When I asked if they needed to “practice self-care in those moments and put up a wall,” the prosecutor said simply, “yeah.” So, even when prosecutors actively engaged with their clients on an emotional level, they needed to pull back when it became too overwhelming.

As I noted earlier, my study sample primarily included females and one male who handled sex crimes. Another participant was a supervisor and therefore rarely prosecuted sexual assault cases. Barak, Leighton, and Cotton (2015) found that few people of color and females hold the position of prosecutor. However, one experienced prosecutor noted that in her

experience, women tend to work sex crimes. This perspective could indicate that sex crime cases are more likely to be assigned by gender, since females have traditionally been viewed as “better fit” for the caregiving role. However, the prosecutor also suggested females may seek out this specialized profession (anonymous personal communication, August 18, 2018).

Moreover, in a 2018 survey of sexual assault survivors, Gagnon, Wright, Srinivas and DePrince suggested victims should have access to a female provider, which suggests that prosecutors who take on these cases reflect victims’ desire to interact with those who identified as female.

An experienced prosecutor shared a concern regarding the assignment of sexual assault cases to people with less experience, and therefore less knowledge and emotional fortitude:

***There’s a basic disservice we’ve done and we also have to stop putting brand new prosecutors on rape cases. And that’s a lot of times, that’s done just because they are messy cases and nobody else wants to do them and well you’re a new kid.***

The phrase “*messy cases*” not only speaks to the complexity of the cases, but also the emotional burden in working with survivors of a highly traumatic crime. Someone with less experience may be in a difficult position not only in terms of technical preparedness, but also in their ability to effectively manage to stress over time. Na, Choo and Klingfuss (2017) used a mixed methods approach in surveying over 200 prosecutors and interviewing a subset of five participants. The data showed that while prosecutors (who handled a variety of cases, not sex crimes specifically) reported high levels of job stress and dissatisfaction due to excessive job demands and lack of organizational support and resources, they also appeared to learn how to handle constraints and stressors with more experience (Na, Choo and Klingfuss, 2017).

During the interview, the above prosecutor also described how they became more confident over time in prosecuting sex crimes and this contributed to a greater willingness to take risks and forward a case to trial even though they knew the chances of obtaining a conviction

were low. Their meaning for the case appeared to shift from one that is not worth it to one that is. With time and experience, a prosecutor may learn ways to both cope with the emotional aspects of their work and to settle into their identity as a powerful advocate for victims. This finding is consistent with symbolic interactionism's emphasis on individual's creativity and active meaning-making.

The literature on emotional labor, coupled with the datum above, offers greater context to the story behind prosecutors' emotional response to cases. While shutting out ones' feeling appears to be adaptive, it may also give the impression of being cold or matter of fact in their work. This could lead to others, including victims and allied professionals, misconstruing a valid coping strategy instead of having empathy for prosecutors' responses to complex cases. Meanwhile, some prosecutors may immerse themselves in feeling as a way to remain genuine in their work and to avoid burnout. These efforts can be especially challenging for prosecutors who are survivors of violence, although more research is needed in this area, and in the intersection of gender and prosecution of sex crimes. As discussed in the next section, prosecutors portray themselves as champions of a victim-centered and trauma informed approach, which is rooted in an apparent cultural shift that encourages victim inclusion into the criminal justice system.

### **Victim-centered and trauma-informed response.**

*The two most powerful competing interests for me are the desire to make sure another person doesn't get victimized, but also making sure the current victim's emotional well-being is protected... One of the other things that we strongly consider is given the likely outcome of the case, is this going to re-victimize, is it really going to be harmful to a victim?* – A prosecutor who participated in the study

In this section, I present the theme referenced by prosecutors more than any other, *victim centered and trauma-informed approach*, which appeared as both a philosophy (meaning) and a strategy (action) for prosecutors. This framework, increasingly emphasized over the past several

decades, affects the shared meanings that shapes and informs prosecutors' approach to sexual assault. The current professional landscape not only supports, but strongly encourages a victim-centered and trauma-informed response as evidenced by training and technical assistance to build expertise in this area. Prosecutors shared the various ways they used the approach to reinforce victims' belief that their needs and goals are primary concerns within the system and to help ensure victims were prepared to face biases in the courtroom. I discuss each of these issues within the context of prosecutors' narratives.

***The victim-centered and trauma-informed movements.***

Beginning in the 1970s, a victims' rights movement emerged with a call to enhance resources and support for crime victims and to decrease marginalization by incorporating them more into the criminal justice process. As Erez, Globokar and Ibarra (2014) maintained, several countries including the U.S. passed legislation during the 1980s in response to this movement. Newly funded mandates included crime victims' compensation as well as rights to notification and protection from retaliation for victims, all in the goal to enhance their participation. During the same period, advocates incorporated the phrase "victim-centered" as a new way of framing intervention, shifting from a standpoint of victim blaming to centering survivors' needs. Aequitas, the national "prosecutors resource on violence against women" (Aequitas, 2018) describes this goal, "The best possible case outcomes hold offenders accountable, but they also take into account a victim's history, experience, and perspective, as well as the impact of the criminal justice process on the victim, victim's family, workplace, and community" (Aequitas, 2018, para. 3).

The role of trauma in sexual violence emerge in research in the past two decades (Halligan, et al., 2003), leading to an emphasis on a "trauma-informed approach."

Acknowledgement of this movement would also appear in the criminal justice system. In 2014, the International Association of Chiefs of Police (IACP) implemented Trauma Informed Sexual Assault Investigation Training (IACP, 2018). In Virginia, then Governor Terry McAuliffe initiated the Task Force on Combating Campus Sexual Violence and in its final report, a key recommendation features a trauma-informed approach to campus sexual assault (Herring, 2015). Also in Virginia, the Services Council offers an annual five-day “Trauma to Trial” conference for prosecutor and investigator teams (Services Council, 2018). In sum, victim-centered and trauma-informed have become part of the discourse within the criminal justice system.

My study lends support to the notion that shifts in the cultural narratives surrounding trauma influenced the meanings prosecutors constructed for their sexual assault cases. During interviews, prosecutors demonstrated awareness of the newer ways of thinking surrounding the impacts of trauma, which in turn influenced how they processed cases:

*I think it's just that **cultural paradigm shift** of these [sexual assault cases] are trauma. I mean, we're just scratching the surface on getting prosecutors introduced to trauma and what that means and what that looks like. For years we have worked in an analysis of ...**here is how you read deception, inconsistent statements, memory problems, unwillingness to cooperate, emotions that don't match up with what you expect should happen. Everything that we now know is a trauma response.***

The statements “cultural paradigm shift” and “everything we now know...” signify a shift in how perspectives have changed. This framework affected the ways prosecutors “read” victim behavior and responses during their interactions because of an increased understanding of trauma. Another prosecutor explained the role of trauma in a victim’s ability to recall an incident, which countered the pervasive narrative of false reporting:

*We're, [prosecutors] just learning about trauma based interviewing, trauma based testimony. Before, 5-10 years ago when we talk to somebody and they could not begin at the beginning of the story and end at the end of the story and go straight through... **We learned trauma victims don't process information like you and I would today in a non-traumatic environment.** I go home tonight, I talk to my [partner] and I can tell you what*



*happened at the beginning to the middle into the end... Trauma victims don't recognize or don't process information. They can't repeat or recount the information in the same sort of way.*

This prosecutor was able to identify with victims, specifically how information recall was different for someone who has experienced trauma, based on what prosecutors have learned through training. Having empathy for victim's traumatic responses also permitted prosecutors to place themselves in the footsteps of victims, *"I think of myself as a voice for victims of crime and to try to see things from their perspective and not automatically discount anything just because it doesn't make sense to me."* As a result, they may have been less likely to push a case forward if the victim would potentially incur more harm through participation.

Prosecutors' statements illuminated their concern with victims' psychological capacity to face the criminal justice process. During interviews, they continued to return to the needs of victims throughout different stages of their work from discussing victims' apprehension in making a police report through the end of a trial. Once a victim chose to report, the potential for re-traumatization was a reality. This was even more significant in cases where engagement with the process did not achieve a desired outcome, as one prosecutor described:

***You can't rely on the criminal justice system to get you justice... victims of sexual assault are all around you, all day, every day. So many people are sexually assaulted and have been, will be... It's going to be a long time before our society recognizes that sexual assault in all of its forms is all around us everyday. Before our society acknowledges that as a whole, our criminal justice system is going to be totally ill-equipped to deal with it.***

This prosecutor appeared to place the burden of responsibility on the public, where justice for victims will be out of reach until there is a broader cultural awareness of the prevalence and dynamics of sexual violence.

Because the likelihood of conviction was minimal, prosecutors suggested it is critical to involve victims in the decision making process from the beginning. This inclusion helped

victims to prepare for trial and to define what outcome could help them achieve a sense of justice, which appeared as another example of redefining meaning:

*I think the victim should be involved, that it should be a holistic process not just about getting a conviction or getting jail time because that rarely happens...**It has to be about what can make a victim whole.** Victims want different things. There are victims who want as much jail time as they can get. There are other victims who actually putting someone in jail traumatizes them. So, they want different solutions.*

The prosecutor spoke to helping to make victims “whole,” which appeared to be the greatest benefit, no matter which outcome the prosecutor and victim sought. In a sense, prosecutors sought to adjust the meaning of justice to other more nuanced and individual definitions of success, based on victims’ needs. Nevertheless, research by Erez, Globokar, and Ibarra (2014) revealed that criminal justice professionals have had varying success in adapting to the emphasis on victim inclusion into the decision-making process. The researchers’ interviews with court personnel, including prosecutors, found that they had ongoing concerns regarding the additional stress and uncertainty experienced by victims. Participants also questioned the high amounts of disruption a lengthy case can yield for victim’s everyday lives. The researchers offered that introducing victims into a fast-paced system where they have historically been outsiders has been difficult to realize in practice. As a result, victims may continue to feel marginalized. (Erez, Globokar, and Ibarra, 2014). Prosecutors who participated in my study shared similar issues, along with the potential for re-traumatization in the court system. Yet, when they were in a position to do so, prosecutors prioritized victims’ wishes not to proceed criminally. When victims do agree to participate, the next step is determining their emotional fortitude.

Prosecutors shared concerns with victims’ ability to move forward in a case, especially determining whether they were strong enough to testify and face potential public scrutiny in the courtroom. As discussed previously, several participants described defense attorney tactics used

during trial that highlighted victims' potential culpability. Previous interactions with defense attorneys influenced prosecutors' actions in describing the process to their victims, "*When trying to determine if we want to put victims through the harsh process of a trial, we have to be very honest with them and say you know a defense attorney is going to ask you about x, y and z.*"

Another prosecutor summed their approach to describing the process overall to victims, "*I spend a lot more time now having some really tough discussions with victims about what it looks like to go through the process.*" The same prosecutor noted that a transparent approach can also lead to victims deciding not to proceed, "*when you're very honest with a victim- survivor a lot of times they don't want to go through it when they understand what it looks like.*" Another prosecutor described how a difficult conversation would unfold during the initial meeting:

*Definitely our first meeting is just a lot about building trust and saying that this is a path that we will walk down and just kind of see where people are. Also saying realistically to some people, **this is a terrible conversation to say, but I know you want X out of this. I know that you were sexually assaulted, but because of X and Y and the evidence we can't bring charges or it would be difficult to get a conviction.***

While the prosecutor sought to build trust and viewed themselves as actively engaging victims in decision-making, they also made the low odds of conviction clear. This strategy might be viewed as a way to discourage victims from proceeding in a case that was unwinnable, as suggested in previous research by Frohmann (1998) where prosecutors were found to focus on "downstream possibilities (p. 395) to manage difficult confrontations with clients on cases. However, being honest with victims may also be viewed as a way for prosecutors to cope with victims' disappointment and potential anger in the event of a non-guilty verdict or plea agreement for a lesser charge. Another prosecutor spoke to their attempts to mitigate negative responses down the line, "*I overcompensate now and prepare them for a not guilty verdict with the idea that if something great happens, they can always recover better that way...it's the*

*understanding it's not because of them [a not guilty verdict], then I think that's success."*

Victims also appeared to rely on prosecutors' transparency, to know what to expect as they weigh their decision to proceed:

*I get asked what do you think? What you think our chances are? **I try to be honest. I say 'I absolutely believe what happened to you.' The question is can I prove it to twelve people beyond a reasonable doubt?** These are the pros. These are the cons. I can't guarantee you anything one way or another. And say, you know how do you feel about going forward? Or would you like me to try to resolve it in some other way?*

Once again, this prosecutor appeared to use a victim-centered approach, by asking the victim to describe the outcomes they were seeking. This strategy also may have contributed to victims feeling as though they contributed to a decision-making process that was nonetheless constrained by many factors.

There were also occasions when victims appeared unable to make the decision to proceed on their own, perhaps due to uncertainty with the process. In these situations, prosecutors obtained greater clarification in determining what actions would serve the needs of victim:

*Our basic guidance, or philosophy has been, **we want them to decide**, do they want to go forward or do they not want to go forward? You have to balance that because a lot of times people don't want to make that decision either. So I...try to explain that their opinion is very important and their feelings about it and **I really do want to hear what they think and what they would like to see at the end of this.** That can range...from, 'I sat in court and I said my piece and they [defendant] had to sit there and listen to it,' to 'I want the death penalty.' **I want them to feel that I value what their opinion is, that I truly do...***

The prosecutor seemed to have a great deal of experience with survivors who sought different outcomes. Empowering the victims was a primary goal, but at the same time, the prosecutor acknowledged their own discretion in taking a case to trial.

***I also say at the end, it's my decision...** what to do with a case and how to proceed with things. And that has a lot to do with just taking the pressure off of them, but if it's somebody that just doesn't want to go forward, we try to get them into counseling. **We try to do whatever we can to have them be able to go forward [to healing]... It is a lot of***

*working with an injured victim and we work with them, do the courtroom tours and practices and all those things when we get close to it.*

Even though the prosecutor acknowledged awareness that they must make the final decision, in sharing this with the victim, they also may have been seeking to alleviate their burden. In the end, prosecutors must also consider offender accountability in protection of the state as another participant noted, *“I try to work within their framework, to also benefit the Commonwealth, but also to help the victim through the healing process. So, I believe they should have input and cooperation throughout the entire process.”* This consideration adds constraints from both a public policy and moral standpoint. Although the prosecutors I interviewed demonstrated clear and genuine concerns for the victims they serve, they must also consider greater threats to community safety. High profile cases may result in greater scrutiny of prosecutors’ success in achieving convictions. However, the prosecutor affirmed during a personal communication that the only way they would go beyond a victim’s wishes to not move forward, would be in a case such as “Jack the Ripper” where there are repeated offenses by the perpetrator (anonymous, personal communication, August 2, 2018).

Still, there were times when victims chose to proceed in spite of the low odds of success, *“If the victim wants to pursue it even though the likelihood of conviction is very low, we’ll go to court and fight for them and say this is your word against this person’s word.”* The prosecutor was willing to forward a case based on the wishes of the victim, an important theme that represented prosecutors’ goal to empower survivors in spite of potential barriers. Another prosecutor explained the reasons for taking a likely unsuccessful case to trial:

*If I feel there is probable cause and I have a victim who is strong enough and who is unwavering, even if I feel that I might have a possibility of losing, I’ll still take it to trial. A lot of times, victims want to be heard and...that will happen. And if I feel that a victim is strong enough, win, lose or hung jury, I’ll take it to trial. That’s not a problem at all.*

*You can't win everything.... They want to be heard. If I feel it's enough to go forward and be heard, then hands down we'll do it.*

This prosecutor defined success as providing a platform for the victim to share their story, which mattered even if there was no conviction. In a study of attrition rates across five countries including the U.S., Daly and Bouhours (2010) found that 30% of reported sexual assault cases are forwarded for prosecution and just over 12% ended in a successful conviction. Redefining success as “victim empowerment,” could be a strategy prosecutors use to help reinforce their identity as a facilitator of justice, one that is slightly different from the formal definition (i.e., a high number of convictions).

Once a victim decided to proceed, prosecutors took extra steps to handle cases in a trauma-informed way. In addition to conducting meetings with survivors, prosecutors offered tours of the courtroom and provided referrals to resources. In one interview, a prosecutor described how they connected victims and service providers:

*If the victim decides to take it [resource] great, but I think often times there's a drop between us advising victims of services, 'these are available' and actually getting the victim in contact...so I think **if we can get those service providers to where it's more of a hand to hand pass of contact at least then I know contact has been made.** That's a huge leap for us when the majority of them probably lose or throw away the information.*

The prosecutor believed the connection was important, otherwise victims may not follow through to seek help. The prosecutor then shared their perspective on the ways college students appear even more reticent to seeking help, perhaps as an assertion of their independence:

*I think that especially when it comes to the campus sexual assaults, **you have young adults who, they think they know it all and I feel like it's almost even worse with adults and sexual assault because they have this mentality of 'I'm fine.'** 'I'm fine so I don't need counseling.' Children don't know any difference so if you say, 'we're going,' the child's gonna go.*

Prosecutors also sought to minimize victims' exposure to multiple professionals since victims could face additional trauma by retelling their story:

***I get the fact that these victims may not want to go forward with the criminal prosecution. You've got a situation where they're traumatized to begin with. If they have been groomed to some degree, there's probably some shame that they are going through that is injected upon them by perpetrator. Assuming that they report it right away, you go through the indignity of a PERK [Physical Evidence Recovery Kit]. You're going to be questioned by the Title IX folks, but then you've got others picking at the scab, if you will, by law enforcement. You're constantly telling this traumatic incident over and over again and then you have to go before 12 people in a box, with the judge and being cross-examined by a defense attorney about all of this and it's little wonder that victims don't want to go forward.***

In repeatedly sharing a triggering event, the prosecutor suggested that a victim might continue to experience shame. By the time they reached the trial, victims' ability to handle additional scrutiny was compromised. A prosecutor described how they sought to avoid this situation:

*What we try to do with the cases is whatever attorney puts their fingers in it at the beginning, we try to keep that person involved in it because we don't want our victim to have to keep getting passed from attorney to attorney...A big part of that is establishing the relationship with the victim.*

The same prosecutor shared that they have honored the wishes of survivors to bring their pets for support. Explaining how they managed the situation in a previous case, the participant said,

*The discussion was, well are we gonna ask the judge's permission or are we just gonna bring the dog into my office? [It] would be a no-no to not have her go through security... so I agreed that she could bring a dog...I'm like, I'll take the dog out for a walk or whatever.*

During interviews, prosecutors offered examples of ways they seek to enhance survivor's capacity to participate in the criminal justice process. These strategies included involvement of victims in the decision-making process, conducting preparatory meetings to give victims insights to the courtroom experience and to help them to define their own definitions of justice, avoiding multiple interviews and allowing and/or facilitating the introduction of comfort animals. These tasks, often unnoticed and under-resourced, are each important contributions to the literature.

In conclusion, there were a variety of factors that made sexual assault cases difficult to prosecute, based on symbolic interactionism's emphasis on interactions, meanings and actions.

Both extra-legal and intra-legal factors intersected to influence decisions to take cases to trial, including prosecutors' interactions with the biases and stereotypes of law enforcement, judges and juries in the former. Without intra-legal evidence to support the constructed meanings of sexual assault created by judges and juries, prosecutors were also in a stymied position to demonstrate that a crime had occurred. As a result, prosecutors appeared to choose inaction more often in cases where the evidence was not available. The emotional impact of working sex crimes was also significant for the meanings prosecutors created for sexual assault cases, with some data to support secondary or vicarious trauma and ongoing emotional labor as a coping action to manage their emotions. Their strident attempts to achieve a victim-centered and trauma-informed approach, while commendable, required greater commitment, resources and effort.

In the next section, I present the ways public policy developments have further influenced the meanings prosecutors give to sexual assault cases based on their interactions with campus officials. Tensions also increased due to conflicts in definitions between processes and as a result, prosecutors have had to adjust their actions to meet higher expectations of survivors. Finally, I will present prosecutors' accounts of the ways defendants' increased access to case information affected their work.

### **Public Policies: Opportunities and Challenges**

*I don't think I've been able to successfully prosecute or even charge any of the complaints and there have been plenty of complaints and that's a hard conversation that we've had to have with the victims, but there has to be something done with that. Either the federal's gotta catch up with the state or the state's gotta catch up with the federal, something, because it's a nightmare to deal with. – A prosecutor who participated in the study*

In the past, prior to federal guidance released by the ED in 2011, prosecutors in my study indicated that they experienced strained relationships with campus officials. The perceived lack



of transparency as evidenced by low numbers of reports released by the schools and minimal collaboration negatively influenced interactions. Since the release, and more recent rescission of guidance (ED, 2017), new procedures have been institutionalized on campuses through development of policies and dedication of personnel to investigate and adjudicate sexual misconduct (Amar, et al., 2014).

During the same period, heightened public attention to campus sexual violence emerged due in part to college students openly sharing their stories including institutions' apparent disregard for incidents as documented in the nationally acclaimed film *The Hunting Ground* (Dick and Zierging, 2015). In the minds of Virginians, news of scandals close to home drew localized scrutiny, including the UVA *Rolling Stone* article, which included student accounts of campus sexual violence and subsequent backlash because of an apparently false claim (Erdely, 2014). The Jesse Matthews case also shocked the public, where investigators found Matthews had moved from one campus to another to avoid punishment. He ultimately raped and murdered Hannah Graham, a college student at UVA (DePompa, 2014).

In 2015, Virginia legislators sought to meet the challenge of “combating sexual violence” (Herring, 2015) through the passage of two laws. The goal of the first law was to increase reporting of campus incidents to law enforcement and commonwealth’s attorneys’ offices. The second law sought to prevent students found responsible, or who withdrew during an active campus investigation, from enrolling in another institution. While some prosecutors viewed these changes as positive, and great efforts were made to devise them (according to one of the prosecutors I interviewed), others noted apprehensions regarding the overall changes.

In this section, I examine an area not yet explored in the literature, the ways public policy developments have influenced the work of prosecutors. First, prosecutors who participated in

my study described increasing tensions due to federal and state interventions and campuses' strident attempts to comply with new mandates. These tensions arose because of differences in definitions of sexual misconduct/rape and consent. Prosecutors also noted difficult conversations with students about the ways the criminal justice system differed from campus processes, with students exhibiting higher expectations beyond what the criminal proceeding could achieve. Second, campus officials also placed students accused of sexual assault on notice in some cases, which made them more apt to secure an attorney early in the process. This placed defendants in a position to request access to campus investigation files, providing them with more tools on the side of defense- making cases even more challenging for prosecutors. Third, historical perceptions of campuses that conceal and discourage sexual assault reporting persist in part due to the unrealized promise of increased communication through Virginia's mandatory reporting law. Finally, increased interactions with Title IX Coordinators, advocates and campus police operating under a revised campus response appear to have generated tensions between processes. Broadly, public policy developments appear to have increased demands on prosecutors, historically presumed to serve as the "gateway to justice" (Kerstetter, 1990, p. 267) with high levels of discretion (Spohn & Tellis, 2013). I review each of these issues in the sections that follow.

### **Differences in definitions and standards.**

Although the 2011 Dear Colleague Letter was not the first OCR discourse on the intersection of sexual harassment and sexual violence, the guidance nevertheless specified that the latter is a form of sexual harassment and therefore specifically prohibited conduct under Title IX (Hughes-Miller, 2018). This reinforced definition of sexual violence, more comprehensive than traditional state laws, initiated greater examination of the role of affirmative consent and

incapacitation (Black et al., 2017, p. 14). Subsequently, colleges and universities revised their policies, and in several states, legislators initiated new mandates to require affirmative consent policies across higher education institutions (e.g., *California Section 67386*).

Former Assistant Secretary for Civil Rights Russlynn Ali argued that sexual misconduct was “unlawful... even if the police do not have sufficient evidence of a criminal violation” (Grasgreen, 2011, para. 13) since the ED recommended the preponderance of the evidence standard for campus investigations and adjudications. This standard is a lower bar than “beyond a reasonable doubt,” where greater sanctions such as imprisonment are applied. Therefore, presumptions on whether a crime has occurred may point towards defendants’ innocence in the criminal justice system as compared to a campus process (Cantalupo, 2016a).

Differences in definitions and standards appeared to alter the shared meanings participants created regarding the campus processes, resulting from their interactions with student victims. During an interview, a prosecutor discussed how students who had participated in the campus process did not appear to understand the conflicting standards:

*One of the trends I have been seeing and I think may continue for at least a little while is that the schools have a very broader sense, definition for sexual misconduct, and victims and students are getting very confused about what the law states versus school policy.*

While the prosecutor viewed the confusion as problematic, they also suggested it could have an ending point, i.e., “*I think it may continue for at least a little while,*” perhaps once campus populations obtained a clearer understanding of the differences through increased awareness and education. In the meantime, prosecutors needed to spend extra time with students in explaining the ways processes differed:

*I see that is a major difference, that we have to do a lot of explaining the differences between student conduct and what the law is and what the standards are because... We have victims who come in and describe things and then when you have to question them about the amount of force, threat or intimidation that was used, they revert back to well,*

*well he didn't ask for my consent. Well, **the law doesn't require consent** and their phrase, not mine, 'well I just kinda laid there.' That doesn't make it a sexual assault and so some victims are very clear about that when you explain it and some victims are very unaware. And so, you know **we try very hard to do it in a way that is non-traumatizing, but I don't think sometimes we're successful.***

Prosecutors needed to address differences in a way that would help students understand why prosecutors' questions during the interview diverged from those they experienced in the campus process. These conversations created tensions since the victims created different, broader, meanings of consent and sexual assault that were consistent with what they had learned from campus officials, but did not fit the meanings constructed by prosecutors through their own interactions within the criminal justice process. This dynamic seemed to frustrate the prosecutor since they could not change their approach due to system constraints. The prosecutor was also concerned that their attempts to avoid re-victimization of students, by delivering the information using a victim-centered approach, was not effective. With the intense focus of trauma-informed prosecution as described in the last chapter, prosecutors' inability to alleviate victims' burden may have created additional stress for their work and perhaps increased frustration with a divergent campus process.

Students' lack of clarity appeared to lead some prosecutors to justify, to other criminal justice actors, why victims were coming forward for issues that did not meet criminal codes:

*And so, trying to explain to everyone that it is a policy issue not a victim trying to get somebody in trouble or someone just wasting officers' time...**It's the legitimate misunderstanding of issues** and all it is a sit-down and explanation, but it also makes it difficult because you're trying to explain how the laws differ from policy and some students get that and some don't...**I see us having to deal with that a lot more in the last two years and I think that will continue if the schools don't change.** And I'm not suggesting that they should, I just think that we need to be very clear that there's two different standards.*

Thus, the criminal justice system was increasingly interfacing with cases that were not prosecutable under current law. In addition to trying to explain why this was occurring with

their colleagues, prosecutors also needed to adjust their actions to provide in-depth explanations of the differences between the campus and criminal process for survivors to help them understand why their cases would likely be unsuccessful. At the same time, prosecutors appeared hesitant to recommend that colleges revert their standards, for example going back to mediation-style interventions vs. investigations:

*Speaking of changes, I know the department, the Secretary of Education just came out with different standards and I think **one of the things that is concerning to me is the mediation** because that had been done away with. In the past I've found that that is a **tool that places were using to kind of intimidate or sway the victim into believing things weren't quite what they said** and so what I see happening is, is that the schools are going to do mediations and then the victim eventually is going to report to law enforcement, which is going to create a different set of issues.*

This prosecutor suggested that the now-rescinded federal guidance held schools to a different standard and without this oversight, colleges and universities might use previous strategies that did not result in offender accountability. In the end, most of the prosecutors I interviewed seemed open to any change that would result in the systems approaching alignment. Conflicting definitions and approaches between systems also appeared to increase survivors' demands for justice within the criminal justice process, which made prosecutors' work even more complex, as described next.

