

RESTORATIVE JUSTICE IN CASES OF SEXUAL MISCONDUCT AT THE  
UNIVERSITY OF OREGON: RISKS, REWARDS, AND CHALLENGES

by

ZANE KESSLER HAGER

A THESIS

Presented to the Conflict and Dispute Resolution Program  
and the Graduate School of the University of Oregon  
in partial fulfillment of the requirements  
for the degree of  
Master of Science

December 2017

THESIS APPROVAL PAGE

Student: Zane Kessler Hager

Title: Restorative Justice in Cases of Sexual Misconduct at the University of Oregon:  
Risks, Rewards, and Challenges

This thesis has been accepted and approved in partial fulfillment of the requirements for  
the Master of Science degree in the Conflict and Dispute Resolution Program by:

Merle Weiner	Chairperson
Jennifer Hudson	Member

and

Sara D. Hodges	Interim Vice Provost and Dean of the Graduate School
----------------	--

Original approval signatures are on file with the University of Oregon Graduate School.

Degree awarded December 2017

© 2017 Zane Kessler Hager

## THESIS ABSTRACT

Zane Kessler Hager

Master of Science

Conflict and Dispute Resolution Program

December 2017

Title: Restorative Justice in Cases of Sexual Misconduct at the University of Oregon: Risks, Rewards, and Challenges

This thesis seeks to identify the risks, rewards and challenges associated with applying a restorative justice response to sexual misconduct at the University of Oregon. The present research uses a literature review to investigate the nature of restorative justice, sexual misconduct, and the laws and statutes that govern both at the University of Oregon. The literature review is supplemented by qualitative data gathered from a series of personal interviews with specialists on the subject. This work contributes to the limited research that analyzes the specific rewards and challenges of particular programs because no university-based restorative justice programs yet exist. This analysis suggest that restorative justice offers a valuable supplement to existing university responses to sexual misconduct, albeit one that has a variety of limitations and barriers.

## CURRICULUM VITAE

NAME OF AUTHOR: Zane Kessler Hager

### GRADUATE AND UNDERGRADUATE SCHOOLS ATTENDED:

University of Oregon, Eugene

### DEGREES AWARDED:

Master of Science, Conflict and Dispute Resolution, 2017, University of Oregon  
Bachelor of Arts, Religious Studies, 2011, University of Oregon

### AREAS OF SPECIAL INTEREST:

Restorative Justice  
Youth Education

### PROFESSIONAL EXPERIENCE:

Restorative Peer Court Coordinator, Center for Dialogue and Resolution, March  
2016-September 2016

Graduate Teaching Fellowship, Religious Studies, Fall 2015-Winter 2016

Graduate Teaching Fellowship, Conflict Resolution Services, Fall 2016-Spring  
2017

### GRANTS, AWARDS, AND HONORS:

Jubitz Peacemaker Travel Award, Jubitz Foundation, 2017

## Table of Contents

Chapter	Page
I. INTRODUCTION .....	1
II. LITERATURE REVIEW.....	2
III. METHODOLOGY .....	4
Researcher Bias.....	7
Terminology.....	9
IV. FINDINGS.....	19
Sexual Misconduct.....	19
Prevalence of Sexual Misconduct.....	20
Damage Inflicted by Sexual Misconduct.....	26
Data on Perpetrators of Sexual Misconduct.....	28
Reporting Rates of Sexual Misconduct.....	29
False Reporting of Sexual Misconduct.....	34
Prosecution Rates for Sexual Misconduct .....	35
Sexual Misconduct and the Traditional Justice System.....	37
Psychology of the Perpetration of Sexual Misconduct.....	40
Role of Alcohol in Sexual Misconduct.....	45
Sexual Misconduct Conclusion.....	47
Restorative Justice .....	47
What do RJ Programs Look Like?.....	49
Metrics for Assessing RJ .....	53
Participation Rates .....	54
Why People Participate in RJ .....	55
Participant Satisfaction .....	56
Offender Recidivism.....	57
Offender Restitution.....	59
RJ and Sexual Misconduct.....	60
Special Considerations for RJ.....	62

Chapter	Page
Legal and Legislative Issues Relevant to RJ Responses to Sexual Misconduct.....	63
Title IX.....	64
VAWA and the Clery Act.....	66
Oregon State Law .....	68
Policies Specific to the University of Oregon.....	69
V. ANALYSIS .....	74
Risks.....	74
Rewards.....	81
Challenges.....	89
VI. CONCLUSION.....	97
APPENDICES .....	106
A. U OF O STUDENT CONDUCT CODE “SEXUAL MISCONDUCT”.....	106
B. SELECTION OF RELEVANT ORS STATUES .....	108
C. INTERVIEW MATERIALS: PARTICIPATION REQUEST .....	111
D. INTERVIEW MATERIALS: INTERVIEW QUESTIONS .....	115
E. INTERVIEW MATERIALS: IRB APPROVAL FORM .....	116
REFERENCES CITED.....	117

## **CHAPTER I**

### **INTRODUCTION**

This graduate thesis for the Conflict and Dispute Resolution Master's Program at the University of Oregon examines the feasibility of a university-led restorative justice (hereafter termed RJ) based response to sexual misconduct involving students at the University of Oregon. The goal of the present research is to identify the risks, rewards, and challenges presented by such a response in order to assess if the University of Oregon should pursue it. This analysis reviews the nature of sexual misconduct (its prevalence, demographics, rates of prosecution, etc.), the essential qualities of RJ (its goals, processes, efficacy, etc.), and the rules governing responses to sexual misconduct at the University of Oregon. This examination is informed by a literature review and a series of interviews, and is followed by a synthesis centered on the ideas of "risks," "rewards," and "challenges." The thesis concludes with a discussion of ideas for additional research that might help the University of Oregon decide whether to pursue a RJ -based response to sexual misconduct, as well as the author's personal assessment about whether such a program is worth the effort.

## CHAPTER II

### LITERATURE REVIEW

Ideally a literature review on this subject would examine research that has explored existing campus-based RJ programs that respond to sexual misconduct to ascertain whether such programs are effective and translatable to the context of the University of Oregon. Such data would be useful to directly answer this paper's research question. Unfortunately, no such programs exist to be studied. As one specialist in the field put it, "scholarly discourse on RJ for sexual assault has been hindered by lack of empirical data and is predominantly conceptual and dialectic." (Koss, 2014, p. 1625) RJ responses to sexual misconduct are not currently undertaken by any universities, and only a handful of community and government-based programs exist (and have published their data) around the world (Daly, 2005; Daly, Curtis-Fawley & Bouhours, 2003). While these programs do report data useful to answering the research question, they have limited applicability. These programs are imperfect matches for the goals of the present research because they work with different populations - youth under the age of 18 in one case (Daly, 2005; Daly, Curtis-Fawley & Bouhours, 2003), and adults sentenced by law courts in the other (Koss, 2014). As non-University programs they also operate distinctly from and are bound by different legal requirements than universities in general and the University of Oregon in particular. A final limitation of the existing data is that it addresses only two programs, a number that does not make for very rigorous analysis.

Research that is theoretical, rather than focused on an existing program, has been undertaken by the Campus PRISM project based in Skidmore College. This project is made up of a diverse group of RJ practitioners and researchers seeking to research,

theorize, and eventually design and promote RJ responses to sexual misconduct on campuses (Karp, Shackford-Bradley, Wilson & Williamson, 2016).

The paucity of research on existing programs means that a traditional literature review will be of limited use. Consequently, the “findings” section of this paper use data that is more tangential than typically found in a literature review. It examines the nature of sexual misconduct, RJ, and the laws and statutes by which university responses to sexual misconduct are guided. This data will be synthesized, analyzed and contrasted, i.e. the nature of sexual misconduct and the problems it presents will be contrasted with the results of RJ programs designed to address problems other than sexual misconduct in order to hypothesize the risks, rewards and challenges an RJ response might present.

## CHAPTER III

### METHODOLOGY

The present research is informed by a particular form of literature review (as described above) and a series of interviews. In order to differentiate this specialized form of literature review from the brief, traditional literature review above, it will be referred to as the “findings.” The findings section is divided into three broad areas: sexual misconduct, restorative justice, and laws and statutes governing the ability of the University of Oregon to respond to the former with the latter. The goal of the findings section is to understand the nature of several complex processes by synthesizing relevant quantitative and qualitative data.

A literature review/findings section is a preferable way to build this understanding because these are complex and multifaceted issues on which there is a great deal of pre-existing scholarship and quantitative data. Much of this scholarship takes the form of wide-ranging surveys and meta-analyses of these surveys. Comparing multiple sources of quantitative data in the findings section will allow the current research to develop a solid conception of sexual misconduct and RJ. A simpler findings section is possible regarding the statutes and laws that govern the ability of the U of O to respond to sexual misconduct with RJ. Multiple sources of data on these laws don't need to be compared to develop an understanding of how these laws work.

This thesis also includes selected findings from a series of long-form, qualitative interviews with individuals associated with any combination of the following: University of Oregon responses to student misconduct, criminal prosecution of perpetrators of sexual misconduct, support for survivors of sexual misconduct, and RJ. These interviews were

conducted by the author during the course of several months, and involved one-on-one meetings of roughly one hour to address a series of open-ended questions. The interviews had initial scripted questions (see appendix D), and incorporated the freedom to choose relevant follow-up questions. The interviews were audio-recorded, transcribed, and then novel or valuable data (as determined by the author) was pulled from them and presented. The interviews were conducted and recorded in a manner that allowed the interviewee's identities to remain confidential (see appendix C confidentiality agreement). As such, they are cited using a vague title rather than the interviewee's name or an identifiable title. These interviews were conducted with a University of Oregon administrator (Administrator, personal communication, June 18th, 2017), a survivor of sexual assault support specialist from a non-profit organization (Support Specialist, personal communication, September 29th, 2017), a RJ practitioner specializing in serious interpersonal offenses (RJ Practitioners, personal communication, October 10th, 2017), and a legal counsel who has worked with survivors of sexual misconduct (Legal Counsel, personal communication, October 9th, 2017).

These interviews were conducted to access views and knowledge relevant to the research question that are not present in a written form accessible through a traditional literature review. The interviews also provided access to specific content area knowledge (e.g. the particular method of Title IX complaint investigation of sexual misconduct used at the University of Oregon) that would be challenging to otherwise access and/or interpret. Incorporating the views of professionals who would likely be involved in an RJ response to sexual misconduct at the U of O is also a useful tool for moving beyond a birdseye academic view of the research question towards a grounded and practical one.

Finally, the subjects of the interviews (as will be discussed further in the “researcher bias” section below) can provide insurance against biased interpretation of data on the part of the principal investigator. When viewing data in a vacuum, the risk of interpreting it in a biased fashion may be increased. By tempering the individual interpretation of the author with the views of others, new ideas can be presented and assumptions and biases can be challenged.

The format of scripted questions followed by improvised follow-up questions was chosen due to a desire to collect a baseline of information shared across all the interviews as well as a desire to encourage interviewees to talk about the issues they felt most strongly about. For example, an interview respondent might imply some negative experience with an RJ program in the course of answering a scripted question about the challenges of such programs. The interview format allows the principal investigator to ask follow-up questions designed to delve more deeply into that potentially relevant experience.

The confidentiality of the interviewees was protected in several ways and for several reasons. Confidentiality was ensured by the timely disposal of all records of the interview with the exception of the final form in which they are confidentially presented in this thesis. Interviewee’s exact words, idiosyncratic turns of phrase, titles, names, and exact departments in which they are employed are not presented in this thesis. The reasons for this protection include defending interviewees from any backlash engendered by their opinions. Most interviews involved a critique of current responses to sexual misconduct - viewpoints which might result in some negative consequence for interviewees if they were publicly linked to them.

The interview transcripts are not presented in their full, verbatim form due to space considerations, the fact that key findings may be more relevant to the present research than a full transcript, and most importantly a desire to protect the anonymity of interview participants. Relating the exact words of an interview might more fully express the views of the participant than selected excerpts and paraphrases chosen at the author's discretion. However, this would almost certainly expose identifiable information of interview participants (their turns of phrase, knowledge area's etc.). That sort breach of confidentiality is not acceptable from the perspective of the University of Oregon Institutional Review Board (IRB), which governs the conduct of research at the University of Oregon.

These interview were conducted in accordance with IRB guidelines (see appendix E for IRB approval). The method used to conduct the interviews involved making initial contact via phone or e-mails, scheduling an interview, getting signed, voluntary, informed consent to participate from the interviewees, conducting the interview, transcribing the results, destroying the original recorded data, and finally entering the information into the relevant sections of the present research. All material used in conducting these interviews, e.g. the questions asked, are presented below in appendices C, D, and E.

