The Campus-Rape Lie

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Bad statistics, shoddy journalism, leftist power grabs, and a crisis that isn’t
There is a lie that is sweeping American higher education — a lie so compelling that it is motivating the systematic violation of constitutional rights, transforming the most intimate of personal relationships, and spawning a parallel “justice” system of amateur kangaroo courts. It’s a lie that the president, the vice president, the Department of Education, key members of the House and Senate, and virtually every significant Left-liberal publication have told. This lie is teaching a generation of young women that they’re victims — dependent on the state (and their university) for protection — and a generation of young men that they’re all potential predators. It’s a lie that’s been debunked time and again — yet keeps being repeated until it once again swallows the truth.

And what is that lie? That campus life is so dangerous for women that one in five of them will be victims of sexual assault before they leave college. In other words, there is a fully 20 percent chance that, between the moment a young woman starts freshman orientation and the moment she walks in the graduation line, she’ll become a victim of one of the worst crimes that can be visited upon the human body. This terrible number is buttressed by other numbers — that only 1 percent of assailants are ever arrested, charged, and convicted; that only 4 percent of victims ever report their attack to police or campus security; and that only between 2 and 8 percent of rape reports are false. In other words, for hundreds of thousands of women, the university experience is a nightmare combination of physical assault, indifferent or hostile administrators, and justice denied.

The very thought is horrifying, and the horror has been compounded by heart-wrenching individual stories. Women have come forward to tell of terrible attacks and brutal physical violence. Those who follow contemporary American policymaking know that statistics — by themselves — are never enough. Lawmakers and the public have to see the human cost of sex crimes. It’s the individual stories that bring the documentaries, the magazine essays, and the rallies to life. It’s the individual stories that communicate better than anything else the fundamental narrative of the campus-rape crisis: Women’s bodies are under attack, with rates of rape approaching those seen in conflict zones, where rape is used as a weapon of terror.

But even without close analysis, something seems off. Common sense rebels. Why, if there is such a wave of rape, do women flock to colleges in ever-increasing numbers, with far more women at school than men? Why, if there is such a wave of rape, are parents — including a generation of parents known for “helicoptering” over their kids’ lives, monitoring their
classes and their relationships with hour-by-hour text messages — unaware of their daughters’ ordeals? And where did this generation of predatory young men come from? The college-educated are not known to constitute the bulk of America’s criminal underclass, and even if there were “super-predators” on campus, they would have to be super indeed to victimize hundreds of thousands of women — all while enjoying a 99 percent chance of evading law enforcement.

Strangely enough, at the same time that they proclaimed this national crisis, campus activists worked mightily to restrict the means for protecting women. When conservatives suggested allowing women to arm themselves to defend against physical attack, the Left scoffed. When, in October 2013, Slate writer Emily Yoffe suggested that women could protect themselves by not drinking to excess, the radical Left pounced, accusing her of fostering “rape culture.” To some feminists, the notion that a woman could or should do anything to protect herself was an act of capitulation to male predators. A similar fate befell a group of young men who invented a nail polish that can reveal the presence of a common “date rape” drug if a woman discreetly dips her finger in a drink. “Rape culture!” the Left cried, once again claiming that adopting self-protective measures somehow implied that rape was “the woman’s fault.”

So, if women weren’t supposed to protect themselves, what could be done? The Left turned to its standard playbook: reject self-reliance and launch a government crackdown. In April 2011, the Department of Education’s Office for Civil Rights (OCR) skipped through statutory processes — which at the very least require binding federal rules to go through a stage that allows for public notice and comment — to unilaterally issue a “Dear Colleague” letter that immediately and dramatically threatened core constitutional rights. Allegedly empowered by a blanket prohibition in Title IX of the Education Amendments of 1972 against gender discrimination in educational programs or activities, the letter mandated that colleges apply a “preponderance of the evidence” standard in campus sexual-assault hearings.

