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From Court Martial to College Campus: Incorporating the Military's Innovative Approaches to Sexual Violence into the University Setting

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COMMENTS

FROM COURT MARTIAL TO COLLEGE CAMPUS: INCORPORATING THE MILITARY'S INNOVATIVE APPROACHES TO SEXUAL VIOLENCE INTO THE UNIVERSITY SETTING

TABLE OF CONTENTS

INTRODUCTION	466
I. SEXUAL VIOLENCE IN THE UNITED STATES MILITARY	468
A. <i>Prevalence of Sexual Violence in the Military</i>	468
B. <i>Current Approach to Sexual Violence in the Military</i>	470
1. <i>Special Victim's Counsel Program</i>	471
2. <i>Two-Tiered Reporting System</i>	472
3. <i>Expedited Transfer Program</i>	474
II. SEXUAL VIOLENCE ON COLLEGE CAMPUSES	475
A. <i>Prevalence of Sexual Violence on College Campuses</i>	475
B. <i>Governmental Responses to Campus Sexual Violence</i>	476
1. <i>Title IX</i>	476
2. <i>Clery Act</i>	478
3. <i>Campus SaVE Act</i>	479
C. <i>The School Disciplinary Process</i>	480
III. INCORPORATING MILITARY PROGRAMS INTO THE COLLEGE AND UNIVERSITY SETTING.....	482
A. <i>Special Victim's Counsel Program: Providing Survivors of Campus Sexual Violence with Legal Representation</i>	482
B. <i>Two-Tiered Reporting System: Expanding Reporting Options for Survivors of Campus Sexual Violence</i>	485
C. <i>Expedited Transfer Program: Helping Survivors of Campus Sexual Violence Continue their Education</i>	486
IV. FEASIBILITY OF IMPLEMENTING PROGRAMS ON COLLEGE AND UNIVERSITY CAMPUSES	488
CONCLUSION	490

INTRODUCTION

August 2016 marked the first week of classes for freshman Jane Doe¹ at Moravian College in Bethlehem, Pennsylvania.² Less than a month later, on August 18, 2016, Doe was raped by a fellow student inside her own dorm room and “within earshot of a nearby [resident advisor].”³ After managing to escape her attacker, Doe ran to the resident advisor to report the incident.⁴ The resident advisor refused to help Doe, allegedly claiming “it would be ‘a lot of paperwork to fill out.’”⁵ The next morning, Doe disclosed the assault to a different resident advisor, who reported the assault to the school’s Title IX compliance officer.⁶ Following the report, the Title IX compliance officer initiated what would turn out to be a nine-month long school investigation of the assault.⁷

Unfortunately, Doe’s victimization did not end with the August 2016 assault. In the nine months preceding her attacker’s expulsion, Doe was required to both attend classes with this student and remain living in the same dormitories as him.⁸ When Doe approached university officials to address her uneasiness, Doe was informed that *she* would be required to change classes or move dorms – not her assailant.⁹ The distress of facing her assailant on a daily basis proved

1. See Adam Hermann, *Student Sues Pa.’s Moravian College, Alleging Mishandling of Reported Dorm Rape*, PHILLY VOICE (Sept. 4, 2018), <https://www.phillyvoice.com/student-suing-pas-moravian-college-over-mishandling-reported-rape-dorm/> (noting while the defendant in the suit is identified by name, the plaintiff used the alias Jane Doe to remain anonymous).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. See *id.* (finding that despite eventually initiating a university investigation, the Title IX compliance officer allegedly did not initially encourage Jane to file an official report of sexual assault).

8. Emma Satin, *Moravian Lawsuit Prompts University Sexual Assault Discussion*, THE BROWN & WHITE (Sept. 23, 2018, 12:12 PM), <https://thebrownandwhite.com/2018/09/19/moravian-sexual-assault-lawsuit> (“[Doe’s] alleged rapist . . . was expelled and sent back to his home in Saudi Arabia nine months after the incident took place.”).

9. Hermann, *supra* note 1.

2019] FROM COURT MARTIAL TO COLLEGE CAMPUS 467

to be too much for Doe, and she eventually ended up failing two of her classes and dropping out of school.¹⁰

On August 28, 2018, two years after the initial incident, Jane Doe filed suit against Moravian College, alleging the school mishandled her sexual assault claim.¹¹ Doe's suit comes in the midst of a growing call to address campus sexual violence.¹²

Jane Doe's story is not unique.¹³ Across college campuses in the United States, survivors¹⁴ of sexual violence¹⁵ are being re-victimized by the very institutions meant to protect them.¹⁶ Part of this re-victimization occurs when survivors are left to navigate the campus disciplinary process, following a sexual assault, with little or no help from the university. The investigation stage of this disciplinary process often intrudes into the survivor's personal life, dissuading survivors from even filing a report. Moreover, like Jane Doe's case, survivors of sexual violence on college and university campuses face a unique problem: they often attend classes with, or even live in the same building as, their aggressors. While the legislature has taken steps to address these problems, additional reform is needed to address the emotional damage student survivors suffer as a result of the campus disciplinary process.

This Comment suggests the key to reforming reporting systems for sexual violence on college and university campuses may be found in an unexpected place – the United States Military. Specifically, colleges and universities should implement a system modeled after the United

10. *Id.*

11. *Id.*

12. Satin, *supra* note 8.

13. MORAVIAN COLL., FEDERAL CAMPUS CRIME STATISTICS (2016), <https://cdn.mc.cake.syntya.com/public/pdf/Federal%20Crime%20Stats%202014-2016.pdf> (finding 18 reported rapes at Moravian college between the years 2014 and 2016).

14. Although the author recognizes the difference between “survivor” and “victim,” these terms will be used interchangeably for purposes of this article.

15. The broad term “sexual violence” will be used to encompass rape, sexual assault, sexual harassment, and other forms of sexual crime.

16. See Kelsey M. McGregor, “Raped a Second Time”: *The Mental Health Impact of Campus Sexual Assault Investigation and Adjudication*, 18 QUINNIPIAC HEALTH L.J. 401, 415 (2016) (“Add [the trauma of an assault] to . . . an abusive, prolonged, and invasive investigation and adjudication process, and it is no wonder that students feel ‘raped a second time’ by their school’s procedures.”)

States Military's Special Victims Counsel Program, where student survivors can access pro bono legal representation from the moment they report an assault. Additionally, colleges and universities should adopt a two-tiered reporting system for survivors of sexual violence. This dual reporting system ensures survivors have access to essential treatment without automatically initiating an intrusive investigation. Finally, colleges and universities should consider the benefits of implementing a program based loosely off the military's expedited transfer program to aid survivors and to avoid further victimization during the campus investigation and adjudication processes.