#### **Students' higher expectations.**

According to participants, college students' overall perceptions of the system appeared to create higher expectations for case results in the criminal justice process. These assumptions resulted in challenging conversations for prosecutors, who were required to provide greater explanations on the differences between systems to student victims and their families. The data indicated that this perspective may have been shaped by portrayals of the system in the media as well as experiences with campus investigation and adjudication processes. As I interviewed

one experienced prosecutor with more than one university in their jurisdiction, we discussed this phenomenon,

Participant: *“Of late we’ve had a trend of victims who felt like all they had to do was come into court, tell their story and the person would be convicted and they’d go home. I don’t understand where that came from...”*

Interviewer: *“...You do a lot of prep with them...”*

Participant:

*Trying to get them to be realistic about what the process is has been difficult. They don’t understand the need for prep. They don’t understand the need to go over their statements. **They literally think they can walk into court and just say their piece and unfortunately that’s a nice dream, but that also makes them horrible testifiers because they’re not willing to acknowledge the weaknesses, but they’re not also able to respond to the weaknesses. So, even though it might be a good case that **has unfortunately become a new factor that I’ve only seen in the last couple of years, but on more than one occasion.*****

Interviewer: *Can you think of any reason? I know you said you’re not sure what was happening...*

Participant:

*I don’t know. I don’t watch a lot of court shows so maybe I’m missing something, but it just seems like **they have this perspective that everyone’s gonna believe them, all they have to do is say it.** They don’t think that the defense attorney can question them about anything and then when you ask them the questions of the defense attorneys they begin to get offended that you are prepping them.*

Media portrayals of a simplistic and swift process appeared to skew students’ perceptions of the process. This viewpoint made it difficult for the prosecutor to explain the need to prepare for the realities of the criminal justice experience.

In addition to more nuanced definitions that capture the continuum of sexual assault among students (Haugen, Rieck, Salter and Phillips, 2018), national public awareness initiatives may continue to shift cultural norms surrounding how the criminal justice system responds to

survivors. The “Start by Believing” campaign was launched in 2011 to “transform the way” the system “responds to sexual assault” and to pave “the road to justice and healing” (End Violence Against Women International, 2018). Specifically, the movement seeks to shift the victim blaming narrative to one of believing sexual assault survivors, as with other crimes such as robbery where victims’ behaviors tend to be under less scrutiny. Technical assistance and resources are available to communities across the globe to create localized campaigns and some states have instituted “Start by Believing” proclamations. Annual recognition programs, such as “Champions of Change,” honors the work of individuals who make a commitment to system reform including police chiefs and officers, victim advocates, forensic nurses and a former prosecutor. As one prosecutor who participated in my study suggested:

*I think every school should start a ‘Start by Believing’ campaign. I mean it’s so disturbing how many people I’ve worked with within the courts even though we deal with stuff, they don’t start by believing and that’s concerning. And so with schools I feel it’s even more so.*

This initiative in particular appeared to have influenced the meanings this prosecutor gave to how to approach victims of sexual assault, believing, instead of discounting, them. Yet, they revealed a need within their system and on campuses to promote this way of thinking, which could also have the effect of intensifying survivor expectations for better outcomes.

Greater demands for justice led to challenging conversations with students who had already participated in a campus process, as indicated by a prosecutor:

*We’ve had Title IX investigations where someone was punished or suspended, so they think okay I’ve got this great case you know and so, well that’s a different burden of proof. That’s a different set of rules and these are our rules here and our victims seem to understand that on the whole.*

Because the victim in this case achieved “success” with the campus process, they anticipated a similar result in the criminal justice system. This placed the prosecutor in a challenging position

to explain the reasons why this was likely, given different definitions and standards.

Nevertheless, the prosecutor also indicated that overall most students understood how the criminal process was unique once they received a thorough explanation.

In addition to challenging discussions with student victims, prosecutors also confronted families that had limited understandings of the differences between systems:

*Of course the victims and their families don't understand why it's two processes. They don't understand that **the burden of proof is higher on the criminal side than on the Title IX side. They are completely confused and they are completely frustrated** and I get it, you know, dealing with it on this side is much different than dealing with it as a victim and they don't understand at all that it's two processes.*

This prosecutor expressed empathy for families who sought justice for their child, and were impatient with the disparate approaches. Coupled with victims and their families' expectations for more favorable outcomes from the criminal justice process, prosecutors also expressed strong concerns with campus officials who placed defendants on notice. In these scenarios, the defendant prematurely became aware that they were under suspicion, which potentially damaged the integrity of an investigation, according to several prosecutors I interviewed. Defendants also appeared to have greater access to information through the campus investigation, which may have creates challenges for the criminal case. I explore these issues in the next section.

### **Putting defendants on notice.**

According to prosecutors, the greatest source of tension appeared in situations where the campus investigation and adjudication processes were perceived to have interfered with a criminal investigation. Believing an outside process was “getting in the way” of cases that were already difficult to prosecute, some prosecutors viewed campus interventions as an additional hurdle. This perception was most nascent in discussions about defendants being placed on notice



prematurely, which impacted police detectives' opportunity to interview the defendant before they had an opportunity to alter their story.

A participant summarized how concurrent systems that operated under different timelines interfered with a criminal conviction:

***The parallel Title IX investigation...can interfere with a law-enforcement investigation. They're on a different timetable. Their process is totally different where they, the first thing they do is one there made aware of an allegation is they talk to the complainant. The second thing that they talk to is they talk to the respondent, I think that's a ridiculous term but, the perpetrator... So you're putting the perp on notice that there is an allegation. Then they dropped their preliminary report and they provide a preliminary report to both sides so now the perp is seeing what the complaint is before law enforcement can even get involved with the investigation.***

According to this prosecutor, several problematic features of the campus process interfered with their criminal case. First, the Title IX administrators conducted intakes with victims, thus beginning the process of retelling their story to multiple parties. Second, the campus made the defendant aware of the investigation. Third, the defendants had access to a campus report that presented statements and findings, thus helping to prepare them in advance for a criminal trial.

Another prosecutor attempted to mitigate this issue by asking campus investigators' to delay contacting the defendant:

***Usually by the time we're made aware of it [the sexual assault report], Title IX...they talk to the perp...so you know we can ask them to please stand down your Title IX investigation, but that's only if we're told within a short period of time and we're given the identifying data as far as the victim is concerned, which we never are initially unless that person wants to go forward.***

So, although the prosecutor requested that the campus delay its investigation, without enough information on the incident, including the names of the parties, this made little difference.

Prosecutors described how putting defendants on notice placed the latter in a better defensive position:

*The defendant is on notice that something is going on and so they've already talk to an attorney or they've already started planning their story. The most successful prosecution is to get confession is when you can get the closest to want it happening catching a suspect off guard and that is nearly impossible when it comes to college campuses because everyone's always talking.*

In addition to potentially boosting the defendant's case, and eliminating an opportunity for a confession, the phrase "everyone's always talking" also suggests a negative influence on student witness testimony. Additionally, witnesses may have been more fearful to participate due to retaliation from the defendant or their peers.

Retaliation also became an issue in relationship to Clery notices. Prosecutors suggested that federal obligations under the Clery Act to warn the campus community of ongoing safety threats not only had the unintended effect of warning a defendant that they were under investigation, but also resulted in potential victim identification:

*I think that specifically some of the disadvantages are... **universities have Clery reporting requirements**. So sometimes based on the geography, based on the offense, they're going to have to make a Clery notification. **So now the whole campus is made aware that X event happened on X date and now what does that do to your criminal case?** Maybe it alerts the offender that the police are aware of it. Maybe it alerts witnesses something has happened or they were witnesses to something... By the time the police come now, and the **suspect has been made aware that there's a notification**, this is what's alleged to have happened, this is the location and they can probably determine who the victim is in the case.*

For the prosecutor, privacy issues were a concern since the community, as a whole was aware. Also, if the defendant realized the victim made a report, the potential for retaliation may have increased. This notice could have influenced future reporting since the literature has demonstrated that fears of public shame (Sable, Danis, Mauzy, & Gallagher, 2006) and retribution (Sinozich and Langdon, 2014) prevent victims from coming forward to authorities.

Because the stakes are higher, i.e. a potential expulsion, defendants appeared to be acquiring attorneys more often to defend their cases. This resulted in increased interactions between defense attorneys and prosecutors earlier in the process:

*I think this was unforeseen, but it is that because students know that this can impact them, **they quickly contact attorneys**. So I think attorneys are a lot more involved, which I think they're not used to either, in the pre-charge process versus after charging. Like last week I got a phone call from a defense attorney who is representing someone in a Title IX hearing and said they wanted to know, basically if whatever his statement was, could be used against him in my decision to prosecute because it's one of those that were waiting for...DNA to come back and I'm like, you know I'm honest with them, but I mean **I think that's been one of the major changes with the notations and everything is that the defense attorneys are becoming involved pre-charge versus post charge***

In this case, the prosecutor noted that transcript notations might have spurred an increased involvement of attorneys. Although most participants did not indicate Virginia's transcript notation law (*Va. Code § 23-9.2:15*) as significantly affecting their work, for this prosecutor, more frequent communications were taking place. Defense attorneys were requesting more information on behalf of their client, which could have benefitted their case as the criminal process moves proceeded to trial

Prosecutors in my study expressed strong concerns on the ways campus investigation and adjudication processes have changed, resulting in different standards and definitions about sexual assault that impacted their approach. However, an answer to these challenges was unclear, since prosecutors appeared to be seeking greater alignment between the processes vs. campuses reverting to their previous response. Backsliding would have been problematic since from the perspective of most participants, campuses historically lacked transparency on the prevalence of sexual assault and minimized sexual assault through strategies such as mediation, sanctions issued against victims and no contact directives. I discuss each of these viewpoints in the following section.

### **Transparency and minimization.**

According to several prosecutors who participated in the study, prior to the 2011 federal guidance, colleges and universities minimized the extent of sexual violence that occurred among their students. This belief is supported in the literature that showed colleges and universities as less likely to report accurate rates of sexual violence (Karjane et al., 2005 and Yung and Lamb, 2015). Therefore, prosecutors were less likely to interface with campus sexual assault cases. They were also less likely to interact with campus officials. When they did learn of cases, they became aware of issues where campus officials took actions to discourage reporting, for example using mediation to resolve complaints, punishing victims for coming forward and issuing no contact directives that did not meet the standard of civil protective orders issued by courts.

Prosecutors' narratives regarding a lack of transparency and distrust with campus practices are important from a symbolic interactionism standpoint since minimal trust may continue to interfere with the ability of prosecutors and campus officials to build meaningful and authentic working relationships. This section explores these areas as well as prosecutors' experiences with supposed mandatory reporting on the part of campuses. Overall, it appeared the law was not having its intended effect, i.e. to increase the number of felony sexual assault reports to prosecutors' offices.

Overall prosecutors had varying views on whether colleges have truly progressed in being more transparent. During an interview, a prosecutor discussed the status of one campus pre-federal guidance, the "*Clery act was totally ignored, because well you can't sell your campuses 'this is going on' and if you've got students who are from fairly elite backgrounds, well then your fundraising is going to suffer as well.*" So, campus officials fears in being open about campus sexual assault was viewed as a way to protect reputation and to avoid reductions in

funding. *The Hunting Ground* (Dick and Ziering, 2015) documentary exemplified this issue, with numerous accounts of campus officials who discouraged outside reporting to local police.

Examples of campus administrators' practices in minimizing survivor accounts were apparent during interviews with prosecutors. Procedures at a private university raised concerns for one prosecutor, who explained campus officials would ask students to sign agreements that had the effect of relinquishing any further disciplinary action, "*One university would bring people in and, 'would you sign this paper and just agree not to contact each other?'*" and "*it just sounds like you're both in the wrong.*" The prosecutor also described ways the university would issue demerits as punishment for drinking and/or having sex, as prohibited under their policy:

*They have these extra policies which they're free to have because they are a private university. **If you drink you get these many demerits** we go to a party, you get these many demerits and **if you have sex you get these many demerits**...And I know there's, you know an exception if you're a victim of crime...but if it's iffy or just seems like well just two kids drinking or whatever, if that's the determination that they make or they don't really want to pursue this, then you get a fine. So, **somebody assaulted me and I reported it and now I have to pay however many hundreds of dollars to the University for reporting it, only to have them say 'it's not that big of a deal, here apologize to each other, go live your lives.'***

Even though the prosecutor seemed aware of policy exemptions, they still expressed distrust of campus officials' willingness to allow an exemption. The prosecutor also believed university officials minimized the nature of the assault for both the survivor and the defendant. During another interview, a prosecutor and I had the following exchange regarding a student victim who faced punishment through the same university's campus conduct process:

Participant:

*I'll give you a for instance, prior to all that [2011 federal guidance] if a woman reported being sexually assaulted and their Title IX investigation determined it to be unfounded she was fined...Because you're not supposed to have sex on campus and she admitted to having sex and they said well, you know it's iffy as to whether or not it was force or violence, well then **you've admitted to having sex and so you're being fined.***

Interviewer: *Was that part of their policy or practice?*

Participant: *It was part of their practice, they would never...[include that in their policy]*

Interviewer: *Right*

These prosecutors' concerns with at least one private university mirror the finding of a 2015 national survey that showed over 20% of the nation's largest private institutions conducted fewer investigations than the number of incidents they reported to the federal government (McCaskill, 2015). As federal guidance trends more towards the rights of the accused because of due process concerns (ED, 2017), it is unclear what impact this will have on private universities.

Campuses also issued no contact directives, to prevent student contact, but one prosecutor suggested these orders may have resulted in a false sense of security for victims:

*One school that we have here that really pushes... the victim to reconcile with the offender and just sign what they call protective orders...for them to agree to stay away from each other on campus. So, that's a negative because the victim feels like, I got this protective order, I'm protected... well it's **not legally enforceable**. Its just something for the school. It's an agreement with the school, as well they're not being informed about all their rights, for criminal prosecution and investigation. If it's just being reported to the college campus than it is trying to do with it of like, **okay everyone let's just apologize and move on, instead of looking into it as a criminal matter.***

Since no contact directives were not court-issued, this prosecutor questioned their effectiveness in preventing further violence. From their perspective, students did not receive adequate information regarding their options for criminal justice participation. However, in another jurisdiction, a respondent stated that students showed signs of accessing resources outside of campus more often since campuses changed their policies, “*We have seen more victims who are aware they have another route other than through campus police/officials....victims who go to the magistrate or local police themselves instead of campus police.*” So, even though campuses may have been educating their students on external systems, some prosecutors remained skeptical of their willingness to encourage students to report to city and/or county police.

Another prosecutor working with public universities as well as private described their views on the reasons why campus officials discouraged students from reporting:

*Often victims are given misinformation by the campus officials, are discouraged from coming forward, are punished for code of conduct violations themselves...I think that colleges and universities still feel somewhat autonomous and 'outside' the judicial system. The academic world still appears to keep things internal and quiet if they are at all able.*

For this prosecutor, campus officials viewed themselves as located within “ivory towers” (Fisher, Daigle, and Cullen, 2009) beyond the reach of the criminal justice system. Another prosecutor agreed, “*I think sometimes they consider themselves as on an island, by themselves and I’m noticing that if our office as a prosecutor’s office is not proactive in reaching out to them and building relationships then nothing is gonna get better.*” It is important to note that the prosecutors’ positions appeared to have been unchanged in spite of recent reforms including mandatory reporting, discussed in the next section.

### **Mandatory reporting.**

The 2011 Dear Colleague Letter signaled a national effort to hold institutions accountable via federal guidance, with additional mandates codified in the subsequent passage of the Clery Act Amendments to VAWA. Evidence for the need to increase engagement of the criminal justice system was a justification for passage of Virginia’s mandatory reporting law (*Va. Code § 23.1-806*). While prosecutors who participated in my study seemed to understand the need for the law, due to lack of transparency, others indicated the law has not had the effect of increasing reports. For two prosecutors, they were not even aware of the law and of these, one asked for more information so they could share it with a campus that did not appear to be reporting. These issues signify a need for more research on the reasons for continued underreporting by Virginia campus officials although for several prosecutors who participated in my study, campus officials’ fear public scrutiny was the main barrier to reporting.

Limited interactions with campus officials and receiving a low number of reports appeared to influence the shared meanings prosecutors created for campus officials' approach to sexual assault. Several prosecutors indicated minimal transparency was an important justification for mandatory reporting:

*I would track it back down to internal issues...I think that the schools see any outside contacts is [sic] bringing attention to any kind of issue. Which is why I think they had to pass the mandatory reporting law is because some schools are still coached in that whole belief system that if no one else outside the University knows about it, then it didn't happen.*

The prosecutor believed that the law was necessary to stop campuses from prioritizing the protection of their reputation over reporting. However, only three prosecutors believed they have received more reports since the law's passage. In response to my interview question on the law, a prosecutor asked, "I know that they have to report to somebody, but I don't even know who it is. What is it?" After I explained the law's requirement to report felony sexual assaults within 24 hours after campus officials and law enforcement conduct their review of the case, they simply stated, "That's not happening." Prosecutors also questioned the impact of the law since victims were not required to talk with prosecutors about the case even when they are aware of a report:

*Mandatory reporting, I don't know if it affects us so much because even though there is a mandatory reporting requirement, those victims still don't have to cooperate with the process. So, even though I might know about it, if they say "I'm not cooperating," well that shuts that down right there.*

For this prosecutor, receiving reports had limited impact on their work since it did not result in increased interactions with student victims who were ready to proceed.

Another participant shared that they started receiving a higher number of reports in the immediate period after the law's passage July 1, 2015, but since that time, reports had slowed considerably:



*As far as the overall number I would say there isn't much of a change and **even though the laws first changed we were getting notifications**, you know I say regularly, maybe once a month. **But now, we hardly ever get them.** And it's kinda like... I don't know if it's not happening or... actually have one recently where they are just straining things out, saying this isn't a campus safety issue and she doesn't want to report so we're not going to worry about notifying the Commonwealth's attorney's office...*

It appeared that college officials were screening out cases that were not deemed a threat to campus safety, perhaps as a way to avoid transparency. The prosecutor explained why this reduction in reporting was worrisome for them:

*So, it is concerning that all of a sudden it was like okay we're going to report these things that have been going on and not that frequently, but then down to none even I know there's plenty of Title IX [campus] investigations going on. Someone made a comment to me recently about a year old sexual assault case that we had going forward and then the Title IX investigator said 'oh, I've had all these different investigations since then.' Now I don't know what they are... but is concerning...because it's not being reported to the police. It's not being reported to us. **It really makes you wonder, you know what these cases are about, what exactly is happening.***

Even though this prosecutor indicated having ongoing contacts with campus officials, the prosecutor expressed distrust regarding the officials' willingness to provide information because reports had decreased. The same prosecutor also specified they learned about a case through the local newspaper; they never received a notification to the prosecutor's office. For this prosecutor, having increased interactions, and then limited reports from campus officials was a significant disappointment.

In the following narrative, another participant exhibited a lack of trust and skepticism of campuses to report sexual assaults in spite of the law:

*The law as it's passed is only as good as the school is willing to enforce that particular law. I'm hoping that the schools are going to realize that if you're discouraging or you're not reporting whatever it is, **somebody's gonna blow the whistle at some point.** Some victim is going to say 'why wasn't this brought? Why wasn't this pursued? Why hasn't this gone forward'? So again I'm hoping that we're getting information. **I just have no way of verifying that we are getting the information.***

The prosecutor pointed to student activism as a potential source of accountability for schools to report their victimization to authorities. At the same time, not having a full picture of what was happening on campuses within their jurisdiction was both a source of frustration and reduced trust. The same prosecutor questioned the accuracy of reports, according to the requirements under Virginia law to report felony cases to commonwealth's attorneys' offices:

*The other thing of course is **the law as it is written requires if the act is of a sufficient nature that it constitutes a felony**, I mean obviously rape is, you don't need to be a rocket scientist to figure out a rape is a felony but other acts, are they felonious or not? Sometimes I have to look at the codebook to see what the range of punishment is and so we're counting on non-lawyers, non-prosecutors to make these particular calls as to what might be a felony and whether it's report or not.*

Thus, the prosecutor not only questioned campus official's willingness to share factual information, but also their ability to discern appropriate cases to forward to their office. This prosecutor appeared to view prosecutors were in the best position to help campus officials make this determination since they held knowledge regarding criminal law. The prosecutor went on to explain why the law did not seem to be having its intended impact:

*The mandatory reporting would have, it has some impact, but not whole lot, because again we're not getting identifying data. So, we're not able to reach out with our victim/witness folks and say look, this is what's available. **When the bills were before the 2015 General Assembly, we were hoping to get something that would allow us to intervene in a positive way.** Ya know, we want you to make an informed decision, and so ya know, here are your options. But, **basically they're not being informed.** All the information is, you can take this criminally as well, well gee, that sounds inviting...yeah, because all they know about the criminal justice is what they've seen on TV and we all know that they don't lie on TV... just like they don't lie on the internet. **So, we're not able to...give them the information and say now, knowing this, these options are available, what would you like to do?** Well, tell me more...well, 'I want to go forward, or I don't want to go forward,' whatever it may be. **At least, you know, victims can make informed decisions.***

The prosecutor shared high hopes for the law initially, since it offered the potential for prosecutors to reach more victims so they could help students explore their options for participating in the criminal justice process. Receiving reports was even more important since

the prosecutors described media portrayals as presenting an unrealistic account of the system.

The prosecutor wanted the opportunity to provide victims with correct information so they could make an informed decision, an unachieved goal that increased their frustration.

Limited information not only constrained actions in terms of prosecution, but also prevention efforts. A participant expressed frustration with minimal facts surrounding the case, but more importantly, a missed collaborative opportunity for a proactive response on the part of the campus:

*I received three notifications from one school. All of them were anonymous. So, it was an anonymous victim with an anonymous suspect and it all came out of the same dorm. I suggested to the notifiers that perhaps we could do a presentation at the dorm, not about obviously what was said but just a general presentation to hopefully encourage people to speak up since obviously there is something going on if there's three in one dorm. Never heard back.*

Knowing that three crimes took place in one area and lacking the ability to act meaningfully upon the information was especially unsettling for this prosecutor. These incidents especially may influence the meanings prosecutors create for campus officials willingness to be genuine partners in a collaborative response.

For another prosecutor who shared positive interactions with campus officials, they simply resigned themselves to inaction in response to partial reports:

*In the past couple of weeks, I really think I've got like half a dozen which is very unusual 'cause I can probably go another six months and... wouldn't have a half-dozen of them... And I move them to just an email folder because most of the time there's actually **nothing for me to do**. I just had one this morning and the gist of it is something along the lines of, you know we got this, someone reported to us that it had been reported to them that a year or two ago a student was sexually assaulted by someone.*

Even though the prosecutor received reports, they took minimal action on the cases. The information they did receive was not helpful to their work. Not knowing what else they should do, they simply saved the reports in a folder.

Of the few participants that did note an increase in reports, one prosecutor suggested that without mandatory reporting, colleges and universities might revert to limited information sharing overall.

*Until that statute passed, there were some universities who stated they never had a sexual assault. With the change in the law that has forced them to re-examine that process and so, because of the change in the law, I have been getting more reports. **I don't think there would be at least one school I would hear from if it hadn't been for the mandatory reporting.***

This prosecutor believed that the law influenced university practice. They also suggested that if Virginia no longer had the law, they would once again receive fewer reports, as they had in the past.

Prosecutors expressed concerns over campuses forwarding reports when victims were not prepared to share the incident with authorities. These views are consistent with research on the potential impacts of “compelled disclosure” (Holland and Cortina, 2017, p. 1) of survivors, who may already be riddled with feelings of guilt and shame in having their personal information shared beyond their control (Brubaker and Mancini, 2017; Holland and Cortina, 2017):

*I think most of the discussion was, is this [mandatory reporting] really, will more people come forward or will fewer people will come forward? Because with some of the mandatory processes that then happen, you know there's a lot of people...their like, 'I didn't want that to happen. **I told my RA [residential assistant] because I just wanted to be talking to a friendly person and now my RA's done this and I you know, I don't want you bothering me. Go away,**' you know type of thing*

The prosecutor may have needed to adjust their approach with victims who had not intended others to have access to their report and who would have preferred the police and/or prosecutors leave them alone.

Participants also wondered if students understood the nature of mandatory reporting, when the officials forwarded information and to whom. Recent research with advocates

(Brubaker and Keegan, 2018) suggested these policies were confusing for students. For students who fear police, this may have served as another significant barrier:

***Even though I know the intricacies of mandatory reporting, I don't know if victims know that. So, if they know that Title IX, it's a mandatory report to law enforcement, it may be shutting them down from reporting because they may not be ready to report to law enforcement. And if they're not ready to report to law enforcement, if they know that law enforcement has to be involved, they don't necessarily know that next step of, 'but I don't want to deal with the criminal prosecution piece of it.' So, it may be shutting down some people from reporting. I wouldn't know, because it's never made it to me, so...I don't know.***

The prosecutor believed that victims lacked overall awareness of the stages of the criminal justice process and that they might “shut down” if they knew that their report would be given to police. Because the prosecutor was not receiving reports, they were not aware of the potential impacts on students. This lack of transparency may have raised additional trust concerns.

A prosecutor who described a collaborative relationship with campus officials suggested that the mandatory reporting law was not necessary in their jurisdiction; the campus was already providing information on reporting options to their students:

***I think that in some situations it probably is a good thing to have the mandatory reporting...here, I think it was getting done...The same resources and information was being provided to the complainant before and now, with the mandatory reporting, it's kind of added maybe things that aren't helping and are causing maybe some you know additional work or in some cases, I think then overwhelming the person with things that they didn't really want to happen at a time when I think they deserve some privacy...I think that there have to be other places where, it was just getting ignored when they did report or swept under the rug...being provided with...the choices is what it's about...You know if it is overwhelming the person making the complaint and therefore quelling that movement along to maybe a prosecution then that's a problem.***

While the prosecutor acknowledged that the law potentially benefitted students at other universities that did not receive referrals, it may have introduced additional stress after a traumatic incident. Unnecessary work may have resulted, especially if the victim did not want to participate. The prosecutor also suggested that some victims could have retreated from the

process because they were not ready to report to authorities, which defeated the purpose of the mandate.

A survey respondent discussed how interacting with a victim that did not actively report their rape influenced their decision-making on whether to charge a case or forward it to trial:

*I think it's important to take into account that mandatory reporting often can mean a victim that did not know it would 'end up here' or 'go this far' and it's another factor in the balancing that must be done in all our decisions.*

In this example, the prosecutor needed to consider victims' desire to have their incident reported. Essentially, when a victim initiated a report, the prosecutor would know the victim was at least interested in seeking offender accountability. Not having this information, the prosecutor did not know what to expect and may have deemed the effort to conduct outreach as futile.

In sum, constrained information seemed to result in frustration with campus officials and the process overall. Most participants noted minimal or no change in reporting. Yet, prosecutors also indicated that without the law, campuses might put an end to reporting outside the university. When campus officials forwarded information, prosecutors indicated they could not take action or simply filed the reports. For other participants, mandatory reporting may have resulted in additional complications since students did not choose to report and therefore victims' stories became "compelled disclosures" (Holland and Cortina, 2017, p. 1), thereby limiting survivors' choice to report. Lack of transparency and resulting distrust were an ongoing concern for several prosecutors, which seemed to result in increased tensions with campus officials, explored in the following prosecutors' narratives.

#### **Interactions with campus officials.**

Prosecutors' interactions with campus officials including Title IX coordinators, advocates and campus police appeared to have influenced how prosecutors understood campus' response to

sexual violence. While some participants described positive communications, especially with community college administrators, others indicated limited cooperation. In this discussion, I explore the ways shared meanings appear to have influenced prosecutor's actions, from active collaboration to avoidance or going about one's work without regard for the campus process.

