

# WON'T BACK DOWN

Student activists and survivors are using the legal system to fight sexual assault and harassment on college campuses

BY GAYLYNN BURROUGHS AND DEBRA S. KATZ

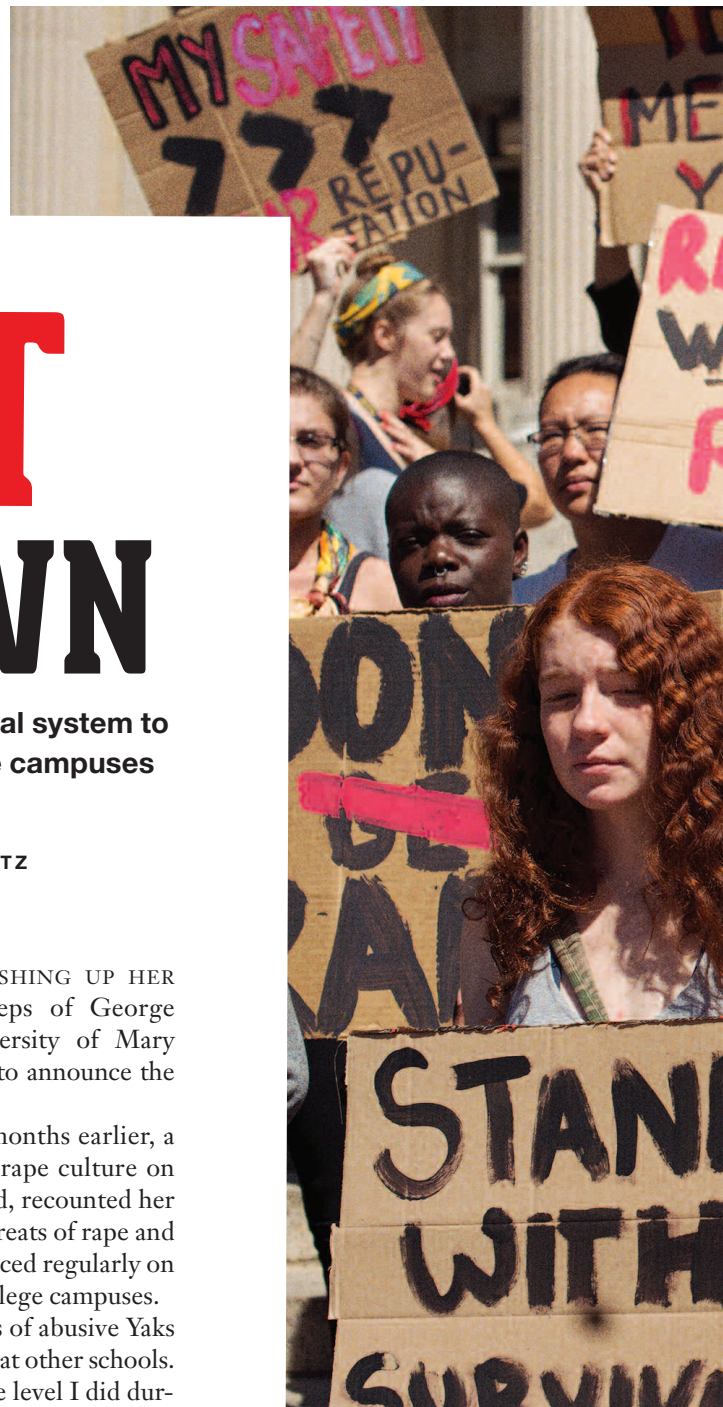
**T**HIS SPRING, INSTEAD OF CELEBRATING FINISHING UP HER final exams, Julia Michels stood on the steps of George Washington Hall, in the heart of the University of Mary Washington's Fredericksburg, Virginia, campus, to announce the filing of a Title IX complaint against her school.