Part I of this Comment will explore the topic of sexual violence within the United States military, and provide a brief history of the Special Victim's Counsel program and other recent reforms. Part II will transition to the topic of sexual violence on college and university campuses, and highlight the need for further reform in response to cases of sexual violence among students. Part III will suggest that colleges and universities should implement these military-based programs into their procedures for responding to claims of sexual violence between students. Finally, Part IV of this Comment will tie these two institutions together by explaining the concept of the "quasi-closed" system, and address the feasibility of implanting such programs into the campus setting.

I. SEXUAL VIOLENCE IN THE UNITED STATES MILITARY

Sexual assault in the military is by no means a contemporary issue. However, recent media attention has increased public scrutiny of sexual violence in the military.¹⁷ This section will focus primarily on sexual violence between service members, as it relates most closely to student-on-student sexual violence, addressed in the next section.

A. Prevalence of Sexual Violence in the Military

Statistics revealing the prevalence of sexual violence within the military can be overwhelming. Female service members "are now more likely to be raped by fellow soldiers than they are to be killed in

17. See, e.g., *THE INVISIBLE WAR* (Roco Films Educational 2012) (examining the epidemic of sexual assault in the military).

2019] FROM COURT MARTIAL TO COLLEGE CAMPUS 469

combat.”¹⁸ In 2017, a total of 696 formal sexual assault complaints were filed within the military.¹⁹ Of these filed reports, “90% of complainants were enlisted members,” and 81% of these incidents occurred while the service members were on duty.²⁰ Age appears to play a role in who files a report, as the majority of complainants are younger, female service members.²¹ Specifically, the Department of Defense’s 2017 annual report found, female service members in E-1 to E-4²² ranks “comprised the largest single grouping of complainants.”²³

On the other hand, while statistics indicate the majority of complaints are filed by female service members,²⁴ gender may not be a high-risk factor for sexual assault. These misleading statistics likely occur because sexual violence in the military remains vastly underreported, especially by male service members.²⁵ In fact, surveys suggest male and female service members actually experience similar rates of sexual violence each year.²⁶ However, these numbers are not

18. Jesse Ellison, *Judge Dismisses ‘Epidemic of Rape’ in Military Case*, THE DAILY BEAST (Dec. 13, 2011, 7:30 PM), <http://www.thedailybeast.com/articles/2011/12/13/judge-dismisses-epidemic-of-rape-in-military-case.html>.

19. U.S. DEP’T OF DEF, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY, FISCAL YEAR 2017, at 8 (2017), http://sapr.mil/public/docs/reports/FY17_Annual/DoD_FY17_Annual_Report_on_Sexual_Assault_in_the_Military.pdf [hereinafter ANNUAL REPORT].

20. *Id.*

21. *See id.* (indicating female service members made up the largest group of complainants).

22. The phrase “E-1 to E-4” is used to encompass the first four ranks available to service members within the enlisted career path. Because the titles of enlisted ranks differ among branches, this designation provides for uniformity when discussing specific ranks. “Service members in pay grades E-1 through E-3 are usually either in some kind of training status or on their initial assignment.” U.S. Dep’t of Def., *Enlisted Rank Insignias*, <https://dod.defense.gov/About/Insignias/Enlisted/> (last visited May 1, 2019).

23. ANNUAL REPORT, *supra* note 19, at 8.

24. *Id.*

25. *Id.* at 13 (concluding because sexual assault is underreported, “the crime occurs much more than is ever reported to authorities”).

26. *Id.* at 14. “Surveys of the military population regularly find that comparable point estimates of male and female Service members experience sexual assault each year . . . As a result, the Department has been working to encourage greater reporting and support service utilization by men.” *Id.*

reflected in the statistics because female service members report assaults “more than twice as often” as male service members.²⁷

B. Current Approach to Sexual Violence in the Military

In 2003, the Air Force Academy in Colorado Springs received nationwide media attention when a sexual assault scandal broke out across the campus involving rampant allegations of sexual violence among cadets living at the academy.²⁸ One survey found that 12% of the 2003 female graduates “were the victims of rape or attempted rape in their four years at the academy.”²⁹ Another survey of 579 female cadets revealed almost 70% of female cadets “said they had been the victims of sexual harassment, of which 22[%] said they experienced ‘pressure for sexual favors.’”³⁰

In 2005, the Department of Defense (“DoD”) established the Sexual Assault Prevention and Response Office (“SAPRO”) in an attempt to address scandals such as this one, as well as the overall prevalence of sexual violence between service members.³¹ The SAPRO now “serves as the Department’s single point of authority for sexual assault policy” and ensures compliance with DoD sexual violence response policies.³² Each military branch has adopted their own Sexual Assault Prevention and Response (“SAPR”) program, and most bases have a SAPR office or a Sexual Assault Resource Center (“SARC”).³³

In the decade since the SAPRO was created, the military has made great strides in implementing programs to address sexual violence among service members. Specific improvements are highlighted by the

27. *Id.*

28. See Diana Jean Schemo, *Rate of Rape at Academy is Put at 12% in Survey*, N.Y. TIMES (Aug. 29, 2003), <https://www.nytimes.com/2003/08/29/us/rate-of-rape-at-academy-is-put-at-12-in-survey.html> (detailing the results of a 2003 survey confirming the prevalence of sexual assault at the academy).

29. *Id.*

30. *Id.*

31. U.S. DEP’T OF DEF. SEXUAL ASSAULT PREVENTION & RESPONSE OFFICE, *Mission & History*, <http://www.sapr.mil/index.php/about/mission-and-history> (last visited May 1, 2019).

32. *Id.*

33. *Id.*

2019] FROM COURT MARTIAL TO COLLEGE CAMPUS 471

military's implementation of various programs, including the Special Victim's Counsel ("SVC") program, a two-tiered reporting system for claims of sexual assault, and expedited transfer procedures.

1. Special Victim's Counsel Program

The SVC program was first implemented as a United States Air Force pilot program in 2013.³⁴ This program provides survivors of sexual violence in the military with attorneys to assist them throughout all stages of the investigation process, including any judicial proceedings resulting therefrom.³⁵ The SVC program is described as "innovative," because it not only provides legal advice to survivors of sexual assault, but also enables Air Force attorneys "to have standing in court to represent the interests of their clients."³⁶

These attorneys, referred to as Special Victim's Counsel, are licensed JAG Corps attorneys,³⁷ and provide survivors with a wide array of legal assistance. The relationship between the Special Victim's Counsel and the survivor is unique because an attorney-client relationship exists between them, and the attorney's sole purpose is to represent the survivor's needs and rights.³⁸ In addition to providing general legal advice to survivors, Special Victim's Counsel responsibilities include: (1) accompanying survivors to interviews, (2) assisting survivors in obtaining military protection or restraining orders

34. See *New Air Force Program Aids Sexual Assault Survivors*, RAINN (Mar. 26, 2013), <https://www.rainn.org/news/new-air-force-program-aids-sexual-assault-survivors> [hereinafter *New Air Force Program*] ("In an effort to help victims and improve the criminal justice response to rape, the Air Force has launched a pilot project to provide legal counsel directly to victims of sexual assault").