### **Researcher Bias**

This thesis is intended to provide a neutral and unbiased examination of the topic. However, any research - especially around hot-button issues like sexual misconduct - carries the risk of researcher bias. To mitigate this risk while pursuing the goal of unbiased research as a practitioner and student of restorative justice, the author

considered both the Law of the Instrument (Kaplan, 1964) and the concept of Occupational Orientation (Caplan & Nelson 1973). The Law of the Instrument posits that “[A] Scientist formulates problems in a way which requires for their solution just those techniques in which he himself is especially skilled” (Kaplan, 1964). This theory suggests that, as a student of RJ, the researcher is susceptible to the risk of indulging in a biased misconstrual of the nature of sexual misconduct at the University of Oregon, potentially inaccurately envisioning it as a phenomenon that would be particularly receptive to a RJ-based response. This risk is compounded by Occupational Orientation’s assertion that people may be subconsciously motivated to seek the goodwill and acceptance of their colleagues (and the career gains entailed therein) rather than pursuing the best interests of a target population or the most objective version of the truth available (Caplan & Nelson 1973). Taken together, these theories suggest that the researcher might be biased towards defining the nature of sexual assault at the University of Oregon as something particularly amenable to a RJ response, and could be motivated to do so in order to be positively regarded by other RJ practitioners.

To avoid it as much as possible, the risk of bias has been addressed in three ways:

1. On an individual level, the author has worked to become aware of the risk for bias inherent in the present research. Although attempting to counteract bias through personal introspection is far from an ideal solution (Pronin, Gilovich & Ross, 2004), it does have benefits. By seeking to accurately report rather than interpret the views found in source material, and critically examining which aspects of which sources are chosen for citation, the risk of bias can be noted and at least partially addressed.

2. In addition, the present research has been structured in part to address the risk of bias through methodological choice. For example, the risk of unilateral, biased research has been mitigated by incorporating interviews with disparate professionals. The presence of these outside voices helps lessen the possibility of interpreting data in a skewed fashion. This bias combating tool is limited by the fact (as described in the methodology section above) that the interview findings are not presented as a full, verbatim transcript. This means that any elements of the interviews that are included, and the exact wording of how they are presented, is at the discretion of the author rather than the interview subject.
3. Finally, the risk of bias in the present research can be mitigated by the reader. By detailing the risk of researcher bias and the steps taken to counteract it, it is hoped that readers will be provided with the tools they need to make informed evaluations and criticisms of the present research. Bias (especially the subconscious, implicit variety) may well be impossible to avoid entirely, but an awareness of the risk it poses may aid readers.

### **Terminology**

The current research involves a literature review regarding the nature of sexual misconduct. Such a review is challenging because various studies on the subject often report their findings in different ways. There are a variety of terms used to describe illegal acts of a sexual nature including sexual assault, sexual misconduct, sexual violence, sexual crime, sexual abuse, sexual battery, sexual victimization, sexual

harassment, and rape. Compounding the challenge of disparate definitions is the fact that the meaning of each term differs depending on the nation, state, institution or group defining it. This multitude of terms and definitions creates a challenge when comparing studies on sexual misconduct.

In order to produce a sensible literature review, the current research will compare the subject areas of various research to the following definition of sexual misconduct synthesized by the author from several sources.

Sexual misconduct may refer to:

1. Non-consensual completed or attempted penetration of a body part by another body part. (this is also a commonly used definition for rape/ attempted rape [Tjaden, 2000])
2. Non-consensual completed or attempted penetration of a body part by an object.
3. Non-consensual completed or attempted contact with genitalia, breast, buttocks, or other intimate body parts.
4. Sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that interferes with work or academic performance. This may include acts that involve non-consensual exposure of or to intimate body parts.

This definition (hereafter referred to as either “the definition of sexual misconduct,” or simply “sexual misconduct”) will be used as tool throughout the present research to assist in comparing data from studies that use disparate terminology. The subject matter of each study examined in the following literature review will be defined in relation to this definition of sexual misconduct in order to make their findings more

easily comparable. For instance, Handeyside, Wickliffe & Adam's (2007) investigation of the impact of rape myths relates to section one of our definition of sexual misconduct. In the findings section of the thesis, which collates the data from a variety of studies on sexual misconduct, the convention will be to parenthetically relate data back to our definition of sexual misconduct. For instance, the findings of the National Crime Victimization Survey (Planty et al, 2013) will be described as including data on rape and sexual assault victimizations (consistent with sections one, two and three of sexual misconduct).

The term "sexual misconduct" is used in this research because it is the preferred term of the University of Oregon Student Code of Conduct, because it encompasses acts that may not be violent, and because it is distinct from common legal terminology like rape or sexual abuse. This distinction is important because the present research is designed to investigate a University of Oregon response to sexual misconduct rather than one by the traditional legal system. The definition of sexual misconduct was chosen in an attempt to balance the need to be inclusive (and thus make relevant as much quantitative data as possible) with the need to be concrete (so that the issue that might be addressed in some way by a Restorative Justice process is clearly defined and understood). The definition of sexual misconduct used in this thesis is aligned with related language present in the University of Oregon Student Conduct Code (See Appendix A) and in Oregon state law (See Appendix B).

This definition is adapted by the author from that provided by AEquitas: The Prosecutors' Resource on Violence Against Women (Miller, 2017), Oregon state law (Oregon Revised Statutes, 2015) and the University of Oregon Student Conduct Code

(University of Oregon, 2015). This definition is fairly broad in that it incorporates elements of common definitions of both sexual assault and sexual harassment. Sexual assault commonly refers to physical acts of a sexual nature perpetrated on a person(s) by another individual(s) (Miller, 2017). Sexual harassment is a term whose meaning varies by state and organization, but which generally relates to the creation of a hostile environment via acts, comments, jokes, body language and official practices like hiring policies that involve harassment based on gender and/or sexuality (Miller, 2017). Sexual assault can fall under that mantle of sexual harassment in that the acts it describes may also result in feelings of harassment. Sexual assault describes the active, physical acts found in sections one, two and three of definition of sexual misconduct, while sexual harassment describes all four sections with a particular emphasis on section four. Our definition of sexual misconduct places rape, sexual assault and sexual harassment under the overarching mantle of sexual misconduct.

An additional nuance to the definition of sexual misconduct at the University of Oregon relates to prior sexual contact. Acts that otherwise meet the our definition of sexual misconduct are categorized by the university as domestic violence if the parties involved had consensual intimate contact at any point prior to the misconduct. This is relevant to the present research because the University mandates different responses and provides different resources in cases of domestic violence than it does in cases of sexual misconduct. For the purposes of focus, clarity and concision, the present research will not attempt to address the risks, rewards and challenges of RJ responses to domestic violence. It's worth noting that the line between the two types of offenses is porous, and

carving a clear distinction between them is sometimes difficult (Legal Counsel, personal communication, October 9th, 2017).

It is important to note that sexual misconduct affects and is perpetrated by representatives of all sexes, genders, and sexualities. However, the great majority of survivors identify as women, and the great majority of perpetrators identify as men (Fisher, Cullen & Turner, 2000; Freyd et al., 2015; Krebs et al., 2007; Planty et al., 2013; Tjaden & Thoennes, 2000; Ullman, Karabatsos & Koss, 1999). As such, many of the studies referenced in the current research exclusively study sexual misconduct perpetrated against women, and others make only cursory reference to sexual misconduct perpetrated against men. The present research follows this trend, and deals mostly with information in which women are survivors and men are perpetrators, although information on other configurations of sexual misconduct will be presented where available. This is not intended to gloss over or ignore the experience of any group or individual, but rather to reflect the data available for analysis.

A note on grammar: in order to reflect the fact that sexual misconduct is perpetrated by and against all gender identities (not just the binary male/female, but transgender and gender nonconforming individuals as well) this thesis will make use of the pronouns “they/their/them” as a gender-neutral singular pronoun. This usage of “they/their/them” has recently been approved by the APA and Chicago manuals of style (Fogarty, 2017)

Other terms that will be used in the thesis and that warrant definition are:

1. Suspect
2. Perpetrator

3. Complainant
4. Survivor
5. Restorative Justice
6. Traditional Justice

In the present research the term “suspect” will be used to describe individuals accused of sexual misconduct, while the term “perpetrator” will be used to describe people whose guilt has been established by the traditional legal system, a campus justice system used by a particular institution to investigate cases of alleged student misconduct, or through their own admission. The term “survivor” will be the default terminology used in the present research to refer to people who report and/or have been proven to have been the victims of sexual misconduct. The term “complainant” will be used to describe people who report having been the victim of sexual misconduct to a court of law or other official regulatory agency (like an HR department or the University of Oregon Office of Student Conduct), but whose claims have not been proven by that court or agency.

The preference for the term “survivor” warrants further explanation. “Survivor” is the nomenclature increasingly preferred (rather than terms like “victim”) by people who have experienced sexual misconduct. Where “victim” couches a person's identity in terms of the crime they suffered and focuses on their powerlessness and pain, “survivor” identifies an individual by their struggle, perseverance and empowerment (Jordan, 2013; Handeyside, Wickliffe & Adams, 2007). This term will also be used throughout this paper because it supports the idea that something occurred which a person survived. This is important because there is a common misconception that survivors often falsely report instances of sexual misconduct (Lonsway, Archimbaut & Lisak, 2009). This systemic

prevalence toward doubting the stories of survivors may influence the likelihood of prosecutors pressing charges (Spohn, Beichner & Davis-Frenzel, 2001), the severity of the psychological distress experienced by survivors (Orth & Maercker, 2004), and the likelihood of survivors reporting offenses at all (DuMont, Miller & Myhr, 2003). For this reason, any language that intimates doubt regarding the truth of survivor's allegations should be used thoughtfully. Please note that the original terminology used by other authors will be used when quoting or citing them. This will result in the inclusion of terms like "victim" and "offender" that would not otherwise be used.

Restorative Justice (RJ) is in some ways an ill-defined term that may refer to a mindset and philosophical framework for understanding wrongdoing and justice and/or to specific processes which incorporate that mindset (Latimer, Dowden & Muise, 2005). RJ is an alternative understanding of justice from that provided by the traditional, adversarial, punitive legal system (e.g. the court system) in which crimes are defined as violations of laws, guilt is established through choosing a winner between prosecution and defense, offenders are punished, and outcomes for victims are decided by third parties like judges (Umbreit, Vos, Coates & Lightfoot, 2006). In contrast, RJ defines crime as harmful violations of relationships, prefers to engage offenders and victims directly rather than through proxies like lawyers, focuses on offenders themselves taking responsibility for understanding and often repairing the damage they caused, and empowering victims and other affected groups and individuals (e.g. representatives of the community in which an offense occurred) to define the nature of the harms done to them and identify what a just resolution to the offense would be (Bonta, Jesseman, Ruge & Cormier, 2006; Umbreit et al., 2006; Zehr, 2005). A defining feature of RJ is that it seeks

to bring together the victim, the offender, the community, and a facilitator in order to decide for themselves what a just outcome to an offense would be (Latimer et al., 2005).

RJ can also describe an array of different justice processes with a variety of different titles that occasionally overlap. For instance, a RJ process in which a victim, offender and facilitator meet to discuss the nature, impact and appropriate response to an offense might be called victim-offender mediation, victim-offender conferencing, restorative justice conferencing, victim-offender reconciliation, or victim-offender dialogue (Umbreit et al., 2006). For the purposes of the present research, “RJ” will be used to describe the philosophy of justice described above, and “RJ process” will be used to describe any of the array of justice processes that involve bringing together victims, offenders, (usually) representatives of communities affected by an offense, and a facilitator in order to collaboratively create a response to a wrongdoing.

A key element in RJ is the idea of voluntary, informed consent. The way that RJ programs (as opposed to traditional justice processes like the court systems, and the police) classically function is at the volition of the parties involved (Bonta et al., 2006; Umbreit et al., 2006; Zehr, 2005). This means that the victim, offender, facilitator, and any other participants only participate at their own, uncoerced discretion. While this is the ideal version of RJ, in practice it often functions differently. For instance, RJ is often offered to people convicted of an offense as an option through which their guilt can be addressed. In this context a judge might offer an offender the option of participating in an RJ program in lieu of some aspect of their sentence. While there is still an element of choice in this version of RJ, that choice comes in the context of avoiding a potentially worse option and therefore may not truly be a free one. There are also a variety of

workarounds that RJ processes incorporate to address the fact that not all potential participants may be willing to participate. For instance, a process might use a surrogate in place of an actual offender if the offender is unwilling to participate, or if the victim is unwilling to meet them.