### *Collaborations with Title IX Coordinators.*

After the ED placed colleges and universities on notice that their response to sexual violence demanded a new approach, campus officials sought to comply with new guidance. Institutions drafted and approved new policies, additional personnel were dedicated to investigation and adjudication and victim services were expanded (Amar, et al., 2014). Meanwhile, prosecutors' work proceeded under existing criminal standards.

Prosecutors and campus officials' interactions influenced the collective meanings prosecutors give to sexual assault cases. These meanings emerged in prosecutors' narratives that portrayed campuses as more engaged in terms of communication and collaboration with their offices. As one survey respondent noted, "*Currently there are more college officials working specifically regarding these issues and making sure Title IX regulations are being followed and people are being educated. Administrators tend to make themselves more readily available.*" For this prosecutor, having access to a Title IX administrator who was committed to compliance and prevention education was an important component in collaboration on college sexual assault cases.

Another prosecutor reflected on the ways campuses have changed since they last attended college:

*I think colleges and campuses from what I can remember from being in college or from graduate school, [they] have really changed their views towards sexual assault...when I went to college, I'm not sure if we could identify who the Title IX coordinator is and now they have dedicated webpages. They have actual coordinators*

*who are not students who are fulfilling that role. Their policies are more public. It seems in terms of trainings that I've been to, that the Dear Colleague Letter was guidance for them from the federal government, of having **policies that were more transparent, more systems to put into place to hold offenders accountable, but also to give complainants-victims more support.** So I think definitely in the past couple of years **there's been a push towards more transparency, more accountability and a better system** in terms of looking at...how they adjudicate complaints of misconduct.*

This prosecutor demonstrated more knowledge of federal policies as compared to other participants and the ways they influenced the work of campus officials' adjudication processes. Training was the likely source of this information, but they may also have learned more about processes through their working relationships with campus officials.

Prosecutors noted the highest levels of collaboration with community college administrators, viewed as working in a unique campus culture. As one prosecutor described, their local community college *“really stepped up and wanted to do a lot and it was really refreshing to see a community campus want to take a role.”* Another participant noted:

*Interestingly enough or community college in [town/city] was actually one of the more aggressive in terms of engaging with us and put in place policies and training... The other campus communities, they did things as well, but I actually had the most contact with the Title IX coordinator from the...community college*

The prosecutor seemed impressed with the level of commitment demonstrated by the community college to work together on campus sexual assault cases even though they had limited resources as a smaller campus. The prosecutor added some possible reasons for greater engagement with community college leadership. Namely, the population was traditionally marginalized and underserved:

*They had a Title IX coordinator that just sort of took it and ran with it...I think that she realized that the community college serves a lot of underserved communities and so your nontraditional students, you had students from less affluent backgrounds. You had marginalized communities [that] maybe didn't have the access or the knowledge that many of our other students did. So, I think she felt very strongly that if there is a way for services, that support could be provided to their community that they did... They work really hard and have the director of the sexual assault program work with them to*



*make sure that all their policies comply with Campus SAVE and would follow... Title IX and that they were trauma informed and that their community [had] the wraparound services that were available in the wider community and not just on campus... if they needed referrals or anything like that they could call our victim witness office to assist if she had questions...if she had students that were coming to her with questions about the criminal justice process that she could call me and either I or someone else help answer the questions. So she was very proactive...*

From this prosecutor's perspective, the Title IX coordinator sought to meet the needs of their community and had an understanding of the challenges faced by underserved populations. The coordinator also collaborated with victim advocates to ensure the availability of comprehensive services where the students lived, outside of the campus. Another prosecutor offered a different perspective on the nature of community colleges' diverse population, which they believed influenced the ways campuses respond to sexual assault:

*I think it's a different set of students... they have a lot more going on than just the school and so they're working their way to afford college. They have jobs in the outside world, they have families... They seem to be more practical, would be the word I'd probably choose and more bottom line about issues and that just seems to translate for them into being very proactive. Also about their [campus] response, but also about being proactive in prevention, especially when they know their students are very diverse. They have 18 and 19-year-olds here [who] are going to transfer and they have older students who want to go back to school and they're all mixed in one group...you have students who have very diverse backgrounds and so I think I think that all contributes to having to push them in a different direction.*

Because the community college population differed from the traditional student attending a four-year college, this prosecutor perceived campus officials were more committed to preventing campus sexual assaults. Prosecutors' perspectives regarding inclusive community college populations were consistent with national statistics that show a higher percentage of low-income and first generation students (The National Center for Public Policy and Higher Education, 2011) as well as minority students (Ma and Baum, 2016).

In spite of positive collaborations, the extent of prosecutors' interactions with Title IX coordinators appeared to vary across campuses within the same jurisdiction:

*So, initially I didn't have much communication with Title IX folks. I would not have been able to tell you who any of the Title IX coordinators at any of the universities were. It changed for some of the institutions...there were some institutions that were much more active in engaging with us than others.*

Inconsistent relationships with campuses may have influenced the outcome of campus sexual assault cases, where collaboration could have yielded a positive result. In cases where there was a lack of communication and cooperation, strained relationships rose for some participants, as I present next.

***Tensions between campus Title IX coordinators and prosecutors.***

The above narratives contrast those of prosecutors who provided accounts that signified tensions with Title IX coordinators around the issues of information sharing, collaboration and education. Limited communication on cases impeded coordination and resulted in conflicts among campus and criminal justice actors. Prosecutors also shared concerns with the effectiveness of educational programs in preventing campus sexual assault since they did not truly capture what prosecutors were seeing in their cases, e.g. complications involving alcohol and consent. For other participants, perhaps due to differences in approaches and limited resources, they determined to remain solely focused on their own work.

As previously mentioned, mandatory reporting appeared to be inconsistent and when reports did come into their office, prosecutors' experienced frustration when they could not reach out to the victim. A prosecutor described a case where campus officials reported a sexual assault, but without the names of the parties since the school did not view it as a threat to the campus community. This resulted in a circular disagreement:

*I know we're [prosecutor and campus Title IX Coordinator] still emailing back and forth because of the last one came in about a week ago...I'm like, **'but from what you're describing to me, this is stereotypical grooming activity by this guy and so let's rethink this whole [case], what sort of threat does he constitute to the students, to the other students into the school?'** And keep in mind that a small percentage of men do this, 20%*

*of women are victimized, that means that this guy, more likely than not, is gonna do it again.*

Differences in perception of threat resulted in a conflict between the prosecutor and a campus official since they did not form the same meaning for the cases. In this example, if they could not come to an agreement, the prosecutor's response would have been hindered, resulting in even more frustration, *"I get so little information...A female student has reported that she was sexually assaulted on campus during the month or whatever and will get back with you sort of thing...It is bare-bones information."* Where interactions increased through mandatory reporting, these may have presented additional tensions in cases where prosecutors and campus officials constructed different meanings of threat to campus safety.

SARTS, teams of allied professionals that meet regularly to facilitate a coordinated response to sexual assault, have been shown to encourage relationship building. Communities with a SART have also exhibited timely victim reports, greater collection of evidence and higher victim participation in the criminal justice process (Nugent-Borakove et al., 2006). Study participants named each of these benefits as important intra-legal case elements. In one jurisdiction, however, a prosecutor described how the aggressive stance of a local Title IX coordinator resulted in limited cooperation on their pre-existing coordinated response team:

*We had always had multi-disciplinary meetings with the social services and the schools and probation...So we invited the campus people to our next jurisdictional meeting and they really took offense that they were being combined with a multi-jurisdictional meeting and not having our own SART meeting or whatever it was...and **I just remember the woman from the college was really pushy, you know you have to do things this way and this is all required and we were just like, 'tick tock lady, what do you want from us, you know, we're here to help you'?**... I don't know that they ever came back ...if they did maybe they came back for one meeting, but they wanted a lot of information about, 'well what is this office doing to address campus sexual assault?' **We were all kind of just befuddled by what they were asking while they were there.***

This participant exhibited a negative response to the coordinator's stated perception of how the prosecutors should have structured the SART. The prosecutor suggested that their colleagues were also startled and confused by the coordinator's questions regarding the criminal justice process, specifically the ways their office was responding or perhaps not doing enough to prosecute campus sexual violence. Because of these initial conflicts, there was less of an opportunity to build a genuine working relationship.

Preventing sexual violence through education for students was a primary concern for study participants, where prosecutors mentioned prevention as a theme across ten interviews. Although the following prosecutor was aware of training programs on campus, they viewed them as ineffective since they did not provide information on high-risk situations:

*I would mandate that all of them have at least a day set aside either the orientation or entering college that discusses the reality of alcohol, sex, sexual assault, consent, Title IX, Clery and what all these processes really mean. Not, cute not funny, the harsh reality and...freshman have to attend before they start school, so either the first day they are on campus because as we know that first six weeks... but especially those first weekends are just horrible now and I think we have to get at them before. I know that part of it can be online, or different, but I also think there's something to be said to having in-person interactions when you're talking about in-person actions. And yes, this is my dream. I will not talk about logistics or how many people it would take to do that or anything, but I just feel like...it should be mandatory.*

For this prosecutor, mandating training for students regarding the ways federal policies influence their lives on campus was important as well as realistic portrayals of the nature and extent of sexual violence. Prosecutors who repeatedly saw student cases come forward, with similar patterns involving alcohol and ambiguous consent frustrated their ability to take action. This prosecutor also seemed to cast blame on campus officials for not having authentic education programs that explored "the harsh reality" for which prosecutors were highly aware.

Nevertheless, for other participants, it was "business as usual," i.e. campus approaches had minimal influence on their day-to-day procedures. High caseloads and limited resources

likely created barriers to conducting outreach. As one prosecutor shared, “*I don’t really think that we pay that much attention in a way to what the campus is doing and their system.*” Another prosecutor explained that a local college had limited communications with them. As they suggested, they simply did not have the time nor the inclination to initiate contact:

*They [four year college/university] just, they did not reach out to us as much as the community college did and frankly with our caseloads I wasn’t going to pursue the other higher education institutions to inquire about their policies because frankly I didn’t care. I mean if we had folks who wanted to partner with us to work with us wanted to figure out ways we can help each other, super.*

Thus, unless a campus Title IX Coordinator sought to build a positive relationship with prosecutor, an effective collaboration was unlikely. Although the prosecutor named excessive work duties as a cause for the non-existent relationship, they may have compared the traditional campus with one that was more committed such as the community college. In turn, they may have had an indifferent view of the campus for not initiating the effort. Relationship building has been shown as effective in reducing systems tendencies to look inward and focus solely on their own demands and constraints. As Kelly (2006) suggested, “linked systems are antidotes to tendencies toward competition, control and the consequences of being in corporations and organizations where the norms are often self-preservation at the expense and others’ quality of life...” (2006, p. 285). In other words, greater connections across systems can improve professionals’ working experience. In the next section, I examine how interactions between prosecutors and campus police contributed to positive and negative meaning-making for participants relating to campus sexual assault cases.

#### ***Interactions between campus police officers and prosecutors.***

Beyond biases of law enforcement explored in the last chapter, prosecutors’ narratives also showed specific concerns with the role of campus police. While some participants indicated

campus officers engaged in a proactive approach, other exhibited skepticism of officer's trauma-informed knowledge and skills in investigating sex crimes as compared to county and/or city officers. However, their assessment could also have been a function of their closer working relationship with the latter since they are members of the "same system." Reviewing the data that follows, I examine how prosecutors' interactions with campus officers influenced their perceptions of campus officers and their work.

Positive comments regarding police included a prosecutor who noticed greater acceptance of trauma-informed investigations across the law enforcement community as a whole. For example, a participant offered praise regarding community college officers as investigators of campus policy violations:

*The community college is very active... Their school uses the campus police as more of their investigative unit. The community college doesn't have a designated Title IX investigator. They use the police to help with that process. So **it's a very uniform and very united approach.***

From their perspective, a local community college's campus police officers effectively investigated sexual misconduct policy violations via the campus administrative process. The prosecutor may have welcomed this strategy due to a higher level of trust that resulted from ongoing communications between police and prosecutors.

However, several prosecutors reported interactions with campus police officers who appeared to be less skilled in trauma-informed investigative techniques. A survey respondent discussed how one campus was unwilling to allow outside detectives with expertise into the investigations process. In their view, this method resulted in technical errors:

*We have also experienced resistance to our trained detectives being involved in campus sexual assaults, leading to **evidentiary issues brought about by untrained individuals conducting investigations** (interviewing suspects/witnesses in the same room and together; not collecting evidence properly and timely).*

For the prosecutor, lack of adequate investigative techniques gained through comprehensive training negatively affected the case. In a review of the literature on law enforcement investigations, Westera, Kebbell, and Milne (2016) found that sexual assault cases historically suffered from poor intelligence gathering, such as not conducting extensive interviews with victims and offenders that would have revealed criminal patterns. The authors argued, “By applying the same standard of care expected of a crime scene examination” to rape cases, “investigators can improve the quality of information obtained and preserved” (2016, p. 1763) and thus enhance the likelihood of conviction.

According to several prosecutors I interviewed, through specialized training, investigators could learn the techniques identified by Westera, et al. (2016). However, campus police may not have had access to ongoing specialized training:

***The problem I think with campus assault cases is you have a police force that's not trained...I don't believe that they are properly trained to handle sexual assault, to know what to look for, to know what investigative tools there are to know first and foremost I mean how to deal with a victim of sexual assault...you know Penn State University... It's huge and so I imagine that their officers are trained. I have been to trainings where Penn State University police have been there. They've been at the child advocacy conference in [another state]. [Local college/university] is not sending their people...so that they can learn about sexual assault...having the open communication I think is very important. We're all in this together. We all have the same goals. We all deal with the same hurdles. And so that better communication, better relationships and proper training I think are the most important things.***

Thus, the prosecutor viewed training as a primary need for campus investigators, similar with larger schools that may have access to more resources. They also named frequent communication and collaboration as necessary, especially since they experienced limited success in this area. Within the past year, the prosecutor had attempted to establish a relationship with campus officials since they reported minimal campus sexual assaults. As a result, the prosecutor started to get more calls from campus police regarding cases, “The last couple months I've had

them reach out and ask questions and some of the questions that I'm getting are very basic questions. And so I think that's the biggest hurdle is they're just not trained." So, in talking more with the campus officers, the prosecutor also became increasingly aware of their limited experience.

Prosecutors indicated that inadequate investigative techniques negatively influenced prosecutors' ability to obtain successful conviction. A prosecutor recalled how a colleague expressed frustration about an interaction with a campus police officer:

*I remember one case in particular [college/university], they had investigated and charged and it was really unprosecutable and **the prosecutor that was assigned to it was very angry that the detective or officer or whatever it was had not done this, and not done that and not done this and it was kind of turning into a standoff...**they [campus police] were insisting this case be prosecuted and she was saying 'you haven't done the proper procedures, **I don't have a case, you ruined the case...you didn't do your sexual assault timely, your exam timely, you let people sit in on the interview with the victim, you didn't record your conversation with the defendant'**...all these things that we had trained our [county/city] officers not to do, or best practices to do them...the campus police weren't following that and I don't know whatever happened to that case. I don't think it ever made it to trial.*

The interaction between the officer and prosecutor was marked by conflict, a "stand off," since they had created different meanings involving the case. Ultimately, the case ceased to move forward because of this tension and more importantly to the prosecutor, due to an incomplete and flawed investigation.

Overall, prosecutors expressed concerns with campus police officers' capacity to investigate sexual assault case effectively, but also acknowledged limited access to training. From their standpoint, this resulted in missed opportunities to prosecute cases. In the next section, I present the tensions prosecutors indicated in interactions with victim advocates, who appeared to create different meanings of sexual assault and consent.



*Interactions between campus/community advocates and prosecutors.*

Among those interviewed, several prosecutors discussed interactions with campus and community advocates, i.e. those that do not work within the criminal justice system. Although prosecutors described the ways internal victim/witness advocates helped to support their work, advocates from the “outside” seemed to have different ways of thinking about sexual violence. Prosecutors suggested that advocates’ perspective in turn influenced the ways they educated students on issues such as consent and the definition of sexual assault.

As discussed previously, prosecutors noted challenging conversations with students because they had higher expectations for case outcomes. A prosecutor described how advocates’ discourse on sexual assault at an awareness event may have resulted in students constructing different meanings for their experiences:

*We have to careful with our terminology...there were advocates there and some of the terminology they used as a prosecutor sort of made me cringe because they were explaining scenarios and saying ‘if you have gone through this, you have been raped.’ And I’m thinking in terms of elements of a crime and your empowering people in the wrong way. You know I’m all about empowerment, but don’t empower them with incorrect information. And so, that has been done some and so that needs to be fixed.*

According to this prosecutor, the content of advocates’ prevention programming at colleges and universities may have shifted students’ perceptions in the wrong direction. In using different explanations for the definition of rape, this prosecutor expressed concern that students would believe they has experienced a rape, even though their case was not prosecutable. In a sense, the prosecutor believed that the victims, and perhaps they, were being set up for failure. This situation created tensions since the prosecutor thought the advocate gave inaccurate information.

Another participant explained that if campus advocates could be more understanding of criminal justice procedures, including interview strategies, they could assist students in becoming informed and full participants in the process. In the following case, a prosecutor was

frustrated that an advocate challenged the need for questions regarding alcohol consumption as potentially blaming the victim:

*It's like, understanding that the fact the person used alcohol isn't what we're judging, it's the fact how are they able to recall, what makes them a good witness. **Instead of saying you're judging the victim or your victim blaming, recognize that we have different standards and we have different rules we have to abide by and appreciate those. Instead of basically judging us and telling us that we need to fix that or the system is wrong. You know the fact of the matter is the system isn't perfect, but it's also been the system for hundreds of years. Instead of trying to work within the system and help with those things, like if you're an advocate when you're talking to a victim and you know they're going to call law enforcement. You know, tell them. Be upfront with them. They're [police] not going to judge you, but they need to know everything...I mean it just feels like, for groups who say they are inclusive in understanding and nonjudgmental, that attitude isn't reciprocated to us.***

While the prosecutor acknowledged imperfections in the system, they desired greater empathy from advocates regarding the limitations and constraints prosecutors must work through to gain a positive outcome, the conviction. The prosecutor also seemed to challenge supposed hypocrisy of professionals traditionally presumed to maintain a non-judgmental approach.

In conclusion, differences in definitions and standards including sexual misconduct/rape and consent have resulted in greater tensions between the campus investigation and adjudication process and prosecutors' procedures. Impacts on prosecutors' work included students and their families exhibiting greater demands for justice and premature notice to defendants, who also gained access to campus case information and legal advice at earlier stages in the criminal investigation. Nevertheless, prosecutors seemed reluctant to recommend that campuses return to previous interventions due to historical issues with minimal transparency and sexual assault reporting, the latter of which remained a concern even after Virginia legislators' passage of the mandatory reporting law. Interactions with campus officials including Title IX coordinators generated increased collaborations for some participants, and tensions for others because of differences in approaches. Broadly, prosecutors also indicated concerns with campus police

officers' skills in conducting effective investigations due to limited training. Finally, campus and community advocates appeared to contribute to complexity because of their descriptions of sexual violence that were not consistent with criminal standards. In the next section, I examine potential approaches to resolving misalignment and tensions, based on themes that emerged in the data.

### **Recommended Models and Practices**

*And that's part of those layers of it being overwhelming to someone that is a victim of a crime and then you know everybody just has to decide, you know where they want to go with it. Is it that they wanted to tell one person? Is it that they want somebody disciplined through the school? Is it that they just want to seek some mental health services for themselves? Or is it, you know, that they want them charged with a crime and go.... And then you know the other problem is that the [different] definitions from a criminal perspective of what might be a crime and definitions under what might be a violation under the school systems, or Title IX. – Prosecutor who participated in the study*

In the last two sections, I analyzed prosecutors' narratives relating to complexities surrounding sexual assault cases and the impacts of public policy developments on their work with campuses. It appears that prosecutors viewed these changes as necessary due to limited transparency and reporting outside the campus boundaries. However, the limited impact of the mandatory reporting law resulted in frustration with persistently low reports that contained minimal information that did not facilitate prosecution. Prosecutors were also dealing with more cases that did not fit within existing criminal codes and having challenging conversations with students on the reasons for prosecutors' inability to gain a successful conviction. Defendants had more access to information via campus investigative reports that gave insight to evidence and acquired attorneys sooner to help them prepare for cases. Finally, tensions increased between prosecutors and campus officials due to increasingly formalized campus investigations and misaligned approaches that seemed to conflict with prosecutors' conceptions of intervention and prevention.

In this chapter, I present models and practices offered by prosecutors as potential ways to address several of the aforementioned issues. These areas include models of enhanced collaboration through case coordination teams and effective leadership dedicated to campus-community partnerships. Prosecutors also offered suggestions for criminal code revisions to capture the nuances of sexual misconduct. They also discussed the ways current movements and survivor-centered approaches may continue to encourage survivors' capacity to participate in the criminal justice process. Finally, specialized training was a key recommendation, especially for campus police officers that conduct investigations.

### **Enhanced collaboration: SART and MDT models.**

Through interviews and survey data, I explored prosecutors' perceptions on their experience with SARTS, specifically the impacts these collaborations had on their work and procedures. Several prosecutors viewed their teamwork favorably, with some campuses in their jurisdictions were becoming more involved. Yet, it seemed that the teams were also lacking in terms of case review and opportunities to better understand professional roles and responsibilities. Based on the literature, I explore how SARTS could become more effective from the standpoint of prosecutors and the ways another coordination team model, Multidisciplinary Teams (MDTs) may serve as a potential framework that would enhance collaboration and improve case outcomes.

Although community based SARTS have existed for decades, prosecutors noted increasing involvement of campus officials. One participant discussed the benefits of having campus representatives on their team:

*So SART went from sort of a, same group of people that were around the table, those kind of meetings where you had folks from the sexual assault response program in law-enforcement, our office... We started seeing Title IX coordinators from the universities who would attend. We started getting invited to present at universities and be part of*

*the conversation to make sure members of their community understood the differences Title IX process, the criminal justice process and what was at stake in each and how we can help each other.*

Involvement of Title IX coordinators served to solidify working relationships. The opportunity to educate the campus community on differences between processes was also important, which may have ameliorated issues surrounding challenging conversations with students. The prosecutor also named the potential for partnership, in working together on a complex high-stakes issue.

For one prosecutor, their SART was the primary venue to enhance partnerships with the local campuses in their area. They actively sought to reorganize and reactivate the team by recruiting campus officials including Title IX coordinators and police. Prior to this effort, the relationship was essentially non-existent:

*I don't believe that the communication that we've had has been a result of the federal guidance. I think that that's been a result of us reaching out to them and showing them that we are invested in them. And we recognize the work that they're doing and that we're all focused on the same goal. And so it's my hope that we're gonna better the bonds and then we'll be firing on all cylinders...I think it's important for prosecutors to reach out and build those relationships because like I've said since we've gone to their meetings and shown an interest in them, they're coming out and showing an interest in us. And so I think it's paramount for prosecutors to reach out. It's not 'they're over there and we're over here.' We're all in this together. The statute for SART says all of us have to be at the same table.*

While communications were improving, the prosecutor did not believe this resulted from any changes in public policies. Instead, they actively reached out to the campuses in their jurisdiction to invite them to meetings and attended meetings on the college campus.

Prosecutors in other interviews indicated demanding caseloads, but this prosecutor viewed their collaboration as important to make a difference in campus cases.

The above participant also alluded to the law that requires commonwealth's attorneys to coordinate SARTS in Virginia under *VA Code §15.2-1627.4*. Campuses must be represented on

city and/or county SARTS in Virginia, but campus coordination teams are not mandated with the exception of campuses that receive funding under the Department of Justice, Office on Violence Against Women (U.S.D.O.J., 2018). A survey respondent found value in both teams:

*Our community's SART team is a subset of our coordinated community response team. Our local college has its own coordinated community response team regarding sexual assaults. Both of these teams have allowed partners and agencies to get to know each other, know what those around them do and better enable us all to quickly and appropriately refer victims. **The SART and CCRTs [coordinated community response teams] have given us an avenue to constantly improve our processes and given us ways to fill gaps in services when we find them.***

From this prosecutor's perspective, the community and campus coordination teams helped members to relate and to understand diverse roles. As a result, the meetings strengthened their coordinated response. The prosecutor's view is consistent with a recent review of the literature on campus coordination teams and SARTS (Carlson, Quiason, Doan and Mabachi, 2018 and Greeson and Campbell), where the latter "may provide campuses with a model strategy to coordinate campus and community service delivery and planning, still underdeveloped or missing at many institutions" (Carlson, et al., 2018 p. 1). Although campuses have increasingly formed their own teams, Carlson, et al. (2018) suggested campus officials could learn from the challenges experienced by SARTS such as role confusion and organizational barriers. The author also noted that in addition to historical challenges faced by community members, campus coordination teams must also contend with the pressures of federal guidance (Carlson, et al., 2018). Tensions between system members might increase with fluctuating federal mandates, which points to the need for even greater communication and transparency on how these developments will continue to influence campus policies and practices.

Prosecutors noted a specific limitation of SARTs; while team members discussed overall trends, they did not conduct case review, where team members identified gaps and system response improvement:

*I can't say that SART really had any measurable impact on our processes... We didn't staff cases. There was usually one person from the CAs office, the Police Department usually one or two Title IX coordinators would show up and then some of the other community stakeholders... really it was an opportunity for everyone to get around the table together if there are questions from community stakeholders that they needed to have answered, you know if there were sort of trends that we were seeing both in campus-based sexual assault and the wider community...but I have never participated in a SART where it was used to staff cases. I know there are jurisdictions that have that model... but I never have.*

Although the SART had representatives from the campus and community, the inability to “staff cases” meant that the team’s effectiveness only reached a certain level. Another prosecutor agreed that case review would have created more opportunities for better case outcomes and stronger relationships:

*So it [SART] hasn't really affected our work processes. The relationship I believe is fairly good. Our last SART meeting was smaller than we would've liked, but I'm not sure of the reason for other than I think one of the schools had lost their Title IX coordinator recently. I'd like to see us do more as a team. Right now, I think we get along fine and I guess we know who to reach if we need to reach, but we can probably do more as a team as far as discussing cases. We don't really discuss cases. We just sort of talk about what's new, what's old, then we schedule the next meeting.*

The utility of the group was questionable beyond building relationships for this prosecutor. Membership seemed to wane, and the prosecutor was not sure of the reasons for minimal commitment. The fact that the prosecutor was not sure if the college had “lost” their Title IX coordinator potentially demonstrated limited communication. However, the prosecutor still viewed the committee as the main approach for coming together as a team.

According to a Virginia SART administrator, team members face challenges in conducting case reviews for several reasons. First, previous guidance from national and state

groups advised that SARTs focus on the future vs. reviewing past cases. However, this recommendation is changing nationally and Virginia's statewide criminal justice agency plans to revise its model protocol to include case review. Second, concerns over confidentiality have created barriers for professionals such as forensic nurse examiners and victim advocates in sharing sensitive information (Kristina Vadas, personal communication, July 20, 2018). These issues were reflected in a study (Cole, 2011) of SART members across three communities. The data showed that 32% (n = 88) of survey participants reported that information sharing among SART members was limited. Additionally, members indicated a lack of understanding of confidentiality protocols on privileged communication between advocates and victims (Cole, 2011).

Schools must follow federal privacy laws, which limits their ability to discuss cases. This could present an additional barrier to case review without developed protocol, although one prosecutor argued that a valid opportunity remained to interface and understand roles through SART participation:

*You can't just say to a Title IX administrator, well, tell me what [student victim] said...or saying 'can I have their medical records'? Well no, their FERPA protected, their HIPPA protected, just understanding that there all these, there's federal guidance, there's federal laws that prevent from giving you some information, but **understanding what their role is, how you can interact, how you can get the information and how you can assist them, because it's a two-way road. So, I really think it's about having connections, having communication and just being open to that.***

Even though campuses may have certain restrictions, information exchange regarding cases could still occur through obtaining a subpoena, or by obtaining authorization by the victim.