35. *Id.*; see also 10 U.S.C. §§ 1044, 1565(b) (2015).

36. *New Air Force Program*, *supra* note 34.

37. *Id.* "JAG Corps" refers to the Judge Advocate General Corps. Each branch has their own JAG Corps, comprised of licensed attorneys who assist military leaders and service members in a variety of legal matters, including military justice, command advice, and personal legal matters. See *About Navy JAG*, U.S. NAVY JUDGE ADVOC. GEN.'S CORPS, <http://www.jag.navy.mil/about.htm> (last visited May 1, 2019).

38. See *New Air Force Program*, *supra* note 34 (describing this "innovative twist, [where] the lawyers play more than an advisory role"); see also 10 U.S.C. § 1044e(c) (2012). This relationship is unlike representation by a prosecutor who represent the interests of the government, which may at times conflict with the interests of the survivor.

against their assailants, (3) communicating with opposing counsel, and (4) filing motions on behalf of the survivor.³⁹

In the five years since its adoption, the SVC program has proven to be successful at streamlining Military sexual assault adjudication processes. In the first two years alone, the attorneys participating in the SVC program “. . . assist[ed] with expedited transfer on 73 occasions, fil[ed] or answer[ed] a motion on 107 occasions, argu[ed] 78 motions, and assist[ed] with 29 Freedom of Information Act requests. . . [and] spent 18,919 hours on representation of sexual assault victims.”⁴⁰ According to the DoD, 77% of survivors who worked with an SVC attorney reported they were satisfied with their experience.⁴¹ Due to the success of the SVC program in the Air Force, each military branch has now adopted its own SVC program.⁴²

2. Two-Tiered Reporting System

Another innovative approach the military has taken to address sexual violence is the implementation of a two-tiered reporting system. This dual system allows survivors of sexual assault in the military to choose between filing a restricted report or an unrestricted report.⁴³ Restricted reports exist for service members and adult military dependents who “wish to confidentially disclose the crime to

39. See *New Air Force Program*, *supra* note 34, for an exhaustive list of services provided by the Special Victim’s Counsel.

40. Margaret Garvin & Douglas E. Beloof, *Crime Victim Agency: Independent Lawyers for Sexual Assault Victims*, 13 OHIO ST. J. CRIM. L. 67, 74 (2015).

41. ANNUAL REPORT, *supra* note 19, at 8; see also Meredith Clark, *New Military Program to Protect Victims Sees Early Success*, MSNBC (Apr. 2, 2014), <http://www.msnbc.com/msnbc/military-sex-assault-svc-program> (describing the general success of implementing the SVC program, but also noting this is “only one small part of a movement to change military culture”).

42. *Special Victims’ Counsel/Victims’ Legal Counsel*, U.S. DEP’T OF DEF. SEXUAL ASSAULT PREVENTION & RESPONSE OFFICE, <https://sapr.mil/svc-vlc> (last visited May 1, 2019). While the Army, Air Force, National Guard, and Coast Guard use the term Special Victims’ Counsel (“SVC”) to refer to these attorneys, the Navy and Marine Corps have labeled them Victims’ Legal Counsel (“VLC”). *Id.* For continuity purposes, the author uses the term “Special Victim’s Counsel” to refer to these attorneys, regardless of the branch.

43. U.S. DEP’T OF DEF., DIR. 6495.01, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM, at 17 (2012), <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/649501p.pdf>.

specifically identified individuals.”⁴⁴ If a survivor chooses to utilize this type of restricted reporting, no investigation will be initiated and the survivor’s chain of command will not be notified of the assault.⁴⁵ However, the survivor must report through either a Sexual Assault Response Coordinator (“SARC”), a Sexual Assault Prevention and Response Office victim advocate, or the survivor’s healthcare provider.⁴⁶ This restricted reporting system ensures survivors receive appropriate medical care and have access to legal advice, via the Special Victim’s Counsel, while still maintaining confidentiality and avoiding a potentially intrusive investigation.⁴⁷ Conversely, if a survivor opts to file an unrestricted report, the survivor’s chain of command is notified of the assault and an investigation is initiated.⁴⁸ The command notification and investigation are in addition to the healthcare, victim advocacy, and legal services available with a restricted report.⁴⁹ While unrestricted reporting does not provide the same level of confidentiality as restricted reporting, “[d]etails regarding the incident will be limited to only those personnel who have a legitimate need to know.”⁵⁰

The SAPRO acknowledges the benefits of filing an unrestricted report.⁵¹ First, the office emphasizes pursuing an investigation against an assailant can lead a survivor to “feel a sense of closure or healing which can aid recovery.”⁵² Second, filing an unrestricted report allows

44. *Restricted Reporting*, U.S. DEP’T OF DEF. SEXUAL ASSAULT PREVENTION & RESPONSE OFFICE, <https://www.sapr.mil/restricted-reporting> (last visited May 1, 2019) (noting restricted reporting is not available to civilian employees of the Department of Defense, or Department of Defense contractors). Military dependents include spouses, children, and potentially other family members of military members. *See* 10 U.S.C. § 1072 (2017).

45. *Restricted Reporting*, *supra* note 44.

46. *Id.*

47. *Id.*

48. *Unrestricted Reporting*, U.S. DEP’T OF DEF. SEXUAL ASSAULT PREVENTION & RESPONSE OFFICE, <https://www.sapr.mil/unrestricted-reporting> (last visited May 1, 2019) (“This option is recommended for victims of sexual assault who desire an official investigation and command notification in addition to healthcare, victim advocacy and legal services”).

49. *Id.*

50. *Id.*

51. *See id.* (noting, among other benefits, unrestricted reporting allows victims to receive closure while the military can ensure the offender is held accountable).