Punitive justice, like RJ, can refer to both a conception of justice and an array of justice processes that reflect that conception. Philosophically punitive justice refers to the idea that crime is a violation of laws, and that the appropriate response to such a violation is the punishment of the perpetrator. Punitive justice is also usually legalistic in that it adheres to the strict standards, procedures and precedents found in a legal code. The traditional justice system (i.e. the courts, judges, lawyers, juries and the legal code) is almost always punitive in that its goal is to assess whether someone committed a crime, and to determine and apply the appropriate negative consequence (e.g. fines, incarceration, capital punishment) for the offender (Zehr, 2005). The idea of punitive justice is present outside the traditional justice system in settings ranging from academic misconduct (e.g. “you cheated on a test, which is prohibited by the class syllabus, and therefore fail the class”), to vigilante justice in popular culture (e.g. “you mugged someone, which is against the law, so Batman will beat you up”). For the purposes of this thesis, the term “punitive justice” will refer to this overarching conception of justice, “traditional legal system” will refer to the U.S. police and court system, and “campus justice system” will refer to the justice processes (which are often legalistic and punitive) developed and utilized by campuses to respond to student misconduct. Campus justice systems are usually distinct processes developed by individual institutions that may work in tandem with, but are separate from, the traditional legal system. The details of the

campus justice system used at the University of Oregon are examined more thoroughly in the “Legal and legislative issues relevant to RJ responses to sexual misconduct” subsection found below

## CHAPTER IV

### FINDINGS

This section of the present research constitutes a specialized literature review designed to report and collate data relevant to answering the research question. This section includes a mix of quantitative (e.g. surveys), and qualitative (e.g. descriptions of RJ processes) data.

#### **Sexual Misconduct**

There are a variety of large-scale studies that investigate the nature of sexual misconduct. These studies range from national-level surveys to studies that investigate the experiences of currently enrolled college women to a study that deals specifically with students enrolled at the U of O. These studies shed light on various aspects of sexual misconduct including its prevalence, the damage it inflicts, perpetrators, reporting rates, rates of prosecution, false reports, how sexual misconduct is addressed by the traditional justice system, the psychology behind the perpetration of sexual misconduct, and the facilitative role of alcohol. This section is valuable to answering the research question because investigating the nature of a problem informs the applicability of any possible solution. Examining the nature of sexual misconduct - who, what, when, where, how and importantly why it occurs - is a necessary step in analyzing the risks, rewards and challenges of a RJ response to it. The surveys and studies compared in the following section include:

- National Crime Victimization survey (NCVS) (Planty et al., 2013)
- The 2015 Campus Climate Survey on Sexual Assault and Sexual Misconduct (CCSSASM) (Cantor et al., 2015)

- National Violence Against Women survey (NVAW) (Tjaden & Thoennes, 2000)
- National College Women Sexual Victimization study (NCWSV) (Fisher, Cullen & Turner, 2000)
- National Survey of College Women (Ullman, Karabatsos & Koss, 1999)
- Campus Sexual Assault survey (CSA) (Krebs et al., 2007)
- Incidence of Rape Among College Students study (Koss, Gidycz & Wisniewski, 1987)
- University of Oregon 2014 & 2015 Sexual Violence and Institutional Betrayal Survey (Freyd et al., 2015)

### **Prevalence of sexual misconduct**

The following section draws on the findings of a number of studies on the subject of the prevalence of sexual misconduct. Direct comparison of these studies is made difficult by the fact that they study different groups at different times, ask different questions, and define their findings in different ways. This reflects the view that “the level and type of sexual violence reported by victims is sensitive to a variety of factors related to the interview process, including how items are worded, definitions are used, and the data collection mode. In addition, the legal definitions of rape and sexual assault vary across jurisdictions” (Truman & Langton, 2015, p. 13). As a whole these studies provide compelling evidence that sexual misconduct is epidemic, and that women attending college are especially at risk.

On the lower end of the spectrum, the National Crime Victimization Survey (NCVS) found that the annual rate of rape and sexual assault victimizations (consistent

with sections one, two and three of sexual misconduct) from 2005-2010 for women between the ages of 18 and 34 was 0.37%, which suggests that 5.97% of 34 year old women have experienced rape or sexual victimization) (Planty et al., 2013). A separate national study, the National Violence Against Women (NVAW) survey conducted by the National Institute of Justice during 1995-1996 found that 17.6% of surveyed women and 3.0% of surveyed men said they experienced a completed or attempted rape (consistent with sections one and two of sexual misconduct) at some time in their life (Tjaden & Thoennes, 2000).

Like the NCVS and the NVAW, the National College Women Sexual Victimization (NCWSV) study. The NCWSV shared the goal of identifying the prevalence of certain types of crime, including forms of sexual misconduct. However, it did so specifically with a nationally representative sample of 4,446 college women, rather than with a sample of women in general. The findings of the NCWSV (which are largely similar to those reported by the NVAW) can help shed light on the discrepancy between the NCVS and the NVAW studies, and focuses on the target demographic of the present research: college students. The NCWSV found that 2.8% of college women experienced attempted or completed rape (consistent with sections one and two of sexual misconduct) over the course of the 6.91 month reporting period. Extrapolating this data over the course of a four-to-five year college career results in a percentage of completed or attempted rape victimization among women in higher educational institutions of 20-25% (Fisher, Cullen & Turner, 2000).

Because this is a significantly higher percentage of attempted or completed rape than was reported in the NCVS study, this discrepancy bears examination. The two

studies differ in several ways. The NCVS study aggregated data on rape (consistent with sections one and two of sexual misconduct) and sexual victimization (consistent with section three of the sexual misconduct), while the NCWSV data relates to instances consistent with sections one and two of our definition sexual misconduct only. The NCVS studies women aged 18-34 rather than women attending colleges. The NCVS surveyed a wider range of misconduct over a broader section of the population, which makes the significantly lower rate of sexual misconduct it reported compared to the NCWSV surprising. This difference may be explained by the fact that while the NCWSV used a broadly similar methodology to the NCVS, it screened applicants differently by using behaviorally specific questions. For instance, respondents to the NCWSV were not asked if they “had been raped,” but rather if someone had “made you have sexual intercourse by using force or threatening to harm you . . . by intercourse I mean putting a penis in your vagina” (Fisher, Cullen & Turner, 2000). The intent was to address the challenge posed by disparate definitions of rape and the challenge some survivors face in defining their experience as such. This distinction may be meaningful because less than half of respondents to the NCWSV whose experiences were categorized as completed rapes self-identified their experience as such (Fisher, Cullen & Turner, 2000).

The Campus Sexual Assault (CSA) survey found that of the 5,446 women attending college who completed the survey, 19% reported experiencing completed or attempted sexual assault (consistent with section one, two, and three of sexual misconduct) since entering college. However 52.7% of the sample group had been attending college for less than two years of college. When sub-setting for people at the end of their college careers, 26.1% of seniors reported experiencing attempted or

completed sexual assault since entering college. It is worth noting that the CSA differentiates between sexual misconduct that involved force vs. incapacitation (through some form of substance abuse). 6.9% of seniors were victims of physically forced sexual assault since entering college, and 16% of seniors were victims of incapacitated sexual assault since entering college (Krebs et al., 2007).

These findings are largely similar to those reported in the Incidence of Rape Among College Students study, which found that out of a national sample of more than 6,000 students enrolled in 32 colleges and universities, 27% of the women reported having experienced attempted (12%) or completed (15%) rape (consistent with sections one and two of sexual misconduct) in their lifetime (Koss, Gidycz, & Wisniewski, 1987).

The 2015 Campus Climate Survey on Sexual Assault and Sexual Misconduct (CCSSASM) (Cantor et al., 2015) surveyed 20,743 students enrolled at the University of Virginia. The survey differentiates between two types of sexual victimization: nonconsensual penetration (consistent with sections one and two of sexual misconduct), and nonconsensual sexual touching (consistent with section three of sexual misconduct). The survey further differentiates between the use or threat of physical force and incapacitation (e.g. the use of drugs or alcohol) as methods a perpetrating sexual misconduct. The CCSSASM found that overall 23.8% of undergraduate women experienced some form of sexual misconduct since entering the University of Virginia. Of these 11.4% percent were survivors of non-consensual penetration, and 17.7% were survivors of non-consensual sexual touching. Incapacitation facilitated more instances of non-consensual penetration than did physical force, while the opposite was found to be true for non-consensual sexual touching. When sub-setting for people at the end of their

college careers the research found that 31.4 percent of female undergraduates reported experiencing some form of sexual victimization consistent with sections one, two and three of sexual misconduct by their senior year (Cantor et al., 2015).

A series of studies at the U of O undertaken by Freyd et al. (2015) in 2014 and 2015 found that 10% of female participants (13% in 2015) experienced non-consensual completed anal or vaginal penetration (consistent with section one of sexual misconduct), that 19% of female participants (20% in 2015) were subjected to attempted or completed anal or vaginal penetration (consistent with sections one and two of sexual misconduct), and that 35% of female (27% in 2015) and 11% of male participants (7% in 2015) indicated at least one sexual experience without consent during college (consistent with sections one, two and three of sexual misconduct).

Sexual harassment (consistent with section four of sexual misconduct) may be significantly more prevalent than crimes consistent with sections one, two and three of sexual misconduct. The American Association of Universities (2007) found that 62% of female college students reported having been sexually harassed at their university - overwhelmingly at the hands of their peers. The CCSSASM found that 52.8% of all graduate and undergraduate students at the University of Virginia experienced sexual harassment during their college careers (Cantor et al., 2015).

Identifiable broad trends emerge from this research. Rates of experiences that correlate to sections one and two of our working definition of sexual misconduct include 17.6% (Tjaden & Thoennes, 2000), 20-25% (Fisher, Cullen & Turner, 2000), 19-26.1% (Brebs et al., 2007), 27% (Koss, Gidycz, & Wisniewski, 1987), 11.4% (Cantor et al., 2015) and 19-20% (Freyd et al., 2015). The finding of Planty et al. (2013) constitute an

outlier, finding that sexual misconduct (this time relating to sections one, two and three of sexual misconduct) occurred at a rate of 5.97%. If we include this outlier, the average chance of a women experiencing sexual misconduct are between 17.1%-19.29%, if we exclude the outlier, then the rate is between 19.52%-22.14%. It's worth noting that the studies focused on college women universally reported higher rates of sexual misconduct than those focused on U.S. society as a whole, suggesting that this problem is especially acute on campuses (DeKeseredy & Scwhartz, 1998).

An appreciable percentage of survivors experience multiple instances of sexual misconduct (Franklin, 2010). An analysis of two national datasets suggested that “a small proportion of college women experience a large proportion of violent and sexual victimizations” (Daigle, Fisher, & Cullen, 2008, p. 1296). This suggests that not only do a significant percentage of college women experience some form of sexual misconduct, but a significant subset of those are survivors of multiple victimizations.

Sexual misconduct perpetrated against men is less common and less studied than that perpetrated against women. Available data on the prevalence of sexual misconduct against men (which is overwhelmingly perpetrated *by* men) includes:

1. The NCVS, which found that approximately 9% of all rape or sexual victimizations (consistent with sections one, two, and three of sexual misconduct) between 1995-2010 were perpetrated against men (Planty et al., 2013)
2. The CCSSASM, which found that 4.5% of undergraduate men at the University of Virginia were survivors of either non-consensual penetration (consistent with sections one and two of sexual misconduct) or sexual touching (consistent with section three of sexual misconduct) (Cantor et al., 2015).

3. The Department of Justice, which found that roughly 3% (or 2.78 million) of American men have experienced sexual misconduct (consistent with sections one and two of our definition of sexual misconduct) in their lifetime (Department of Justice, 2000)
4. The CSA, which found that approximately 6.1% of males reported experiencing attempted or completed sexual assault (consistent with sections one and two of sexual misconduct) since entering college (Krebs et al., 2007)

These surveys suggest that, while uncommon when compared to the rates experienced by women, sexual misconduct perpetrated against men is still notably prevalent. (Daigle, Fisher, & Cullen, 2008).

### **Damage inflicted by sexual misconduct**

Obviously a traumatic experience like sexual misconduct has an impact on survivors. The scope and nature of this trauma is worth investigating since informs the harm experienced by survivors that RJ might work to repair, and may impact survivors' willingness and ability to engage in a justice process.