Importantly, the prosecutor seemed to understand these limitations vs. viewing campus officials as actively withholding information, which signified a greater level of trust.



Still, the extent of collaboration also appeared to vary by jurisdiction and by college, which may have influence how prosecutors viewed campus officials' willingness to cooperate:

*I think sometimes people who don't do this work, don't understand why it's so important talk to all the different groups...because it impacts everything we do. You know [several] colleges decided they would like their own SARTS...they also don't invite the Commonwealth's Attorney to every SART meeting which is a little odd. [College/university] on the other hand has a SART and we are included in that.*

By simply involving prosecutors in campus teams, this could have a positive impact on the ways prosecutors create meaning for the work of campus officials as one that portrays genuine partnership.

Prosecutors also presented the MDT as an effective model for case coordination on child abuse cases. *Virginia Code § 15.2-1627.5*. (2014) established MDTs in jurisdictions across the state, also coordinated by the commonwealth's attorney. Although the research regarding MDTs is limited, a clinical study conducted by Brink, Thackeray, Bridge, Letson and Scribano (2015) analyzed the predictive ability of one clinic's MDT to identify child sexual abuse. The team included a mental health advocate, a forensic interviewer and a physician or nurse practitioner. Based on their evaluations, the MDT determined nearly 1,000 cases (n = 997), out of 1,492 total cases as having a high likelihood of further abuse. Of these, 789 (79.1%) were "substantiated or indicated" by the local child protective services agency. Where the MDT projected a lowered risk of abuse, the services agency recorded cases as unsubstantiated or unindicated in 78.8% (n = 335, which showed moderate agreement on predicted abuse between the MDT and child protective services under their model (Brink, Thackeray, Bridge, Letson and Scribano, 2015). Similar to MDTs, SARTs could review cases for potential ongoing risk that could aid in preventing further sexual assaults among individuals and groups.

A prosecutor provided insight into how MDTs that coordinated service delivery in child abuse cases created positive outcomes, i.e. held offenders accountable:

*I had a case where the victim was, had cerebral palsy and did not was not able to communicate and who had a child as result of the sexual assault. So, **there was the need not only to have a PERK exam and DNA done on the child, but there is also need to gather all records** from [name] hospital related to her disability so we could document that she was a person who is physically incapacitated, that was not competent...to consent to a sexual assault, you know we need all that documentation related to the child so that we can prevent injury...**those were conversations that had to be had over time... we staffed cases together, kind of talked through cases together in the lead up to court...an ongoing process. Their job did not stop with the charge or the indictment. Their job stopped when we went to court and there was a finding.** So I was very lucky in [city/town], that that's how that worked. It wasn't necessarily the same in [city/town].*

This illustration could offer insights into how working together as a truly collaborative team affected not only the victim served, but also the professionals who interacted in complex and emotionally challenging situations. The relationships seemed to solidify as the case proceeded from the beginning through the trial. The prosecutor also worked in a community that did not have this model and thus, they understood the impacts of not having access to this level of coordination.

Another prosecutor explained the challenges in learning and understanding roles, suggesting that MDTs provided a framework for increasing collaboration among systems including campus officials:

***I think it's definitely having an understanding of different agencies and meeting where they are because it's difficult. I think police have one way of doing it and that might not be the way that Title IX would interview someone or have access to witnesses, but it's just saying okay, knowing that both of these systems have to coexist, what can we do? It just reminds me of...when child abuse cases are investigated, you know you have the police investigating, you have the child protective services is considered law enforcement and they're investigating it, and so for children we've come up with multidisciplinary teams...they have to learn how to interface, they have to learn what are the CPS mandates, what protocols, policies and procedures do the police have to abide by. But how do we make these work together so that we are doing things in a trauma informed way, not interviewing the victim 20 different times, collecting evidence once, making***

*sure it's law-enforcement collecting the evidence?... just communication...I think is just the key to going forward.*

For this prosecutor, even disparate systems were able to come together to effectively work child abuse cases through the establishment of protocols that clearly defined roles, requirements and boundaries. This model not only increased case outcomes through effective and coordinated investigations, but also supported a trauma-informed approach by avoiding multiple interviews. The prosecutor viewed these features as valuable and as potential strategies for campus sexual assault investigations.

The MDT model may inform the ways SARTs could address challenges regarding case review and confidentiality through the creation of formalized agreements and memorandums of understanding that specify each members roles in “first response, pre and post interview debriefings, forensic interviews, confidentiality, consultations, advocacy, evaluation, treatment, case reviews and prosecution” (Virginia Department of Criminal Justice Services, 2014, para. 4). These features may serve as a framework for SART members’ actions to increase information-sharing and effective case coordination. Beyond the SART, prosecutors also addressed the ways campus leadership influenced relationship building, which I explore in the following section.

### **Committed leadership.**

In this section, I explore the influence of leadership. First, committed leadership among campus officials appeared to contribute to prosecutors having positive views of campus processes. Second, the presence of a supervising commonwealth’s attorney that supported prosecutors in their discretion to take cases to trial was also important from participants’ perspectives. Third, over time, prosecutors appeared to gain confidence in their role, thus becoming effective leaders. However, being proactive also resulted in increased demand since more victims were willing to participate in the process.

Working with an impassioned campus leader that demonstrated authenticity in making a difference for student survivors shaped the way a prosecutor viewed their working relationship:

*I do hear very frequently from [name of college]. They are very good about staying in contact. They have a great Dean of students. I don't think she's the Title IX Coordinator as well, but I hear from her on a regular basis.*

When I posed the follow up question, “*how did that relationship evolve?*” The participant stated, “*I think because she's dedicated to eradicating sexual assaults on campuses.*” In this case, although the administrator did not appear to act as the Title IX coordinator, regular communications with a high-level official appeared to build a sense of collaboration and trust because the administrator and prosecutor were committed to a shared meaning for how to address sexual violence. In a study of community coordinating councils (Allen, 2006), strong leadership was shown to improve case outcomes. Effective coordination of meetings and resolving conflicts among members, mission commitment and expert knowledge all contributed to a positive perception of leaders. Although the study focused on domestic violence councils, features of leadership identified in the literature are relevant for the ways prosecutors in my study created meaning for campus sexual assault based on their interactions with campus officials, especially if campus leaders portray these qualities.

Prosecutors also mentioned committed leadership within the criminal justice system as a necessary component for enhancing system response. One participant described how their supervisor, the commonwealth's attorney, supported their decision-making, which appeared to foster a sense of empowerment:

*So, I was lucky in that the Commonwealth attorney I worked for **strongly supported us and gave us the discretion that we needed**, it was honestly something that was earned over time but it was, as long as you can document the reasons behind it, as long as you explain those reasons, to the victim as long as you give them the opportunity to tell you how angry they are with you... You have the support you need.*

The commonwealth's attorney in this jurisdiction provided latitude for this prosecutor's decision-making, but also established clear expectations in terms of documentation and rationale for deciding not to forward a case. The prosecutor also indicated that they earned their identity as a capable decision-maker once they demonstrated their capacity to weigh the facts and provide adequate reasons for not taking a case. Once they made this decision, the commonwealth's attorney expected the prosecutor to allow the victim an opportunity to respond to the decision.

Conversely, pressure to take only those cases to trial that would likely result in a guilty verdict was a reality for some prosecutors, as a participant explained:

*I also worked for people that said you don't have to think you're going to have a guilty verdict to go trial. So, a lot of prosecutors are working for an elected that says...I want this standard of assurance that if we're going to go to a jury on a case like this, you have to be able to tell me that more likely than not this is going to end up as a guilty verdict.*

While this prosecutor indicated having support from some supervisors to forward a case in spite of it being perceived as weak, they also knew other prosecutors who did not enjoy commonwealth's attorneys support in these situations. However, as one prosecutor shared regarding individuals in the system who may be skeptical of taking these cases to trial, “*We are not to try anything you can't win.*” Well the truth is, any sexual assault you try you could lose so we would never try them if that was the standard.”

The theme *Developmental changes come through experience* emerged from narratives where prosecutors discussed how they were able to gain confidence in their work over time, essentially becoming leaders in their own right:

***I've changed over the years as I've become more comfortable as a prosecutor. I've become more aware, and more informed...so what I make a decision now is, do I believe it happened? Is the victim fully informed and willing to participate? Do I have probable cause which is my ethical standard to take a case to trial? I don't factor in the thought of whether I think at the end of the day I'm going to have a guilty verdict as to whether or not I go to trial. Um, but that's taken me a long time to get there....***

As the prosecutor gained more experience, they became more willing to take risks on cases that did not appear to be prosecutable. The meaning the prosecutor created for their cases shifted over time to incorporate believability, victim capacity to participate and the criminal case element of probable cause to meet their ethical standard. They also indicated they no longer looked towards the end goal of a conviction or lack thereof, because it may have reduced their confidence to move forward.

Nevertheless, effective leadership at the prosecutor level in one area resulted in more reports, which overwhelmed the system and created a greater demand for more resources. First, the prosecutor had to overcome significant victim-blaming on the part of police:

***It certainly comes down to leadership because when we took over adult rapes from violent crimes and special victim [unit] was created... I sat in that meeting really to protest because I was like, 'you're going to add more work to our workload and we are already swamped.' And their response was 'we had 89 rape complaints last year and only 6 of them were valid.' And it was like cold water got dumped on me and I started investigating, 'tell me about that,' and I watched some of these interviews where these male detectives would be harassing the victim, right? You know 'you're lying, tell us you're lying' or they're writing in reports 'she didn't cry very much during the interview so I think she's being dishonest.' And then when these victims would eventually say, you know 'screw you, I don't want to report anymore, they were like, 'case closed, woman lied.' And so, I said to the police, my counterpart in the police department, 'ok we are going to take on these cases, but it's gonna be more than 6, you know that this is baloney and he was like, 'I agree,' and sure enough, the reported and actual rape went up and then what I said was going to happen, 'we're going to be overloaded' is exactly what happened, we had to add another prosecutor to do adult rapes.***

As a knowledgeable leader, the prosecutor understood that once officers completed training that improved their investigation techniques and reinforced a trauma-informed approach, the reporting rate would also increase. Yet, the prosecutor explained how the culture reverted to a victim blaming mentality after a change in leadership:

*...and then when leadership in the police department changed, they brought in new supervisors and I was like 'hey you're on the same page as me right?' And I started immediately getting 'you know, a lot of kids make it up too,' and then **as much as you try***

*to fight and fight for that it just eventually creeps back down to where you're like, 'I'm exhausted.' So if it doesn't come from leadership then those misconceptions about sexual assault creep right back in and their all over our media. They're all over everywhere I used to say that no means no unless you're on a jury...and then, suddenly it's like, 'well she wasn't forceful enough.' Well...okay, I think those beliefs are just things we're going to fight for the next 100 years and we've certainly as women come a long way, but...*

The prosecutor argued that the new police chief's disbelief of sexual assault victims shaped the ways other officers created meaning for the same issues. Although the prosecutor tried to push back on this perception, over time, they felt overrun by the biases of police and the influence of the media. Interestingly, the prosecutor also pointed to a known skepticism of juries that emerged outside of the courtroom and would likely continue to persist in spite of women's advocacy.

In addition to enhancing collaboration and effective leadership, prosecutors also recommended revision of criminal codes to address more comprehensively the continuum of sexual violence. Revision would provide prosecutors with more tools to hold offenders accountable. I describe these viewpoints in the following section.

### **Expanded criminal codes.**

In reviewing Virginia's criminal codes, participants centered on elements needed to prove a sexual assault; consent was not present due to force, threat and intimidation. While most prosecutors relayed concerns over differences in campus definitions and criminal codes creating tension and confusion as mentioned previously, several commented on the need to enhance the current criminal code. These recommendations included clarification of the evidence needed to demonstrate incapacitation as well as including a wider spectrum of conduct.

According to one prosecutor, the lack of a tiered approach to criminal conduct impeded offender accountability. Essentially, Virginia prosecutors indicated being constrained by an all or nothing approach:

*I mean for us every sexual assault crime is a life felony or something major, it makes you a violent felon or a felon has to register as a sex offender...A lot of our offenders will ask for jury trials because you just need one person [to question guilt] because so much is at stake. Other states have sexual assault statutes, where they have lesser offenses that can be pursued...for us it's basically all or nothing. We have sexual battery, that's a misdemeanor and I think, what you get your third then you have to register as a sex offender...where there is nonconsensual sex, you know against the will of someone else, but maybe not force, threat, intimidation or because of physical or mental incapacity those are pretty high standards to reach for sexual assault.*

Because a conviction could result in more severe sanctions, the prosecutor suggested that juries were less inclined to find the defendant guilty. Realizing this, defendants and their attorneys had an opportunity to capitalize on juror's doubt and reluctance to punish as a strategy to win their case. Another prosecutor described how the laws inadequately captured all types of sex crimes:

*The thing that I see is that our laws are not very creative. The people and their sexual desires are extremely creative and so there's a lot of stuff that happens between people that doesn't get talked about, it's never prosecuted because it's strange and we don't know how to think about it. But, sexual assault, there's a whole gambit and we have a very limited concept of it in our jurisprudence...I really think eventually, hopefully by the time my career is over, I'll be able to prosecute a woman who's passed out drunk, not passed out, but so drunk she can only articulate this [showing a face that appears incapacitated and nodding head], I'll be able to prosecute the case. You know today I couldn't, but hopefully by the time I'm done I will be able to so that, yes, maybe the guy thought there was consent, but he should have known that there wasn't consent. So, that's the case that I think is you know like, I hope we'll get there someday.*

This prosecutor pointed to public perception, namely the lack of awareness of the extent and pervasiveness of sexual assault, as a cause for insufficient legal standards. Yet, they expressed hope that the current landscape could change to enhance accountability and perhaps shift notions of consent, as indicated in the statement *he should have known*.

Capturing problematic criminal conduct that did not meet the definition of rape was a challenge for prosecutors. A participant provided an example where amendment of a specific criminal code, sexual battery, would incorporate sexual misconduct outside of the current rape standard:



*We have lots of cases, battery of a sexual nature...but **when you get a court you can't prove it because you don't have force threat or intimidation**...the case law on that is not particularly helpful so how do we address this problem because it is a problem? And do it in a way that **captures more the behavior not just those traditional kinds of rapey [sic] things that we all think of.***

According to this prosecutor, code revision would have increased their opportunities to charge and convict offenders across a greater range of behavior. The public tended to exhibit a generalized schema of *rapey* [sic] behavior. If the incident did not fit with that image, it was difficult to obtain a guilty verdict.

For another prosecutor, incapacitation was a challenging case element to prove and therefore, they looked to enhanced criminal codes to clarify the issue.

*I wish the statutes were little more clear about what incapacity was. We use case law to determine that, but it's a double-edged sword. I do think there will be predators who use, any change [to case law on incapacity] to try to say they were victimized.*

Previous case outcomes, case law, provided the framework for new trials. However, because perceptions of incapacitation were more abstract, prosecutors required stronger evidence to prove it beyond a reasonable doubt. Defendants were also in a position to challenge the prosecutors' argument and imply that they were the true victims in the system.

A participant demonstrated a comprehensive and strategic point of view to the ways laws may continue to evolve over time, especially surrounding consent:

*So, I foresee that in the next 50 to 100 years, the concept of consent is going to be flushed out. I feel like by the time I'm old and gray, the Supreme Court of the United States will have to visit that issue because it is really unclear about consent. I mean the standards that we have are just vague and weird, because... rape specifically requires force, but in the case law of course, force can be as little as flipping somebody over, but in practice that's not the way it works... [If] we're really going to convince a jury that there is force, there's gotta be injuries. So, I do think that that's what I foresee in the next hundred years in our culture and our society is that **there's gonna be a lot more understanding of the continuum between violent gun pointing stranger rape and...the least severe type of sexual assault you can imagine like grabbing somebody's butt on the street. There's thousands of things in between, but people just have no concept of***

*it and it's unfortunate unless you are way over here on this extreme, people don't want to consider it rape or sexual assault.*

This prosecutor named consent as a primary challenge for prosecutors to resolve in the courtroom. Again, jurors did not appear to have a broad notion of the continuum of sexual violence including the consistent lack of injuries in cases where coercion is more often the norm. Still, the prosecutor had faith in the system's evolution over time as cultural notions shifted.

Ways of knowing consent could be both changed by the law and lay the foundation to encourage modification of criminal codes. In the aftermath of the Brock Turner case in California, the judge's minimal punishment resulted in public outcry. As a result, legislators passed new laws designed to enhance penalties for sexual assault (Ford, 2016). One of the laws prohibited probation in cases of rape in cases where "the victim is unconscious or prevented from resisting by any intoxicating, anesthetic or controlled substance" (Section 1203.065, Chapter 863, 2016). Another law, chapter one of California's Code, Rape, Abduction, Carnal Abuse of Children, and Seduction, reads "The legislature finds and declares that all forms of nonconsensual sexual assault may be considered rape for purposes of the gravity of the offense and the support of survivors (Section 263.1, a, 2016). Thus, expansions of criminal codes are underway and may continue to do so as high profile cases come to the forefront.

Conversely, some critics of the California law point to evidence of racial disparity in punishment as a key reason to abandon expansion of criminal codes (Bazelon, 2017). A 2016 ED report that showed Black students in K-12 schools were three times more likely to face disciplinary action than white students (ED, 2016c), noting "Heavy-handed disciplinary policies fall disproportionately on students of color. Because of the stereotypes associated with them, including the noxious but persistent trope that black males are inherently sexually predatory, black kids are presumed guilty" (Bazelon, 2017, para. 8). This argument recalls Susan

Brownmiller's (1975) warning of the terror and irrationality that erupts in cases involving a reported black man who raped a white woman (p. 230). From a social justice standpoint, revision of criminal codes must be tempered with the potential for ongoing negative impacts to marginalized communities, particularly students of color. Namely, a "school to prison pipeline" leads these students on a path of disciplinary action that begins in their youth and carries forth to future incarceration (Mallett, 2017, p. 563). As I describe in the next section, movements dedicated to empowering survivors may also affect ways of thinking, which may have the effect of reinforcing victims' participation in the criminal justice process.

### **Strengthening victims.**

A primary theme for prosecutors was having a strong victim, who was ready to move forward with a case, "*A willing victim is most important,*" stated one prosecutor and "*Of all cases that I've had a guilty verdict I've had a very strong victim who was very strong on the stand...the victim was an incredibly strong testifier,*" shared another. According to prosecutors' statements, high profile cases and national awareness initiatives may continue to enhance victim's involvement in the criminal justice process.

Several prosecutors mentioned cases such as the Harvey Weinstein and Bill Cosby trials and the national #MeToo Movement as bringing more awareness of the extent and range of victimization as well as the need for increased offender accountability:

*I think with this, like '#MeToo' movement, people are unearthed. Culture is starting to realize the weird stuff that people do to one another, like the you know that guy [Harvey Weinstein] that ejaculated into a plant?...People don't talk about that stuff because I think it's so strange and I think if somebody said this guy came up and ejaculated into a plant next to me, people would be like, gosh that's strange. They wouldn't necessarily think that's like sexual assault, but it is.*

Prosecutors suggested that as the public increasingly gained access to stories that involved behaviors that fell outside of their previous perspectives on sexually deviant behavior, they

expanded their views. This shift could also result in greater advocacy for laws that address other types of conduct, which may positively influence the ability of prosecutors to seek offender accountability.

Victims may be more willing to engage in the criminal justice process if they are more confident that they will be supported by the system overall. A study by Gagnon, Wright, Srinivas and DePrince (2018) supported this notion, where they gathered recommendations from sexual assault survivors on ways to improve the criminal justice process. Study participants suggested that service providers complete educational programs to understand the impacts of trauma. Believing the survivors' story was also important as well as avoiding blame (Gagnon, et al., 2018).

Comprehensive views of sexual assault among college students' may influence their willingness to participate in the criminal justice process. Namely, in defining a range of acts as meeting their constructed definition of sexual violence, they may be more apt to report. In a recent study by Haugen, Rieck, Salter and Phillips (2018), the researchers interviewed college students to examine the role of informal theories, where individuals "deploy their schemas in order to provide a certain semblance of truth," (p. 19). Qualitative themes generated from participants' self-described definitions of rape indicated that students held a broader view of sexual assault beyond the traditional physical violent rape stereotype. A major theme included a continuum of responses to whether the presence of a "no" is necessary to demonstrate that rape occurred. For the authors, this signaled potential movement towards students having a more nuanced understanding of affirmative consent, although they suggested more education is needed (Haugen, Rieck, Salter and Phillips, 2018). As the #MeToo movement and other national initiatives continue to take shape, survivors of sexual assault may be more inclined to overcome

the reporting barrier due to expanding narratives, including those from marginalized communities, by harnessing the power of social media to call out rape culture (Blustein, 2018).

A prosecutor appeared hopeful that more victims would come forward and have the courage to face public scrutiny over time:

*One of the features we would love to have is a strong victim. Bill Cosby's victim is a one in a million...She's willing to come forward. She's willing to be identified. She's willing to not be ashamed to being a victim, but those are one in a million...through no fault of their own. I don't want to put any blame on them and all. It's, I can't imagine going through that sort of trauma.*

The prosecutor shared that having a victim who was willing to go public was an anomaly, although they expressed empathy for those who were unable to participate in the process. Still, well-known cases could also mean greater victim empowerment overall, as another prosecutor offered, “*Because sexual assault is in our culture and it's highlighted at the moment, I think it's easier for them to talk about it. They're less likely to blame themselves.*” Whether or not national narratives and initiatives involving sexual assault are achieving a “watershed moment” (Mayer, 2017) remains to be seen. Nevertheless, prosecutors' interactions with increasingly empowered victims may influence their decision-making.

Across interviews, prosecutors noted the importance of implementing specialized training for criminal justice professionals, especially campus police. I next discuss investigative training techniques prosecutors described as changing the paradigm in conducting victim interviews.

### **Specialized law enforcement training.**

In a previous section, I examined the narratives of prosecutors who expressed concerns with campus police officers' having the knowledge and skills to investigate sex crimes. Based on trauma research, an experienced prosecutor suggested that Forensic Experiential Trauma Informed (FETI) interviewing was changing the way the criminal justice community responded

to sexual violence. I begin with an overview of the effects of trauma on memory as described by a researcher who has presented numerous national trainings to the criminal justice community, and whose work may have altered the meanings prosecutors created for sexual assault.

In 2012, Rebecca Campbell delivered a presentation entitled, “The Neurobiology of Sexual Assault: Implications for First Responders in Law Enforcement, Prosecution and Victim Advocacy” sponsored through the National Institute for Justice. In the seminar, Campbell explored the role of trauma and its impacts on memory and cognition, and implications for law enforcement interviews with victims. For example, investigators and prosecutors historically believed that a victim’s inconsistent statements damaged credibility. Campbell argued that impaired memory influenced victim’s ability to piece together an accurate timeline of events (Campbell, 2012). A prosecutor, familiar with this approach, described how prosecutors might change prosecution strategies moving forward:

*You know, this is an evolving situation... I think that we’re, prosecution are just learning about trauma based interviewing, trauma based testimony. You know, before, 5-10 years ago when we talk to somebody and they could not begin at the beginning of the story and end at the end of the story and go straight through... We learn the trauma victims don’t process information like you and I would today in a non-traumatic environment...I was at a conference...we were talking about how using the fact that these women for the most part cannot tell a story from the beginning to end as evidence. Use it as evidence, the fact that they have been traumatized, what traumatized them? Were there any other reasons to explain this trauma? If not, then it is positive evidence that what they’re saying as far as being sexually assaulted is true...There’s this interview technique called FETI, which stands for forensic experiential trauma interviewing. It’s fascinating stuff, it’s all based on physiology and how the brain works.*

For this prosecutor, who had many years’ experience, information presented at the conference changed the way system actors viewed sexual assault victims’ credibility. A belief that victims could be lying shifted to an account of victims lacking the capacity to form consistent accounts.

The prosecutor also suggested that based on their interactions with conference presenters,

prosecutors may have learned new ways to use evidence of trauma to demonstrate that a crime occurred.

The prosecutor also described FETI as an interviewing technique that aids investigators in tapping into victim's memories. Russell Strand, retired Chief of the U.S. Army Police School Behavioral Sciences Education & Training Division, developed FETI as a way to address difficulties in gaining accurate memories due to trauma. Instead of traditional interview techniques that focus on details, FETI interviews include questions such as "what are you able to tell me about the experience?" and "what was the most difficult part of this experience for you?" (Strand and Heitman, 2017, p. 3). Interviews also include questions regarding the senses, e.g. smell and taste, to further gain access to implicit memories (Strand and Heitman, 2017). In naming the research surrounding the impacts of trauma and FETI technique, the prosecutor in my study pointed to a new approach that may influence the shared meanings created by criminal justice professionals. It is also notable that the final report of the Virginia Task Force on Combating Campus Sexual Violence named FETI as a best practice in (Herring, 2015).

In this chapter, I presented prosecutors' recommendations for ways to address tensions across systems. Models and approaches included enhanced collaboration via SARTs and MDTs, committed leadership, expanded criminal codes, strengthening victims to participate in the process and specialized trauma-informed law enforcement training. In chapter 6, I expand upon the ideas forwarded by prosecutors who participated in my study and present additional public policy considerations. I also discuss the ways my study contributes to the literature, as well as methodological limitations.

## Chapter 6: Conclusion

In this study, I set out to understand the shared meanings prosecutors create for campus sexual assault cases based on their interactions with campus officials operating under changed public policies and how those relationships influenced their actions. Symbolic interactionism's emphasis on interactions, meanings and actions informed the research questions, methodology and data analysis. Findings from my study identified three overarching themes, 1) factors that make sexual assault cases difficult 2) public policy opportunities and challenges and 3) models that could improve the criminal justice system response to campus sexual assault. In this section, I summarize the main findings and the ways they support and build upon prior research. I also present a grounded theory of how prosecutors make decisions regarding taking cases to trial and collaborating with campus partners on sexual assault cases. I then discuss methodological limitations and conclude with public policy and recommendations for future research.

### Case Elements

In this section, I review the factors that influence prosecutors' decision to bring cases to trial including extra-legal and intra-legal factors, as explored in previous research (Frohmann, 1991; Spohn & Tellis, 2013; Stemen and Frederick, 2013). The results of my study build and expand upon the literature to include those that are specific to college cases. These elements include extra-legal biases surrounding the campus party culture, as supported by previous research that revealed prosecutors were more likely to seek probation in cases where sexual assault victims were perceived to frequent parties (Spohn and Tellis, 2013). Intra-legal case elements regarding the abstract nature of consent and incapacitation also mirrored studies surrounding police officers' decision to share "he said/she said" (Spohn and Tellis, 2013, p. 47)



cases with a prosecutor prior to making an arrest because they believed the prosecutor would be less likely to charge.

Concerns over the ways defense attorneys questioned victims on the stand, and how judges and jurors perceived victims' appearance and behavior were all key issues for prosecutors who participated in my study. The data support prior literature regarding the influence of relationships with courtroom actors on prosecutorial decision-making. Although prosecutors in my study were critical of defense attorney tactics, a prior study (Frederick and Stemen, 2012) showed that prosecutors sought to build positive working relationships with them overall and to engage in rewarding and punishing defense attorneys for their actions. Prosecutors have also appeared to base their decisions on judges' expectations (Frederick & Stemen, 2012) and prosecutors' belief of the likelihood of successful conviction, which may have affected their ability to obtain a promotion (Frohmann, 1991).