Speaking in the same spot where, just a few months earlier, a crowd of students rallied to demand an end to rape culture on campus, Michels, the incoming president of Feminists United, recounted her group's efforts to push the university to protect them from threats of rape and violence, and other forms of sexist cyber-harassment they'd faced regularly on Yik Yak, an anonymous social media app popular on many college campuses.

Feminists United members became the target of hundreds of abusive Yaks after they spoke out against sexual assault on their campus and at other schools. "I have never before experienced anxiety and fear on the same level I did during this last year," said Michels. She explained that her grades and schoolwork suffered because of the abuse, and that other students had suffered emotional or psychological harm. They all agreed: The university had betrayed them through inaction.

Students at UMW and across the country, fed up with inaction from university officials, are taking matters into their own hands. A massive movement has resulted in a flood of Title IX complaints and the creation of new federal rules to strengthen efforts on college campuses to prevent sexual violence and hold perpetrators accountable. These efforts have led to real change on some campuses, but students are not relying solely on universities or the Department of Education to protect their rights. Instead, they are pursuing justice through a variety of avenues, including the courts.

The problem at the University of Mary Washington began when then-



Nearly 100 students stood on the steps of Columbia University's Low Hall last October in solidarity with rape survivors who spoke against the school's sexual assault policy.

president of Feminists United, Paige McKinsey, opposed official recognition of fraternities at UMW and later published an op-ed in the student newspaper decrying rape culture on campus; she criticized members of





the school's rugby team who'd been recorded chanting about rape and necrophilia. Yik Yak exploded with vitriol. Anonymous posters referred to Feminists United members as "feminazis" and "femicunts." Other posts, Michels recalls, charged that Feminists United was a "hate group" on a "witch hunt." Some of the posts included physical and sexual threats, including references to rape and

euthanasia. Yakkers even posted McKinsey's whereabouts so people could "call her out in person," encouraging potentially threatening confrontations. McKinsey became so frightened she asked campus police to accompany her to student group meetings.

"I was terrified," explained Michels. "I did not know if the person sitting next to me in class had just threatened to hurt me anonymously, and I had no way to gauge the seriousness of these threats."

Feminists United alerted the university and requested that it take action. Instead, the UMW Title IX coordinator sent an email to the student body stating that "the university had no recourse for such cyberbullying" and directing the students to take their complaints to Yik Yak directly. Michels emailed the





Sade Tanis and Farah Tanis (left) of Black Women's Blueprint are demanding better policies to end gender-based violence on campus. Carry That Weight's Emma Sulkowicz (center) carries her mattress in protest of Columbia University's lack of action after she was raped. Feminist United's Julia Michels (right) speaking at University of Mary Washington announcing a Title IX complaint at her school.

Title IX coordinator to express frustration that the university was shirking its legal obligations. “It should not be the responsibility of students to prevent their own bullying, or to address threats aimed against them,” she wrote. “We ask that the university itself be the one to take the lead against this problem.”

The university, however, continued to do little more than say the issue was “complicated” and cite apprehensions about the First Amendment. But the school’s concerns are misguided. As long ago as 1969, the Supreme Court found that schools do not violate First Amendment rights when they regulate or restrict student speech that interferes materially and substantially with the operation of the school or infringes on the rights of other students. “Freedom of speech does not extend to harassment that creates a hostile environment or to threats of violence,” says Shireen Mitchell, founder of Digital Sisters/Sistas. “There is no right to threaten someone’s life with impunity, whether in-person or online.”

**T**ITLE IX OF THE EDUCATION AMENDMENTS OF 1972 PROHIBITS SEX discrimination in education programs or activities that receive federal funding. The law has been a game changer for women. Before Title IX, less than 15 percent of women ages 25 to 34 held a bachelor’s degree or higher. Today, women are more likely to go to college than men and more likely to graduate. “We fought tirelessly to get women into college and graduate programs,” said Feminist Majority Foundation President (and publisher of *Ms.*) Eleanor Smeal. “Now, we’re fighting to make sure that they aren’t pushed out by sexual violence, harassment and discrimination.”