52. *Id.*

the military to “hold the offender accountable,” while “ensur[ing] the safety of the victim and of others, who may be victimized by the same suspect.”⁵³ Finally, the victim filing an unrestricted report can request a Military Protective Order against his or her assailant.⁵⁴

Initially, if a survivor of sexual assault in the military files a restricted report, the survivor has the ability to change to an unrestricted report later in the investigation process.⁵⁵ Research indicates that, “of the 2,196 Restricted Reports received in fiscal year 2017, 537 (or 24 [%]) later converted to Unrestricted Reports, leaving 1,659 reports remaining Restricted at the end of the year.”⁵⁶ Since the implementation of the two-tiered reporting system, there has been an increase in reports of sexual violence in the military. One Department of Defense study estimated, “that [the department] received a report from 1 in 3 [s]ervice members who experienced a sexual assault in 2016.”⁵⁷ This is a dramatic increase from 2006, where only 1 in 14 service member survivors made a report,⁵⁸ evidencing an increased comfortability with reporting sexual assault.

3. Expedited Transfer Program

In 2013, the DoD implemented a program allowing for expedited transfers for active duty victims of sexual assault.⁵⁹ This program was created “to address situations where a victim feels safe, but uncomfortable.”⁶⁰ Expedited transfers can be either temporary or permanent, and allow service members to relocate to a new command

53. *Id.*

54. *Id.* A Military Protective Order restricts communication between the victim and the accused, similar to a civilian protective order.

55. U.S. DEP’T OF DEF., INSTR. 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, INCORPORATING CHANGE 3, at 36 (2017) <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649502p.pdf> [hereinafter SAPR PROGRAM PROCEDURES].

56. *Unrestricted Reporting*, *supra* note 48.

57. ANNUAL REPORT, *supra* note 19, at 3.

58. *Id.*

59. SAPR PROGRAM PROCEDURES, *supra* note 55, at 51 (discussing “[t]he intent behind the Expedited Transfer policy is to assist in the victim’s recovery by moving the victim to a new location, where no one knows of the sexual assault”).

60. *Id.*

2019] FROM COURT MARTIAL TO COLLEGE CAMPUS 475

or installation, or to a new location within their current command or installation.⁶¹ However, this relocation option is only available to survivors who choose to file an unrestricted report.⁶²

II. SEXUAL VIOLENCE ON COLLEGE CAMPUSES

A. Prevalence of Sexual Violence on College Campuses

While statistics on the pervasiveness of sexual violence across college campuses may vary, the sheer numbers reveal the pervasiveness of this issue. One study suggests as many as “20% - 25% of college women and 15% of college men are victims of forced sex during their time in college.”⁶³ Statistics for instances of non-rape sexual violence are equally alarming. “[N]early two thirds of college students experience sexual harassment” while attending school, and “27% of college women have experienced some form of unwanted sexual contact.”⁶⁴ The overwhelming prevalence of sexual violence across college and university campuses is far from a new epidemic. In recent years, however, proposed legislation,⁶⁵ the uprising of the #MeToo movement⁶⁶ and stories like Jane Doe,⁶⁷ have increasingly caused the topic to come under strict public scrutiny.⁶⁸

61. *Id.*

62. *Id.*

63. NAT’L SEXUAL VIOLENCE RESOURCE CTR., *Sexual Assault in the United States*, NSVRC, <https://www.nsvrc.org/statistics> (last visited May 1, 2019).

64. *Id.*

65. See generally Dana Bolger, *Betsy DeVos’s New Harassment Rules Protect Schools, Not Students*, N.Y. TIMES (Nov. 27, 2018), <https://www.nytimes.com/2018/11/27/opinion/betsy-devos-title-ix-schools-students.html> (discussing Secretary of Education Betsy DeVos’s November 2018 recommended revisions to Title IX regulations and how these proposed revisions may affect campus disciplinary procedures).

66. See Jocelyn Frye, *From Politics to Policy: Turning the Corner on Sexual Harassment*, CTR. FOR AM. PROGRESS (Jan. 31, 2018, 2:59 PM), <https://www.americanprogress.org/issues/women/news/2018/01/31/445669/politics-policy-turning-corner-sexual-harassment/> (observing the barriers women experience to employment, ways to empower victims of sexual assault, and other mechanisms to prevent sexual harassment).

67. See *supra* Part I.

68. Satin, *supra* note 8.

Likewise, in the wake of Brett Kavanaugh's confirmation hearing to the United States Supreme Court, a new movement titled #WhyIDidntReport emerged across multiple social media platforms.⁶⁹ This new social media movement encourages survivors of sexual violence to share why they did not report their sexual abuse to authorities.⁷⁰ The reasons survivors do not report sexual violence vary,⁷¹ but one thing is certain – sexual assault on college campuses goes vastly unreported. According to one study conducted by the National Sexual Violence Resource Center, rape is the most underreported crime, and “more than 90% of sexual assault victims on college campuses do not report the assault.”⁷²

B. Governmental Responses to Campus Sexual Violence

This widespread prevalence of sexual violence across college campuses has led to various governmental responses. The history of legislation addressing sexual violence on college and university campuses is crucial to understanding the campus disciplinary process. This section provides a brief overview of the various legislation addressing this issue.

1. Title IX

Title IX of the Education Amendments Act, enacted by Congress in 1972, provides a foundation for legislation addressing sexual violence on college campuses.⁷³ This statute prohibits discriminatory actions “on the basis of sex” in any “education program or activity receiving Federal financial assistance.”⁷⁴ Despite being passed almost

69. See AJ Willingham & Christina Maxouris, *These Tweets Show Why People Don't Report Sexual Assaults*, CNN (Sept. 21, 2018, 1:51 PM), <https://www.cnn.com/2018/09/21/health/why-i-didnt-report-tweets-trnd/index.html> (highlighting the various reasons survivors of sexual assault do not report).

70. *Id.*

71. *Id.* Some survivors of sexual assault don't report because they are afraid of repercussions, they are made to feel that the assault was their own fault, they are afraid no one will believe them, they are afraid others will find out, or they just want to forget the assault happened. *Id.*

72. NAT'L SEXUAL VIOLENCE RESOURCE CTR., *supra* note 63.

73. 20 U.S.C. § 1681(a) (2012) (referred to colloquially as “Title IX”).

74. *Id.*

2019] FROM COURT MARTIAL TO COLLEGE CAMPUS 477

fifty years ago, Title IX still plays a critical role in virtually all campus disciplinary proceedings involving claims of sexual violence.