By far, the single greatest theme that arose from interviews and surveys was a focus on the needs and perspectives of victims and that participation in the trial would not cause further harm. While studies have shown that prosecutors acknowledged the difficulties of participating in the criminal justice process (Erez, Globokar and Ibarra, 2014) and their own secondary victimization (Leiterdorf-Shkedy and Gal, 2018) and empathy for victims (Wettergren and Bergman Blix, 2016), the prosecutors in my study also spoke to "above and beyond" measures they took to prepare victims for trial. Additionally, prosecutors were open regarding their frustrations with the criminal justice system, including criminal codes, as they felt constrained their ability to seek justice for survivors within the current cultural climate. This offers new insight into the forward thinking of prosecutors, who may be in the best position to recommend new models for criminal justice interventions.

Prosecutors' accounts provide additional context and narrative to the reasons why prosecutors choose to take a case to trial, which may contribute at least in part to the low number of convictions for rape cases. Although historically prosecutors have been viewed as having high levels of discretion, in fact they are hindered by cultural norms and values that support victim blaming and overall silence on the extent of sexual victimization. A variety of criminal justice actors holding bias interface with victims throughout the process and can negatively affect case outcomes. As national attention on sexual assault continues to unfold, future research should examine whether the narratives of police, judges and juries shift in response to high profile cases and advocacy movements.

### **Victim-Centered Actions and Emotional Labor**

Prosecutors discussed the ways they sought to meet the psychological needs of victims as they participated in the process. These efforts corresponded with the victim-centered and trauma informed movements that have been found to influence the ways the criminal justice community responds to survivors (Erez, Globokar and Ibarra, 2014). My study contributes to the literature on emotional labor, which historically has focused on para-professional labor. Prosecutors who participated in my study indicated numerous strategies to help prepare victims for the courtroom experience such as involving victims in decision-making and preparatory meetings that also helped victims to define their own meaning of justice. They also avoided having victims participate in multiple interviews and facilitated the introduction of comfort animals. Each of these actions were examples of emotional labor, an area not previously explored. Future studies could explore the impacts of emotional labor on prosecutors as well as the resources that would help prosecutors cope with these challenges during a time when victims expect to be more involved in the process. Examining the role of prior victimization on prosecutors who handle

sex crimes would also provide greater insight on potentially intensified emotional management and labor.

Meeting the needs of victims was especially nascent for marginalized communities who appear to remain outsiders to the system in spite of attempts at reform. Prosecutors noted that marginalized populations, particularly members of the LGBTQ community, faced even more barriers to reporting and higher levels of scrutiny from judges and jurors. Overall, prosecutors noted higher involvement with cases that involve cisgender, white, heterosexual female victims, which is consistent with prior studies that demonstrate the low participation of people who are transgender (Munson & Daniels, 2015). Research on international college students who hold multiple identities in terms of race and ethnicity has also indicated low reporting to authorities (Forbes-Mewett and McCulloch, 2016). Challenges faced by marginalized communities serve to exacerbate a cycle of low reporting and low convictions.

### **Public policy opportunities and challenges**

The meanings prosecutors created for campus sexual assault cases both before and after 2011 federal guidance were marked by concerns with limited transparency and trust, which remained in spite of public policy developments such as mandatory reporting. Differences in definitions and approaches yielded tensions between processes, an area not previously explored. Prosecutors also noted the increasingly difficult conversations they were having with college students who did not understand differences in the processes. Again, this phenomenon has not been examined previously since the public policies surrounding campus sexual assault are both recent and fluctuating. Campuses placing defendants on notice was also a problematic issue for participants, as the pendulum of justice appeared to be moving more towards the rights of defendants who obtained attorneys sooner and gained access to campus case reports prior to trial.

Prosecutors who participated in my study seemed to have varied knowledge of campus processes and how these had changed, or had not changed, since the 2011 release of federal guidance. While some noted increased offender accountability, several prosecutors expressed concern that campuses used informal processes such as mediation to hide the extent of victimization. Prosecutors were also uncertain of what the impacts of forthcoming federal guidance will be, and whether campuses would revert to former practices. The data also showed limited impact of mandatory reporting laws on the work of prosecutors in Virginia, with some receiving few or no reports and when campuses did provide information, it was too limited in scope for prosecutors to take any meaningful action.

Relationships with campus officials including Title IX coordinators, police and advocates included increased collaborations, as well as tensions that were not only dependent by jurisdiction, but also the college or university. Prosecutors indicated favorable interactions with community colleges, due to the perception of strong leadership that was committed to ending sexual assault. While one prosecutor viewed campus police as effective in investigating policy violations, several prosecutors noted limited expertise that could improve through training and selection. Finally, advocates and prosecutors did not seem to be operating under a shared meaning of rape, as the former viewed sexual assault a continuum, which did not meet the criminal definition.

### **Recommended Models and Practices**

Across interviews, prosecutors noted the importance of relationship building amongst criminal justice professionals and more recently, campus officials. Participants viewed SARTs as holding promise for increased collaboration, although they suggested limitations in case review, instead focusing on general trends. Although previous research has reviewed the

effectiveness of SARTs on case outcomes and confidentiality limits, research on the influence of SARTs on campus sexual assault outcomes is limited. My study lends support to the importance of SARTs for prosecutors and their desire to enhance the work of the teams, including increased collaboration with campus officials. Committed leadership amongst campus was officials was another important feature for effective collaboration with prosecutors. In jurisdictions that had an impassioned campus leader, prosecutors viewed their working relationship as positive, likely due to shared meanings on prevention and intervention.

For some prosecutors, Virginia's criminal code presented challenges in addressing the full spectrum of sexual offenses. Introducing a tiered approach to codes would afford them more opportunities to hold offenders accountable for a conduct of a lower severity. For prosecutors, the ways the public viewed sexual assault, or more aptly ignored the reality, influenced the revision of laws. As high profile cases continue to emerge, and the narrative of sexual assault becomes more transparent, this could influence the modification of criminal codes. Importantly, prosecutors suggested that increased awareness may reduce the stigma surrounding sexual assault and in turn, more victims may be strengthened and willing to hold offenders accountable.

Prosecutors indicated support for specialized training for law enforcement on trauma informed investigations, notably FETI training. Research is available on the impacts of stress on memory (for a review, see Arnsten, 2009). However, I could not find studies that specifically examined the effectiveness of the FETI technique on investigator's information gathering or on victim's ability to recall information. Nevertheless, prosecutors indicated trauma informed training shows promise for improving law enforcements' investigative techniques.

### **Implications for future research.**

Prosecutors' narratives regarding the challenges of working sexual assault cases, the impacts of public policy and potential models have implications for scholarship on campus sexual violence among numerous populations. These groups include victims and defendants across diverse communities, prosecutors, Title IX coordinators, defense attorneys, campus and community police and advocates. Future studies should center on the views of college students, whose conceptualization of sexual assault and coercion appears to be more inclusive (Haugen, Rieck, Salter and Phillips (2018), and what they expect from systems of accountability from a victim-centered standpoint and in terms of due process. The data regarding the emotional impacts of working sex crimes and potential vicarious trauma demonstrates a need to examine these issues among prosecutors, as well as what supports may be needed to prevent burnout from extensive emotional labor.

Examining the extent to which victims are genuinely included in decision-making, especially those from marginalized communities could identify gaps and strategies to enhance inclusion. In-depth interviews with both parties from the beginning of a case through its conclusion may yield additional insights on the needs and goals of victims and the ways these intersect with those of prosecutors. Additionally, researchers should collaborate with advocate practitioners to explore ways to enhance victims' resources and emotional capacity to participate if they choose to do so, as well as exploring alternatives to healing and community accountability, such as restorative justice. Research should continue to illuminate biases within the criminal justice system and examine ways it could be adapted to encourage greater involvement of marginalized communities, for example through recruitment and selection of police officers that reflect greater diversity and leadership and training that supports inclusion.

With the federal guidance in flux, research should continue to explore prosecutors' perspectives regarding campus processes and how these shift over time. For example, through case studies, researchers could focus on jurisdictions indicating high and low tensions, to learn more about the factors that influence interactions and meaning making among prosecutors and campus officials. Qualitative methods could identify perspectives of campus officials on the criminal justice process and explore the nuances of case coordination as well as defense attorneys' perspectives on campus processes and issues of due process. The roles of campus and community police in addressing campus sexual assault, including where the systems converge and differ in their policies, protocols and training are additional areas of research. Advocates' views on shifting definitions and their place in the campus process as federal policies unfold should also be explored.

Due to questions surrounding the effectiveness of mandatory reporting policies, quantitative studies could determine how widespread the issue of low reporting is across the state. Research should also explore the variables that influence reporting from the viewpoints of prosecutors as well as police and campus officials who conduct regular threat assessment reviews per the mandatory reporting law. What criteria do campus officials use in determining threat? How consistently are these applied? Are there any differences among campuses that are more likely to report, for example public vs. private, campus size and student demographics? Finally, due to concerns regarding the impacts of mandatory reporting on victims, scholars should continue to examine the psychological and social impacts of having reports shared with authorities without the survivor's expressed consent.

Prosecutors also reviewed models and practices of collaboration, criminal justice intervention and awareness initiatives during interviews. Several prosecutors presented their

local MDT as a model for case review, which indicates a need to explore the differences between teams and how SARTs could reach a level where members consistently conduct case review. Previous studies on leadership provide foundational scholarship (Allen, 2006) to explore how campus leaders influence collaboration. Future studies could explore what aspects of leadership have the greatest effect on interactions amongst campus officials and the criminal justice community. Research could also examine differences between the approaches of traditional four-year colleges and community colleges, since prosecutors seemed to view those relationships more favorably.

Prosecutors identified several areas of criminal justice system enhancement through the revision of criminal codes and clearer case elements required to prove incapacitation and lack of consent. Future research could examine whether judges and jurors' perspectives of sex crimes shift over time. Studies should also explore whether codes that are more expansive might influence jurors' willingness to issue sanctions in cases of lower severity. Additionally, the influence of national initiatives such as the #MeToo campaign may serve to shift beliefs and attitudes across numerous populations. Scholarship has just recently begun to explore criminal justice actors' perspectives on the impacts of national movements and social media on their work (for example, see Mendes, Ringrose, and Keller, 2018). Research should explore victims' knowledge of these movements and the ways they influenced their decision to come forward. Finally, prosecutor's knowledge of and support for FETI training suggested a need for further research on the effectiveness of FETI interviews vs. traditional investigation techniques. In the following section, I present a theoretical model that helps to explain the ways the primary themes influenced prosecutors' decision-making across several areas of their work, followed by a discussion of implications for public policy and additional recommendations for research.



## Theoretical Model

Prosecutors indicated several decision points during interviews: collaboration, charging and taking a case to trial. Although prior research has focused on charging decisions and intra- and extra-legal variables relationship with conviction rates, my study pointed to the influence of interactions with campus officials as informing the shared meanings prosecutors created for campus sexual assault cases. Collaboration was a key action since prosecutors willingness to receive and provide information to campus officials regarding cases appeared to be influenced by the level of cooperation and the introduction of factors that increased tensions, such as campuses putting defendants on notice, or providing inaccurate information to victims (from the perspective of prosecutors).

Consistent with prior studies, prosecutors noted extra-legal and intra-legal factors that influenced their ability to prosecute cases. In particular, prosecutors described the impacts of biases and stereotypes among law enforcement, judges and juries as powerful barriers to effective prosecution. Experiences with vicarious trauma also appeared to affect participants at a psychological level. Emotional labor emerged both as a coping strategy and as a victim-centered approach to engaging victims as active participants in the process.

Prosecutors noted increasingly challenging conversations with students who had higher expectations post federal guidance due to differences in definitions and standards with the campus process. Prosecutors also faced more “gray area” cases that did not meet the criminal standard. While a few prosecutors were willing to take risks and forward cases perceived as weak, others did not have the support or inclination to proceed with a case that was lacking in evidentiary standards. New pressures from defense attorneys and defendants who held

information gleaned through the Title IX case also may have placed the defense in a more favorable position, and this may have affected prosecutors' decision to proceed to trial.

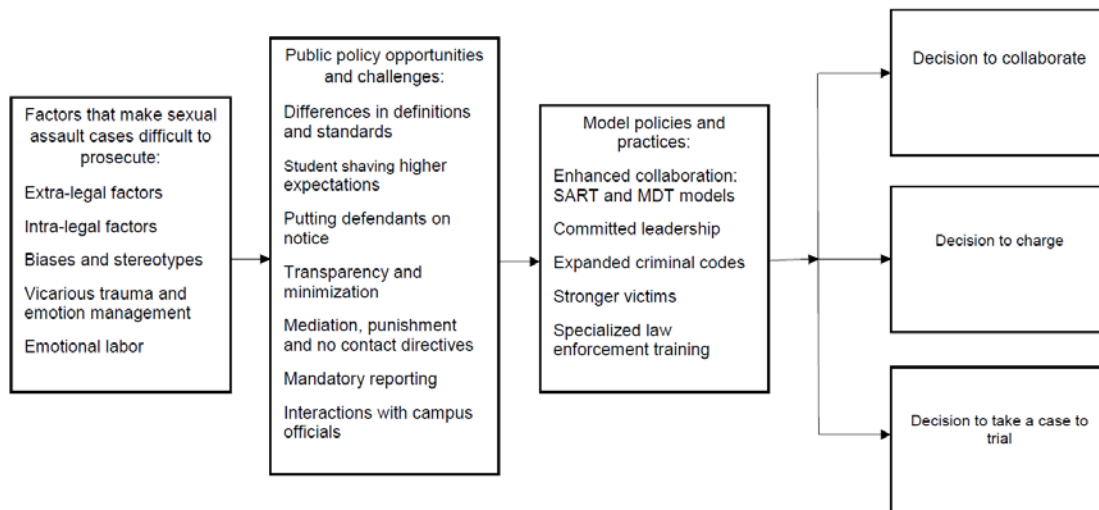
Additionally, trust was a concern for prosecutors who recalled previous campus practices and procedures that minimized the reality of sexual assault, which may have reduce their willingness to collaborate. In reviewing charging decisions, when prosecutors received minimal information in reports via the mandatory reporting process, they needed to weigh the decision to contact victims to ask if they would like to participate since the victims did not initiate the reports. Without a willing victim, several prosecutors indicated this would stop them from proceeding, due to potential for re-traumatization. At least one prosecutor was also concerned with multiple parties reaching out to a victim, so they determined it would be best to leave referrals in the hands of campus Title IX coordinators and/or police. Thus, the minimal information, when received, did not result in increased charges, nor convictions.

Both negative and positive interactions with campus officials, the latter of which occurred through active SARTs and/or committed leadership also influenced the meanings prosecutors created for cases, which influence their willingness to collaborate. Although more research is needed to explore the specific types of information-sharing that would enhance a coordinated response to victims, having positive interactions with campus officials would likely increase prosecutors' openness to discuss cases and address gaps and issues that arise through consistent case review. Expanded criminal codes might influence charging decisions and result in more convictions, at least for crimes of lesser severity. Strengthening victims to a point where they are better able to participate would also result in a witness who could face the courtroom and its actors with confidence. Detectives effectively trained in trauma informed investigations

would result in more details of the crime, which would in turn provide prosecutors with a comprehensive report.

With these themes in mind, the below theoretical model depicts the varied factors that make cases difficult to prosecute, public policy developments and model policies and practices that influence prosecutors' decision-making in decisions to collaborate, to charge and to take a case to trial.

Figure 2, A theory of prosecutor decision-making regarding campus sexual assault



The above model provides an overview of the ways multiple variables influence prosecutors' decision-making. Future research could explore these decision points at a deeper level, through alternative methodologies such as observation and content analysis of documents, for example SART meeting minutes. Finally, data from my study could inform the development of surveys implemented on a larger scale, to identify whether the above model is consistent across Virginia, and across the nation. Scholars could also draw comparisons with states that do not have mandatory reporting laws, to determine the rates at which reports are provided and if these are

resulting in greater victim participation and higher rates of charging and convictions. Although my study offered in-depth insights to Virginia prosecutors' views on campus sexual assault, there were several methodological limitations, addressed in the following section.

### **Limitations**

The primary methodological limitation to my study is a small sample size within one state. Although I attempted different strategies to recruit participants, I was working with an extremely demanding and high profile profession, as well as a relatively sensitive and politically controversial topic. The sample was also relatively homogenous, which is not surprising since prosecutors working sex crimes may tend to be women. The number of minorities was also low, which is consistent with the population overall, but which did not permit me to draw meaningful comparisons. Lastly, the individuals who responded to my request to interview them were likely already passionate about the work, and may have wanted to make a difference through their contributions. So, I may have missed the opportunity to interview prosecutors who are less engaged, which could have revealed valuable information on the reasons for reduced dedication and/or resistance.

### **Reflexivity**

My background in victim advocacy and Title IX coordination and my status as a survivor influenced many of my approaches to the study. Therefore, it is likely that my professional and personal experiences affected my analysis of the data. For example, as a fellow advocate, I may have wanted to see their focus on helping victims. At the same time, I remain immersed in a cultural narrative that portrays prosecutors as having wide latitude in decisions to prosecute. I recall being surprised a multiple points during interviews when I realized that prosecutors faced many barriers and emotional challenges in their work. Being aware of my biases from the

beginning, I actively sought to keep an open mind and be systematic as I coded the data line by line and only recently began to piece together the larger picture of what the data showed. In the next section, I describe how overall themes inform public policy implications.

### **Implications for public policy**

Prosecutors who participated in my study demonstrated a strong commitment to victim-centered and trauma-informed approaches. Campus interventions may also benefit from a comprehensive model that centers on the individual needs and goals of students. Options for victims could include alternatives to the traditional model of punishment in the campus and criminal justice systems, such as restorative justice as another means of reducing community harm. Policy makers should also offer resources to advance evidence-based research that identifies effective strategies to prevent sexual violence. Exploring ways to introduce more frequent case review in SARTs may enhance their effectiveness in preventing further incidents. Prosecutors and campus police would also benefit from additional training on campus procedures for the former and trauma-informed investigations for the latter. Finally, because of the inconsistent impact of the mandatory reporting law, and its potential for reduced victim empowerment, lawmakers should review the law's utility in increasing offender accountability.

Prosecutors' goal to place victims at the center of decisions to forward cases provides justification for trauma-informed approaches to campus sexual assault prevention and intervention methods. For scholars McCauley and Casler (2015), a trauma-informed approach to prevention institutionalizes an understanding among campus communities that:

Sexual assault may impact everything about survivors moving forward, including peer relationships, academic progress, likelihood of engaging in subsequent risky alcohol use, and poor mental health. It also guides us to approach all students as though they have experienced abuse, regardless of whether they have or not, so that we begin each interaction with students prepared to support them where they are. A trauma-informed approach does not necessarily seek disclosure, rather it shifts our frame of reference so

that we are mindful of the myriad of experiences that may influence our students. It also equips us with language to normalize conversations about violence, an important step in shifting the culture on campuses from one plagued by silence to one that challenges the misconception that sexual assault is normal or acceptable. (p. 585).

Supporting victims where they are, based on their needs signifies a trauma-informed approach.

Instead of focusing on increased reporting, this approach envisions an environment where sexual violence and other forms of trauma are known to occur across a spectrum of individuals.

Importantly, while the campus is not silent on the issue of sexual assault, it also deems the behavior as unacceptable to a culture that values the respect and dignity of all persons.

McCauley and Casler's call for trauma-informed approaches justifies a shift the focus from reporting and punishment to one that helps victims to choose their own path to healing.

To address harm at the community, relationship and individual levels, scholars and practitioners are increasingly exploring restorative justice as an alternative, which "provides victims broader choice in meeting their self-perceived justice needs, helping victims and communities seek accountability while also rebuilding autonomy and empowerment" (Koss and Lopez, 2018, para. 2). Koss, Wilgus, and Williamsen (2014), recommended restorative justice practices for resolution and sanctioning of campus sexual misconduct that also address the impacts on victims and others harmed by incidents of sexual assault. The practice would also allow for reintegration of the respondent into the campus community once they have accepted responsibility, a key factor in initial participation in restorative justice conferences. Finally, the authors suggested restorative justice would serve to increase institutional compliance with 2011 ED guidance as an alternative to the "quasi-criminal justice, investigative and judicial response" to sexual assault (Koss, et al., 2014, p. 1) that has emerged on college campuses.

To implement restorative justice practices on college campuses, officials could model the criminal justice system's use of confidentiality agreements, which help to protect the integrity of

offenders' ability to accept responsibility in an open forum. Collaboration between all members of the system including police, prosecutors and judges would be necessary in addition to the establishment of protocols and memorandums of understanding (Koss, Wilgus and Williamsen, 2014). As mentioned previously, my study yielded concerns of prosecutors that colleges and universities will scale back efforts at offender accountability, for example by introducing mediation to resolve sexual assault. As one prosecutor explained, campuses should not implement restorative justice models without careful and intentional examination of the practice:

*[Referring to restorative justice] We've done that in my office with very strict parameters. One of my concerns has always been with the colleges is that it's one thing when someone who frankly has been doing this for years sets up a process. **It's a different thing when someone with the best of intentions, but no training, sets up a process with no input** and that's what concerns me...it is a very delicate process and it has to be very monitored... I mean if they [campuses] were invested in restorative justice... it takes investment. Like, are the schools willing to hire independent mediators for these? And frankly I think **there are a lot of victims who would like that opportunity if they felt like it was a safe place.** But, we've traditionally never been able to do that.*

Due to these concerns, it will be important for campuses to include prosecutors in discussions on the introduction of restorative justice practices to reinforce transparency and trust. There are also opportunities to explore how a restorative practice within the campus and criminal justice processes might benefit student victims and offenders involved in individual cases. Introducing restorative justice in both systems could also address concerns with the “school to prison pipeline” that carries forth school disciplinary action to mass incarceration (Mallett, 2017, p. 563).

The RESTORE program in Pima County Arizona is an empirically evaluated model of restorative justice within the criminal justice process. During the voluntary practice, primary and secondary victims share the impacts of the crime with the individual(s) responsible during in person meetings. Together, they discuss the behavior and create a “re-dress plan” (Koss, 2014,

p. 1623), whereby RESTORE staff supervise the responsible party's adherence for one year. Offenders are also required to attend periodic Community Accountability and Re-Integration Board meetings to provide updates on their progress (Koss, 2014). At the systems level, public policy makers are taking notice of the model as applied in the criminal justice process, since it may assist in reducing recidivism and mass incarceration and inequities in the system overall. Recently, U.S. Senator Patrick Leahy introduced pending legislation to create a National Restorative Justice Center ("Leahy Advances Restorative Justice Legislation," 2018).

In addition to recommending restorative justice practice in the criminal justice system, Daly and Bouhours (2010) argued for a shift in the focus of meeting high evidentiary standards of trials. Instead, criminal justice professionals should focus on earlier stages of the criminal justice process, such as encouraging admissions through effective interrogation and by treating offenders humanely. Involving victims early on is also important as prosecutors explore potential sanctions and plea bargains, to help survivors have some ownership over the process. This approach could also change the work of prosecutors, who would be positioned to "reassess their sources of professional status and success: rather than adversarial trial heroics, greater emphasis could be placed on negotiating skills and acumen..." where "sexual offending is recognized as being varied in seriousness and not necessarily requiring a criminal law response" (p. 623). Based on my findings regarding emotional labor and potential secondary traumatization, an alternative focus may enhance prosecutors' identity as victim-centered advocates as well as their confidence in their ability to help victims achieve justice in a way that addresses harms beyond punishment.



### **Research on evidence-based practices.**

More than any other complicating case factor, prosecutors viewed the role of alcohol and other drugs as a major contributor to campus sexual assault. In turn, this variable influenced the ability to collect and corroborate evidence since victims were often unable to recall information. Heavy episodic drinking has been shown as strongly correlated to sexual violence, with one study (Parks, Hsieh, Bradizza, and Romosz (2008) finding the odds of an assault against women increased by 19.44 times when they engaged in heavy drinking within the same day.

Although alcohol consumption is strongly related to the incidence of sexual violence, prevention practitioners may walk a fine line in presenting this data and being perceived as blaming the victim. At the same time, not making people aware of the vulnerabilities that perpetrators exploit might also pose harm. Prosecutors indicated strong concern that colleges are treading too carefully in their approach, which provides an opportunity for further dialogue amongst campus and criminal justice partners to explore evidence based prevention programming that will address this problem effectively.

In order to determine the effectiveness of campus prevention initiatives overall, the literature recommends assessment at multiple levels of the socio-ecological model, to include systems, community, relationship, and individual. First introduced by Bronfenbrenner (1977). Moylon and McKensie (2018) applied the social-ecological model to recommend research and campus wide approaches to preventing sexual assault that move beyond individual risk factors and across institutional policies and practices. For example, rigorously evaluated prevention programs should address contextual and environmental variables, the latter of which requires greater collaboration between practitioners and researchers (Moylon and McKensie, 2018).

Rigorous assessment is resource intensive and requires greater levels of investment at the state and federal levels.

My research also points to the need incorporate the criminal justice community (especially prosecutors) in efforts to determine what is working and what steps can be taken help rebuild communities as a whole. This collaboration might also enhance transparency on how campuses are preventing and addressing sexual misconduct and as a result, build greater trust. Campus wide collaborative teams that include a variety of campus and community decision makers should develop comprehensive strategic plans that guide the work of practitioners who deliver educational programs. In addition, case reviews conducted through campus SARTs, as discussed next, could inform prevention efforts at the systems level including ongoing revision of campus policies to address new issues as they arise.

### **Sexual Assault Response Teams.**

Although prosecutors who participated in my study recognized the value and contributions of SARTS, they felt they could be doing more to identify gaps, address procedural concerns and explore innovate ways to serve victims. Participants also noted that they are more likely to discuss broad issues in their meetings, such as trends and training opportunities, vs. actual case review. In this section, I discuss how the introduction of case review would benefit the work of SART members, which would require development of protocols and potential legislative revision to permit discussion of cases involving students.

A recent statement offered through the Sexual Violence Justice Institute (Engelking, 2018, para. 3) provided several reasons for introducing SART review of victim case files. These benefits include discovering best practices, recommending policy review and revision and developing evaluation strategies. Incorporating meaningful inclusion of victims' experiences is

another important component, as well as “strengthening or creating feedback loops in the response” (para 3) so that members receive ongoing guidance in their work. Effectiveness can also be enhanced through intentionally identify points in which advocates should be involved across system points (Engelking, 2018).

To explore the barriers to case review, I contacted Kristina Vadas, an administrator at the Virginia Department of Criminal Justice who provides training and technical assistance to SARTs throughout the state. She suggested, “It can be very challenging to build a truly collaborative, trusting team. For teams that have not developed strong, positive working relationships, case review can devolve into finger-pointing and blaming, further damaging the team” (Kristina Vadas, personal communication, July 20, 2018). So, it appears SARTs should focus on relationship-building prior to reviewing cases. Study participants generally viewed SARTs as a positive beginning, but more training, support and resources may be needed to increase their confidence in reviewing cases in a way that avoids conflict. SARTs should also be prepared to review cases that involve people who are transgender or gender non-conforming. To conduct these reviews effectively, members should participate in specialized training to understand key issues in serving marginalized populations.

#### **Training for prosecutors on campus processes.**

During interviews, prosecutors expressed varying knowledge of campus policies and procedures. Prosecutors would benefit from more timely training and information on campus processes to advance knowledge and enhance trust. One prosecutor noted that although their association offers workshops on campus sexual assault at statewide conferences, they were unlikely to attend since there were numerous options. To address this need, statewide training institutes could offer more workshops during regularly scheduled conferences, regional stand-

alone trainings throughout the year at minimal cost and a series of current, accessible and relevant online education that also offers accreditation opportunities.

Prosecutors would also benefit from greater access to information and communication from campuses so that they are more aware of how campuses in their particular jurisdiction address sexual misconduct. Campus officials should strive to be consistent in their reporting of crime statistics, as already required under the *Clery Act* (34 CFR 668.46 1990). Broad dissemination of annual reports may also enhance transparency and the willingness of allied professionals in the community to view their local campus colleagues on their own merits vs. comparing them with universities under heightened public scrutiny.