This meant that students could be convicted in campus tribunals — often conducted without the benefit of rigorous rules of evidence and in front of barely trained, highly ideological adjudicators — on a mere finding of a 50.01 percent chance of guilt. The threat to due process is obvious. The Department of Education’s letter allows for draconian and career-ruining punishments on the lowest possible standard of proof, without the rules of evidence and of discovery that render even civil litigation (which shares the “preponderance of the evidence” standard) a rigorous, transparent process in which each side can test and probe the other side’s case.
Further, the “Dear Colleague” letter failed to account for the First Amendment. Much of what colleges and universities label “sexual harassment” creating a “hostile environment” is actually constitutionally protected speech. According to the Supreme Court, true “hostile environment” sexual harassment on campus exists only when the unwelcome speech or conduct is “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.” In other words, mere “offensiveness” can’t constitute harassment. Nor is a person harassed merely because sexualized words or conduct are “unwelcome.” Yet universities have consistently adopted sweeping rules that allow angry students to file charges on the basis of nothing more than hurt feelings or ideological anger. A classic recent example occurred at Northwestern University, where professor Laura Kipnis found herself fighting off a Title IX complaint because of an essay, published in the Chronicle of Higher Education, in which she decried campus sensitivities over sexual relationships. When Northwestern’s president published a defense of academic freedom in the Wall Street Journal, students filed yet another Title IX complaint. When a professor discussed the Kipnis complaint at a faculty meeting, students filed yet again.

In its crackdown, the Obama administration found a willing ally in campus administrators and even some state legislatures. California passed an “affirmative consent” law that required college students to obtain ongoing, unambiguous consent at each stage of a sexual encounter. Multiple universities outside California followed suit, and Governor Andrew Cuomo proposed an affirmative-consent law for New York. Yet affirmative-consent laws utterly fail to account for the realities of human interactions. In journalist Cathy Young’s words, such a bill “essentially redefines some 95 percent of human sexual encounters as rape.” Since the existence of prior sexual relations “creates no presumption of consent,” even most marital sex would become rape.

Yet just as the crackdown reached its apex, the crisis passed. Or, more precisely, the case for the nonexistent crisis collapsed. Research and reality caught up with common sense.

First, the research. In December 2014, the Department of Justice’s Bureau of Justice Statistics released a report showing that the true incidence of campus rape wasn’t one in five but rather 6.1 per 1,000. Moreover, women are actually safer on campus than off. The “rate of sexual assault was 1.2 times higher for nonstudents.” Critically, the rate of sexual assault has been
trending downward since 1997. So when the OCR issued its “Dear Colleague” letter in 2011, it was doing so after a 14-year decline in campus rapes.

The 2014 Department of Justice report was far more rigorous than the study that indicated that one in five college women were raped. The one-in-five study was based on nothing more than an online survey of women at two colleges who were given a $10 Amazon gift card for completing the questionnaire. Yet even with that inducement, the researchers who ran the study noted that response rates were low and warned against drawing sweeping conclusions on the basis of their research. Their words were clear: “Although we used the best methodology available to us at the time, there are caveats that make it inappropriate to use the 1-in-5 number in the way it’s being used today, as a baseline or the only statistic when discussing our country’s problem with rape and sexual assault on campus.” The 2014 DOJ report, by contrast, studied sexual assault over time, wasn’t limited to a mere two colleges, was tailored to discover the prevalence of actual crimes, and had a much higher response rate than other surveys.

What about research showing that only a tiny minority of women make false rape complaints and only 1 percent of assailants are ever convicted? Turns out these studies can’t withstand scrutiny either. For example, as Jason Richwine recently noted, one popular study counted as “false” only the 5.9 percent of allegations that were deemed “provably false,” and did not consider false any of the 44.9 percent of cases that “did not proceed” because of lack of evidence or other reasons. In other words, in the logic of the rape-crisis lobby, all rape claims are true unless they are “provably false” — yet our criminal-justice system doesn’t adjudicate claims as “false.” It merely determines whether the state has met its burden of proof. We simply can’t know the percentage of false rape claims, and without knowing the number of actual rapes, we can’t even begin to know the number of actual rapists, much less the percentage who are tried and convicted.

But it wasn’t just the research supporting claims of crisis that collapsed. Some of the most prominent rape “survivors,” put forward after national searches for appropriate victims, were caught telling considerably less than the whole truth. The most famous such incident is of course the collapse of Rolling Stone’s story about “Jackie,” a woman allegedly gang-raped at a fraternity party at the University of Virginia. Virtually nothing about her lurid tale proved to be true, and it’s now an open question whether “Jackie” suffered an assault of any kind while at UVA. Rolling Stone retracted the story, and the Columbia Journalism School, after a lengthy investigation, declared the story to be a “journalistic failure.”
But that’s not the only case of journalistic failure. A recent documentary, The Hunting Ground, has made the rounds of elite campuses and onto Capitol Hill, where it’s been called “terrifyingly true” and an “unblinking look at sexual assaults on campus.” Yet not only does the documentary rely on debunked statistics (the one-in-five number, for example), it also features student victims whose stories fall apart under scrutiny.