Title IX was not created explicitly to combat sexual assault, but rather was a product of feminist calls for equal hiring opportunities.⁷⁵ The early interpretation of Title IX focused primarily on sexual discrimination rather than sexual harassment or sexual violence.⁷⁶ Courts did not apply Title IX to claims of sexual harassment until the Second Circuit Court of Appeals heard *Alexander v. Yale University*⁷⁷ in 1980. Although the plaintiff in *Alexander* could not sufficiently prove her case, the decision acknowledged that Title IX covers sexual harassment claims.⁷⁸

Over the next few decades, the interpretation and implementation of Title IX focused primarily on sexual discrimination and sexual harassment, particularly in cases between students and faculty.⁷⁹ Then in 2011, U.S. Department of Education's Office for Civil Rights ("OCR") issued a *Dear Colleague Letter*, which shifted the application of Title IX to include rape and other forms of sexual violence.⁸⁰ The OCR's letter defined sexual violence as, "physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol," and reaffirming sexual violence includes "rape, sexual assault, sexual battery, and sexual coercion."⁸¹ In addition to extending the protections of Title IX, the letter detailed the specific Title IX requirements colleges and universities must follow to adequately address claims of sexual

75. AM. ASS'N U. PROFESSORS, THE HISTORY, USES, AND ABUSES OF TITLE IX, at 10 (2016), <https://www.aaup.org/file/TitleIXreport.pdf>.

76. *Id.*

77. 631 F.2d 178 (1980).

78. *Id.*

79. *See, e.g., id.* (examining a claim of sexual harassment against Yale University by a former student).

80. Letter from Russlynn Ali, Assistant Sec'y for Civil Rights, Office for Civil Rights, U.S. Dep't of Educ. To Colleagues 1 (Apr. 4, 2011), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> [hereinafter OCR Letter].

81. *Id.* at 1–2.

violence.⁸² Colleges and university were also given guidance on how to address sexual violence between students.⁸³

2. Clery Act

In April 1986, nineteen-year-old Jeanne Clery was approaching the end of her freshman year at Lehigh University in Bethlehem,⁸⁴ Pennsylvania.⁸⁵ Within a week of returning from spring break, Jeanne was brutally raped and murdered by one of her classmates in her third-floor dorm room.⁸⁶ Following their daughter's death, Jeanne's parents began lobbying state lawmakers to enact legislation requiring colleges and universities to make statistics concerning campus sexual violence public.⁸⁷

The efforts of Jeanne's parents ultimately produced the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"),⁸⁸ enacted in 1990. The Clery Act requires federally-funded colleges and universities⁸⁹ to maintain and promptly disclose statistics concerning sexual assault and other crimes on or near their campuses.⁹⁰ Schools are required to distribute statistics, or

82. *Id.* at 4 ("Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects").

83. *Id.* "Schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school's education program or activity. If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures." *Id.*

84. Bethlehem, Pennsylvania, also happens to be the town where Moravian College is located. *See* Hermann, *supra* note 1.

85. Ken Gross & Andrea Fine, *After Their Daughter Is Murdered at College, Her Grieving Parents Mount a Crusade for Campus Safety*, PEOPLE (Feb. 19, 1990, 12:00 PM), <https://people.com/archive/after-their-daughter-is-murdered-at-college-her-grieving-parents-mount-a-crusade-for-campus-safety-vol-33-no-7/>.

86. *Id.*

87. *Id.*

88. 20 U.S.C. § 1092(f) (2012).

89. *See* Laura L. Dunn, *Addressing Sexual Violence in Higher Education: Ensuring Compliance with the Clery Act, Title IX and VAWA*, 15 GEO. J. GENDER & L. 563, 565–67 (2014) (discussing the federal requirements to address sexual violence on college campuses); *see also* *Campus SaVE Act*, RAINN, <https://www.rainn.org/articles/campus-save-act> (last visited May 1, 2019).

90. Dunn, *supra* note 89, at 567.

“timely reports,” as well as the policies the school has in place for addressing reports of these crimes to all current students and employees.⁹¹

3. *Campus SaVE Act*

The Campus Sexual Violence Elimination Act (“Campus SaVE Act”), passed in 2013, modified prior legislation specifically addressing sexual violence on college and university campuses.⁹² The Campus SaVE Act amended and expanded certain portions of the 1990 Clery Act,⁹³ while codifying several provisions laid out in the 2011 *Dear Colleague Letter*.⁹⁴ For instance, the Campus SaVE act adds domestic violence, dating violence, and stalking to the list of crimes that must be reported under the Clery Act.⁹⁵ Additionally, the Campus SaVE Act requires victim’s names to be withheld, in certain circumstances, from the “timely reports” required under the Clery Act.⁹⁶

In addition to new reporting requirements, the Campus SaVE Act also implements new student disciplinary requirements and increases the rights of survivors within campus disciplinary proceedings. Under the Campus SaVE Act, officials in charge of the disciplinary process must be trained to investigate claims and are required to conduct

91. *Id.*

92. *See* Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 304, 127 Stat. 54, 89–92 (2013) (codified at 20 U.S.C. § 1092(f)). The Violence Against Women Reauthorization Act adds additional requirements for colleges and universities through one of its provisions, the Campus SaVE Act, in Section 304 of the act. *Id.* “The Campus Sexual Violence Elimination (Campus SaVE) Act amends the Clery Act to encourage greater transparency and adds additional requirements for institutions . . . [and] is enforced by the U.S. Department of Education’s Office for Civil Rights [applicable] to all colleges and universities that receive any federal funding.” *Campus SaVE Act*, *supra* note 89.

93. § 1092(f).

94. *See generally* OCR Letter, *supra* note 80.

95. Memorandum from Hogan Lovells US LLP on New Requirements Imposed by the Violence Against Women Reauthorization Act (Apr. 1, 2014), <https://www.acenet.edu/news-room/Documents/VAWA-Summary.pdf> (describing colleges and universities are required to report additional crimes “beyond crime categories the Clery Act already mandates”).

96. *Id.* at 2 (noting “with respect to the ‘timely reports’ the Clery Act mandates for crimes considered a threat to other students and employees, that victims’ names be withheld”).

disciplinary proceedings in a manner that “protects the safety of victims.”⁹⁷ The Campus SaVE Act also attempts to keep victims more informed about the disciplinary proceedings by requiring the accuser and the accused be notified simultaneously, in writing, of the outcome of any disciplinary proceeding.⁹⁸ Finally, and perhaps most importantly, the Campus SaVE Act mandates “the accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice . . .”⁹⁹

C. The School Disciplinary Process

Title IX, the Clery Act, and the Campus SaVE Act provide the foundation for campus disciplinary proceedings. Although campuses may differ in how to approach disciplinary proceedings, the 2011 *Dear Colleague Letter* sets forth minimum requirements schools should follow to ensure students receive due process during the investigation and the disciplinary processes. These requirements include: (1) providing survivors access to support services; (2) confidentiality and notice requirements; and (3) equal opportunity for both the accused and the accuser to present their own witnesses and evidence at the disciplinary proceeding.¹⁰⁰

Most importantly, the *Dear Colleague Letter* suggests students *may* have the right to have a lawyer present during the proceedings.¹⁰¹ The OCR leaves the decision to allow students access to counsel to the

97. *Id.*

98. *Id.* (observing both the accuser and the accused must be notified in writing at the same time of the outcome of any proceedings, which heightens the requirements in the 2011 *Dear Colleague Letter* which “merely ‘recommends’ that the parties be provided the determination ‘concurrently’”).