Title IX provides one tool for doing just that. In addition to dismantling barriers to entry into educational institutions, Title IX obligates schools—both public and private—receiving federal funds to remedy and prevent sexual violence and discrimination whether or not the harassing behavior occurs in person or online. A university’s failure to act violates students’ civil rights.

The complaint against UMW, filed on behalf of Feminists United, a Feminist Majority Foundation campus affiliate, and others, alleges that the school violated Title IX by failing to protect students from a sexually hostile environment, sex-based cyber assaults, and threats of physical and sexual violence. It is one of the

first complaints to arise from a university’s failure to adequately address the creation of a sexually hostile environment fueled by anonymous social media. According to a Pew Research Center study, around 70 percent of young adults who use the Internet have been the targets of online harassment, and young women are disproportionately affected. Other studies show that people of color are also frequent targets of abuse: Around 51 percent of African American and 54 percent of Hispanic Internet users report experiencing harassment, compared to 34 percent of whites. The epidemic of campus sexual violence—both online and off—is indisputably nationwide, affecting small and large campuses, public and private universities, religiously affiliated colleges and everything in between.

Title IX legally obligates schools to investigate sexual harassment and discrimination on campus. Under the law, once a school knows, or should know, about an incident of sex discrimination, it must promptly investigate what occurred and immediately remedy the situation. The Campus Sexual Violence Elimination Act (Campus SaVE) bolstered Title IX by requiring



schools to create prevention programs and clarifying schools' obligations to make survivors aware of their reporting options. Campus SaVE also strengthened the Jeanne Clery Act, which requires colleges and universities receiving federal funds to report and publicize crime statistics annually, and to alert the campus of known public safety risks. The range of crimes schools must disclose now includes domestic and dating violence, stalking and sexual assault. Adminis-

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trations that fail to comply could face a \$35,000 fine for each violation.

These policy changes would not have been possible without the work of student activists and recent graduates, along with national groups such as the American Association of University Women, Feminist Majority Foundation, Legal Momentum and the National Women’s Law Center, which pushed to make this issue a national priority.

Activists from Know Your IX and End Rape on Campus have not only fought for legislative change, but have also developed networks to help students file Title IX complaints with the Department of Education to hold college administrations accountable for failing to appropriately address sexual assault. Other networks, such as Black Women’s Blueprint and Carry That Weight, are demanding better policies on campus and stronger implementation to end gender-based violence and counter rape culture.

Their efforts have been supported by the Obama administration, which has issued guidance to help schools comply with Title IX. The administration also launched a White House Task Force to Protect Students from Sexual Assault, leading to the creation of NotAlone.gov, a website where students and school administrators can find resources on Title IX, including legal advice and a guide for drafting sexual-misconduct policies.

The torrent of activity at both the national and campus levels has correlated with an exponential rise in the number of Title IX complaints received by the Department of Education Office of Civil Rights (OCR). Between 2009 and 2014, sexual-violence complaints at higher education institutions increased by more than 1,000 percent. This increase, together with a lack of appropriate resources, has contributed to severe delays in the resolution of complaints. In May, OCR reported that the average duration of a sexual-violence investigation in 2015 was 940 days, or more than two years.

Schools that are ultimately found to violate Title IX may lose federal funding. Although no school has faced this penalty yet, termination of funding is not an empty threat, something Tufts University learned last year after attempting to back out of a voluntary compliance agreement it entered into with OCR. Tufts was found to have failed to adequately investigate or address student complaints of sexual assault and harassment and specifically failed to protect the complainant from a hostile environment. The agreement required the school to revise its policies, procedures and investigative practices concerning complaints of sexual assault and harassment.