On June 1, Slate’s Emily Yoffe examined one featured case — that of Kamilah Willingham, a Harvard Law student who claimed that she was drugged and then assaulted (along with another woman) in her own apartment. She said that university officials were indifferent to her assault, and the film ominously notes that the alleged assailant had previously been charged with sex crimes. As Yoffe explains, while it is true that the young man had been charged, the film fails to tell viewers anything about the defendant’s side of the story, fails to refer to the “voluminous” investigatory record, and then — ultimately — fails to tell the viewer that the defendant was actually acquitted of all sex crimes and convicted only of one count of misdemeanor nonsexual touching. Rather than serving as a terrifying example of justice denied, Willingham’s case was, in Yoffe’s words, “precisely the kind of spontaneous, drunken encounter that administrators who deal with campus sexual-assault accusations say is typical.”

But Willingham’s story is not the only one that raises questions. In March, Stuart Taylor Jr. wrote on National Review’s website about the problems with another case featured in The Hunting Ground: Erica Kinsman’s tale of alleged rape at the hands of star Florida State University (now Tampa Bay Buccaneers) quarterback Jameis Winston. While the film tells Kinsman’s side of the story, it neglects to explain that she was found less than credible in two separate proceedings — a criminal investigation led by State Attorney William Meggs, and campus hearings conducted by former Florida supreme-court justice Major Harding. Meggs went so far as to say that Kinsman was not “a witness that we believed we could put on the stand and vouch for.”

But for sheer strangeness, it’s hard to top the “mattress girl,” recent Columbia University graduate Emma Sulkowicz. Upset that a campus court failed to punish her alleged rapist (and glossing over the fact that New York City police also declined to bring charges), she began carrying her mattress around campus as a work of performance art. She instantly became a symbol of the rape “crisis” and even attended the most recent State of the Union address at the invitation of New York Democratic senator Kirsten Gillibrand — the Senate’s leading campus-rape alarmist.

Yet her story also fell apart under scrutiny. Her alleged rapist, a young German student, filed suit against Columbia, alleging that the university
had violated his rights by essentially conspiring with Sulkowicz to harm an innocent man. As part of that lawsuit, he published voluminous communications with Sulkowicz that complicated and contradicted her narrative. With her story unraveling, she completed her college career with one last piece of “performance art” — a pornographic film that appeared to reenact the alleged assault, a film so graphic and strange that it left even many of her supporters shocked.

While the collapse of the stories of “Jackie,” Willingham, Kinsman, and Sulkowicz doesn’t prove the absence of crisis — four stories don’t prove much of anything in a nation of more than 300 million souls — it’s important to remember that these cases were handpicked after nationwide searches. Rolling Stone and the producers of The Hunting Ground labored mightily to find the most emblematic victims, the people who could tell just the right tale of horrific assault, indifferent universities, and justice denied. If one in five women are assaulted on campus and only 1 percent of assailants convicted, why are true stories so hard to find?

There is no question that campus rapes do occur. While a rate of six per 1,000 is nowhere close to one in five, each rape is a terrible crime, one deserving of not just expulsion from school but prosecution to the full extent of the law. Indeed, sex crimes are too serious to be left to campus tribunals, and it is absurd that the Department of Education is requiring universities to adjudicate what are, in essence, criminal complaints. Crimes should be adjudicated in court, with universities responding to legal findings, not conducting their own tribunals. If a student is found guilty in a criminal proceeding or liable in a civil proceeding — in which both sides are represented by counsel and defendants receive due process — then the university should take punitive action. And while cases proceed, no-contact orders are appropriate and prudent. But the essential narrative of the campus Left is demonstrably false: There is no epidemic of rape, and in fact its incidence is declining. Nor are universities and law enforcement systematically indifferent — indeed, rape is often vigorously prosecuted.

It is that vigorous prosecution that breeds the newest class of campus victims: innocent men. A man accused of sexual assault often enters into a bewildering world of secret charges, barely trained tribunals, and bizarre rules of evidence, often without a lawyer. His future hangs by a thread.

Former Yale student Patrick Witt — a potential Rhodes scholar and NFL draft pick — saw his future altered by an “informal” sexual-misconduct complaint. An “informal” complaint does not trigger a full investigation or
hearing but rather pushes the accused student into a dispute-resolution process. Finding himself compelled to participate in a “mediation,” Witt was unable to determine the charges against him, unable to engage in any fact-finding, and unable even to initiate a “formal” sexual-misconduct proceeding that would have led to an actual hearing and adjudication of the complaint. Instead, he was forced to live with an unresolved complaint — a complaint that was soon enough leaked not just to the Rhodes Trust but also to the New York Times. Confidentiality, intended as a shield against embarrassment, was used as a sword to wound a man who could not formally defend himself.

