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## The challenges of sexual assault on college campuses

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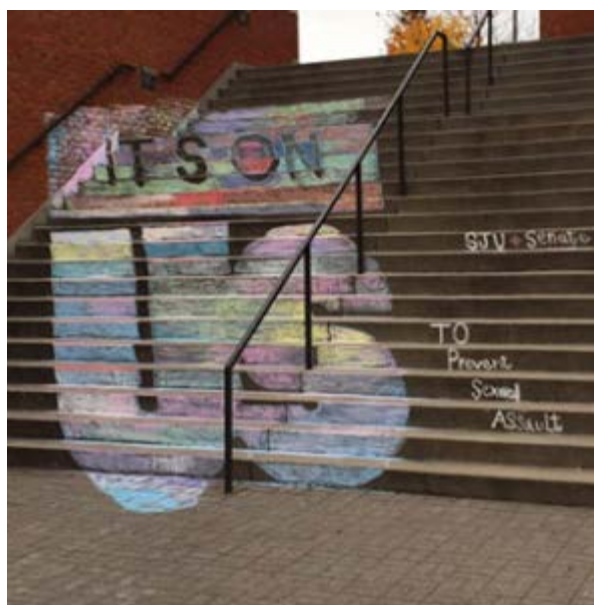
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### The Challenges of Sexual Assault on College Campuses



The “It’s On Us” campaign seeks to engage college students and all members of campus communities in preventing sexual assault. Image: @jillianhiscock via Twitter

Many things have changed on college campuses in the past few decades, but among the biggest changes are the policies around alcohol abuse and sexual assault. A generation ago the former was largely treated with a “kids will be kids” attitude and the latter was either unacknowledged or ignored.

Colleges and universities have made significant strides in improving the policies in both areas. Binge drinking is now treated as a **serious health hazard**, and sexual assault on campus, especially when the victim is not capable of giving consent due to impairment as a result of alcohol or drug consumption, is recognized as seriously harming victims and now falls under the Title IX enforcement of the **Office for Civil Rights**. These two policy challenges are often closely related because the vast majority of sexual assault cases involve the abuse of alcohol and the resulting impairment of judgment. Colleges naturally try to protect all their students from the bad choices that can be, and often are, made when under the influence of alcohol. In the case of sexual assault, the challenge for policy makers and college

administrators is to balance the rights of assault complainants and respondents. Those who believe they have been sexually assaulted deserve to have their complaints addressed sensitively and adjudicated fairly according to policies and procedures that are clear and understandable. The respondent deserves a due process that protects his (or sometimes her) rights to a fair hearing.

This balancing between complainants and respondents is hard enough in the case of traditional criminal legal cases, but can be even more difficult when the standards of evidence are more complicated than the criminal “beyond a reasonable doubt” standard. Most Title IX Sexual Assault policies are adjudicated on the basis of the “preponderance of the evidence” or a “more likely than not” **standard of evidence**, as directed by the Office for Civil Rights.

The adjudication of Title IX policies on sexual assault has brought **significant controversy** to college campuses. Some have referred to “**A War on College Men**”, while others have written about the “**sexual assault crisis** on campuses.”

**Legislators** have naturally weighed in on this **topic**, but recent comments by a Colorado Representative have been particularly

controversial as they appeared to give due process rights of respondents little weight. U.S. Rep. Jared Polis has been criticized for **remarks he made** at a Congressional hearing suggesting that “college students accused of sexual assault may merit expulsion even if they’re not proved guilty.”

*“It certainly seems reasonable that a school for its own purposes might want to use a preponderance of evidence standard, or even a lower standard,” he (Polis) said at a hearing on campus sexual assault prevention before the House Subcommittee on Higher Education and Workforce Training. “Perhaps a likelihood standard. ... If I was running a*

[college] I might say, well, even if there is only a 20 or 30 percent chance that it happened, I would want to remove this individual.” After a witness at the hearing, Foundation for Individual Rights lawyer Joseph Cohn, said applying this standard would deprive students of constitutional due process rights, Polis responded, “It seems like we ought to provide more of a legal framework, then, that allows a reasonable likelihood standard or a preponderance of evidence standard. If there are 10 people who have been accused, and under a reasonable likelihood standard maybe one or two did it, it seems better to get rid of all 10 people. We’re not talking about depriving them of life or liberty, we’re talking about them being transferred to another university, for crying out loud.”

Responding to Polis’s comments, UCLA Law Professor Eugene Volokh noted in the *Washington Post* that even if transferring were as easy as the Congressman suggested, innocents would still be hurt and campus would not be made safer:

*The innocent expelled students would have their education badly disrupted and delayed. But the guilty students would, by hypothesis, just be at another university, where they’ll be able to attack their classmates (just a different set of classmates). Indeed, if University A expels 10 students on this ground and they’ll go to University B, while University B expels 10 students on this ground and they’ll go to University A (“we’re talking about them being transferred to another university, for crying out loud”), the actual rapists will just be shuffled around from place to place, so neither university will get safer. And the wrongly accused (by hypothesis, eight or nine of them, compared to one or two correctly accused) will pay the cost.*

There is no doubt that adjudicating actual sexual assault cases on campuses is difficult. There are no winners in any of these cases, but if the safety of students and due process both matter, which they surely do, colleges and universities must do the hard work of developing policies that protect both complainants and respondents in the Title IX sexual assault cases that will be part of higher education for as long as undergraduates mix alcohol and sex.

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Michael Hemesath | September 16th, 2015 | Categories: [Higher Education](#) | [0 Comments](#)

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## About the Author: **Michael Hemesath**

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Michael Hemesath is the 13th president of Saint John's University. A 1981 SJU graduate, Hemesath is the first layperson appointed to a full presidential term at SJU. You can find him on Twitter [at] [PrezHemesath](#).