99. *Id.* at 3.

100. OCR Letter, *supra* note 80, at 11; *see also* Lindsay J. Brice & Caroline S. Palmer, *Understanding Title IX Investigations: What They are and What They Aren't*, 74 BENCH & B. MINN. 24, 26 (2017) (“The Campus SaVE Act lays out the due process requirements for a campus investigation. It codifies much of the “Dear Colleague Letter” sent by the OCR to higher education institutions in 2011”).

101. OCR Letter, *supra* note 80, at 12 (noting although lawyers are not required to be present, if the school chooses to allow lawyers to participate in the proceedings, the school must provide equal access to an attorney to both parties).

individual schools, but if a school does permit students “to have their lawyers participate in the proceedings, it must do so equally for both parties.”¹⁰² While the OCR does not explicitly recommend the presence of lawyers during the proceedings, the office does “strongly discourage” allowing the accused and the survivor to cross-examine one another directly, noting that allowing this would be “traumatic or intimidating” for the survivor and could potentially “escalat[e] or perpetuat[e] a hostile environment.”¹⁰³

Aside from the possibility of cross-examination, campus disciplinary proceedings for sexual assault share little in common with criminal trials. Unlike criminal proceedings, which employ a “beyond a reasonable doubt” standard, the OCR only requires schools apply a “preponderance of the evidence” standard to comply with Title IX.¹⁰⁴ These proceedings conclude with a finding of responsibility or no responsibility.¹⁰⁵ Possible sanctions may range from a warning to expulsion.¹⁰⁶ One critical distinction between campus disciplinary proceedings and criminal trials is parties are not automatically entitled to appeal a final finding of responsibility.¹⁰⁷ While the OCR “recommends that schools provide an appeals process,” a right to

102. *Id.*

103. *Id.*

104. *Id.* at 11 (finding the preponderance of the evidence standard is satisfied if “it is more likely than not that sexual harassment or violence occurred”). On the other hand, “[t]he ‘clear and convincing’ standard (i.e., it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX.” *Id.*

105. Brice & Palmer, *supra* note 100, at 26; *see also* OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., Q&A ON CAMPUS SEXUAL MISCONDUCT 5 (2017) [hereinafter OCR Q&A], <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf> (discussing the adjudication process and procedures schools must follow to find a student responsible for sexual misconduct).

106. Brice & Palmer, *supra* note 100, at 26.

107. *See* OCR Q&A, *supra* note 105, at 7 (explaining a school may choose whether to allow an appeal proceeding “regarding responsibility and/or disciplinary sanctions, [and] the school may choose to allow appeal (i) solely by the responding party; or (ii) by both parties, in which case any appeal procedures must be equally available to both parties”).

appeal, unlike an appeal for criminal liability, is not guaranteed under Title IX.¹⁰⁸

III. INCORPORATING MILITARY PROGRAMS INTO THE COLLEGE AND UNIVERSITY SETTING

A. *Special Victim's Counsel Program: Providing Survivors of Campus Sexual Violence with Legal Representation*

The story of Jane Doe, described in the introduction, underscores the importance of providing survivors of sexual violence on college campuses with access to legal counsel. Survivors of college sexual violence face unique problems. First and foremost, survivors on college campuses often live on their own for the first time, perhaps isolated from their family and support networks. Further, these survivors are sometimes forced to continuously interact with their assailants in class and in campus dormitories. These obstacles are heightened because many survivors have little or no idea how college disciplinary proceedings work, nor do they have any knowledge of the legal resources available.¹⁰⁹

The 2011 *Dear Colleague Letter* permits, depending on the school policy, survivors to have legal counsel throughout the disciplinary process. In practice, however, this is often not the case. One 2014 study of 440 four-year colleges and universities found that only 13% of schools made “campus legal service counseling” available to survivors who reported instances of sexual assault.¹¹⁰ When survivors *are* referred to legal counsel, even pro bono legal counsel, few survivors seek out representation. One explanation could be because student survivors often lack transportation or monetary resources to access attorneys. However, it is likely survivors fail to seek out legal services

108. OCR Letter, *supra* note 80, at 12 (“If a school provides for appeal of the findings or remedy, it must do so for both parties”); *see also* OCR Q&A, *supra* note 105, at 7 n.30.

109. *See* Merle H. Weiner, *Legal Counsel for Survivors of Campus Sexual Violence*, 29 YALE J. L. & FEMINISM 123, 129–30 (2017) (observing the lack of education and awareness universities provide to students about available legal services).

110. *Id.* at 128.

2019] FROM COURT MARTIAL TO COLLEGE CAMPUS 483

because they simply do not understand or appreciate the value an attorney can bring to the campus disciplinary process.¹¹¹

Survivors of sexual violence on college campuses should be appointed legal counsel from the moment they report an assault. The implementation of a “Special Victim’s Counsel”¹¹² program could help survivors navigate the complexities of the campus disciplinary system.¹¹³ Lawyers in the Special Victim’s Counsel program could: (1) interact with the university and defense counsel on behalf of the survivor; (2) assist survivors in obtaining protective orders against their assailants; (3) represent the survivor throughout the disciplinary proceedings; and (4) otherwise provide emotional and legal support to the survivor.¹¹⁴ If survivors were appointed legal counsel during the campus disciplinary process, these attorneys could better equip survivors with critical information and resources for moving forward, in both civil and criminal forums.

The call to provide survivors of sexual assault on college campuses with adequate representation has gained support in recent years. The increased media attention surrounding campus sexual violence has led various scholars to advocate for victims’ counsel. In a 2017 article, Professor Merle Weiner stressed the importance of legal assistance, suggesting in some circumstances schools might be under a legal obligation to provide student survivors with attorneys.¹¹⁵ In the past

111. *See id.* at 130 (finding that “information about legal resources . . . may mean little to a student who does not know if she will qualify for legal services, if she is eligible for legal remedies, or why she might need legal services in the first place”).

112. This “Special Victim’s Counsel” program would be modeled after the one employed by the United States Military, and would provide student survivors with free legal representation from the moment they report an instance of sexual assault.