Research indicates that four out of five survivors of experiences consistent with sections one and two of sexual misconduct suffer from chronic physical or psychological conditions as a result of their experience (Strategies for the Treatment and Prevention of Sexual Assault, 1995). The nature of these conditions varies greatly between survivors, but may follow a series of phases. The initial acute phase directly following a trauma may involve loss of sleep, changes in appetite, difficulty concentrating, self-blame, shock, numbness, unstable emotions, disorientation, memory gaps, loss of coping skills, fatigue, and other behavior changes. In the following 6-12 months survivors may experience loss

of appetite, nightmares, stress, fatigue, loss of sexual response, nausea, guilt, fear, anxiety, disbelief, the sensation of feeling ruined, avoidance of intimate relationships, and depression (Herman, 1994). Survivors may experience social withdrawal, an inability to go outside, engage in self-medication, harbor suicidal feelings, exhibit an inability to talk about the assault, and experience anxiety or hyper-alertness when alone. At a certain point survivors may continue to grieve the outcome of their victimization while seeking out supportive services and developing coping strategies to aid in recovery (Herman, 1994). Many of these symptoms are consistent with post-traumatic stress disorder, and epidemiological studies show that prevalence of posttraumatic stress disorder (PTSD) is high among survivors of sexual assault (consistent with sections one and two of sexual misconduct), and lies between 35% to 70% for survivors (Orth & Maercker, 2004). A prominent result of experiencing sexual misconduct is a sense of self blame that may be linked to and predictive of avoidance coping (i.e. drawing into oneself, avoiding any thought of the trauma) (Littleton & Breitkopf, 2006).

In addition to the psychological and physical harm directly caused by sexual misconduct, data suggests that survivors are concerned by the risk of additional retaliatory harm should they report the offense to the authorities. The CCSSASM found that 24.2% of students surveyed (and 29.3% of undergraduate women) indicated that they thought it was very or extremely likely that a perpetrator or their associates would retaliate against the survivor in response to a report of sexual misconduct (Cantor et al., 2015).

An overarching theme in the literature is that the psychological harm of rape is often articulated by survivors in terms of its disempowering and dehumanizing effects.

As one feminist scholar and rape survivor describes it: “rape denies that you are a person, that you exist” (Brenner, 2013b, p. 23). The impact of sexual misconduct on survivors is long-term, both psychological and physical, often corresponds to the causes and symptoms of PTSD, and may be informed by survivor’s feelings of dehumanization.

### **Data on perpetrators of sexual misconduct**

Information regarding perpetrators of sexual misconduct is valuable for the present research because RJ centers on the interaction between victims/survivors and their perpetrators. Available data shows an overwhelming agreement that sexual misconduct is usually perpetrated by people known to the survivor, and may be perpetrated by a relatively small group of offenders.

The National College Women Sexual Victimization Study found that the perpetrator was known the survivor (as a friend, classmate, significant other or acquaintance) in 96% of completed rapes (consistent with sections one and two of sexual misconduct) and 92% of attempted rapes (Fisher, Cullen & Turner, 2000). These findings are mirrored by Ullman, Karabatsos & Koss (1999), who found that perpetrators were known to the victim in 93% of sexual victimizations (consistent with section one, two and three of sexual misconduct). Similarly, the National Institute of Justice found that between 85-90% of sexual assaults (consistent with sections one, two and three of sexual misconduct) reported by college women were perpetrated by someone known to them (NIJ). The NCVS reported that 78% of sexual violence (consistent with sections one, two and three of sexual misconduct) involved an offender who was a family member, intimate partner, friend, or acquaintance of the survivor (Planty et al., 2013). The NVAW survey found that 64% of the women who reported being raped, physically assaulted, and/or

stalked (consistent with sections one-through-four of sexual misconduct) were victimized by a current or former husband, cohabiting partner, boyfriend, or date. (Tjaden & Thoennes, 2000).

There is some debate over the recidivism of perpetrators of sexual misconduct. Some data suggest that many perpetrators are repeat offenders. One study found that of 1,882 self-reported rapists (consistent with sections one and two of sexual misconduct), “63.3% were recidivists, and reported committing additional rapes, either against multiple victims or the same victim, averaging 5.8 rapes per person” (Lisak and Miller, 2002, p. 8). Alternatively a study by Swartout et al. (2015) found that the while 10.8% of college men reported perpetrating rape (consistent with sections one and two of sexual misconduct) since they were 14, the great majority of college rapists were not serial rapists. Most (almost 80%) were either first time offenders, or repeat offenders who re-offended over a very limited period of time rather than across their entire college career. The data from Lisak and Miller (2002) suggests that effective responses to sexual misconduct should focus on reducing the recidivism rate of serial offenders. The data from Swartout et al. (2015) suggests that targeting those at risk of committing a first offense should be prioritized.

### **Reporting rates of sexual misconduct**

The rate at which sexual misconduct is reported to the traditional justice system and campus authorities is also pertinent to the current research as a way of illustrating the limitations of current justice responses. A variety of sources agree that sexual misconduct is widely underreported to the authorities (e.g. police, campus administration etc.), and may in fact be the violent crime least reported to law enforcement (Handeyside, Wickliffe

& Adams, 2007). DuMont, Miller & Myhr (2003) suggest that, although the criminal justice system can provide substantial benefit to women who report cases of sexual assault including access to victim services, punishment for offenders and a restored sense of safety and well-being, few survivors of sexual assault attempt to access it. Data on reporting rates of sexual assaults (consistent with sections one, two and three of sexual misconduct) to law enforcement ranges from 6.0% (DuMont, Miller & Myers, 2003) to somewhere between 32% and 59% (Planty et al., 2013). The cause for this discrepancy may be linked to survivor's negative beliefs about or experiences with the criminal justice system's response to sexual assault (Hattem, 2000). This negative view of the justice system may in turn stem from the belief that reporting to the police and going to trial would involve impugning a survivor's character (DuMont, Miller & Myhr, 2003). Under-reporting may also be a function of intrapsychic processes like guilt, fear (of reprisal or of not being believed), humiliation, helplessness and denial (Stewart, Dobbin, & Gatowski, 1996; Wiehe & Richards, 1995; Fisher, Cullen, & Turner, 2000).

This reporting number may be significantly lower on campuses, where one study found that fewer than 5.0% of completed and attempted rapes of college students are reported to campus authorities or law enforcement (Fisher, Cullen & Turner, 2000). Similarly, Freyd et al. (2015) found that the 90% of students who were sexually assaulted (consistent with section three of sexual misconduct) and 86% of students who were raped (consistent with sections one and two of sexual misconduct) did not report to a university source. The CCSSASM found that the type of sexual misconduct experienced by a survivor strongly impacted their reporting rate. While 25.6% of survivors of non-consensual penetrative acts (consistent with sections one and two of sexual misconduct)

involving physical force were reported to authorities (either the traditional justice system or campus authorities), only 3.8% of non-consensual sexual touching (consistent with section three of sexual misconduct) involving force was reported (Cantor et al., 2015). For comparison, rape and sexual assault were the least reported of all violent victimizations in the U.S. (a category which includes rape and sexual assault along with offenses like robbery, assault and domestic violence) in 2014, with 33.6% reported to the police compared to 46% of violent victimizations as a whole (Truman and Langton, 2015).

These low levels of reporting may be linked to how closely a sexual assault aligns with myths about what constitutes “real” rape and how likely a person is to report it to the police. DuMont, Miller & Myhr (2003) investigate the extent to which the types of sexual assault that are reported to the police reflect commonly held conceptions of “real rape” that is - sexual assaults in which sober, housed women are subjected to forcible intercourse by, and incur some injury while resisting, strangers who may use weapons. These myths about rape (consistent with sections one and two of sexual misconduct) include the idea that it represents a loss of control over sexual desire (rather than an expression of power and control), that most rapes are committed by someone unknown to the survivor, that rapists are psychopaths or mentally ill, and that survivors are in some way responsible for their own rape (Handeyside & Adams, 2007). Incapacitation, for instance as a result of alcohol consumption appears to impact how survivors of sexual misconduct view their experiences. Koss, Gidycz, & Wisniewski (1987) found that of victims of completed or attempted rape (congruent with sections one and two of sexual misconduct), 64.6% of physically forced rape victims and 37.8% of incapacitated rape

victims considered the incident to be rape. Once again whether a survivor considers an incident to constitute rape appears to inform the likelihood of reporting it to the authorities. Survivors of physically forced sexual assault (consistent with sections one and two of sexual misconduct) were found to contact the authorities 13% of the time, while survivors of sexual assault in which they were incapacitated by a substance like alcohol reported in 2% of cases (Koss et al., 1987)

DuMont et al. (2003) suggest that, for the most part, survivors are not more likely to report crimes committed against them to police and/or campus authorities regardless of how closely their assault aligns to myths of “real” rape. The major exception to this trend involves situations in which visible, physical harm was inflicted on a survivor, in which case survivors were three times more likely than average to report their assault. This is consistent with the theory that a victim's motivation to take corrective action - like involving the police - may be linked to how harmful they consider the offense against them to be; and demonstrable physical harm is one of the most common ways to judge the seriousness of a crime (Greenburg & Ruback, 1992). However, studies suggest that only one in five rapes or attempted rapes (consistent with sections one and two of sexual misconduct) committed against college women result in visible injury like bruises and cuts (Fisher, Cullen & Turner, 2000). This potential lack of reporting due to not labeling an incident as rapes is borne out by a National Institute of Justice study which found that roughly 50% of student survivors of rape (consistent with sections one and two of sexual misconduct) do not define the incident as “rape.” This is especially true when no weapon was used, there is no obvious physical injury, and alcohol was involved — factors

commonly associated with campus acquaintance rape. This is one reason rape and other sexual assaults on campus are not well reported (NIJ).

Survivors report many other reasons why they are loathe to report crimes committed against them. Survivors cite a lack of awareness that an incident constitutes sexual assault or rape, fear that friends and/or family will not or believe them, fear that they will be blamed by authorities, or fear that they will be put on trial, opening their past and present behavior to public scrutiny (Handeyside, Wickliffe & Adams, 2007). This last reason has been found to be the strongest impediment victims cite for not reporting the offense (Sokulo, 2004). The NCWSV found disparate reasons for this under-reporting, the most cited being “did not think it was serious enough to report” (70%). This was followed by “not clear that harm was intended” (42%), “did not want family or other people to know (39% and 40% respectively), “lack of proof” (37%), and “fear of reprisal” (33%) (Fisher, Cullen & Turner, 2000, pg. 23-25). These findings are similar to those of the 2004 CSA survey. Although the CSA used slightly different terminology and divided the respondents based in part on whether the misconduct they suffered was a result of force or incapacitation (usually via substance abuse), it also listed “not serious enough” as the top reason not to report an incident to law enforcement, followed by a desire to keep the incident secret from others and a sense that harm was not intended. (Krebs, Lindquist, Warner, Fisher & Martin, 2007). The CCSSASM found that amongst students at the University of Virginia who had survived victimizations consistent with sections one and two of sexual misconduct and not reported it, between 80.4%-86.3% chose not to report because they didn’t think the incident was serious enough. Additionally 29.9% did not report because they thought nothing would be done as a result

of doing so, and 17.7% chose not to out of concern that their confidentiality would not be maintained (Cantor et al., 2015). Koss et al. (1987), who also differentiate in their study between survivors of sexual misconduct in which physical force was used and those in which the survivor was incapacitated, found that 56% of physically forced sexual assault victims, and 67% of incapacitated sexual assault victims who chose not to report the crime did not do so because they did not think the incident was serious enough to report. The second most common reason for not reporting was that it was unclear that a crime was committed or that harm was intended (35% of both types of survivors), and that the survivors did not want anyone to know about the incident (42% of physically forced sexual assault victims and 29% of incapacitated sexual assault victims). Overall, these studies suggest that survivors most commonly choose not to report incidents of sexual misconduct due to a belief that the event was not sufficiently serious or intentional enough to warrant an official response, followed by a desire to keep the incident secret.

### **False reporting of sexual misconduct**

The issue of reporting touches on the frequently discussed misconception that in “cases of non-stranger sexual assault... many—or even most—reports are false” (Rennison, 2002). Lonsway, Archimbaut & Lisak (2009) conducted a meta-analysis of studies they deemed to be sufficiently scientifically rigorous<sup>1</sup> which addressed the rates of false reporting in cases of sexual assault (consistent with sections one, two and three of sexual misconduct). They found that between 2-8% of sexual assault cases could reasonably be considered false reports. This number is supported by research from

---

<sup>1</sup> In this study, Lonsway, Achimbaut and Lisak determined that studies of rates of false reporting that relied on investigating officers determining reports to be false without a full investigation were not scientifically rigorous. Data from these non-rigorous studies showed false reporting rates ranging from 10-90%.