Less than 10 days later, Tufts notified OCR that it was revoking the agreement. OCR subsequently issued a press release informing the school that it “may move to initiate proceedings to terminate federal funding of Tufts.” Tufts eventually recommitted to the agreement and announced the creation of a “response and resource coordinator” to assist student-survivors in accessing needed services.

Given delays in investigating Title IX complaints and the limited relief offered by OCR, students should know that there are other avenues available to vindicate their civil rights. Some student-survivors have initiated their own private lawsuits against universities, with a few high-profile cases settling out of court. Survivors have been able to obtain large settlements and create change.

In one case, a student sued the University of Colorado at Boulder after she reported being sexually assaulted at a party by football players and recruits. The suit alleged that the university knew that several students had been assaulted over a period of years during alcohol-fueled parties meant to entertain football recruits on school-sponsored campus visits. The university agreed to pay \$2.5 million to settle the suit and hired an independent Title IX adviser as well as a counselor for its Office of Victim Assistance. In the wake of the lawsuit, several

university staff and administrators—including the president, chancellor, athletic director and football coach—resigned.

In a 2014 case, the University of Connecticut settled a Title IX lawsuit brought by five survivors for over \$1.2 million; students alleged that UConn had failed to respond appropriately to reports of rape and threatening behavior. One woman who reported to campus police that she'd been raped, for example, says she was told, "Women have to just stop spreading their legs like peanut butter," or else rape is going to "keep on happening till the cows come home." UConn did not admit any wrongdoing in the settlement, but the lawsuit did lead to several changes, including the creation of a Special Victims Unit within campus police, increased training of university staff and more resources for the Office of the Title IX Coordinator.

Monetary settlements are important for survivors. These students often suffer economic harm, including lost tuition and student aid, and expenses related to counseling, tutoring and new housing. And the settlements may help student-survivors in future cases attract quality legal representation. Universities and fraternities have long had a cadre of lawyers and lobbyists ready to protect their financial interests, but student-survivors haven't had that same advantage. Additionally, students may find that universities forced to pay for failing to comply with Title IX are much more likely to take student claims seriously in order to avoid liability.

In their documentary *The Hunting Ground*, filmmakers Kirby Dick and Amy Ziering expose how colleges and universities systematically cover up incidents of sexual violence. The film focuses on the business side of educational institutions, demonstrating how schools are motivated by money, reputation loss and liability when making decisions about how to handle reports of sexual assault. It also shows how money and power allow athletic teams and fraternities to achieve an almost untouchable status at some universities.

Just this past spring, the Fraternity and Sorority Political Action Committee, or FratPAC, which has helped raise millions for federal candidates, planned on lobbying Congress for a requirement that would prevent universities from investigating sexual-assault allegations until cases were resolved by the criminal justice system. Days before students were to arrive on Capitol Hill, and after nationwide criticism from students, including many Greeks, the organizers announced they would postpone their efforts.

FratPAC's proposal would not only have violated Title IX, it would have prevented schools from addressing sexual violence on campus unless a student filed a police report, a measure that would drastically reduce the ability of campuses to respond at all. According to a 2007 report, only 12 percent of college-student survivors report to the police, with male survivors reporting at lower rates than women. Even when students do

## IS YOUR SCHOOL SAFE?

According to a 2015 Washington Post-Kaiser Family Foundation poll, 1 in 5 women students experience a rape or attempted rape while in college. Here are five ways to gauge your school's sexual-violence climate.

### 1. Read your school's annual crime reports.

The Clery Act is a federal law that requires colleges and universities receiving federal funds to collect statistics on certain crimes, including sex offenses, occurring on campus and in some areas affiliated with or near the school. Schools must publish these statistics in annual crime reports, often available on the school's website. You can also access the reports using the Department of Education's Campus Safety and Security Data Analysis Cutting Tool. Remember that fewer reported incidents do not necessarily mean more safety.