#### **Trauma-informed training for campus police.**

Prosecutors shared concerns over the ability of investigators to collect evidence and conduct victim interviews using a trauma informed approach, based on limited access to training. Additional screening may also be necessary to make sure the officer is in the best position to do the work, as one prosecutor shared, *“I think you have to put the right people in the right jobs. So, it’s not just training a police officer. It’s finding the police officer, the prosecutor that understands sexual assault and can do the job. And then giving that person training.”* Trauma-informed campus investigations training should continue to be offered in a variety of mediums. Additional resources would also permit campus officers to attend national trainings and/or certifications. The Services Council may also consider expanding its annual Trauma to Trial training to include campus investigators as part of the prosecutor-investigator training team model. This approach would serve to enhance trust and collaboration between campuses and the criminal justice system.

### **Mandatory reporting.**

Subsequent to the high profile Jesse Matthews case (DePompa, 2014) and increased focus on campus sexual assault nationally, Virginia legislators took action to increase campus reporting to local police and prosecutors in an effort to increase convictions. However, based on prosecutors stated views on the ways public policies in Virginia have influenced their work, it may be worthwhile to revisit the utility of the transcript notation and mandatory reporting laws as effectuating actual change in offender accountability. Campus reporting varies regionally throughout the state and amongst campuses. Only three participants indicated they received more reports since the law was passed in 2015. In some jurisdictions, a prosecutor received reports from one of their colleges, but not another.

It is recommended that public policy makers re-examine the law to determine whether it make sense to continue to require campuses to report when they do not appear to be doing so consistently. Additionally, the requirement may add administrative burden. Campus officials must dedicate time and effort every 72 hours to review and report sexual assault cases. Some prosecutors who do receive the reports simply file them away in an email inbox. As a prosecutor argued, *“just reporting them to the prosecutor’s office means nothing. It means somebody’s printing it out and putting it in a notebook.”* Only one prosecutor indicated that they took the extra step to reach out to students to offer assistance and one prosecutor shared concerns with overwhelming students with too many actors conducting outreach.

This issue is further complicated by assumptions that mandatory reporting provides an answer to increasing offender accountability since victims’ privacy and ability to independently decide to move forward with the criminal justice process may be hindered (Brubaker & Mancini, 2017; Erard, 2015). Scholars are also reviewing requirements for college and university

employees to report sexual violence to campus officials, citing the need research for research that these policies actually increase reporting and the willingness of victims to proceed throughout the process (Holland, Cortina and Freyd, 2018).

## **Conclusion**

Sharing their frustration with campus sexual assault cases, a prosecutor stated, “*We end up believing our victims and believing something happened to them, but not being able to prove something happened to them and they don’t get that and I don’t know how to fix that issue.*” My study supports previous research on the extra and intra-legal factors that influence prosecutorial decision-making and provides greater insight on the complexities of campus sexual assault. These issues include not only procedural and practical challenges, but also personal. For several prosecutors, sexual cases were exceedingly tough from an emotional standpoint, more than any other crime. The greatest contribution of my study could be the empathy I gained, and perhaps others will gain, of the significant constraints and barriers prosecutors face in their work. Allied professionals should make efforts to avoid cross blame within the system and to develop genuine partnerships. As one participant argued, “*it would be more helpful for the campus if they had a good working relationship where they can just call me at home and say ‘hey I’ve got this, can I stop by?...stop picking on prosecutors.*” The work is difficult, for everyone, from survivors to advocates, campus administrators, police and prosecutors. Communication and collaboration must be the norm and not the exception. The same prosecutor noted, “*I hope your research makes a difference someday.*” I hold the same aspiration.

## REFERENCES

- Acker, J. (1990). Hierarchies, jobs, bodies: A theory of gendered organizations. *Gender and Society, 4*(2), 139-158.
- Aequitas. (2018). The prosecutors resource on violence against women. Retrieved from <http://www.aequitasresource.org/about.cfm>
- Albonetti, C. (1986). Criminality, prosecutorial screening, and uncertainty: Toward a theory of discretionary decision making in felony case processing. *Criminology, 24*, 623-644.
- Allen, N. E. (2006). An examination of the effectiveness of domestic violence coordinating councils. *Violence against women, 12*, 46–67. doi:10.1177/1077801205277405
- Alderden, M. A., & Ullman, S. E. (2012). Creating a more complete and current picture examining police and prosecutor decision-making when processing sexual assault cases. *Violence Against Women, 18*(5), 525-551.
- Alderden, M., Cross, T. P., Vlajnic, M., & Siller, L. (2018). Prosecutors' Perspectives on Biological Evidence and Injury Evidence in Sexual Assault Cases. *Journal of interpersonal violence, 1*-13. doi: 0886260518778259.
- Alexander, M. (2009). Girls gone wild and rape law: Revising the contractual concept of consent & (and) ensuring an unbiased application of reasonable doubt when the victim is non-traditional. *Journal of Gender, Social Policy & the Law, 17*(1), 2.
- Alexander, J., & Brown, L. (2015). *Building an effective infrastructure: Addressing sexual violence on campus*. Washington, DC: Education Advisory Board.
- Amar, A., Strout, T., Simpson, S., Cardiello, M., & Beckford, S. (2014). Administrators' perceptions of college campus protocols, response, and student prevention efforts for sexual assault. *Violence and Victims, 29*(4), 579-593.

American Association of University Women. (2017, May 10). 89 percent of colleges reported zero incidents of rape in 2015. Retrieved from: [http://www.aauw.org/article/clery-act-data-analysis-2017/An act to Amend Section 1203.065 of the Penal Code, relating to probation. California Public Act. Section 1203.065. Chapter 863 \(2016\).](http://www.aauw.org/article/clery-act-data-analysis-2017/An%20act%20to%20Amend%20Section%201203.065%20of%20the%20Penal%20Code,%20relating%20to%20probation.%20California%20Public%20Act.%20Section%201203.065.%20Chapter%20863%20(2016).) Retrieved from <https://leginfo>.

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB2888](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2888)

An Act Concerning Affirmative Consent. Connecticut Public Act No. 16-106, Section 1. Section 10a-55m (2016). Retrieved from <https://www.cga.ct.gov/2016/ACT/pa/pdf/2016PA-00106-R00HB-05376-PA.pdf>

Anderson, M. (2002). From chastity requirement to sexuality license: Sexual consent and a new rape shield law. *George Washington Law Review*, 70, 51.

Anderson, N. (2014, December 15). Colleges often reluctant to expel for sexual violence—with U-Va. a prime example. *Washington Post*. Retrieved from [http://www.washingtonpost.com/local/education/colleges-often-reluctant-to-expel-for-sexual-violence--with-u-va-a-prime-example/2014/12/15/307c5648-7b4e-11e4-b821-503cc7efed9e\\_story.html](http://www.washingtonpost.com/local/education/colleges-often-reluctant-to-expel-for-sexual-violence--with-u-va-a-prime-example/2014/12/15/307c5648-7b4e-11e4-b821-503cc7efed9e_story.html)

Armstrong, E., Gleckman-Krut, M., & Johnson, L. (2018). Silence, power, and inequality: An intersectional approach to sexual violence. *Annual Review of Sociology*, 44(1), Soc-073117-041410.

Armstrong, E., Hamilton, L., & Sweeney, B. (2006). Sexual assault on campus: A multilevel, integrative approach to party rape. *Social Problems*, 53, 483-499.

Arnsten, A. (2009). Stress signalling pathways that impair prefrontal cortex structure and function. *Nature*, 10, 410-422.



- Bachman, R. (1998). The factors related to rape reporting behavior and arrest new evidence from the national crime victimization survey. *Criminal Justice and Behavior*, 25(1), 8-29.
- Barak, G., Leighton, P., & Cotton, A. (2015). *Class, race, gender, and crime: the social realities of justice in America*. Lanham: Rowman and Littlefield
- Battelle Memorial Institute Law and Justice Study Center. (1977). *Forcible rape: A national survey of response by prosecutors*. National Institute on Law Enforcement and Criminal Justice. Washington, DC: U.S. Government Printing Office.
- Bazeley, P., & Jackson, K. (Eds.). (2013). *Qualitative data analysis with NVivo*. London, UK: Sage Publications Limited.
- Bazelon, L. (2017, September 22). California's sexual assault law will hurt black kids. *The New York Times*. Retrieved from <https://www.nytimes.com/2017/09/22/opinion/california-sexual-assault-law-blacks.html>
- Beichner, D., & Spohn, C. (2005). Prosecutorial charging decisions in sexual assault cases: Examining the impact of a specialized prosecution unit. *Criminal Justice Policy Review*, 16(4), 461-498.
- Bennett, R. S. (1996). Press advocacy and the high-profile client. *Loyola of Los Angeles Law Review*, 30, 13.
- Beyond a reasonable doubt. (2008) *West's Encyclopedia of American Law* (2<sup>nd</sup> ed.). Retrieved January 31 2017 from <http://legal-dictionary.thefreedictionary.com/beyond+a+reasonable+doubt>
- Birks, M., & Mills, J. (2012). *Grounded theory: A practical guide* (2<sup>nd</sup> ed.). Los Angeles, CA: Sage Publications.
- Black, N., Henry, H., Lewis, W.C., Morris, L., Oppenheim, A., Schuster, S. . . .Swinton, D.

- (2017). *The ATIXA playbook: Best practices for the post-regulatory era*. Association of Title IX Administrators.
- Blosnich, J. R., & Bossarte, R. (2012). Drivers of disparity: Differences in socially based risk factors of self-injurious and suicidal behaviors among sexual minority college students. *Journal of American College Health, 60*, 141-149.
- Blosnich, J. R., & Horn, K. (2011). Associations of discrimination and violence with smoking among emerging adults: Differences by gender and sexual orientation. *Nicotine and Tobacco Research, 13*, 1284-1295.
- Blumer, H. (1986). *Symbolic interactionism: Perspective and method*. Berkeley, CA: University of California Press, Ltd.
- Blustein, A. (2018). Student activism. In Kaukinen, Hughes Miller & Powers (Eds.), *Addressing violence against women on college campuses* (pp. 255-267). Philadelphia: Temple University Press.
- Bonomi, A., Nichols, E., Kammes, R., Chugani, C., De Genna, N., Jones, K. & Miller, E. (2018). Alcohol use, mental health disability, and violence victimization in college women: Exploring connections. *Violence against women, 24*(11), 1314-1326.
- Bordenkircher v. Hayes. 434 U.S. 357, 364 (1978).
- Bouffard, J. A. (2000). Predicting type of sexual assault case closure from victim, suspect, and case characteristics. *Journal of Criminal Justice, 28*(6), 527-542.
- Bowen, G. A. (2006). Grounded theory and sensitizing concepts. *International Journal of Qualitative Methods, 5*(3), 12-23.

- Brink, F., Thackeray, J., Bridge, J., Letson, M., & Scribano, P. (2015). Child advocacy center multidisciplinary team decision and its association to child protective services outcomes. *Child Abuse & Neglect, 46*, 174-181.
- Brodie, M., DiJulio, B., Norton, M. Craighill, P., & Clement, S. (2015). Washington Post- Kaiser Family Foundation survey of college students on sexual assault. *The Washington Post*. Retrieved from <http://apps.washingtonpost.com/g/page/national/washington-post-\kaiser-family-foundation-survey-of-college-students-on-sexual-assault/1726/>
- Bronfenbrenner, U. (1977). Toward an experimental ecology of human development. *American Psychologist, 32*, 513–531.
- Brown, J., & King, J. (1998). Gender differences in police officers' attitudes towards rape: Results of an exploratory study. *Psychology, Crime, and Law, 4*, 265-279.
- Brown v. State, 106 N.W. 536 (Wis. 1906).
- Brownmiller, S. (1975). *Against our will*. New York, NY: Simon & Schuster.
- Brubaker, S. J. (2009). Sexual assault prevalence, reporting and policies: Comparing college and university campuses and military service academies. *Security Journal, 22*(1), 56-72.
- Brubaker, S. J., & Keegan, B. (2018). "Suddenly Everyone's an Expert in Our Field:" Campus Victim Advocates and the Promise and Perils of Professionalization. *Violence Against Women*. doi: <https://doi.org/10.1177/1077801218807096>
- Brubaker, S. J., & Mancini, C. (2017). The impact of increased state regulation of campus sexual assault practices: Perspectives of campus personnel. *Journal of School Violence*, Advance online publication. doi: [//dx.doi.org/10.1080/15388220.2017.1318577](https://dx.doi.org/10.1080/15388220.2017.1318577)
- Bryden, B., & Lengnick, L. (1997). Rape in the criminal justice system. *Journal of Criminal Law and Criminology, 87*(4), 1194-1384.

- Buchhandler-Raphael, M. (2011). The failure of consent: Re-conceptualizing rape as sexual abuse of power. *Michigan Journal of Gender and Law*, 18(1).
- Butler, P. (2009). *Let's get free: A hip-hop theory of justice*. New York, NY: New Press.
- Caamano-Isorna, F., Adkins, A., Moure-Rodríguez, L., Conley, A. H., & Dick, D. (2018). Alcohol Use and Sexual and Physical Assault Victimization Among University Students: Three Years of Follow-Up. *Journal of interpersonal violence*, 1-22. doi: 0886260518780413.
- Campbell, R. (1995). The role of work experience and individual beliefs in police officers' perceptions of date rape: An integration of quantitative and qualitative methods. *American Journal of Community Psychology*, 23(2), 249-277.
- Campbell, R. (1998). The community response to rape: Victims' experiences with the legal, medical, and mental health systems. *American Journal of Community Psychology*, 25, 355-379.
- Campbell, R. (2012). The Neurobiology of Sexual Assault: Implications for First Responders in Law Enforcement, Prosecution and Victim Advocacy. Presentation for the National Institute of Justice's 2012 Research for the Real World seminar. Retrieved from <https://www.nij.gov/multimedia/presenter/presenter-campbell/pages/presenter-campbell-transcript.aspx>
- Campbell, R., Wasco, S. M., Ahrens, C. E., Self, T., & Barnes, H. E. (2001). Preventing the "second rape:" Rape survivors' experiences with community service providers. *Journal of Interpersonal Violence*, 16, 1239-1259.

- Campbell, R., Adams, A., Wasco, S., Ahrens, C., & Sefl, T. (2010). "What has it been like for you to talk with me today?": The impact of participating in interview research on rape survivors. *Violence Against Women, 16*(1), 60-83.
- Campbell, R., Patterson, D., Bybee, D., & Dworkin, E. R. (2009). Predicting sexual assault prosecution outcomes: The role of medical forensic evidence collected by sexual assault nurse examiners. *Criminal justice and behavior, 36*, 712-727.
- Campbell, R., Townsend, S., Long, S., Kinnison, K., Pulley, E., Adames, S., & Wasco, S. (2005). Organizational characteristics of sexual assault nurse examiner programs: Results from the national survey project. *Journal of Forensic Nursing, 1*(2), 57-65.
- Campus Sexual Assault Victims' Bill of Rights, Higher Education Amendments of 1992 (Public Law 102-325, section 486(c).
- Cantalupo, N. (2016a). Address: The civil rights approach to campus sexual violence. *Regent University Law Review, 28*.
- Cantalupo, N. (2016b, February 19). For the Title IX civil rights movement: Congratulations and cautions. *Thidee Yale Law Journal Forum*.
- Cantor, D., Fisher, B., Chibnall, S., Reanne Townsend, R., Lee, H., Bruce, C., & Thomas, G. (2015). *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct*. Rockville, MD: Westat Corporation. Retrieved from <http://www.aau.edu/Climate-Survey.aspx?id=16525>
- Carey, K. B., Durney, S. E., Shepardson, R. L., & Carey, M. P. (2015). Incapacitated and forcible rape of college women: Prevalence across the first year. *Journal of Adolescent Health, 56*(6), 678-680.

- Carlson, J., Quiason, M., Doan, A., & Mabachi, N. (2018). What can campuses learn from community sexual assault response teams? Literature review of teams' purpose, activities, membership, and challenges. *Trauma, Violence & Abuse*, doi 1524838018789157.
- Casey, R., & Murray, P. (2017, January 5). *Letter to Donald Trump*. Retrieved from <https://assets.documentcloud.org/documents/3253529/Casey-Murray-to-Trump-Re-2011-Dear-Colleague.pdf>
- Castells, M. (1997). Communal heavens: Identity and meaning in the network society. *The Power of Identity*. Malden, MA: Blackwell.
- Catanese, S. (2010). Traumatized by association: The risk of working sex crimes. *Federal probation*, 74(2), 36-38.
- Chamberlain-Salaun, J., Mills, J., & Usher, K. (2013). Linking symbolic interactionism and grounded theory methods in a research design: From Corbin and Strauss' assumptions to action. *Sage Open*, 3(3), 1-10. Doi: 10.1177/2158244013505757.
- Chandler S. M., & Torney M. (1981). The decisions and processing of rape victims through the criminal justice system. *California Sociologist*, 4, 155-169.
- Charmaz, K. (2000). Grounded theory: Objectivist and constructivist methods. In N. K. Denzin & Y. S. Lincoln (Eds.), *Handbook of qualitative research* (2<sup>nd</sup> ed., pp. 509-535). Thousand Oaks, CA: Sage.
- Charmaz, K. (2006). *Constructing grounded theory*. London: Sage Publications.
- Charmaz, K. (2014). *Constructing grounded theory*. Los Angeles, CA: Sage Publications.
- Cherelus, G. (2018, June 20). Ohio State University closes sexual assault unit; cites mismanagement. *Reuters*. Retrieved from <https://www.reuters.com/article/us-ohio->

education-sexcrimes/ohio-state-university-closes-sexual-assault-unit-cites-mismanagement-idUSKBN1JG26P

Clark, A. (2005). *Situational analysis: Grounded theory mapping after the postmodern turn*. Thousand Oaks, CA: Sage.

Cole, J. (2011). Victim confidentiality on sexual assault response teams (SARTs). *Journal of Interpersonal Violence, 26*, 360–376.

Collins, P. H. (2009). *Black feminist thought: Knowledge, consciousness, and the politics of empowerment*. London, UK: Routledge.

Commonwealth's Attorneys' Services Council. Training programs. Retrieved from <http://www.cas.state.va.us/trainingprograms.htm>

Corbin, J., & Strauss, A. (2008). *Basics of qualitative research* (3<sup>rd</sup> ed.). London, UK: Sage.

Corcoran, K. J., & Thomas, L. R. (1991). The influence of observed alcohol consumption on perceptions of initiation of sexual activity in a college dating situation. *Journal of Applied Social Psychology, 21*(6), 500-507

Coulter, R., Blosnich, J., Bukowski, L., Herrick, A., Siconolfi, D., & Stall, R. (2015). Differences in alcohol use and alcohol-related problems between transgender-and nontransgender-identified young adults. *Drug and Alcohol Dependence, 154*, 251-259.

Coulter, R., Mair, C., Miller, E., Blosnich, J., Matthews, D., & McCauley, H. (2017). Prevalence of past-year sexual assault victimization among undergraduate students: Exploring differences by and intersections of gender identity, sexual identity, and race/ethnicity. *Prevention Science, 1-11*. doi: 10.1007/s11121-017-0762-8

Cranney, S. (2015). The relationship between sexual victimization and year in school in U.S. colleges. *Journal of Interpersonal Violence, 30*(17), 3133-3145.

- Crenshaw, K. (1989). Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics. *University of Chicago Legal Forum*, 139.
- Creswell, J. (2009). *Research design: Qualitative, quantitative and mixed methods approaches* (3rd Ed). Thousand Oaks: Sage Publications.
- Creswell, J., & Miller, D. (2000). Determining validity in qualitative inquiry. *Theory Into Practice*, 39(3), 124-130.
- Crowy, S. (2017, February 18). Universities face pressure to hold the line on Title IX. *The New York Times*. Retrieved from [https://mobile.nytimes.com/2017/02/18/us/college-campuses-title-ix-sexual-assault.html?\\_r=0&referer=](https://mobile.nytimes.com/2017/02/18/us/college-campuses-title-ix-sexual-assault.html?_r=0&referer=)
- Daly, K., & Bouhours, B. (2010). Rape and attrition in the legal process: A comparative analysis of five countries. *Crime And Justice: A Review Of Research*, 39, (1), 565-650.
- Davis v. Monroe County Board of Education (97-843) 526 U.S. 629 (1999).
- De Beauvoir, S. (1989). *The second sex*. Translated by H. M. Parshley. New York, NY: Vintage.
- DeMatteo, D., Galloway, M., Arnold, S., Patel, U., & Lamb, M. E. (2015). Sexual assault on college campuses: A 50-state survey of criminal sexual assault statutes and their relevance to campus sexual assault. *Psychology, Public Policy, and Law*, 21(3), 227-238.
- Deming, M., Covan, E., Swan, S., & Billings, D. (2013). Exploring rape myths, gendered norms, group processing, and the social context of rape among college women. *Violence Against Women*, 19(4), 465-485.
- DePompa, R. (2014, October 2). 12 News investigation: Jesse Matthew timeline. *12 On Your Side*. Retrieved from: <http://www.nbc12.com/story/26691627/12-news-investigation-jesse-matthew-timeline>



- Dewey, J. (1929). *The quest for certainty: A study of the relation of knowledge and action*.  
London, UK: Allen & Unwin.
- Dewey, J., & Bentley, A. (1960). *Knowing and the known*. Boston, MA: Beacon Press.
- Dey, I. (2007). Grounding categories. In A. Bryant & K. Charmaz (Eds.), *The Sage handbook of grounded theory* (pp. 167-90). Los Angeles, CA: Sage.
- Dick, K. & Ziering, A. (2015). The hunting ground. Retrieved from <http://thehuntinggroundfilm.com/>
- Dillon, J., & Keiser, M. (2016, December 20). Minnesota's failed football boycott was a blow to fairness in campus sexual assault hearings. *The Washington Post*. Retrieved from [https://www.washingtonpost.com/news/grade-point/wp/2016/12/20/minnesotas-football-boycott-was-a-blow-to-fairness-in-campus-sexual-assault-hearings/?utm\\_term=.56087a81070c](https://www.washingtonpost.com/news/grade-point/wp/2016/12/20/minnesotas-football-boycott-was-a-blow-to-fairness-in-campus-sexual-assault-hearings/?utm_term=.56087a81070c)
- Director of Public Prosecutions v. Morgan [1975] 2 WLR 913; [1976] AC 182.
- Doe v. Ohio State University, 2:15-cv-2830 (2018).
- Donovan, R. A. (2007). To blame or not to blame. *Journal of Interpersonal Violence*, 22(6), 722-736.
- Dugan, L., & Apel, R. (2003). An exploratory study of the violent victimization of women: Race/ethnicity and situational context. *Criminology*, 41(3), 959-980.
- Edwards, K., Probst, D., Tansill, E., Dixon, K., Bennett, S., & Gidycz, C. (2014). In their own words: A content-analytic study of college women's resistance to sexual assault. *Journal of Interpersonal Violence*, 29(14), 2527-2547. Retrieved from <http://dx.doi.org/10.1177/0886260513520470>

- Edwards, K. M., Turchik, J. A., Dardis, C. M., Reynolds, N., & Gidycz, C. A. (2011). Rape myths: History, individual and institutional-level presence, and implications for change. *Sex Roles, 65*(11-12), 761-773.
- Eisenberg, T., Hannaford-Agor, P., Hans, V., Waters, N., Munsterman, G., Schwab, S., & Wells, M. (2005). Judge-jury agreement in criminal cases: A partial replication of Kalven and Zeisel's The American Jury. *Journal of Empirical Legal Studies, 2*(1), 171-207.
- Eisenstein, J., Flemming, R. B., & Nardulli, P. F. (1988). *The contours of justice: Communities and their courts*. Boston, MA: Little, Brown.
- Ellison, L., & Munro, V. (2010). A stranger in the bushes, or an elephant in the room? Critical reflections upon received rape myth wisdom in the context of a mock jury study. *New Criminal Law Review: An International and Interdisciplinary Journal, 13*(4), 781-801. doi:10.1525/nclr.2010.13.4.781
- End Violence Against Women International. (2018). *Start by believing*. Retrieved from <http://www.startbybelieving.org/home>
- Engelking, J. (2018). Why should our SART do case file review? *Rural realities: A project of SVJI*. Sexual Violence Justice Institute. Retrieved from <https://ruralrealitiesblog.wordpress.com/2018/07/25/why-should-our-sart-do-case-file-review/>
- Erard, G. (2015, March 3). Virginia legislature passes bills to address campus sexual assault. *The Cavalier Daily*. Retrieved from <http://www.cavalierdaily.com/article/2015/03/virginia-legislature-passes-bills-affecting-victim-autonomy>
- Erez, E., Globokar, J., & Ibarra, P. (2014). Outsiders inside: Victim management in an era of participatory reforms. *International review of victimology, 20*(1), 169-188.

- Erdely, S. (2014, November 19). A campus rape. *The Rolling Stone*, 1223. Retrieved from <http://web.archive.org/web/20141119200349/http://www.rollingstone.com/culture/features/a-rape-on-campus-20141119?page=7>
- Erickson, F. (2012). In B.J. Fraser et al. (eds.), *Second international handbook of science education*, 93. (pp. 1451-1469). Netherlands: Springer International
- Estrich, S. (1987). *Real rape*. Boston, MA: Harvard University Press.
- Federal Bureau of Investigation. (2014, December 11). Frequently asked questions about the change in the UCR definition of rape. Retrieved from <https://ucr.fbi.gov/recent-program-updates/new-rape-definition-frequently-asked-questions>
- Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99. (1974). Retrieved from <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- Ford, M. (2016, October 1). How Brock Turner changed California's rape laws. *The Atlantic*. Retrieved from <https://www.theatlantic.com/news/archive/2016/10/california-law-brock-turner/502562/>
- Fischel, J. (2016). *Sex and harm in the age of consent*. Minneapolis: University of Minnesota Press.
- Fisher, B. S. (2004). Measuring rape against women: The significance of survey questions. *Violence Against Women and Family Violence: Developments in Research, Practice, and Policy*. Washington, DC: U.S. Department of Justice.
- Fisher, B. S., Cullen, F. T., & Turner, M. G. (2000). *The sexual victimization of college women*. Washington, DC: National Institute of Justice, Bureau of Justice Statistics.
- Fisher, B. S., Daigle, L. E., & Cullen, F. T. (2009). *Unsafe in the ivory tower: The sexual victimization of college women*. Thousand Oaks, CA: Sage.

- Fisher, B. S., Daigle, L. E., Cullen, F. T., & Turner, M. G. (2003). Reporting sexual victimization to the police and others results from a national-level study of college women. *Criminal Justice and Behavior*, 30(1), 6-38.
- Fisher, B. S., Karjane, H. M., Cullen, F. T., Blevins, K. R., Santaa, S. A., & Daigle, L. E. (2007). Reporting sexual assault and the Clery Act: Situating findings from the National Campus Sexual Assault Policy Study within college women's experiences. In B. S. Fisher & J. J. Sloan III (Eds.), *Campus crime: Legal, social and policy issues* (2<sup>nd</sup> ed., pp. 65-86). Springfield, IL: Charles C. Thomas.
- Flack, W. F., Caron, M. L., Leinen, S. J., Breitenbach, K. G., Barber, A. M., Brown, E. N., Stein, H. C. (2008). 'The red zone': Temporal risk for unwanted sex among college students. *Journal of Interpersonal Violence*, 23, 1177-1196.
- Flaherty, C. (2015, February 4). Endangering a trust. *Inside Higher Ed*. Retrieved from <https://www.insidehighered.com/news/2015/02/04/faculty-members-object-new-policies-making-all-professors-mandatory-reporters-sexual>
- Foundation for Individual Rights in Education (2014). *California: Affirmative consent bill threatens student due process*. Retrieved from <https://www.thefire.org/cases/california-passes-affirmative-consent-bill/>
- Foley, L., Evancic, C., Karnik, K., King, J., & Parks, A. (1995). Date rape: Effects of race of assailant and victim and gender of subjects on perceptions. *Journal of Black Psychology*, 21(1), 6-18.
- Fontaine, G., & Emily, C. (1978). Causal attribution and judicial discretion: A look at the verbal behavior of municipal court judges. *Law and Human Behavior*, 2(4), 323-337.