Schafran (1993) who found that the rate of false reports/accusations of rape is roughly 2-3%, which is no different from that of other crimes. Complainant recanting (as described by Spohn, Beichner & Davis-Frenzel, 2009) is a distinct process from false reporting, but the two share the result of the reports of the complainant being dismissed. While they measure linked but distinct issues, this 2-8% or 2-3% false reporting rate is consistent with one of the findings of Spohn et al. (2009), who found that 5 out of 140 (3.5%) cases they reviewed ended with victims recanting their allegations. Lonsway et al. (2009) outline a host of reasons as to why survivors of sexual assault may omit or change details of the crime (or fail to report it at all). These reasons range from shame to trauma induced memory changes to minimizing or omitting details that would implicate a perpetrator upon whom a survivor relies for their basic needs.

### **Prosecution rates for sexual misconduct**

The rate of arrest and prosecution of perpetrators of sexual misconduct is extremely low, with the large majority of rapists never apprehended (Carr & VanDeusen, 2004). The Rape, Abuse & Incest National Network (RAINN), which collates data from the NCVS, the Department of Justice, and other government sources, found that 11 out of every 1000 rapes (consistent with sections one and two of sexual misconduct) reported by survey respondents are referred to prosecutors, and of these, six result in conviction and incarceration (RAINN, 2017). The distinction between arrests and prosecutions is salient here. The NCVS found that “out of the 283,200 annual average rape or sexual assault victimizations in 2005-10, both reported and not reported to the police, approximately 12% resulted in an arrest at the scene or during a follow-up investigation.” (Planty et al., 2013). This suggests that roughly 90% of rape and sexual assault victimizations

(consistent with sections one, two and three of sexual misconduct) do not result in an arrest, and of those arrested, roughly one percent are prosecuted in court (RAINN, 2017).

Spohn, Beichner & Davis-Frenzel (2001) suggest that a variety of factors impact prosecutor's decisions to prosecute these cases, ranging from assessments of the likelihood of conviction to process issues like complainants failing to appear for pre-file interviews or refusing to cooperate with the prosecution. Prosecutors may base their decision to pursue or drop charges on their judgement of how decision-makers like jurors will view salient aspects of a case. Prosecutors may use information like the type and severity of an offense and the background and behavior of suspects and victims in order to assess the likelihood of a conviction. Prosecutors were found to use information about the complainant - like their criminal history, and history of drug use - in sexual assault cases to inform their decision about whether to prosecute. The decisions made by judges and juries may also be impacted by their perception of the complainant. Research suggests that "sexual assault case outcomes are affected by the victim's age, occupation and education, by risk-taking behavior such as hitchhiking, drinking, or using drugs and by the reputation or moral character of the victim. Sexual assault case outcomes are also affected by the relationship between the victim and the suspect. Stranger rapes are investigated more thoroughly and are less likely to be unfounded by the police" (Spohn, Beichner & Davis-Frenzel, 2001).

Spohn et al. found that the sort of prosecutorial concern over convictability described above was only one of several reasons why sexual assault cases went unprosecuted. Of the 58 cases of sexual assault they reviewed in which the charges were rejected by the prosecutor, 15 were rejected because the victim failed to appear or could

not be located, 10 were rejected because the victim would not cooperate or asked that case be dropped, and in 5 cases the victim recanted. These disparate causes for a lack of prosecution may be linked. The time-consuming and emotionally demanding process by which prosecutors determine convictability may deter victims from appearing before or cooperating with the court system (Frohman, 1991).

### **Sexual misconduct and the traditional justice system**

In the instances in which sexual misconduct is reported, the perpetrator is arrested, and the case goes to trial, research suggests that survivors have limited faith in the ability of the justice system to help them. The process used by the justice system to prosecute crime may either cause or be perceived to cause additional harm to survivors. These justice system problems include attrition (the damage caused by the long time period required by the justice system), re-traumatization (the pain experienced by survivors when they are required to relate their experiences to a jury, and have the veracity of their claims assessed), and negative outcomes (survivor displeasure with the actions taken by the justice system in response to their claims) (Orth & Maercker, 2004). An analysis by Koss (2006) adds that some survivors experience the perpetrator and some members of the justice system (e.g. jurors, judges etc.) blaming them for being partially or fully responsible for the criminal offense, and that in addition to the trial outcome, the process itself is a frequent source of indignation. These studies suggest that justice proceedings like trials can be traumatic experiences for survivors. Supporting evidence for the previous claims is found in a study in which 52% of rape (consistent with sections one and two of sexual misconduct) survivors surveyed found their contact

with the legal system to be in some way harmful (Campbell, Wasco, Ahrens, Self, & Barnes, 2001).

The interview with the survivor support specialist supported the idea that sexual misconduct is infrequently dealt with effectively by the traditional justice system. Few survivors choose to report to the authorities, and so few of those cases that are reported result in a conviction. This may be due both to the mismatch between the nature of most sexual misconducts and the evidentiary rules of courts (i.e. many instances of sexual misconduct can boil down to “he said she said,” which favors suspects in a system in which one is presumed innocent until proven guilty), and to the expectations and experiences many survivors have with contacting the police. Survivors report that their interactions with law enforcement can be more traumatic than the initial misconduct. An example of this would be an officer focusing on establishing an exact sequence of events with a survivor, whose recent trauma precludes them from reporting the sequence accurately. This sort of grilling and general stance of incredulity can be traumatic to survivors. Concern over the risk of trauma may discourage contact with the traditional justice system (Support Specialist, personal communication, September 29th, 2017).

However a separate study found that trials of perpetrators did not cause re-traumatization (defined as a significant increase in the frequency of posttraumatic stress reactions) among survivors. The study assessed a variety of trial variables including outcome evaluation, procedural justice, moral satisfaction with the court decision, relief at the court decision, stress caused by testimony, stress caused by delay until the beginning of the trial, victim blaming by judge, and victim blaming by perpetrator or defender. Of these, only moral satisfaction was found to significantly affect or predict

PTSD reactions in survivor participants in the justice system. Victims who had experienced moral satisfaction with the court decision reported lower levels of intrusion and hyper-arousal (indicators of PTSD) several years later. Other trial variables were of no importance in the prediction of posttraumatic avoidance (Orth & Maercker, 2004).

It is worth noting that regardless of what the evidence cited above suggests, there is a strong perception amongst survivors and their supporters that contact with the legal system is traumatic/re-traumatizing to survivors of sexual misconduct. A study of mental health professionals found that 81% of the participants believed that contact with the legal system can be psychologically harmful for rape (consistent with sections one and two of sexual misconduct) survivors (Campbell & Raja, 1999). In addition, experiences with the justice system may be mediated by the identity of the survivor as a result of disparate treatment across gender, class, and ethnic lines (Orth & Maercker, 2004).

People from traditionally underrepresented communities including people of color, the LGBTQ community, and people with disabilities were found to have particularly acute challenges as a result of surviving sexual misconduct (Handeyside, Wickliffe & Adams, 2007). These challenges may be a result of prejudicial treatment by various aspects of the justice system (police, prosecutors, juries etc.). Male survivors may also face additional challenges related to the cultural perception that sexual misconduct is something that happens to women. This may result in even lower levels of reporting and institutional action in cases of sexual misconduct with male rather than female survivors.

(Handeyside, Wickliffe & Adams, 2007)

### **Psychology of the perpetration of sexual misconduct**

The goal of this subsection is to investigate the multifaceted psychological forces that produce and/or facilitate the perpetration of sexual misconduct. Investigating the psychology of perpetrators can help inform the applicability of responses to sexual misconduct because an effective response (especially one that seeks to reduce recidivism) to an offense should be informed by the psychology that precipitated it (Bonta et al., 2006)

It is generally accepted that sexual misconduct often has little to do with sexuality and much to do with exerting power and control over another person (Jewkes & Garcia-Moreno, 2002; Uggen & Blackstone, 2004). Digging deeper, Marshall and Barbaree (1990) suggest that sexual misconduct is the product of a confluence of biology, psychology and sociology. The biological aspect of sexual misconduct may be rooted in both the general biological drive of mammals to engage in aggressive sexual acts, and the human predisposition towards conflating sex and violence. This predisposition may be a result of the fact that similar biological systems - like the activation of sex steroids by the endocrine system - trigger both sex and aggression. In this understanding, the separation of sex and aggression is a learned behavior that must contend with biology. Marshall and Barbaree (1990) suggest that this biological predisposition interacts with sociological structures that impact the prevalence of sexual misconduct. These include the social dominance of men and resulting devaluation of women, and the prevalence and acceptance of pornography that validates the view that forceful, predatory sex is enjoyed by all parties and accepted by society. Marshall and Barbaree (1990) found that the following were predictors of sexual misconduct: indifference to the feelings of others (for

instance as a result of a lack of empathy), an inability to surmount the biological link between sex from violence, role-models who modelled aggressive responses and devalued women, and feelings of powerlessness that offenders might seek to alter by perpetrating non-consensual sexual acts.

Dehumanization theory may shed light on the psychologies of both perpetrators and survivors of sexual victimization. It may inform the lack of empathy and willingness to commit normally morally repugnant acts described above by Marshall and Barbaree (1990). Rudman and Mescher (2012) suggest that dehumanization and sexual victimization are directly linked in ways that correspond to Haslam & Loughnan's (2014) "Dual Model" definition of dehumanization. Rudman & Mescher (2012) found that men who automatically associated women with animalistic concepts (i.e. who viewed women as akin to animals rather than fully human) scored higher than their peers on a rape-behavioral analogue and rape proclivity tests, and were found to be more willing to perpetrate forms of sexual victimization. The tendency to automatically associate women with mechanistic concepts like objects, tools, and things also positively correlated with men's rape proclivity. This research suggests that men who implicitly dehumanize women (as either animals or objects) are more likely to sexually victimize them.

The connection between dehumanization and sexual victimization may be informed by the sexual objectification of women. Laughnan, Pina, Vasquez & Puvia (2013) suggest that women who are viewed sexually are at a greater than normal risk of being dehumanized via a denial of their mental states and moral concern. Beyond being dehumanized, these sexually objectified women were perceived to be more responsible for being raped. Additionally, this study suggested that sexually objectified women who

experienced sexual victimization elicited fewer changes in moral concern than their non-objectified peers. This research suggests that it is a particular form of dehumanization – one that views women as sexualized objects rather than full humans – that influences both sexual victimization rates and support and regard for survivors.

Interestingly, dehumanization via sexual objectification influences both men and women. Vaes, Paladino & Puvia (2011) found that sexualized images of women produced forms of dehumanization in both men and women in ways that non-sexualized images of women and both sexualized and non-sexualized images men did not. Men tended to dehumanize sexualized women – to view them as sex-objects - as a way to pursue their “sex goal motivation,” (Vaes et al., 2011, pg. 282). Vaes et al. (2011) suggest that sex goal motivation may produce dehumanization by shifting men’s focus away from the personalities of sexualized women and onto their bodies. Women also dehumanized sexualized women. This dehumanization appeared to be “a product of a desire to distance themselves from sexualized representations of their gender” (Vaes et al., 2011, pg. 282). The authors suggest that dehumanization and sexual objectification may be linked because viewing women as sexual objects turns them into products and instruments to be used, consumed or disregarded – which may constitute a denial of their full humanity via the mechanistic form of dehumanization described by Haslam & Laughnan (2014). A potential limitation of this study is that Vaes et al. (2011) focused on gender rather than sexuality, and did not delve into the impact that homosexuality might have on their research (i.e. do gay men dehumanize sexualized women)?

Other psychological forces besides dehumanization may inform a person’s willingness to perpetrate sexual victimization. In conducting their survey of the

victimization of women at the University of Oregon, Freyd, Gomez, Rosenthal, Smidt & Smith (2015) unexpectedly found that female JD students at School of Law were more likely than their peers to suffer a wide variety of sexual victimizations. Freyd et al. (2015) also found that male JD students ranked significantly higher than the norm in their adherence to traditional masculine role norms, as well as all three of the “Dark Triad” of personality traits: narcissism, Machiavellianism and psychopathy. The researchers noted that more research would be required to suggest a causal relationship between these psychological traits and an increased frequency of sexual victimization. This corresponds to research by Handeyside, Wickliffe & Adams (2007) which found that the personality profiles of self-reported college rapists include lack of empathy, hostile masculinity, macho/aggressive and dominant and controlling personalities, impulsivity, emotional constriction, underlying anger and power issues with women.