At Amherst, a male student was expelled for sexual assault even though he was “blacked out” at the time of the alleged attack, with the university adjudicators finding that “being intoxicated or impaired by drugs or alcohol is never an excuse.” The “assault” consisted of a woman performing oral sex while he was “blacked out.” When text messages were later discovered that (further) exonerated the expelled student, Amherst refused to reopen the case.

Increasing numbers of men are filing suit, challenging campus procedures and seeking damages for the considerable harm to careers and reputations. At the same time, however, the Department of Education presses on, investigating dozens of campuses for allegedly mishandling sexual-assault cases or failing to protect women from harassment. Yet some of these investigations, such as a Department of Education investigation of Yale, are based on the thinnest of legal reeds. Recall that the legal standard for sexual harassment requires conduct that is “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit” (emphasis added). But the complaint that led to the investigation of Yale was triggered by a select few offensive incidents that had occurred years apart (including a grand total of three incidents of obscene chants in five years).

While one is tempted to feel sympathy for college administrators who are stuck between the rock of Department of Education investigations and the hard place of an increasing number of lawsuits by aggrieved men, it’s worth noting that they have a way out that they’ve deliberately not taken — filing a legal challenge to the Department of Education’s lawless “Dear Colleague” letter. The letter, issued without the proper rulemaking process, is probably invalid. Colleges are no strangers to legal challenges of federal rules. A coalition of universities challenged the Solomon Amendment — which required universities to allow military recruiters on campus — all the way to the Supreme Court. But the Solomon Amendment case (though legally without merit) was ideologically easy, applauded by campus radicals from coast to coast. Any challenge to the “Dear Colleague” letter would be the
exact reverse: legally much stronger but ideologically volatile. The campus Left would explode, accusing any challenging university of endorsing “rape culture.”

So colleges just muddle through, violating students’ First Amendment rights, ignoring students’ rights to due process, and casting about for public sympathy when they still face intense criticism for “not doing enough” to stop sexual assault. Indeed, universities face the possibility of additional federal legislation. Senator Gillibrand and Senator Claire McCaskill (D., Mo.) are sponsoring the bipartisan Campus Accountability and Safety Act, a bill that would expand campus bureaucracy, further undermine due process by providing significant financial incentives for universities to expand their crackdown on accused students, and provide unjustified immunities for students who report alleged sexual crimes — for example, by prohibiting universities from punishing alleged victims for other campus rules violations, such as underage drinking, when they file a complaint against a fellow student.

To criticize the hysteria surrounding campus sexual assault is not to deny the existence of rape and sexual misconduct on campus. Recently, the city of Nashville was shocked by the story of four Vanderbilt football players carrying a drunk and unconscious young woman to a dorm room, laughing at her, and then assaulting her — on camera. It took a jury just three hours to convict the first two defendants to face trial. (The remaining defendants await a trial date.) Rape has always been present in human society. It is simply less common on campus and, thankfully, decreasing in frequency.

There is sexual misconduct in our colleges and universities, but it has little to do with an epidemic of sexual assault and a lot to do with the toxic combination of excess alcohol and a libertine ideology. The sexual revolution has triumphed nowhere more completely than in America’s colleges and universities, yet college is no sexual utopia. Instead, a combination of binge drinking, the ambiguity and confusion that’s often inherent in “casual” sexual encounters, and the differing natures of men and women is creating an atmosphere of hurt, anxiety, and depression. The American Psychological Association has called campus mental-health statistics “grim” and has noted that the number of students seeking help for mental-health issues “has reached increasingly higher levels.” In a 2010 survey, 45.6 percent of respondents reported “feeling things were hopeless,” and 30.7 percent reported “feeling so depressed that it was difficult to function,” during the past twelve months.

While no one should claim that the state of sexual relations on campus is solely responsible for these alarming statistics, matters of the heart cannot
be underestimated as a cause. Binge drinking and an alarmingly widespread hookup culture are not proving conducive to human flourishing. Yet the proper response to this wave of sexual regret and confusion is not a government crackdown on intimate relationships, nor is it found in the suppression of free speech or the denial of due process.

The campus-rape crisis is over. In fact, it never even existed. But the last people to acknowledge this reality will be the people who most benefited from the hysteria — radical leftists, who now wield enormous power over speech, justice, and even intimate relationships. They will not yield this power easily, nor will they go quietly. While the crisis never existed, the “crisis” is yet to pass, and it will not pass before more lives are ruined, more rights are trampled, and more lies are told.

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