### 2. Read the campus sexual misconduct policy.

Title IX requires schools to adopt and publish grievance procedures explaining how students can bring sexual misconduct complaints. Schools must also establish investigation and resolution procedures, should offer

relief to survivors and must establish protocols for disciplinary action against offenders. These policies are sometimes published alongside policies regarding other conduct infractions. Acquaint yourself with how your university handles sexual misconduct and how it defines consent. Find out if your school provides survivors with an advocate during grievance proceedings. Look at the minimum sanctions for sexual-misconduct violations and compare them to sanctions for other offenses, such as academic dishonesty. Does the school have a history of actually imposing appropriate sanctions in cases where sexual misconduct is found? Also, determine whether survivors are being offered the accommodations guaranteed to



report, resolving a criminal complaint could take years.

Rape and sexual assault are serious crimes under state and federal laws, and the criminal justice system *should* be an ally for survivors, especially since most rapists are repeat offenders. Yet law enforcement has been notorious for failing to properly investigate sexual assault, and some universities have actively repelled local law enforcement, obstructing the ability of police to investigate crimes; for instance, police have been refused access to some campuses when attempting to serve orders of protection or to interview alleged perpetrators.

“The campus system cannot adequately ensure the safety of the community beyond the college borders,” explained Laura Dunn, a former University of Wisconsin student activist, sexual-assault survivor and founder of SurvJustice. “Knowing your rights and options in every system—and having proper legal support to navigate them all—is essential for survivors to truly be safe and demand accountability after sexual violence.”

There is clearly much more work to be done to reduce sexual violence and harassment on college campuses—but student activists are not giving up. After Feminists United filed its Title IX complaint against UMW, university president Richard Hurley sent a hostile and disparaging letter to FMF President Eleanor Smeal, the entire UMW community and the media. Members of Feminists United responded with a strong statement of their own, blasting

President Hurley for his misrepresentation of the complaint. “Worse still,” they wrote, “the way you framed the conversation about these threats, suggesting that members of our club were somewhat at fault for opening themselves up to criticism, was eerily similar to the victim blaming that is so prominent in rape culture.”

The students later amended their Title IX complaint to add a retaliation claim against the university. “We’re not backing down,” said Julia Michels.

Michels realizes that the complaint will probably not be resolved while she is a student at UMW. That fact does not dampen her determination. “We care about other students,” she said. “We have hope that the environment will improve, and we want to make it better for the people who will come after us.”

Asked if she had any advice for other students wanting to organize their campuses, Michels said, “Remember that there are people who can help. Reach out to professors, national organizations, community groups and other student associations. Keep fighting. Don’t give up. Show them you are not going away.” ■

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them by federal law, such as no-contact orders and housing accommodations.

### **3. Find out what campus health and emergency services are available to sexual assault survivors.**

Does the university have a Sexual Assault Nurse Examiner (SANE) on staff? If not, is there an agreement with local hospitals or medical centers to provide a SANE nurse? Find out if your university provides STI and HIV testing, and if it offers pregnancy tests or emergency contraception to survivors. Do universities have access to a certified forensic-science laboratory that can test for the full panoply of drugs used for drug-facilitated rape? Best situation: your university would provide these services free of charge.

### **4. Meet your school’s Title IX coordinator.**

Every university is required to have a Title IX coordinator who monitors the school’s compliance with the law, but not every coordinator has enough time, resources, training or background to effectively fulfill their duties. Get to know your Title IX coordinator. If the coordinator is unable to meet the needs of your campus, make your grievances known to the administration. Also, ask your Title IX coordinator if OCR is investigating a complaint against your school or if your school has entered into a voluntary compliance agreement.

### **5. Look for student activist groups.**

A good indicator of the campus climate surrounding sexual assault is whether the university has student-led initiatives to make the campus safer. These could include peer-led prevention and bystander trainings, a student-centered task force, a social justice club, gender and sexual diversity programming, or student involvement on a Sexual Assault Response Team (SART).

—LAURA JENSEN & RACHEL CLAY