Further research on the relationship between these psychological traits, dehumanization, and sexual victimization has been undertaken. Brown & Forth (1997) researched the role of psychopathy in sexual assault. They posited that psychopaths are more likely to perpetrate certain types of sexual victimization. The researchers categorized rapists based on their personalities/motivations, and found that psychopaths were more likely to belong to the “opportunistic” or “pervasively angry” rapist subtypes, while non-psychopaths were more likely to be categorized as “non-sadistic-sexual” or “vindictive.” This motivation discrepancy may clarify the relationship between psychopathy, dehumanization and sexual victimization. Psychopathy is itself linked to key aspects of dehumanization including a lack of empathy and a willingness to use morally problematic tools like cruelty and exploitation (Patrick, Fowles & Krueger,

2009). The subtypes of rapist found to be less closely linked to psychopathy include “non-sadistic-sexual,” a motivation that may correlate to the dehumanization of sexualized women discussed above (Laughnan, Pina, Vasquez & Puvia, 2013; Vaes, Paladino & Puvia, 2011). The relationship between sexual victimization and both psychopathy and sexual objectification may be mediated by dehumanization.

The relationship between narcissism – defined as an excessive and defensive assertion of status (Locke, 2009), dehumanization, and sexual victimization has also been investigated. Locke (2009, pg. 99-100) posits that “if the degree to which people perceive themselves and others in desirable or humanizing terms predicts aggression, and self-esteem and narcissism predict these perceptions of the self and others, then these perceptions may constitute one social cognitive process through which the traits of self-esteem and narcissism influence aggression.” Locke suggests that the narcissistic urge to see oneself as more possessing of desirable, humanizing traits than others may encourage and reinforce the perception of others as less fully human than oneself – a key aspect of dehumanization (Haslam & Laughnan, 2014) – and thus facilitate aggression.

Besides its well documented traumatic impacts on survivors (Follette, Polusny, Bechtle & Nuaugle, 1996), sexual victimization itself may elicit a form a self-dehumanization from survivors, i.e. survivors may come to see themselves as less than fully human as a result of their experiences (Brenner, 2013a; Brenner, 2013b). This internalization may be a result of the process of self-blame. Campbell, Dworkin & Cabral (2009) note that self-blame is often characterological (in which survivors perceive a victimization to be result of their personal faults) or behavioral (in which they perceive it to be result of their actions). Either form of self-blame takes away from the culpability of

a perpetrator, but in distinct ways. Characterological self-blame is of particular importance to the present research as it may be linked to dehumanization. Bastian & Haslam (2010) posit that people who experience social ostracism, - the denial of shared human nature - may internalize the view that they are less than human. Bastian & Haslam (2010, pg. 111) suggest that “ostracized individuals feel lacking in flexibility, emotionality, agency, and warmth, as if they see themselves as mechanical entities rather than fully human beings.” The authors found support for the idea that dehumanized people perceive both themselves and those who dehumanized them as less than human, and believed that others would feel the same. It’s worth noting that the mechanistic form of dehumanization, which denies others human nature itself rather than specific human attributes (Haslam & Laughnan, 2004), may be the form of dehumanization that is most damaging and impactful to dehumanized people (Bastian & Haslam, 2010).

In short, research suggests that the willingness and ability to dehumanize others (to see them as less than human, and especially as sex-objects) may mediate the perpetration of sexual misconduct. This means that responses to sexual misconduct that seek to reduce the recidivism rate of perpetrators may be enhanced when they combat dehumanization.

### **Role of alcohol in sexual misconduct**

A final element of sexual misconduct that stood out in this specialized literature review is the facilitative role of alcohol consumption (Mohler-Kuo, Dowdall, Koss, & Wechsler, 2004; Fisher, Cullen, & Turner, 2000; Krebs, Lindquist, Warner, Fisher & Martin, 2007). Investigating the impact of alcohol consumption on sexual misconduct is

useful in answering the research question because effective responses to sexual misconduct should take into account the primary drivers and facilitators of the offense, of which alcohol consumption may be a primary one.

Krebs et al. (2007) found that 11.1% of all undergraduate women experienced sexual assault (consistent with sections one, two and three of sexual misconduct) when they were incapacitated and unable to provide consent, and that 84% of those incapacitations were a result of alcohol use. Mohler-Kuo et al. (2004) found that instances of sexual intercourse when the victim was so intoxicated that she was unable to provide consent (consistent with section 1 of sexual misconduct) accounted for 72% of all the rapes they studied. In one survey Fifteen percent of college men acknowledged using some form of alcohol-related sexual coercion. 35% of the male respondents indicated that their friends approved of getting a woman drunk to have sex with her, and 20% acknowledged having friends who have gotten a woman drunk or high to have sex. (Carr and Van Deusen, 2004).

Research suggests that this positive correlation between alcohol use and sexual misconduct may be associated with alcohol's role in impairing the ability to give consent. (Mohler-Kuo, Dowdall, Koss, & Wechsler, 2004; Fisher, Cullen, & Turner, 2000; Krebs, Lindquist, Warner, Fisher & Martin, 2007). Beyond impacting consent, alcohol consumption may also be related to dehumanization. Gervais, DeLillo & McChargue (2014) suggests that heavy drinking is positively correlated with both sexual objectification and sexual violence in college men. The authors found that sexual objectification (linked to dehumanization by Vaes, Paladino & Puvia, 2011 as described previously) mediated the relationship between alcohol consumption and sexual

misconduct. Alcohol consumption may elicit dehumanizing sexual objectification which in turn facilitates sexual misconduct. Additionally, alcohol's role as a cognitive impairment may encourage misperceptions of women's sexual motive and intent (Abbey, 2002). In short, alcohol is link to the sexual victimization of women in at least three ways: by impairing the ability to provide consent, by promoting misperceptions of sexual motivation, and by facilitating the objectification and dehumanization of women.

### **Sexual misconduct conclusion**

In short, the findings of a variety of studies suggest that sexual misconduct is prevalent in America (and especially so at institutions of higher learning), is often perpetrated by people known to the survivor, is very rarely reported, and even more rarely prosecuted for a variety of reasons, may be facilitated by alcohol consumption and the psychological process of dehumanization. This information on the nature of sexual misconduct will help inform the risks, rewards, and challenges of RJ responses to it.

### **Restorative Justice**

This section delves more deeply into what RJ seeks to do, the ways in which it works, and its efficacy across a variety of variables. As mentioned previously, RJ is both a blanket term for a philosophical approach to justice, and a title for a variety of processes that seek to realize that approach. RJ as a process involves all the parties with a stake in a particular offense coming together to mutually agree on how to deal with the harm caused by it (Marshall, 1996). The process is therefore collaborative (multiple parties working in tandem to identify and repair a harm) rather than adversarial (arguing over guilt and appropriate punishment in which one party defeats another) (Karp, Shackford-Bradley, Wilson & Williamson, 2016). This process is based on viewing

offenses as a rupture in relationships in a community, RJ involves not just directly affected parties (victim and offender), but also their shared community. In an RJ process, the community as a whole is provided with an opportunity to heal through the reintegration of victims and offenders (Llewellyn & Howse, 1998).

RJ is distinct from other forms of alternative dispute resolution, of which mediation is perhaps the most notable. Mediation involves people in a dispute working with a neutral third party to try and find a mutually agreeable way to resolve their conflict. RJ usually involves a harmed party and someone who admits their culpability in causing that harm working with a neutral 3rd party (and potentially an array of relevant, affected community members) to identify the nature of the harm caused, and hold the offender accountable for repairing that damage. Mediation is for people with competing legitimate claims and grievances; RJ is for people who admit their guilt in an offense and those they have harmed (Zehr, 2005).

Functionally there are a constellation of RJ processes that work to achieve the goals stated above. This raises a challenge in assessing and comparing RJ processes: they are not all the same, and a direct comparison of their efficacy might risk equating apples and oranges. Rather than directly comparing RJ processes, this section compares outcomes across a variety of RJ programs. These outcomes represent some of the sought after goals of justice processes in general, and the ability of RJ processes to fulfill them are often compared vis-à-vis the traditional justice system in the literature. This section looks in depth at exactly how some common RJ processes function, then examines the efficacy of these processes in terms of victim and offender satisfaction, recidivism, and restitution compliance.

### **What do RJ programs look like?**

RJ programs in general bring together offenders, victims, community members and a trained mediator/RJ practitioner. These people communicate with each other about an offense, the harm it caused, where the responsibility for the repair of the harm lies, and how that repair should take place (Zehr, 2005) The most common types of RJ processes fall into the categories of: victim-offender mediations, conferences, and circles (Umbreit, Vos, Coates & Lightfoot, 2006; Latimer, Dowden & Muise, 2005). There might be significant overlap between a program that generally describes itself as a RJ circle and one that describes itself as an RJ conference No formal organization guides how RJ programs function or sets exact standards for them. Most individual RJ programs are informed by other successful programs, and then customized to fit a particular situation, need and community. RJ programs, regardless of individual differences, usually begin from the position of an offender admitting their guilt for an offense. RJ is not a tool for identifying culpability (Daly, 2005). RJ is a tool for investigating what it means (to the victim, offender, and their community) that someone committed an offense, and for holding offenders accountable for repairing the harm they caused. This automatically means that RJ is generally only applicable in cases where an offender admits their guilt, or has been determined to be guilty as the result of a different justice process.

Victim-offender mediation (VOM) is perhaps the simplest form of RJ. In it, a victim and offender meet and – with the support of a mediator/RJ practitioner - share their stories, discuss the harm caused, ask questions of one another, and decide what should be done to repair the damage caused. These processes can also include support

persons and affected community members. This does not necessarily need to involve face-to-face meetings between victims and offenders (e.g. mediators could shuttle between victims and offenders) (Umbreit et al., 2006). The distinctive feature of this form of RJ is its relatively small number of participants, and focus on the relationship and harm between the victim and the offender. An example of a victim-offender mediation would be homeowners meeting with a person who egged their house on Halloween. Each party would relate what occurred during the incident, and ask questions of each other. Then the mediator/RJ practitioner would help them identify the harms caused by the crime and brainstorm ways to repair the damage.

Group conferencing builds on the basic idea of victim-offender mediation, but includes a larger and more diverse group of participants. This often means the presence of support persons for both victims and offenders along with additional participants from the community (Umbreit et al., 2006). The level of participation from support persons can vary from mutually agreed upon silent support to active questioning of offenders and victims. Participants from the community are usually invited because they have some stake or relationship to the offense. For instance an arresting officer might participate in an RJ conference to share their (ideally neutral) take on what transpired. Group conferencing tends to be applied to situations in which participants need support (for instance if the participants are children, or dealing with an emotionally sensitive topic), and/or when the offense impacts a wider swath of the community. For instance a group conference could include a neighborhood committee concerned about vandalism in the Halloween egging scenario mentioned previously.

RJ Circles (also called "peacemaking circles," "repair of harm circles," or "sentencing circles") are similar to group conferencing but usually involve an even more disparate group of participants from the community. RJ circles may be used in situations where offenses have no clear victim (e.g. underage drinking) in order to provide feedback, support and obligations to offenders (Umbreit et al., 2006). To continue the previous example, an RJ circle might be used in response to a Halloween egging that hit a derelict house. There would be no direct victim, but harm would still be done to the neighborhood at large that had to deal with the mess. An RJ circle would bring the offender together with support people and those affected by the offense.

Across the board, RJ programs do not necessarily need to involve all the participants mentioned above. For instance, a victim might choose to not participate in a victim-offender conference, but one could still be attempted by using a surrogate – perhaps someone who has been victimized in a similar fashion and feels comfortable sharing their experience. One of the strengths and limitations of RJ is that it is consent-based. This means that participation is not mandatory, and many key participants in a process might choose not to participate. On the other hand, the focus on consent means that flexible, innovative solutions can be attempted in RJ processes. If the victim is not interested in participating in an RJ process, then (with the consent of the offender) one can still be attempted using a surrogate victim.

Another key element of RJ processes is that, unlike going to court, they do not work to establish guilt or innocence. The baseline for participation in RJ programs is that offenders admit (or have had proven, or at least don't deny) their guilt. The goal of RJ is to examine the impact of a guilty party's actions (as defined by their victim/s) and to find

and support ways in which the offender can repair this harm. RJ is not designed to establish guilt in the first place (Daly, 2005).