113. *See* Erin J. Heuring, *Til It Happens to You: Providing Victims of Sexual Assault with Their Own Legal Representation*, 53 IDAHO L. REV. 689 (2017), for a comprehensive discussion on incorporating a Special Victim’s Counsel-type program into the civilian criminal and civil justice systems; *see also* Garvin & Beloof, *supra* note 40.

114. This article focuses solely on providing student survivors with legal representation throughout the campus disciplinary proceedings. This article does not address the applicability of Special Victim’s Counsel to student survivors of sexual assault in any civil or criminal litigation that may also result from the sexual violence.

115. *See* Weiner, *supra* note 109, at 188 (discussing the instances when schools may be legally obligated to provide free legal counsel and noting the “OCR Guidance has never addressed directly the institutional obligation to provide free legal services

couple of years, other scholars have echoed the importance of survivors of campus sexual violence accessing counsel.¹¹⁶

Taking into account Professor Weiner's call to provide legal representation for survivors of sexual violence on college campuses, this article suggests the answer to implementing such a program lies within the United States Military's Special Victim's Counsel program. Adopting a program similar to the military, and implementing it into institutions of higher education, would benefit survivors and schools because survivors would be properly represented, streamlining the disciplinary process. The success of the Special Victim's Counsel in the military is indicative of the program's benefits to survivors. The attorneys assist survivors with a plethora of legal matters, from general legal advice to obtaining protective orders against their assailants. On a more emotional level, these attorneys serve another important function. As noted above, survivors of sexual violence on college campuses often may be separated from their families or other support networks. Providing these survivors with legal representation throughout the reporting, investigation, and disciplinary processes allows survivors to feel someone is tending to their needs and fighting to ensure they have a voice throughout the disciplinary processes.

Additionally, the benefits of providing legal representation to student survivors of sexual violence extends to colleges and universities. As previously mentioned, the OCR discourages survivors from cross-examining one another during a college disciplinary proceeding, noting the potentially disastrous consequences.¹¹⁷ However, attorneys, unlike most college students, know the appropriate types of questions to ask on cross-examination. Allowing attorneys to represent survivors and facilitate aspects of the college disciplinary proceedings, such as cross-examinations, could ensure a fair and efficient adjudication process. Further, survivors of sexual violence in the military have had a positive experience working with Special

to survivors, its open-ended language suggests that such a legal obligation sometimes exists").

116. See, e.g., Kelly Alison Behre, *Ensuring Choice and Voice for Campus Sexual Assault Victims: A Call for Victims' Attorneys*, 65 DRAKE L. REV. 293, 327 (2017) (noting that "[a]ccess to qualified attorneys may serve to mitigate the post-assault trauma experienced by student victims by providing them with confidential, individualized legal counseling, advocacy, and representation").

117. OCR Letter, *supra* note 80, at 12.

2019] FROM COURT MARTIAL TO COLLEGE CAMPUS 485

Victim's Counsel, regardless of whether the survivor obtained their desired outcome.¹¹⁸ Providing student survivors with this same type of legal representation gives survivors a well-deserved voice in the disciplinary process and demonstrates universities are addressing the needs of survivors. Schools may avoid lawsuits like Jane Doe's by allowing survivors access to adequate representation, which in turn would empower survivors and ensure they are not re-victimized during the disciplinary process.

B. Two-Tiered Reporting System: Expanding Reporting Options for Survivors of Campus Sexual Violence

In addition to urging colleges and universities to provide legal representation to student survivors of sexual violence, expanding reporting options for survivors is equally as important. In recent years, reporting outlets for survivors have improved. The OCR has recognized the importance of confidential reporting, and colleges and universities are urged to take privacy requests by student survivors seriously. Schools should consider a variety of factors to determine whether to comply with a student's request for confidentiality, including: (1) the risk of the alleged perpetrator re-offending; (2) whether a weapon was involved in the alleged sexual violence; (3) the age of the student; and (4) "whether the school possesses other means to obtain relevant evidence."¹¹⁹

In cases where factors weigh in favor of confidentiality, the school should "take all reasonable steps to respond to the complaint consistent with the student's confidentiality request."¹²⁰ Further, the OCR notes schools may take certain steps to limit the impact a campus assault has on the victim and the school community. For example, the school may provide support services to the student and "chang[e] living arrangements or course schedules, assignments, or tests."¹²¹

118. ANNUAL REPORT, *supra* note 19, at 8.

119. Letter from Catherine E. Lhamon, Assistant Sec'y for Civil Rights, Office for Civil Rights, U.S. Dep't of Educ., Questions and Answers on Title IX and Sexual Violence 21 (Apr. 24, 2014), <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

120. *Id.* at 22.

121. *Id.* at 20.

While these confidentiality procedures allow some students to file a report of sexual violence without initiating an investigation, there is still a need for further reform to increase reporting. Research indicates that 80% of student survivors do not report incidents of sexual violence to law enforcement.¹²² This lack of reporting may be attributed to a multitude of reasons, but one significant factor that limits a student's willingness to report is the uncertainty that comes with reporting an assault. Additionally, students may not know who a mandatory reporter¹²³ is on campus and do not feel comfortable disclosing the assault to any employee of the university. Colleges and universities should implement a system that mirrors the military's two-tiered reporting system, and allow students to choose whether to file a restricted or unrestricted report.¹²⁴ The availability of a dual reporting system, and each reporting option therein, should be made clear to students from the very beginning of their enrollment in the school. This reporting system should also clearly lay out the survivor's options and leave little room for uncertainty about the consequences of reporting. Students who wish to avoid a potentially intrusive investigation process could file a restricted report, while still receiving crucial medical and emotional services. In contrast, students who do wish to pursue disciplinary action against their assailant would have the option to file an unrestricted report, thus initiating the campus disciplinary process. Students, like service members, could also have the option to later change their restricted report to an unrestricted one.

C. Expedited Transfer Program: Helping Survivors of Campus Sexual Violence Continue their Education

As discussed above, the military's expedited transfer program was created to help survivors who feel safe but "uncomfortable," due to the close proximity to their assailant. This uneasiness is a situation many

122. See SOFI SINOZICH & LYNN LANGTON, BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: RAPE AND SEXUAL ASSAULT VICTIMIZATION AMONG COLLEGE-AGE FEMALES, 1995–2013, at 1 (2014), http://www.bjs.gov/content/pub/pdf/savca_f9513.pdf (reporting "[r]ape and sexual assault victimizations of students (80%) were more likely than nonstudent victimizations (67%) to go unreported to police").

123. The OCR also refers to these individuals as "responsible employees." See OCR Q&A, *supra* note 105, at 2.

124. See *supra* Part I Section B.

2019] FROM COURT MARTIAL TO COLLEGE CAMPUS 487

survivors of sexual violence in institutions of higher education may experience. Even if the survivor is confident another assault will not happen, the survivor may not feel comfortable knowing the perpetrator is living in their dorm or in their classes.