- Forbes-Mewett, H., & McCulloch, J. (2016). International students and gender-based violence. *Violence Against Women, 22*(3), 344-365.
- Foucault, M. (2013). *Politics, philosophy, culture: Interviews and other writings, 1977-1984*. New York, NY: Routledge.
- Fradella, H., & Fahmy, C. (2016). Rape and related offenses. In H. Fradella & J. M. Sumner (Eds.), *Sex, sexuality, law and (in)justice* (pp.138-182). New York, NY: Routledge.
- Frazier, P., Haney, B., & Roesch, R. (1996). Sexual assault cases in the legal system: Police, prosecutor, and victim perspectives. *Law and Human Behavior, 20*(6), 607-628.
- Frederick, B., & Stemen, D. (2012). The anatomy of discretion: An analysis of prosecutorial decision making. New York: Vera Institute of Justice. Retrieved from [https://storage.googleapis.com/vera-web-assets/downloads/Publications/anatomy-of-discretion/legacy\\_downloads/anatomy-of-discretion-technical-report.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/anatomy-of-discretion/legacy_downloads/anatomy-of-discretion-technical-report.pdf)
- Free, M. D., Jr. (2002). Race and presentencing decisions in the United States: A summary and critique of the research. *Criminal Justice Review, 27*(2), 203-232.
- Free, M. D., & Ruesink, M. (2012). *Race and justice: Wrongful convictions of African American men*. Boulder: Lynne Rienner Publishers.
- Frohmann, L. (1991). Discrediting victims' allegations of sexual assault: Prosecutorial accounts of case rejections. *Social Problems, 38*(2), 213-226.
- Frohmann, L. (1997). Convictability and discordant locales: Reproducing race, class, and gender ideologies in prosecutorial decisionmaking. *Law and Society Review, 31*(3), 531-555.
- Frohmann, L. (1998). Constituting power in sexual assault cases: Prosecutorial strategies for victim management. *Social Problems 45*(3), 393-410.

- Fusch, P. I., & Ness, L. R. (2015). Are we there yet? Data saturation in qualitative research. *The Qualitative Report*, 20(9), 1408.
- Gagnon, K. L., Wright, N., Srinivas, T., & DePrince, A. P. (2018). Survivors' Advice to Service Providers: How to Best Serve Survivors of Sexual Assault. *Journal of Aggression, Maltreatment & Trauma*, 1-20. doi: <https://doi.org/10.1080/10926771.2018.1426069>
- Gebhard, P. (1965). *Sex offenders: An analysis of types*. New York, NY: Harper & Row.
- George, W. H., Gournic, S. J., & McAfee, M. P. (1988). Perceptions of post drinking female sexuality: Effects of gender, beverage choice, and drink payment. *Journal of Applied Social Psychology*, 18, 1295-1317
- George, W. H., & Martínez, L. J. (2002). Victim blaming in rape: Effects of victim and perpetrator race, type of rape, and participant racism. *Psychology of Women Quarterly*, 26(2), 110
- Gidycz, C. A., & Koss, M. P. (1990). A comparison of group and individual sexual assault victims. *Psychology of Women Quarterly*, 14, 325-342. doi:1111/j.1471-6402.1990.tb00023.x
- Glaser, B. G. (1978). *Theoretical sensitivity*. Mill Valley, CA: Sociology Press.
- Glaser, B. G., & Strauss, A. (1965). *Awareness of dying*. Piscataway, NJ: Transaction.
- Glaser, B. G., & Strauss, A. (1967). *The discovery of grounded theory: Strategies for qualitative research*. Chicago, IL: Aldine.
- Glaser B. G. (1992). *Basics of grounded theory analysis*. Mill Valley, CA: Sociology Press.
- Glaser, B. G. (2007). Doing formal theory. In A. Bryant & K. Charmaz (Eds.), *The Sage handbook of grounded theory* (pp. 97-113). Los Angeles, CA: Sage.

- Gooden, S. T. (2014). *Race and social equity: A nervous area of government*. London, UK: M. E. Sharpe.
- Goodwin, M. (2016). Marital rape: The long arch of sexual violence against women and girls. (University of California Irvine, School of Law Research Paper No. 2016-35) *The American Journal of International Law Unbound*, 109.
- Gordon, M. T., & Riger, S. (1989). *The female fear*. New York, NY: The Free Press.
- Grant, J., Mottet, L., Tanis, J. E., Harrison, J., Herman, J., & Keisling, M. (2011). Injustice at every turn: A report of the national transgender discrimination survey. Washington, DC: *National Center for Transgender Equality*. Retrieved from [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf)
- Grasgreen, A. (2011, April 4). Call to action on sexual harassment. *Inside Higher Ed*. Retrieved from [https://www.insidehighered.com/news/2011/04/04/education\\_department\\_civil\\_rights\\_office\\_clarifies\\_colleges\\_sexual\\_harassment\\_obligations\\_title\\_ix](https://www.insidehighered.com/news/2011/04/04/education_department_civil_rights_office_clarifies_colleges_sexual_harassment_obligations_title_ix)
- Greeson, M., & Campbell, R. (2013). Sexual Assault Response Teams (SARTs): An empirical review of their effectiveness and challenges to successful implementation. *Trauma, Violence, & Abuse*, 14(2), 83-95.
- Griffin, E. (1997). *A first look at communication theory*. New York, NY: The McGraw-Hill Companies.
- Grinberg, E. (2017, February 3). This bill could change how colleges handle sexual assault in Georgia. *Cnn.com*. Retrieved from: <http://www.cnn.com/2017/02/02/us/georgia-hb-51-university-sexual-assault-investigations/>
- Gross, A., Winslett, A., Roberts, M., & Gohm, C. (2006). An examination of sexual violence against college women. *Violence Against Women*, 12(3), 288-300.

- Guadalupe-Diaz, X. (2014). Same-sex victimization and the LGBTQQ community. In T. N. Richards & C. D. Marcum (Eds.), *Sexual victimization: Then and now* (pp. 173-192). Los Angeles, CA: Sage.
- Guy, M. & Newman, M. (2004). Women's jobs, men's jobs: Sex segregation and emotional labor. *Public Administration Review*, 64(3), 289-298.
- Hale, M. (1778). *Historia placitorum coronae. History of the pleas of the crown*. London, UK: T. Payne.
- Halligan, S. L., Michael, T., Clark, D. M., & Ehlers, A. (2003). Posttraumatic stress disorder following assault: The role of cognitive processing, trauma memory, and appraisals. *Journal of Consulting and Clinical Psychology*, 71, 419-431
- Harrell, E., & Rand, M. R. (2008). *Crime against people with disabilities*. Washington, DC: Bureau of Justice Statistics, U.S. Department of Justice. Retrieved from <http://bjs.ojp.usdoj.gov/content/pub/pdf/capd08.pdf>
- Harris, P. Taylor, R., Thielke, R., Payne, J. Gonzalez, N., & Conde, J. (2009). Research electronic data capture (REDCap) – A metadata-driven methodology and workflow process for providing translational research informatics support. *Journal of Biomedical Information*, 42(2), 377-81.
- Hart v. Commonwealth. (1921). 131 Va. 726, 729.
- Haugen, A. D., Rieck, S. M., Salter, P. S., & Phillips, N. L. (2018). What makes it rape? A lay theories approach to defining rape among college students. *Basic and applied social psychology*, 40(1), 18-35.
- Herring, M. (2015, May 18). *Governor Terry McAuliffe's task force on*



*combating campus sexual violence: report and final recommendations to the governor.*

Retrieved from [http://www.oag.state.va.us/files/Final\\_Report-](http://www.oag.state.va.us/files/Final_Report-)

[Task\\_Force\\_on\\_Combating\\_Campus\\_Sexual\\_Violence.pdf](#)

Hindelang, M. J., & Gottfredson, M. (1976). The victim's decision not to invoke the criminal justice process. In W. F. McDonald (Ed.), *Criminal justice and the victim* (pp. 57-78). Beverly Hills, CA: Sage.

Holland, K. J., Cortina, L. M., & Freyd, J. J. (2018). Compelled disclosure of college sexual assault. *American Psychologist*, 73(3), 256-268.

Holleran, D., Beichner, D., & Spohn, C. (2010). Examining charging agreement between police and prosecutors in rape cases. *Crime & Delinquency*, 56(3), 385-413.

Holmes, G. R., Offen, L., & Waller, G. (1997). See no evil, hear no evil, speak no evil: Why do relatively few male victims of childhood sexual abuse receive help for abuse-related issues in adulthood? *Clinical Psychology Review*, 17, 69-88.

Hooker, M., & Lange, E. (2003). Limiting extrajudicial speech in high-profile cases: The duty of the prosecutor and defense attorney in their pre-trial communications with the media. *The Georgetown Journal of Legal Ethics*, 16(4), 655-673.

Hochschild, A. R. (1983). *The managed heart—Commercialization of human feeling*. Los Angeles: University of California Press

Hughes-Miller, M. (2018). From sexual harassment to sexual violence: The evolution of Title IX's response to sexual victimization. In Kaukinen, Hughes Miller & Powers (Eds.), *Addressing violence against women on college campuses* (pp. 97-112). Philadelphia: Temple University Press

*Implementation by colleges and universities of sexual assault, dating violence, domestic violence, and Stalking prevention and response policies and procedures.* New York Education Law EDN Article 129-B, 6439 – 6449. Retrieved from <http://legislation.nysenate.gov/pdf/bills/2015/S5965>

International Association of Chiefs of Police. (2005). *Sexual assault incident reports: Investigative strategies*. Retrieved from <http://www.theiacp.org/portals/0/pdfs/sexualassaultguidelines.pdf>

International Association of Chiefs of Police. (2018). Trauma informed sexual assault investigation training. Retrieved from <http://www.theiacp.org/trauma-informed-sexual-assault-investigation-training>

Jackson, R. (1940). The federal prosecutor. *Journal of Criminal Law and Criminology*, 31(1), 3-6.

James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *Executive summary of the report of the 2015 U.S. transgender survey*. Washington, DC: National Center for Transgender Equality

James Madison University Student Handbook. (2016). *Student accountability and restorative practices. Student standards of conduct (J34-101)*. Retrieved from <https://www.jmu.edu/osarp/handbook/OSARP/standarads-policies.shtml>

Kahn, A. S., Jackson, J., Kully, C., Badger, K., & Halvorsen, J. (2003). Calling it rape: Differences in experiences of women who do or do not label their sexual assault as rape. *Psychology of Women Quarterly*, 27, 233-242.

Kalvan, H., & Zeisel, H. (1966). *The American jury*. Boston, MA: Little, Brown.

- Karjane, H., Fisher, B., & Cullen, F. (2005). *Sexual assault on campus: What colleges and universities are doing about it*. Washington, DC: U.S. Department of Justice Office of Justice Programs.
- Karp, D., Shackford-Bradley, J., Wilson, R., and Williamsen, K. (2016). Campus Prism: A Report on Promoting Restorative Initiatives for Sexual Misconduct on College Campuses. Retrieved from: [http://www.skidmore.edu/campusrj/documents/Campus\\_PRISM\\_Report\\_2016.pdf](http://www.skidmore.edu/campusrj/documents/Campus_PRISM_Report_2016.pdf)
- Karpman, B. (1975). *The sexual offender and his offenses*. New York, NY: Julian.
- Kelderman, E. (2014, June 25). College lawyers confront a thicket of rules on sexual assault. *The Chronicle of Higher Education*. Retrieved from <http://www.chronicle.com/article/College-Lawyers-Confront-a/147349/>
- Kelle, U. (2010). The development of categories: Different approaches in grounded theory. In A. Bryant & K. Charmaz (Eds.), *The Sage handbook of grounded theory* (pp. 191-213). Los Angeles, CA: Sage.
- Kelly, J. (2006). *Becoming ecological: An expedition into community psychology*. New York: Oxford University Press.
- Kerstetter, W. (1990). Gateway to justice: Police and prosecutorial response to sexual assaults against women. *The Journal of Criminal Law and Criminology*, 81(2), 267-313. Retrieved from <http://www.jstor.org/stable/1143908> doi:1
- Kimble, M., Neacsiu, A. D., Flack, W. F., Jr., & Horner, J. (2008). Risk of unwanted sex for college women: Evidence for a red zone. *Journal of American College Health*, 57(3), 331-337.

- Kingkade, T. (2014, October 12). Colleges are reporting more sexual assaults, and that's a great sign. *The Huffington Post*. Retrieved from [http://www.huffingtonpost.com/2014/10/12/college-sexual-assault-numbers-clery-reports\\_n\\_5967412.html](http://www.huffingtonpost.com/2014/10/12/college-sexual-assault-numbers-clery-reports_n_5967412.html)
- Kingsnorth, R., Lopez, J., Wentworth, J., & Cummings, D. (1999a). Adult sexual assault: The role of racial/ethnic composition in prosecution and sentencing. *Journal of Criminal Justice, 26*(5), 359-371.
- Kingsnorth, R., MacIntosh, R., & Wentworth, J. (1999b). Sexual assault: The role of prior relationship and victim characteristics in case processing. *Justice Quarterly, 16*(2), 275-302.
- Kirk, D. (2008). The neighborhood context of racial and ethnic disparities in arrest. *Demography, 45*(1), 55-77.
- Klein, K. J., & Kozlowski, S. W. (2000). From micro to meso: Critical steps in conceptualizing and conducting multilevel research. *Organizational Research Methods, 3*(3), 211-236.
- Koss, M. (1992). The underdetection of rape: Methodological choices influence incidence estimates. *Journal of Social Issues, 48*, 1, 61-67.
- Koss, M. (1993a). Detecting the scope of rape: A review of prevalence research methods. *Journal of Interpersonal Violence, 8*, 198-222.
- Koss, M. (1993b). Rape: Scope, impact, interventions, and public policy responses. *American Psychologist, 48*, 1062-1069.
- Koss, M. (2014). The RESTORE Program of Restorative Justice for Sex Crimes: Vision, Process, and Outcomes. *Journal of Interpersonal Violence, 29*(9), 1623-1660.

- Koss, M., Gidycz, C., Wisniewski, N., & Kazdin, A. (1987). The scope of rape: Incidence and prevalence of sexual aggression and victimization in a national sample of higher education students. *Journal of Consulting and Clinical Psychology, 55*(2), 162-170.
- Koss, M., & Gidycz, C. (1985). The sexual experiences survey: Reliability and validity. *Journal of Consulting and Clinical Psychology, 53*(3), 442-443.
- Koss, M. & Lopez, E. (2018). Restorative justice for sexual misconduct: Not if but when. *The gender policy report*. Retrieved from <http://genderpolicyreport.umn.edu/restorative-justice-for-sexual-misconduct-not-if-but-when/>
- Koss, M., & Oros, C. (1982). Sexual experiences survey: A research instrument investigating sexual aggression and victimization. *Journal of Consulting and Clinical Psychology, 50*(3), 455-457.
- Koss, M., Wilgus, J. & Williamsen. (2014). Campus sexual misconduct: Restorative justice approaches to enhance compliance with Title IX guidance. *Trauma, violence and abuse, 15*(1), 242-257.
- Krebs, C., Lindquist, C., Berzofsky, M., Shook-Sa, B., Peterson, K., Planty, M. . . .Stroop, J. (2016). Campus climate survey validation study final technical report (Report: NCJ 249545). Washington, DC: Bureau of Justice Statistics. Retrieved from <http://www.bjs.gov/content/pub/pdf/ccsvsfr.pdf>
- Krebs, C. P., Lindquist, C. H., Warner, T. D., Fisher, B. S., & Martin, S. L. (2007). *The campus sexual assault (CSA) study*. Washington, DC: National Institute of Justice, U.S. Department of Justice.

- Krebs, C., Barrick, K., Lindquist, C., Crosby, C., Boyd, C., & Bogan, Y. (2011). The Sexual Assault of Undergraduate Women at Historically Black Colleges and Universities (HBCUs). *Journal of Interpersonal Violence, 26*(18), 3640-3666.
- Kreighbaum, A. (2018, June 13). Under DeVos, a smaller Department of Education. *Inside Higher Education*. Retrieved from [https://www.insidehighered.com/news/2018/06/13/education-department-staff-down-13-percent-trump-administration-began?utm\\_source=Inside+Higher+Ed&utm\\_campaign=450d1e6802-DNU\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_1fcbc04421-450d1e6802-198412237&mc\\_cid=450d1e6802&mc\\_eid=fcd5e873ee](https://www.insidehighered.com/news/2018/06/13/education-department-staff-down-13-percent-trump-administration-began?utm_source=Inside+Higher+Ed&utm_campaign=450d1e6802-DNU_COPY_01&utm_medium=email&utm_term=0_1fcbc04421-450d1e6802-198412237&mc_cid=450d1e6802&mc_eid=fcd5e873ee)
- Krug, E. G., Mercy, J. A., Dahlberg, L. L., & Zwi, A. B. (2002). The world report on violence and health. *The Lancet, 360*(9339), 1083-1088.
- Lacey, N. (2007). Space, time and function: Intersecting principles of responsibility across the terrain of criminal justice. *Criminal Law and Philosophy, 1*(3), 233-250.
- La Free, G. D. (1980). Variables affecting guilty pleas and convictions in rape cases: Toward a social theory of rape processing. *Social Forces, 58*(3), 833-850. doi:10.1093/sf/58.3.833
- La Free, G. (1989). *Rape and criminal justice: The social construction of sexual assault*. Belmont, CA: Wadsworth.
- Langenderfer-Magruder, L., Walls, N., Kattari, S., Whitfield, D., & Ramos, D. (2016). Sexual victimization and subsequent police reporting by gender identity among lesbian, gay, bisexual, transgender, and queer adults. *Violence and Victims, 31*(2), 320-31.
- Latta, R. E., & Goodman, L. A. (2011). Intervening in partner violence against women: A grounded theory exploration of informal network members' experiences. *Counseling Psychologist, 39*(7), 973-1023.

- Lawrence v. Texas, 539 U.S. 558, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003).
- Leahy Advances Restorative Justice Legislation. (2018, June 16), *U.S. News and World Report*. Retrieved from <https://www.usnews.com/news/best-states/vermont/articles/2018-06-16/leahy-advances-restorative-justice-legislation>
- Leavy, P. (2014). *The oxford handbook of qualitative research*. Oxford: Oxford University Press.
- Leiterdorf-Shkedy, S., & Gal, T. (2018). The sensitive prosecutor: Emotional experiences of prosecutors in managing criminal proceedings. *International Journal of Law and Psychiatry*, 1-10. doi.org/10.1016/j.ijlp.2018.07.008
- Lempert, L. B. (2007). Asking questions of the data: Memo writing in the grounded. In A. Bryant & K. Charmaz (Eds.), *The Sage handbook of grounded theory* (pp. 245-264). Los Angeles, CA: Sage.
- Lisak, D., & Miller, P. (2002). Repeat rape and multiple offending among undetected rapists. *Violence and Victims*, 17(1), 73-84.
- Lizotte, A. J. (1985). The uniqueness of rape: Reporting assaultive violence to the police. *Crime and Delinquency*, 31, 169-190.
- Lofland, J., Snow, D. & Lofland, L. (2006). *Analyzing social settings: A guide to qualitative observation and analysis*. Australia: Thomson Wadsworth
- Lombardi, K. (2009, December 1). *Sexual assault on campus shrouded in secrecy*. Center for Public Integrity. Retrieved from <http://www.publicintegrity.org/2009/12/01/9047/sexual-assault-campus-shrouded-secrecy>
- Lonsway, K., & Archambault, J. (2012). The 'justice gap' for sexual assault cases. *Violence Against Women*, 18(2), 145-168.

- Loh, W. D. (1980). The impact of common law and reform rape statutes on prosecution: An empirical study. *Washington Law Review*, 55, 543-562.
- Mah, J. and Baum, S. (2016, April). Trends in community colleges: Enrollment, prices, student debt, and completion. *College board research brief*. Retrieved from <https://trends.collegeboard.org/sites/default/files/trends-in-community-colleges-research-brief.pdf>
- Mallett, Christopher A. (2017). The school-to-prison pipeline: Disproportionate impact on vulnerable children and adolescents. *Education and Urban Society*, 49(6), 563-592.
- Maltz, M. (1999). *Bridging gaps in police crime data*. Bureau of Justice Statistics, U. S. Department of Justice. Washington, DC: U.S. Government Printing Office.
- Maniglio, R. (2010). The role of parent-child bonding, attachment, and interpersonal problems in the development of deviant sexual fantasies in sexual offenders. *Trauma, Violence, and Abuse*, 13(2), 83-96.
- March, J. G., & Simon, H. A. (1958). *Organizations*. Cambridge, UK: Blackwell.
- Martin, M. (1996). *Family Practice*, 13, pp. 522-525
- Martin, P. Y. (2006). *Rape work: Victims, gender and emotions in organization and community context*. New York, NY: Routledge.
- Martin, S. L., Fisher, B. S., Warner, T. D., Krebs, C. P., & Lindquist, C. H. (2011). Women's sexual orientations and their experiences of sexual assault before and during university. *Women's Health Issues*, 21, 199-205.
- Maxwell, J. A. (2013). *Qualitative research design: An interactive approach* (3<sup>rd</sup> ed.). Los Angeles, CA: Sage.
- Mayer, J. (2017, November 1). Anita Hill on Weinstein, Trump, and a Watershed Moment for Sexual-Harassment Accusations. *The New Yorker*. Retrieved from



<https://www.newyorker.com/news/news-desk/anita-hill-on-weinstein-trump-and-a-watershed-moment-for-sexual-harassment-accusations>

McCahill, T. W., Meyer, L. C., & Fishman, A. M. (1979). *The aftermath of rape*. Lexington, MA: Lexington Books.

McCaskill, C. (2014). *Sexual violence on campus: How too many institutions of higher education are failing to protect students*. Retrieved from <https://www.mccaskill.senate.gov/SurveyReportwithAppendix.pdf>

Mccauley, & Casler. (2015). College Sexual Assault: A Call for Trauma-Informed Prevention. *Journal of Adolescent Health, 56*(6), 584-585.

McDougle, R., Stone Graham, F., & Rissler, G. (2015). Commonwealth education poll 2014-15. *Commonwealth Educational Policy Institute*. Retrieved from: <http://www.cepi.vcu.edu/media/university-relations/cepi/pdfs/CommonwealthEducationPoll2014-15-FinalReport.pdf>

McNamee, C. (2001). Rape. In R. Simon (Ed.), *A comparative perspective on major social problems* (pp. 1-40). Lanham, MD: Lexington Books.

McNamee, C., & Backes, B. L. (2012). Guest editors' introduction. *Violence Against Women, 18*(2), 135-144.

Medea, A., & Thompson, K. (1974). *Against Rape*. New York, NY: Farrar, Straus, & Giroux.

Mellins, C. A., Walsh, K., Sarvet, A. L., Wall, M., Gilbert, L., Santelli, J. S....Hirsch, J. S. (2017). Sexual assault incidents among college undergraduates: Prevalence and factors associated with risk. *PLoS ONE, 12*(11), e0186471. doi:10.1371/journal.pone.0186471

- Menaker, T., Campbell, B., & Wells, W. (2017). The Use of Forensic Evidence in Sexual Assault Investigations: Perceptions of Sex Crimes Investigators. *Violence Against Women, 23*(4), 399-425.
- Mendes, K., Ringrose, J., & Keller, J. (2018). # MeToo and the promise and pitfalls of challenging rape culture through digital feminist activism. *European Journal of Women's Studies, 25*(2), 236-246.
- Mennicke, A., Anderson, D., Oehme, K., & Kennedy, S. (2014). Law enforcement officers' perception of rape and rape victims: A multimethod study. *Violence and Victims, 29*(5), 814-827.
- Mills, J. S. (1998). *On liberty and other essays* (2<sup>nd</sup> ed.). J. Gray, Ed. Oxford, UK: Oxford University Press.
- Model Penal Code, § 213.1 (1980). *Rape and related offenses*. Philadelphia, PA: American Law Institute.
- Mohler-Kuo, M., Dowdall, G. W., Koss, M. P., & Wechsler, H. (2004). Correlates of rape while intoxicated in a national sample of college women. *Journal of Studies on Alcohol, 65*(1), 37-45.
- Moini, N. (2016, December 30). Henn. Co. attorney: No charges In Gophers rape investigation. *CBS Minnesota*. Retrieved from <http://minnesota.cbslocal.com/2016/12/30/gophers-no-charges/>
- Morris, C. (2017, September 24). DeVos rolls back Obama Title IX rules on campus sexual assault. *Diverse Issues in Higher Education*. Retrieved from <http://diverseeducation.com/article/102070/>

- Morse, J. M. (2009). Tussles, tensions, and resolutions. In J. Morse (Ed.), *Developing grounded theory: The second generation* (pp. 13-22.). Walnut Creek, CA: Left Coast Press.
- Morse, J. M. (2010). Sampling in grounded theory. In A. Bryant & K. Charmaz (Eds.), *The Sage handbook of grounded theory* (pp. 229-244). Los Angeles, CA: Sage.
- Moylan, C. & McKenzie, J. (2018). Widening the Lens: An Ecological Review of Campus Sexual Assault. *Trauma, Violence, and Abuse, 1* (14), 1-14
- Muehlenhard, C. L., Peterson, Z. D., Humphreys, T. P., & Jozkowski, K. N. (2017). Evaluating the one-five statistic: Women's risk of sexual assault while in college. *The Journal of Sex Research, 54*(4-5), 549-576.
- Munson, M., & Daniels, L. (2015). Sexual violence in the transgender community survey. *A Self Help Guide to Healing and Understanding*. Retrieved from <http://forge-forward.org/wp-content/docs/self-help-guide-to-healing-2015-FINAL.pdf>
- Murphy, S., Edwards, K., Bennett, S., Bibeau, S., & Sichelstiel, J. (2014). Police reporting practices for sexual assault cases in which 'the victim does not wish to pursue charges.' *Journal of Interpersonal Violence, 29*(1), 144-156.
- Muskie School of Public Service, University of Maine. (2015). Violence against women act; Measuring effectiveness initiative (VAWA MEI). (2015). Summary data report on campus programs July 1, 2015-December 31, 2015. Retrieved from [http://muskie.usm.maine.edu/vawamei/attachments/graphicreports/campus/Campus\\_GR\\_JJ15.pdf](http://muskie.usm.maine.edu/vawamei/attachments/graphicreports/campus/Campus_GR_JJ15.pdf)
- Na, C, Choo, T, & Klingfuss, J. (2017). The causes and consequences of job-related stress among prosecutors. *American journal of criminal justice, 43*, 329-353.

Nardi, P. (2014). *Doing survey research: A guide to quantitative methods* (3<sup>rd</sup> ed.). Boulder, CO: Paradigm.