RJ programs also often interact with (either in support of or lieu of) the traditional justice system. A common point of entry into an RJ program involves the traditional justice system serving as a gatekeeper. For example, a judge might offer an offender the option of an RJ program as an alternative to court proceedings, or even as part of their sentencing (i.e., an offender is required by the courts to participate in an RJ program, a situation that tends to violate the idea of participant informed consent). The traditional justice system is naturally involved in the prosecution of crimes, and RJ generally works in tandem with it. RJ-esque programs can be used in situations in which an offense is not criminal, e.g. as a response to interpersonal conflict that does not violate laws, but in these cases the gap between RJ and classic mediation is very narrow. For the purposes of the current research, RJ programs refer to alternative responses to criminal offenses that operate with the knowledge and support of the traditional justice system.

RJ programs generally require a significant investment of resources and time to function well. Trained RJ practitioners/mediators are required, as are meetings with all participants to discuss the nature of RJ (which is foreign to many) and to obtain their informed consent to participate. Beyond this, the actual RJ session (although there might be many sessions for a single incident) may take multiple hours, followed by a period of time in which the offender works to fulfill whatever restorative obligations or tasks they have agreed to in order to repair harm, all under the auspices and guidance of the RJ practitioner (Zehr, 2005).

An important note about the limits of consent in RJ processes involves choice. Obviously there can be no meaningful consent if there are not multiple viable choices, which is not always the case in the justice system, especially for offenders. RJ is often an option presented to offenders in place of participation in the traditional justice system. Put another way, offenders may be given the choice of RJ or courts/fines/incarceration. While the offender does still have a choice and can give their consent, the relative attractiveness of the options available makes their free choice less meaningful. This issue can affect victims just as clearly as it does offenders. In the scenario like prosecuting an act of sexual misconduct, where research shows that survivors view the traditional justice system poorly (Campbell & Raja, 1999) - and with potentially good reason given the low rate of conviction in cases of sexual misconduct (RAINN, 2017) - the choice between the traditional justice system and an RJ program may be free but not at all equal. The “risks” section found below will examine this issue in greater detail.

### **Metrics for assessing RJ**

This section examines the efficacy of RJ processes across a variety of metrics. Given the variety, flexibility, lack of unified standards, and relative rarity (compared to the traditional justice system) of RJ processes, it is important to note that direct, scientific comparison (i.e. comparison in which there are clear independent and dependent variables) of RJ processes is almost impossible. Research on the subject of RJ efficacy most often takes the form of meta-analysis of the reports of fairly disparate RJ processes. This can be an effective measure because research shows that despite the variety of ways that RJ can occur, no one particular RJ process has been shown to produce meaningfully different outcomes from the others (Latimer, Dowden & Muise, 2005). This suggests

(although it does not prove) that disparate processes can be lumped together for the purpose of assessing the efficacy of a broad spectrum of RJ programs.

To assess the efficacy of RJ, Latimer, Dowden & Muise (2005) conducted a meta-analysis of studies on several RJ programs and identified four outcomes by which RJ could be judged: victim satisfaction, offender satisfaction, recidivism, and restitution compliance. To this can be added the question of participation rates, i.e. how often do victims and offenders choose to participate in the voluntary process of RJ. The Latimer, Dowden & Muise's (2005) study is particularly salient because the offenders it studied were predominantly male (94%), and young (74%), which corresponds to the majority of the target population of perpetrators of sexual misconduct on campuses.

### **Participation rates**

Regarding participation rates, two relevant meta-analyses (Coates, Burns & Umbreit, 2002; Gehm, 1990) reported largely similar findings. Their research dealt directly with the participation rates of victims (the group generally least likely to participate in RJ processes in the context of victim-offender mediation. Given VOM's focus on bringing victims and offenders into direct contact, the research also suggests that this form of RJ is the one in which victim participation is least likely. Coates et al. (2002) recorded participation rates among victims in Victim Offender Mediations of between 40-60%, while Gehm (1990) found 47% of victims were willing to participate in VOM. Victims were more likely to participate if the offense was a misdemeanor rather than a felony, and more likely to meet offenders involved in interpersonal crimes as more time passed (Gehm, 1990). These analyses suggest that when given the option, roughly half of

victims (less when sub-setting for victims of serious crimes) chose to meet with the perpetrator of the crime committed against them.

### **Why people participate in RJ**

A meta-analysis of RJ participants involved in violent crimes undertaken by Coates, Burns & Umbreit, (2002) found that victims' chief reasons for wishing to meet were to seek information (58%), to show the offender the impact of their actions (43%), and to have some form of human contact with the person responsible for the crime (40%). An analysis of an RJ program that dealt specifically with sexual misconduct found that 93% of survivors who chose to participate agreed that they did so at least in part to hold the person responsible accountable, 92% agreed that they wanted to make sure the perpetrator did not re-offend, and 85% agreed that they wanted the perpetrator to get the help they needed (Koss, 2014). Offenders who agreed to meet reported choosing to do so to apologize (38%), to help victims heal (38%), and to do whatever would benefit victims (26%). 74% of offenders also hoped the experience would benefit themselves. This benefit could include RJ contributing to their own rehabilitation (33%), changing how their victims viewed them (21%), and for spiritual reasons (18%) (Coates, Burns & Umbreit, 2002). An analysis of an RJ program that dealt specifically with sexual misconduct found that 95% of perpetrators chose to participate in the program to apologize to the person they harmed (Koss, 2014). Those survivors who elected not to participate in VOM cited reasons including feeling the crime was too trivial to be worth the time, feeling fearful of meeting the offender, and wanting the offender to have a harsher punishment. This data suggests that there are disparate reasons for participating in VOM (and by extension RJ in general), and that the severity of a crime affects

participation (Coates, Burns & Umbreit, 2002). Less severe crimes have been shown to engender higher participation rates amongst victims, and yet at the same time many victims choose not to participate in RJ because the process doesn't seem worth the emotional and time investment. Offenders very commonly seek to participate in RJ for personal benefit, although that may include more altruistic reasons like aiding in their own rehabilitation or apologizing.

### **Participant satisfaction**

Several meta-analyses have found that victims who participate in RJ programs report higher rates of satisfaction with the process and its outcomes compared to participation in the traditional justice system (Bonta et al., 2006; Coates et al., 2002; Latimer et al., 2005). In this context "satisfaction" is a blanket term that refers to a positive experience with a given justice process and satisfaction with the outcome. In 12 out of 13 RJ programs surveyed (including VOM, RJ Circles and group conferencing), participation was found to result in higher victim satisfaction rates in comparison to a control group that participated in the traditional justice system. These findings suggested that RJ programs have a moderate-to-weak positive impact on victim satisfaction (Latimer et al., 2005). Data specific to RJ programs that address violent interpersonal crime is rare given the relative infrequency with which these offenses are responded to with RJ. Those programs that do address such crime have been found to have high rates of participant satisfaction, with one such analysis reporting that 81.6% of victims were satisfied with the process (Bonta et al., 2006).

Offenders similarly report favorable levels of satisfaction with RJ processes (Coates, Burns & Umbreit, 2002). This is perhaps unsurprising given that offenders may

be eager to avoid or mitigate participation in the traditional justice system. In their analysis, Bonta et al. (2006) found that 87.6% of offenders were satisfied with the RJ process (compared to 81.6% of victims). While the satisfaction of offenders may not be the primary concern of most justice proceedings, their participation (which is likely mediated by their perception of the positive nature of the experience of RJ) is often valuable in terms of allowing the victim to communicate with them. Additionally, offender participation in RJ processes may positively affect recidivism rates.

### **Offender recidivism**

One of the primary goals of RJ is reduced recidivism. “RJ is based on the premise that an awareness of the harm one's actions cause coupled with restored relationships with victims and the community reduces recidivism. Traditional punitive/deterrence based justice is based on the premise that fear of punishment reduces recidivism” (Bonta et al., 2006, p. 109). Significant amounts of research have been conducted on RJ's impact on recidivism, and in general RJ processes have been shown to promote lower levels of recidivism than the traditional justice system (Coates, Burns & Umbreit, 2002). Bonta et al. (2006) found that offenders who participated in RJ programs were 15% less likely to recidivate than comparable individuals who had gone through the traditional justice system, a finding largely supported by other meta-analyses (Latimer, Dowden & Muise, 2005). A study of RJ conferences (i.e. RJ processes that include the victim, offender, and various affected community members and support persons) found that they led to on average a moderate (and relatively inexpensive) reduction in repeat offending compared to traditional justice processes (Strang, Sherman, Angel, Woods, Barnes, Bennett & Inkpen, 2005).

The relatively superior recidivism rates achieved by RJ processes vis-à-vis the traditional justice system have as much to do with the limitations of the latter as they do with the qualities of the former. Traditional, punitive justice is by far the primary justice approach in the United States, which has the highest incarceration rate in the world (Walmsley, 2013). Several Meta-analyses of studies regarding the recidivism rates of incarcerated persons suggest that serving a prison sentence does not result in reduced recidivism (Gendreau, Little and Goggin, 1996; Smith, Gendreau & Goggin, 2002). Any positive impact in recidivism achieved by RJ should be seen in light of the frequent failure of the traditional justice system to achieve the same. A focus on recidivism may be particularly salient given that some research suggests that many perpetrators of sexual misconduct are repeat offenders. One study concluded that 28% of a studied population of paroled sex-offenders (rapists, whose crimes are consistent with sections one and two of sexual misconduct) were convicted of a new sex offense over a period of 59 months (Quinsey, Rice & Harris, 1995). Lisak and Miller (2002) found that 63.3% of convicted rapists (consistent with sections one and two of sexual misconduct) were repeat offenders. These findings have been challenged, especially in the context of sexual misconduct at universities, by research conducted by Swartout et al. (2015) who found that the majority of perpetrators of sexual misconduct at universities were first time offenders.

While all types of RJ processes appear to produce similar results, several other variables do affect recidivism rates. Consent once again appears as an important factor. RJ processes in which offenders were not required to participate by courts (i.e. ones in which offenders freely chose to participate) were found to reduce recidivism rates, court-

sanctioned RJ processes were not found to positively affect recidivism (Bonta et al. 2006).

The nature of an offender likely affects the impact of RJ on recidivism rates. RJ programs were found to have a positive effect on low-risk offenders, but produce no change in recidivism rates for high-risk offenders. This is reflected in the fact that RJ programs usually deal with low-risk offenders who have committed nonviolent crimes rather than high-risk perpetrators of violent crime (Bonta et al., 2006). High-risk offenders are usually those with antisocial attitudes, social groups, and personalities, and a history of antisocial behavior and crime (Lowenkamp & Latessa, 2004). Such offenders may have their psychological and situational needs poorly met by RJ, and have been shown to be better served by offender rehabilitation and psychologically informed treatment and rehabilitation. Such treatment is based on the premise that meeting the needs of offenders through appropriate psychological/substance-abuse treatment or through structural change reduces recidivism (Bonta et al., 2006). The irony of this is that such care is less effective at reducing the recidivism rates of low-risk offenders than RJ processes (Bonta et al., 2006). In fact, applying the techniques best suited for treating high-risk offenders to low-risk ones has been shown to be harmful to them, both psychologically, socially, and in terms of recidivism (Lowenkamp & Latessa, 2004).

### **Offender restitution**

Offender restitution refers to the outcome of a justice process in which an offender undertakes some action – classically the payment of money – in order to repay a victim or the state for the damage they caused. One of the key concepts of RJ is that there are many ways for offenders to repair the damage they caused. RJ processes are designed

to provide a space where offenders can come to understand exactly what harm they caused, and can work with victims to generate creative, individualized ways to repair the damage that are specific to the needs of the victim. Given this individualization, interpersonal contact, and flexibility, it is perhaps unsurprising that offenders who participated in restorative justice programs were significantly more likely to complete restitution agreements than those who participated in the traditional justice system (Bonta et al., 2006; Latimer, Dowden & Muise, 2005).

### **RJ and sexual misconduct**

The previous review of the efficacy of RJ processes has a serious limitation in the context of sexual misconduct. The ideal way to examine the ways that RJ might relate to sexual misconduct would be to assess existing programs that apply one to the other. There are almost no examples of this taking place, especially in the university/campus context. The reasons for this are manifold and will be examined more carefully in the “challenges” section of the current research. In short, RJ has traditionally been used for non-violent offenses and misdemeanors (like vandalism) rather than for serious interpersonal felonies (like assault). Having a victim interact with an offender involved in serious crimes risks traumatizing them, and society as a whole tends to expect harsh punishment for such offenders rather than an RJ process that might be perceived as “touchy-feely” (Coates, Burns & Umbreit, 2002; Daly, 2005, Zehr, 2005). There are, however, two (and to the best knowledge of the author only two) relevant studies that provide analyses of RJ responses to sexual misconduct: one that examines RJ programs that respond to sexual misconduct perpetrated by minors in Australia (Daly, 2005), and

another that assesses a community program that provides an RJ conferencing process for adult offenders in Arizona (Koss, 2014).