As noted earlier, survivors of sexual violence on college campuses, and in the military, face a unique problem that survivors outside these institutions often do not: forced interaction with their assailants. One study suggests that approximately 78% of students knew their assailant.¹²⁵ Student survivors, like Jane Doe, mentioned in the introduction, continue to see their assailants after the assault, either in campus buildings, dormitories, or in the classroom. The emotional burden of these continued interactions may ultimately induce survivors to drop out of school. Therefore, sexual violence on college campuses can threaten a student survivor's access to education – a risk that is not present with sexual violence in the military.

Due to these unique obstacles student survivors face, the expedited transfer program used in the military cannot be easily implemented in the college setting. However, colleges and universities could still benefit from adopting similar protections for survivors of sexual violence on their campuses. These institutions could adopt similar approaches to helping survivors continue their education after filing the initial report or after the disciplinary proceedings conclude. Colleges and universities should adopt a uniform transfer system for student survivors of sexual violence. Instances of survivors dropping out could potentially be reduced if schools implemented stricter guidelines for helping student survivors transfer out of classes, between dormitories, or even to a different institution altogether. By adopting such a program, based loosely off the military's expedited transfer program, colleges and universities could ensure student survivors complete their education.

125. Sinozich & Langton, *supra* note 122, at 7 (“College-age female victims knew their offender in about 80% of rape and sexual assault victimizations”).

IV. FEASIBILITY OF IMPLEMENTING PROGRAMS ON COLLEGE AND UNIVERSITY CAMPUSES

Campuses and universities should adopt their own form of the SVC program, as well as the other programs mentioned above;¹²⁶ however, translating military-specific programs to institutions of higher learning requires an examination of both the military and campus settings themselves. In particular, this determination warrants a discussion of the concept of “closed” and “quasi-closed” systems. Traditionally, the military has been viewed as a “closed system.”¹²⁷ A closed system refers to a “place where people both live and work and are at the same time isolated from the larger community for a significant length of time.”¹²⁸ Scholars have long noted the similarities between the military and institutions of higher education with regard to sexual violence. As noted above, both of these institutions are characterized by “high occurrences of sexual abuse” and comparatively low reporting rates.¹²⁹

In a 2017 article, Hannah Brenner and Kathleen Darcy suggest the similarities between the military and institutions of higher education run deeper than mere statistics, into “the structure of the settings themselves.”¹³⁰ These authors compared the college and university settings with traditional closed systems, and introduced the concept of

126. This article does not address specific approaches for implementing a Special Victim’s Counsel program into the college and university setting. However, some scholars have discussed possible methods of implementation. *See* Weiner, *supra* note 109, at 201–03 (describing a program where colleges and universities partner with local law schools to create a clinic, where law students gain experience and survivors receive legal representation at no cost); *see also* Heuring, *supra* note 113, at 734 (recommending a state-funded non-profit approach).

127. *See* Hannah Brenner & Kathleen Darcy, *Toward a Civilized System of Justice: Re-Conceptualizing the Response to Sexual Violence in Higher Education*, 102 CORNELL L. REV. ONLINE 127, 144–48 (2017) (discussing the common characteristics of prisons, higher education, and the military, and the barriers each institution presents to reporting sexual violence). The idea of a “closed system” stems from the concept of a “total institution.” Other types of closed systems include prisons and mental hospitals. *Id.* at 128.

128. *Id.* at 139.

129. *Id.* at 130.

130. *Id.* at 131.

colleges and universities as “quasi-closed” systems.¹³¹ This “quasi-closed” system includes characteristics of both the community as a whole and traditional closed systems.¹³² On the surface, the similarities between the military and institutions of higher education are clear. Young enlisted service members tend to be within the same age range as college students, and both institutions have individuals living in shared housing and engaging in excessive alcohol use. A more significant similarity, however, is that both institutions involve voluntary membership.¹³³ This voluntary membership creates a sense of extreme loyalty to the institution, which may create tension for the survivor when deciding whether to report sexual violence.¹³⁴

Other important similarities include the fact that both systems: (1) “require forced interaction with perpetrators;” (2) have “perpetrator[s] . . . almost always known to the survivor;” and (3) possess an “interest in communicating to the broader outside community low levels of sexual violence.”¹³⁵ Although Brenner and Darcy acknowledge important distinctions between institutions of higher education and traditional closed systems do exist, they argue the similarities are significant enough to warrant the creation of a new system, the “quasi-closed” system, to properly include colleges and universities.¹³⁶ Further, Brenner and Darcy “suggest that acknowledging the similarities [between] these systems and viewing them together offers a novel approach that encourages and advises widespread legal change.”¹³⁷ This position is well-supported. Institutions can learn from one another.

The military has seen considerable success in its responses to sexual violence between service members. The similarities between the military and institutions of higher education, described above, suggest implementing programs such as the SVC program and two-tiered reporting system into the college and university setting would be both

131. *Id.* at 132 (noting “[t]he quasi-closed system includes attributes of both the broader open community as well as the closed institutional systems”).

132. *Id.*

133. *Id.* at 146 (finding the characteristic of voluntary membership “contributes to the tensions related to loyalty and reporting”).

134. *Id.*

135. *Id.* at 145–51.

136. *Id.* at 132.

137. *Id.* at 158.

feasible and beneficial. These programs would help ensure that survivors have a voice in the campus investigation and disciplinary processes and prevent re-victimization by the institution.

CONCLUSION

In the years since the implementation of Title IX, the United States has made great strides in responding to claims of sexual violence on college campuses. Sexual violence against students remains a rampant issue and further reform is needed to ensure survivors receive fair treatment during campus disciplinary proceedings. Even today, student survivors are often re-victimized during campus disciplinary proceedings. Incidents of sexual assault on college campuses regularly occur between students, which creates unique problems for the survivor. Even if the survivor does not want to move forward with criminal charges against his or her assailant, there will likely be no alternative to a campus disciplinary action under Title IX. This disciplinary action can be emotionally exhausting and invasive for the survivor, and often leaves survivors even more traumatized than before filing a report. Further problems arise when the assailant is in the survivor's classes or lives in the same dormitory. Due to these unique situations, survivors often end up dropping out of school after experiencing sexual violence.

Perhaps the best model for reform comes from an unlikely source – the United States Military. The military has seen considerable success in their innovative sexual assault response programs, including the Special Victim's Counsel Program, the two-tiered reporting system, and the expedited transfer program. Incorporating similar programs into college and university campuses would give survivors more control over the process and help ensure all parties receive fair treatment.

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