New, J. (2015, July 10). Requiring a red flag. *Inside Higher Ed*. Retrieved from <https://www.insidehighered.com/news/2015/07/10/states-requiring-colleges-note-sexual-assault-responsibility-student-transcripts>

New, J. (2016a, May 17). Due process and sex assaults. *Inside Higher Ed*. Retrieved from <https://www.insidehighered.com/news/2016/05/17/professors-urge-department-education-revise-sexual-assault-guidance>

New, J. (2016b, July 29). Creating the right climate survey. *Inside Higher Ed*. Retrieved from [https://www.insidehighered.com/news/2016/07/29/campus-climate-surveys-abound - does-disagreement-overwhatworksbest?utm\\_source=Inside+Higher+Ed &utm\\_campaign=76fc02fe2b-DNU20160729&utm\\_medium=email&utm\\_term=0\\_1fcbc04421-76fc02fe2b-198412237](https://www.insidehighered.com/news/2016/07/29/campus-climate-surveys-abound - does-disagreement-overwhatworksbest?utm_source=Inside+Higher+Ed &utm_campaign=76fc02fe2b-DNU20160729&utm_medium=email&utm_term=0_1fcbc04421-76fc02fe2b-198412237)

New, J. (2016c, November 10). Campus sexual assault in a Trump era. *Inside Higher Ed*. Retrieved from [https://www.insidehighered.com/news/2016/11/10/trump-and-gop-likely-try-scale-back-title-ix-enforcement sexualassault?mc\\_cid=0932ca8b9f&mc\\_eid=fcd5e873ee](https://www.insidehighered.com/news/2016/11/10/trump-and-gop-likely-try-scale-back-title-ix-enforcement sexualassault?mc_cid=0932ca8b9f&mc_eid=fcd5e873ee)

Norris, J., & Cubbins, L. A. (1992). Dating, drinking and rape: Effects of victim's and assailant's alcohol consumption on judgments of their behavior and traits. *Psychology of Women Quarterly*, 16, 179-191

Nugent-Borakove, M. E., Fanflik, P. L., Troutman, D., Johnson, N., O'Connor, A. L., & Burgess, A. (2006). *Testing the efficacy of SANE/SART programs. Do they make a difference in sexual assault arrest & prosecution outcomes?* National Criminal Justice

- Reference Service (No. 214252). U. S. Department of Justice, Washington, DC.  
Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/214252.pdf>
- O'Neal, E., Tellis, K., & Spohn, C. (2015). Prosecuting Intimate Partner Sexual Assault. *Violence against Women.*, 21(10), 1237-1258.
- Orchowski, L. M., & Gidycz, C. A. (2012). To whom do college women confide following sexual assault? A prospective study of predictors of sexual assault disclosure and social reactions. *Violence Against Women*, 18, 3264-3288.  
doi:10.1177/1077801212442917
- Page, A. D. (2008). Judging women and defining crime: Police officers' attitudes toward women and rape. *Sociological Spectrum*, 28, 389-411. doi:10.1080/02732170802053621
- Panter, H. (2017). Pre-operative transgender motivations for entering policing occupations. *International journal of transgenderism*, 18(3), 305-317.
- Parks, K. A., Hsieh, Y. P., Bradizza, C. M., & Romosz, A. M. (2008). Factors influencing the temporal relationship between alcohol consumption and experiences with aggression among college women. *Psychology of Addictive Behaviors*, 22, 210–218. <https://doi.org/10.1037/0893-164X.22.2.210>.
- Pattavina, A., Morabito, M., & Williams, L. (2016). Examining connections between the police and prosecution in sexual assault case processing: Does the use of exceptional clearance facilitate a downstream orientation? *Victims and Offenders*, 11(2), 315-334.
- Patton M. Q. (1990). *Qualitative evaluation and research methods* (2<sup>nd</sup> ed.) Thousand Oaks, CA: Sage.
- Patton, M. Q. (1999). Enhancing the quality and credibility of qualitative analysis. *Health Services Research*, 34(5), 1189-1208.

- Patton, M.Q. (2015). *Qualitative Evaluation and Research Methods* (4th ed.) Thousand Oaks: Sage Publications.
- Peterson, Z. D., Voller, E. K., Polusny, M. A., & Murdoch, M. (2011). Prevalence and consequences of adult sexual assault of men: Review of empirical findings and state of the literature. *Clinical Psychology Review*, 31(1), 1-24.
- Portnoy, J. (2016, April 6). Why a Va. senator told a teacher: 'You do not know better than the parents.' *The Washington Post*. Retrieved from [https://www.washingtonpost.com/local/virginia-politics/why-a-va-senator-told-a-teacher-you-do-not-know-better-than-the-parents/2016/04/06/0a0a5602-fc23-11e5-886f-a037dba38301\\_story.html?utm\\_term=.32d1d1502e13](https://www.washingtonpost.com/local/virginia-politics/why-a-va-senator-told-a-teacher-you-do-not-know-better-than-the-parents/2016/04/06/0a0a5602-fc23-11e5-886f-a037dba38301_story.html?utm_term=.32d1d1502e13)
- Planty, M., Langton, L., Krebs, C., Berzofsky, M., & Smiley-McDonald, H. (2013). *Female victims of sexual violence, 1994-2010*. Washington, DC: U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- Promoting Real Opportunity, Success, and Prosperity through Education Reform Act, H. R. 4508 (2017). Retrieved from <https://www.congress.gov/115/bills/hr4508/BILLS-115hr4508rh.pdf>
- QSR International. (2012). NVivo 10® [Computer software]. Available from <http://www.qsrinternational.com>
- QSR International (2018). Run a coding comparison query. Retrieved from [http://help-nv11.qsrinternational.com/desktop/procedures/run\\_a\\_coding\\_comparison\\_query.htm](http://help-nv11.qsrinternational.com/desktop/procedures/run_a_coding_comparison_query.htm)
- Regents of the University of California. (2010). *The common law and civil traditions*. Retrieved from <https://www.law.berkeley.edu/library/robbins/pdf/CommonLawCivilLawTraditions.pdf>

- Rennison, C. M. (2002). *Rape and sexual assault: Reporting to police and medical attention, 1992–2000*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.
- Reporting of Acts of Sexual Violence. (2016). Retrieved from <http://law.lis.virginia.gov/vacode/title23.1/chapter8/section23.1-806/>
- Richards, T.N. & Kafonek, K. (2016). Reviewing state legislative agendas regarding sexual assault in higher education: Proliferation of best practices and points of caution. *Feminist Criminology, 11*(1), 91-129.
- Ridgeway, C. (2013). Why status matters for inequality. *American Sociological Review, 20*(10), 1-16.
- Robers, S., Kemp, J., Rathbun, A., Morgan, R. & Snyder, T. (2014). *Indicators of School Crime and Safety:2013*. Washington, DC: U. S. Department of Justice. Bureau Of Justice Statistics.
- Russell, D. (1975). *The politics of rape*. New York, NY: Stein & Day.
- Russell, D. (1982). The prevalence and incidence of forcible rape and attempted rape of females. *Victimology: An International Journal, 7*(1-4), 81-93.
- Sabina, C., & Ho, L. (2014). Campus and college victim responses to sexual assault and dating violence: Disclosure, service utilization, and service provision. *Trauma, Violence, and Abuse, 15*(3), 201-226.
- Sable, M. R., Danis, F., Mauzy, D. L., & Gallagher, S. K. (2006). Barriers to reporting sexual assault for women and men: Perspectives of college students. *Journal of American College Health, 55*(3), 157-162.

- Safe Transfer Act. 114<sup>th</sup> Cong. (2016). Retrieved from [https://speier.house.gov/sites/speier.house.gov/files/wysiwyg\\_uploaded/SPEIER\\_Safe%20Transfer%20Act%20bill%20text.pdf](https://speier.house.gov/sites/speier.house.gov/files/wysiwyg_uploaded/SPEIER_Safe%20Transfer%20Act%20bill%20text.pdf)
- Safko, E. (2016). Are campus sexual assault tribunals fair? The need for judicial review and additional due process protections in light of new case law. *Fordham Law Review*, 84(5). Retrieved from <http://ir.lawnet.fordham.edu/flr/vol84/iss5/16>
- Saldana, J. (2014). Coding and analysis strategies. In P. Leavy, (Ed.), *The Oxford handbook of qualitative research* (pp 581-605). Oxford: Oxford University Press.
- Schuller, R. A., & Stewart, A. (2000). Police responses to sexual assault complaints: the role of perpetrator/complainant intoxication. *Law and Human Behavior*, 24(5), 535.
- Schuller, R. A., & Wall, A. M. (1998). The effects of defendant and complainant intoxication on mock jurors' judgments of sexual assault. *Psychology of Women Quarterly*, 22, 555-573.
- Scott, M. B., & Lyman, S. M. (1968). Accounts. *American Sociological Review*, 33(1), 46-42.
- Shalin, D. (1991). The pragmatic origins of symbolic interactionism and the crisis of classical science. In N. Denzin (Ed.), *Studies in symbolic interaction* (pp. 223-251). Bradford, UK: Emerald Group.
- Simpson, J. (2012, June 21). How Title IX sneakily revolutionized women's sports. *The Atlantic*. Retrieved from <https://www.theatlantic.com/entertainment/archive/2012/06/how-title-ix-sneakily-revolutionized-womens-sports/258708/>
- Sims, C. M., Noel, N. E., & Maisto, S. A. (2007). Rape blame as a function of alcohol presence and resistance type. *Addictive Behaviors*, 32(12), 2766-2775.



- Sinozich, S., & Langdon, L. (2014). Rape and sexual assault among college-age females, 1995-2013. Washington, DC: U.S. Department of Justice Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5176>
- Sokolow, B. (2017, September 22). Statement on September 22, 2017 Dear Colleague Letter Rescission and Interim guidance. *Association for Title IX Administrators*. Retrieved from <https://atixa.org/wordpress/wp-content/uploads/2017/09/2017-ATIXA-Member-Statement-on-DCL-Recission.pdf>
- Sommers, I., Goldstein, J., & Baskin, D. (2014). The intersection of victims' and offenders' sex and race/ethnicity on prosecutorial decisions for violent crimes. *The Justice System Journal, 35*(2), 178-204.
- Spears, J., & Spohn, C. (1997). The effect of evidence factors and victim characteristics on prosecutors' charging decisions in sexual assault cases. *Justice Quarterly, 14*(3), 501-524.
- Spencer, B. (2016). The Impact of class and sexuality-based stereotyping on rape blame. *Sexualization, Media, and Society, 2*(2), 1-8.
- Spohn, C., Beichner, D., & Davis-Frenzel, E. (2001). Prosecutorial explanations for sexual assault case rejection: Guarding the gateway to justice. *Social Problems, 48*, 206-235.
- Spohn, C., & Holleran, D. (2001). Prosecuting sexual assault: A comparison of charging decisions in sexual assault cases involving strangers, acquaintances, and intimate partners. *Justice Quarterly, 18*(3), 651-688.
- Spohn, C., & Horney, J. (1993). Rape law reform and the effect of victim characteristics on case processing. *Journal of Quantitative Criminology, 9*(4), 383-409.

- Spohn, C., Rodriguez, N., & Koss, M. P. (2008, November). *The 'victim declined to prosecute': Accounting for lack of cooperation in sexual assault cases*. Presented at the Annual Meeting of the American Society of Criminology, St. Louis, MO.
- Spohn, C., & Spears, J. (1996). The effect of offender and victim characteristics on sexual assault case processing decisions. *Justice Quarterly*, *13*, 649-679.
- Spohn, C., & Tellis, K. (2010). Justice denied: The exceptional clearance of rape cases in Los Angeles. *Albany Law Review*, *74*, 1379.
- Spohn, C., & Tellis, K. (2012). The criminal justice system's response to sexual violence. *Violence Against Women*, *18*(2), 169-192. doi:10.1177/1077801212440020
- Spohn, C., & Tellis, K. (2013). *Policing and prosecuting sexual assault: Inside the criminal justice system*. Boulder, CO: Lynne Rienner.
- Spohn, C., & Tellis, K. (2018). Sexual Assault Case Outcomes: Disentangling the Overlapping Decisions of Police and Prosecutors. *Justice Quarterly*, *1*-29.
- Stack, L. (2016, June 6). Light sentence for Brock Turner in Stanford rape case draws outrage. *New York Times*. Retrieved from <http://www.nytimes.com/2016/06/07/us/outrage-in-stanford-rape-case-over-dueling-statements-of-victim-and-attackers-father.html>
- Stanko, E. A. (1980). *These are the cases that try themselves: An examination of the extra-legal criteria in felony case processing*. Presented at the Annual Meeting of the North Central Sociological Association, Buffalo, NY.
- State Ex Rel. Pope v. Superior Court, 545 P.2d 946 113 (Ariz. 22 1976).
- State in Interest of MTS, 609 A.2d 1266, 129 N.J. 422 (1992).
- State of California. Education Code Section 67380-67386 (2014). Retrieved from [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=67386.&lawCode=EDC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=67386.&lawCode=EDC)

- State of California. California Penal Code § 263.1 (2016). Retrieved from <https://law.justia.com/codes/california/2016/code-pen/part-1/title-9/chapter-1/section-263.1/>
- State v. Alston, 312 S.E.2d 470, 310 (N.C. 399, 1984).
- Steffensmeier, D., & Demuth, S. (2000). Ethnicity and sentencing outcomes in U.S. federal courts: Who is punished more harshly? *American Sociological Review*, 65(5), 705-729.
- Steffensmeier, D., Ulmer, J., & Kramer, J. (1998). The interaction of race, gender, and age in criminal sentencing: The punishment cost of being young, black, and male. *Criminology*, 36(4), 763-798.
- Stemen, D., & Frederick, B. (2013). Rules, resources, and relationships: Contextual constraints on prosecutorial decision-making. *Quinnipiac Law Review*, 31, 1.
- Stern, P. N., & Porr, C. (2011). *Essentials of accessible grounded theory*. Walnut Creek, CA: Left Coast Press.
- Stewart, M., Dobbin, S., & Gatowski, S. (1996). "Real rapes" and "real victims:" The shared reliance on common cultural definitions of rape. *Feminist Legal Studies*, 10(2), 159-178.
- Strand, R. & Heitman, L. (2017, June). The Forensic Experiential Trauma Interview (FETI). Retrieved from <http://www.evawintl.org/images/uploads/Forensic%20Compliance/Training%20Materials/FETI-PublicDescription-Jan2017.pdf>
- Strauss, A. (1959). *Mirrors and masks; the search for identity*. Glencoe, IL: Free Press.
- Strauss, A. (1993). *Continual permutations of action*. New York, NY: Aldine de Gruyter.
- Strauss, A., & Corbin, J. (1998). *Basics of qualitative research: Techniques and procedures for developing grounded theory* (2<sup>nd</sup> ed.). Thousand Oaks, CA: Sage.

- Struckman-Johnson, C.; Struckman-Johnson, D.; Anderson, P.B. (2003). Tactics of sexual coercion: When men and women won't take no for an answer. *Journal of sex research*, 40, 76–86.
- Suggs, D., Sales, B., Barclay, A. G., & Grisso, T. (1978). The art and science of conducting the voir dire. *Professional Psychology*, 9(3), 367-388.
- Svrluga, S. (2016, June 17). Former U-Va. law student files suit challenging federal sexual assault directive. *The Washington Post*. Retrieved from <https://www.washingtonpost.com/news/grade-point/wp/2016/06/16/former-u-va-law-student-files-suit-challenging-federal-sexual-assault-directive/>
- Swartout, K., Koss, M., White, J., Thompson, M., Abbey, A., & Bellis, A. (2015). Trajectory analysis of the campus serial rapist assumption. *JAMA Pediatrics*, 169(12), 1148-54.
- Taslitz, A. E. (1999). *Rape and the culture of the courtroom*. New York: NYU Press.
- Taslitz, A. E. (2005). Willfully blinded: On date rape and self deception. *Harvard Journal of Law and Gender*, 28, 381-446.
- Tellis, K. M., & Spohn, C. C. (2008). The sexual stratification hypothesis revisited: Testing assumptions about simple versus aggravated rape. *Journal of Criminal Justice*, 36(3), 252-261.
- Tempkin, J., & Krahe, B. (2008). *Sexual assault and the justice gap: A question of attitude*. Oxford, UK: Bloomsbury.
- The Chronicle of Higher Education. (2016). *Title IX: Tracking sexual assault investigations*. Retrieved from [http://projects.chronicle.com/titleix/#recent\\_developments](http://projects.chronicle.com/titleix/#recent_developments)

The National Center for Public Policy and Higher Education. (2001, June). Affordability and transfer: Critical to increasing baccalaureate degree completion. *Policy alert*. Retrieved from [http://www.highereducation.org/reports/pa\\_at/index.shtml](http://www.highereducation.org/reports/pa_at/index.shtml)

Tillman, S., Bryant-Davis, T., Smith, K., & Marks, A. (2010). Shattering silence: Exploring barriers to disclosure for African American sexual assault survivors. *Trauma, Violence, & Abuse, 11*(2), 59-70.

Title IX of the United States Education Amendments of 1972. (June 23, 1972). Public Law No. 92-318, 86 Stat. 235 codified at 20 U.S.C. §§ 1681–1688.

Tjaden, P., & Thoennes, N. (2006). *Extent, nature, and consequences of rape victimization: Findings from the National Violence Against Women Survey*. Washington, DC: National Institute of Justice, U.S. Department of Justice.

Ulmer, J. T. (1997). *Social worlds of sentencing: Court communities under sentencing guidelines*. Albany: State University of New York Press.

Ulmer, J.T., Kurlycheck, M.C., & Kramer, J. H. (2007). Prosecutorial discretion and the imposition of mandatory minimum sentences. *Journal of Research in Crime and Delinquency, 44*, 427- 458.

U.S. Congress. (2010, September 14). *Rape in the United States: The chronic failure to report and investigate rape cases*. Senate Hearing 111-891. Retrieved from <https://www.gpo.gov/fdsys/pkg/CHRG-111shrg64687/pdf/CHRG-111shrg64687.pdf>

U.S. Department of Education. (2001, January 19). Revised sexual harassment guidance. Washington, DC: U.S. Government Printing Office. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>

U.S. Department of Education. (2011). *Dear colleague letter: Sexual violence*. Washington, DC: U.S. Government Printing Office.

U.S. Department of Education. (2016a). *Campus safety and security*. Retrieved from <https://ope.ed.gov/campussafetyi/#/datafile/list>

U.S. Department of Education. (2016b, October 12). *Students accused of sexual misconduct had Title IX rights violated by Wesley College, says U.S. Department of Education*. Washington, DC: U.S. Government Printing Office. Retrieved [http://www.ed.gov/news/press-releases/students-accused-sexual-misconduct-had-title-ix-rights-violated-wesley-college-says-us-departmenteducation?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](http://www.ed.gov/news/press-releases/students-accused-sexual-misconduct-had-title-ix-rights-violated-wesley-college-says-us-departmenteducation?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)

U.S. Department of Education (2016c, October 28). 2013-14 Civil Rights Data Collection (CRDC). A first look: Key data highlights on equity and opportunity gaps in our nation's public schools. Washington, DC: U.S. Government Printing Office. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>

U.S. Department of Education. (2017, September 22). *Dear colleague letter*. Washington, DC: U.S. Government Printing Office. Retrieved from [https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf?utm\\_content=7ec0049c8d32a3d728e1f88db93654d5&utm\\_campaign=Office%20for%20Civil%20Rights%20Issues%20Dear%20Colleague%20Letter%20on%20Title%20IX&utm\\_source=Robly.com&utm\\_medium=email](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf?utm_content=7ec0049c8d32a3d728e1f88db93654d5&utm_campaign=Office%20for%20Civil%20Rights%20Issues%20Dear%20Colleague%20Letter%20on%20Title%20IX&utm_source=Robly.com&utm_medium=email)

U. S. Department of Education (2018, June 11). *Office for Civil Rights launches investigation into University of Southern California's handling of sexual harassment claims:*

*Calls for full cooperation and transparency by university officials.* Retrieved from <https://content.govdelivery.com/accounts/USED/bulletins/1f68480>

U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. (2015). *National crime victimization survey, 2010-2014.* Washington, DC: U.S. Government Printing Office.

U.S. Department of Justice, Office on Violence Against Women. (2018). OVW Fiscal Year 2018 grants to reduce sexual assault, domestic violence, dating violence and stalking on campus program solicitation. Retrieved from <https://www.justice.gov/ovw/page/file/1022671/download>

U.S. Office of Management and Budget. (2007). *Final bulletin for agency good guidance practices.* Washington, DC: U.S. Government Printing Office.

U.S. Office for Victims of Crime. (2011, March). *What is a SART?* Office of Justice Programs. Retrieved from <https://ovc.ncjrs.gov/sartkit/about/about-sart.html>

Venema, R. M. (2016). Police officer schema of sexual assault reports: Real rape, ambiguous cases, and false reports. *Journal of Interpersonal Violence, 31*(5), 872-899.

Valenti-Hein, D. & Schwartz, L. (1995). *The sexual abuse interview for those with developmental disabilities.* California: James Stanfield Company.

*Virginia Code § 15.2-1627.5* (2014).

*Virginia Code § 23-9.2:15* (2015).

*Virginia Code § 23.1-806* (2015).

*Virginia Code § 23.1-807* (2015).

- Virginia Commonwealth University. (2015a). *Commonwealth education poll 2015-16*. Retrieved from <http://www.cepi.vcu.edu/media/university-relations/cepi/pdfs/cCommonwealthEducationPoll2015-16-FinalPrintedVersion.pdf>
- Virginia Commonwealth University. (2015b). *Sexual misconduct/violence and sex/gender discrimination*. Retrieved from <http://www.policy.vcu.edu/sites/default/files/Sexual%20Misconduct%20Violence%20and%20Sex%20Gender%20Discrimination.pdf>
- Virginia Department of Criminal Justice Services (2014). Child abuse multidisciplinary teams and sexual assault response teams fact sheet. Retrieved from <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/juvenile/fact-sheet-child-abuse-mdts-and-sexual-assault-response-teams.pdf>
- Wall, A. M., & Schuller, R. A. (2000). Sexual assault and defendant/victim intoxication: Jurors' perceptions of guilt. *Journal of Applied Social Psychology, 30*, 253-274.
- Westera, N., Kebbell, M., & Milne, B. (2016). Want a better criminal justice response to rape? improve police interviews with complainants and suspects. *Violence against women, 22*(14), 1748-1769.
- West's Encyclopedia of American Law* (2<sup>nd</sup> ed.). (2008). The Gale Group, Inc. Retrieved from <http://legal-dictionary.thefreedictionary.com/beyond+a+reasonable+doubt>
- Wettergren, &., & Bergman Blix, S. (2016). Empathy and objectivity in the legal procedure: The case of Swedish prosecutors. *Journal of Scandinavian Studies in Criminology and Crime Prevention, 17*(1), 1-17.
- Whitford, E. (2018, June 13). Students want due process -- with limited rights in sexual misconduct cases. *Inside Higher Education*. Retrieved from <https://www.insidehighered.com/news/2018/06/13/survey-finds-student-support-due->



process-campus?utm\_source=Inside+Higher+Ed&utm\_campaign=450d1e6802-DNU\_COPY\_01&utm\_medium=email&utm\_term=0\_1fcbc04421-450d1e6802-198412237&mc\_cid=450d1e6802&mc\_eid=fcd5e873ee

Wilson, L., & Miller, K. (2015). Meta-analysis of the prevalence of unacknowledged rape.

*Trauma, Violence and Abuse, 17*(2), 149-59. doi: 10.1177/1524838015576391

Williams K. (1981). Few convictions in rape cases: Empirical evidence concerning some alternative explanations. *Journal of Criminal Justice, 9*, 29-39.

World Health Organization. (2013). Guidelines for medico-legal care for victims of sexual violence. Retrieved from <https://reliefweb.int/report/world/guidelines-medico-legal-care-victims-sexual-violence>

Wyatt, G. E. (1992). The sociocultural context of African American and white American women's rape. *Journal of Social Issues, 48*(1), 77-91.

Yung, C., & Lamb, M. (2015). Concealing campus sexual assault: An empirical examination. *Psychology, Public Policy, and Law, 21*(1), 1-9.

## Appendix A: Interview Questions

The goal of this research to learn more about how prosecutors with jurisdiction over higher education institutions understand and experience new Title IX guidance and heightened attention and scrutiny of campus sexual assault. As a prosecutor working in an area with a college or university, I value your insights into how these developments have influenced your work processes and relationships with campus communities. An ultimate objective of this study have a better understanding of your experiences as a prosecutor during a time of changes in public policy relating to campus sexual assault.

Do you have any questions for me before we get started?

1. age

How do you identify in terms of the following?

2. race/ethnicity

3. gender

4. sexual identity

5. What is your title and where do you work? How long have you worked here? How long have you been working with campuses to prosecute sexual assault cases?

6. In your experience, what have been the main challenges/obstacles you've faced in your role in prosecuting campus sexual assault cases?

7. I am interested in learning more about your perspective on how college campuses have addressed sexual assault in the past and what they are doing now. How have their processes changed from your standpoint?
8. Research has consistently shown rape to be underreported. Based on your experience, why are victims reluctant to report and participate in the criminal justice process?
9. Have you seen any changes in reporting rates from campuses in say, the past three years? Have reports increased or decreased?
10. Do you see any patterns to the reports you receive? For example, are you seeing any trends across particular groups?
11. Are there particular challenges in prosecuting cases where the victim or offender are from marginalized communities, e.g. LGBTQQ or underrepresented minority groups?
12. Are there any processes that differ for handling cases where college students, rather than community members, who are victims?
13. Please discuss areas where you believe you have the most discretion in sexual assault cases. What kinds of decisions do you make, and what factors do you take into account?
14. Think of a time when you successfully prosecuted a college campus sexual assault case.

What were the features of that case that made it “prosecutable?” If there was no such case, what features could have led to a conviction?

15. In preparing juries for sexual assault cases, what are some important considerations? Have you noticed any trends or changes in their perceptions of offenders, victims or other case elements over time?

I'd like to find out about how you interact with other groups and individuals in handling campus sexual assault cases.

16. First, can you tell me about your relationship with the media and public officials as it relates to prosecuting sexual assault cases?
17. I'd like to learn more about your working relationship with law enforcement. What are some of the ways you collaborate in sexual assault cases? How might your relationship be strengthened or enhanced?
18. Can you tell me about how you interact with campus officials/administrators? How if at all has this changed over time, especially more recently, and why?
19. Please tell me about your jurisdiction's Sexual Assault Response Team and the relationships you've developed with Team members. How has the SART affected your processes?

20. In your view, how do laws requiring mandatory reporting and transcript notations influence your work?
21. If you could change one thing about campuses' approaches, what would it be?
22. What directions and/or changes do you anticipate for commonwealth's attorneys with respect to campus sexual assault? What changes would you like to see?
23. Is there anything else about your work in this area that you'd like to mention? Anything I haven't asked you about?

Thank you so much again for taking the time to talk with me. I really appreciate it!

## Appendix B: List of Codes

Theme	Number of Sources	Number of References Across Sources
Factors that make cases difficult to prosecute	13	186
Working Against Us	13	87
Education	13	84
Schools more engaged	12	73
Factors that make prosecution more likely	13	70
Trauma informed and victim centered	14	69
Marginalized communities	14	49
Mandatory reporting law impact	13	48
Jury considerations	11	33
SART or MDT collaboration	14	30
Tension between processes and definitions	10	29
Patterns to cases	11	25
Complexity not your run of the mill burglary	11	24
SART limitations	10	19
Recommended changes to policy or VA law	9	18
Really tough discussions	8	14
Transcript notation	9	14
Developmental Changes With Experience	5	13
More awareness	6	13
No change in prosecution rates	7	13
Uncertain if laws have changed anything	8	12
Bias and stereotypes- judges	4	10
Media inquiry-scrutiny	5	10
Schools vary in approach	5	10
Better interactions between systems	4	9
Colleges protecting reputation	7	9
Discretion and its limits	4	9
Justice and Fairness	7	9
High profile cases in media	6	8
Community or small colleges proactive	4	7
Need to understand each others' roles and requirements	5	7
Advocate inclusion	3	6
Mediation concerns under new guidance	3	6
Affirmative consent	3	5
Bias and stereotyping- law enforcement	4	5
Legislative action	3	5
Predation research cited	1	5

Support from Commonwealth Attorney	3	4
Lack of a coordinated Title IX process	2	3
Campuses investigating more	2	2
Litigation	2	2
Students reporting more to outside CJS	2	2
You have to have faith and hope and I think that's why we do this job.	2	2