The program in Australia does not deal with the target demographic of the current research (university students). With this limitation in mind, the study did conclude that RJ responses to sexual assault resulted in higher rates of victim satisfaction, lower rates of re-victimization, and higher rates of offender restitution compliance than the traditional legal system (Daly, 2005). The program studied used an RJ conferencing model in which survivors and perpetrators were both supported by their friends and family, and the broader community was involved. Outcomes for participants in this program were compared to those for comparable (in age, crime, location etc.) participants in the traditional legal system i.e. the courts. While the RJ program produced superior results, it also had a key difference with the court cases: RJ participants admitted their guilt before beginning the program.

The RJ program operating in Arizona (called RESTORE) addresses both misdemeanor and felony sexual assaults (consistent with sections one-through-four of sexual misconduct) that are referred by a prosecutor and voluntarily agreed to by both the victim and the offender. Prosecutor referral reflects the fact that RESTORE operates as an enhancement to the traditional legal system rather than a replacement. Participation occurs after guilt has been established, and the program provides what amounts to a supplement to traditional sentencing, i.e. a perpetrator would be allowed to participate in the program as one aspect of their court-sanctioned requirements (which might also include fines, jail time etc.). The RESTORE program is a

Victim-Offender Mediation model in which “primary and secondary victims voice impacts, and responsible persons acknowledge their acts and together develop a redress plan that is supervised for 1 year” (Koss, 2014, p. 1623). The RESTORE program participation rate amongst survivors was 26% for survivors of felony sexual assault (consistent with sections one, two and three of sexual misconduct) and 46% for survivors of misdemeanor sexual assault (consistent with section four of sexual misconduct). The levels of offender and victim satisfaction and offender restitution compliance were higher than that reported by the traditional justice system alone.

### **Special considerations for RJ**

Research suggests that RJ can have appreciable participation rates, achieve superior rates of victim and offender satisfaction, lower rates of recidivism, and a higher rate of completed restitution agreements relative to the traditional justice system. These benefits are mediated by a few factors including the nature of the offense (RJ is more commonly used for less serious offenses), and the nature of the offender (high-risk offenders see significantly less benefit from processes than low-risk ones). Across the board the voluntary nature of RJ processes is important. Court mandated RJ processes in which the offender has no choice but to participate produce little benefit (Bonta et al., 2006; Coates, Burns & Umbreit, 2002).

Because victims and offenders choose to participate in RJ processes, there is a significant self-selection bias that should be taken into account when assessing the efficacy of RJ programs. Self-selection refers to the fact that, when given choice, people choose the option that would most benefit them. Self-selection bias impacts the reliability of RJ studies because people who choose to participate in voluntary RJ processes are not

a random sample but rather a sample of people who believe that RJ will work best for their situation. This bias is challenging to avoid because removing the voluntary aspect of the process would make it no longer RJ, and has been shown to eliminate the benefits of the process for offenders. This does not mean that the data highlighted previously is incorrect or not of value, only that that it exclusively shows that those who *chose* to participate in an RJ process found greater levels of satisfaction, lower rates of recidivism, and higher levels of compliance with restitution agreements than participants in the traditional legal system (Latimer, Dowden & Muise, 2005).

There are risks inherent in RJ processes as well. The process can be conducted well or poorly. Poorly conceived, organized, staffed and/or executed programs can be actively harmful to participants. Examples of this poor conduct include a lack of appropriate training for mediators/facilitators (a significant hurdle given that, although there are trainings and professional organizations for RJ practitioners, there is no official credentialing for them comparable to a bar exam for lawyers, nor is there an official organization for them that sets and enforces standards). A lack of effective program planning might result in the creation of RJ programs with significant flaws. An example of this would be a process that placed victims in the presence of their offenders without proper levels of preparation and support. This could create the potential for re-victimization. RJ programs may also place excessive focus on offender rehabilitation at the expense of the needs of victims (Coates, Burns & Umbreit, 2002).

### **Legal and legislative issues relevant to RJ responses to sexual misconduct**

Like all institutes of higher education in the United States, the University of Oregon's official responses to and policies regarding sexual misconduct are informed by

a variety of laws, statutes and codes. Any potential institutional responses to sexual misconduct needs to be able to align with these guidelines. These laws include Title IX legislation, the Student Right-to-Know and Campus Security Act of 1990 (also known as the Clery act), and the Violence Against Women act of 1994 (also known as VAWA). Additionally, the University of Oregon has its own Student Conduct Code outlining institutional rules and responses to violation to which all students are required to adhere.

### **Title IX**

Title IX is a federal law that in its broadest sense mandates equal access to federally funded educational opportunities regardless of sex and gender. Title IX identifies sexual misconduct - in all four of the ways we have been defining it - as a mechanism by which people can be denied equal access to an education. This being the case, when an institution governed by Title IX fails to respond to sexual misconducts it is considered evidence of sex discrimination. This may subject the institution to both federal penalties and civil liability. Under Title IX, once an incident of sexual misconduct has occurred, schools must “take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again” (Title IX).

Title IX, and the various government publications that clarify its interpretation (e.g. the recently issued Q and A on Campus Sexual Misconduct (United States Department of Education, Office of Civil Right, September, 2017) take care to specify exactly how universities need to investigate claims of sexual misconduct in order to be Title IX compliant. Specifications include those that require universities to have an

independent responsibility to investigate sexual misconduct distinct from any investigation undertaken by the police, and describes how universities need to codify and appropriately fund and staff their Title IX compliance efforts (Wheaton, 2017). They also provide information on when informal processes (i.e. something other than a full investigation in which guilt or innocence are determined, which includes RJ) are acceptable. This information specifies that:

“If all parties voluntarily agree to participate in an informal resolution that does not involve a full investigation and adjudication after receiving a full disclosure of the allegations and their options for formal resolution and if a school determines that the particular Title IX complaint is appropriate for such a process, the school may facilitate an informal resolution... to assist the parties in reaching a voluntary resolution” (United States Department of Education, Office of Civil Rights, September 2017).

The way that Title IX applies to sexual misconduct on campuses had been further interpreted and refined by the recently superseded “Dear Colleague Letter” (United States, Department of Education, Office for Civil Right, April 4, 2011). This letter specified that universities should assess culpability in sexual misconduct cases that they investigate based on a preponderance of evidence, i.e. on whether it is more likely than not that a suspect is responsible for sexual misconduct. This method of assessing culpability has recently (as of September 2017) been changed by the current federal administration to allow universities to rely on the more robust and difficult to prove “clear and convincing standard of proof” rather than a “preponderance of evidence”(United States Department of Education, Office of Civil Rights, September

2017). The impact of this change is hypothetical given its recent nature. The intent appears to be to provide more due process to those accused of sexual misconduct. Detractors of the change express concern that the added burden of proof in cases that can often be reduced to “he said, she said” will lead to lower levels of reporting by survivors (who will see little point in reporting something that the university will be unable to address) and less punitive action taken by universities which will be unable to meet the standard of proof. This change to the nature of university investigation of sexual misconduct might have the unintended consequence of making RJ and/or other voluntary processes that are not based on officially assessing guilt more appealing to survivors since they will be relatively more accessible, but less appealing to perpetrators whose guilt may now be harder to prove in a campus justice process.

Title IX states that mediation is not a Title IX compliant response to sexual misconduct (United States Department of Education, Office of Civil Rights, April 2014). The inapplicability of mediation may have made many institutions leery of adopting philosophically similar RJ processes for fear of violating Title IX (Koss, Wilgus, & Williamsen, 2014). As described in the RJ section of the present research, mediation is a distinct process from RJ with different goals and methods. The most salient distinction between the two is that one party admits guilt at the onset of an RJ process.

### **VAWA and the Clery Act**

Beyond responding to instances of sexual misconduct, campuses are legally required to take steps to discourage it. The federal law known as the Violence Against Women Act (VAWA) mandates that campuses must take proactive steps to combat sexual misconduct. VAWA codifies some aspects of what campus grievance processes

for rape survivors must include, with the intention of requiring schools to go beyond responding to individual instances of sexual misconduct and begin to take affirmative steps to transform campus culture to prevent rape. (Brenner, 2013; Koss, Wilgus & Williamsen, 2014).

Campus responses to sexual misconduct are also informed by the Student Right-to-Know and Campus Security Act of 1990, also known as the Clery Act. The Clery Act mandates that colleges and universities that receive federal funding for student aid track and make an annual report that details campus security policies and crime statistics (including those related to sexual misconduct) available to a variety of groups like current and potential students and employees. This act has been amended to include the Campus Sexual Assault Victims' Bill of Rights, which requires colleges and universities to specify their policies regarding the awareness and prevention of sexual misconduct in the annual report and to afford basic rights to sexual assault victims (Student Right-to-Know and Campus Security Act of 1990, 2013). The Clery act was designed to provide important information on the risk of crime on campuses to people who need it to make informed decisions about where they will attend school or work. In essence, the act makes public information relevant to the way a school addresses the issues brought up by Title IX and VAWA. The public information promoted by these acts is mediated by the University of Oregon's adherence to the Family Educational Rights and Privacy Act (FERPA). This federal act protects personally identifiable information about a student, including details about their grades, class schedule, academic standing etc. from being disclosed to anyone other than a student and their parent/guardian without the latter's written consent (Family Educational Rights and Privacy Act, 1974).

### **Oregon state law**

Oregon state law also weighs in on the ways that sexual misconduct is responded to, specifically on the applicability of RJ processes like mediation and victim-offender conferencing. Mediation is expressly forbidden in response to offenses consistent with section one, two and three of sexual misconduct (ORS §§ 163.305-163.479, 2015). RJ processes are not expressly forbidden, although the option to use them is mediated by an assessment of how appropriate they might be for a given crime, offender, and survivor (Umbreit, Lightfoot & Fier, 2001 citing ORS §§ 163.305-163.479, 2015).

In addition to allowing RJ processes, Oregon is one of eight U.S. states that dispenses grants to nonprofit organizations to provide victim-offender mediation services. This means that the state may serve in a funding, referring, monitoring and consulting role rather than as a provider of RJ. Oregon has established a statewide commission to monitor and provide guidance to the nonprofits that provide the RJ programs to which the state may refer cases. It's important to note that the state of Oregon specifies that victim-offender mediation is acceptable for non-violent offenders only (Umbreit, Lightfoot & Fier, 2001). This adds an element of ambiguity to state-supported victim-offender mediation in cases of sexual misconduct. As noted previously, while sexual misconduct is never consensual, it may not (and in fact relatively infrequently does) involve the direct use of violence. Social, psychological and/or chemical coercion is much more common than violent rape. The U of O is required to involve law enforcement in cases in which the survivor is under the age of 18. This does not mean that an RJ process could not be used in such cases, only that an investigation by the police and/or DHS would also occur.

The State of Oregon also passed ballot measure 11 in 1994, which established mandatory minimum sentences for certain types of crimes, including several relevant to the present research. For instance, perpetrators found guilty of Rape 1 (consistent with section one of sexual misconduct) have a minimum, mandatory sentence of 8 years, 4 months. This minimum cannot be altered by traditional methods like early parole or time off for good behavior (ORS 137.707, 1994). Measure 11 indirectly impacts the applicability of RJ because it means that suspects will be almost certainly be reticent to admit responsibility for an act that could be prosecuted as a measure 11 crime because sentencing for such crimes is mandatory. A primary interest of many suspects will be to deny culpability in all pre-conviction contexts for fear that any admission discoverable in court would result in mandatory imprisonment. RJ could certainly still be effective post-conviction, but the admission of guilt (an important step in the RJ process) pre-conviction would be extremely risky for perpetrators.

### **Policies specific to the University of Oregon**

The University of Oregon itself has a hand in its response to sexual misconduct beyond what is mandated by law. The U of O student conduct code (the document that outlines the rules and expectations for students attending the U of O) provides a definition for sexual misconduct in exacting, legalistic language (see appendix A). The student code of conduct does not specify exactly how an act that meets its definition of sexual misconduct will be addressed. This leaves room for individualized, creative responses to sexual misconduct that are in some ways at the discretion of the administration. The university is not obligated to relay information regarding sexual misconduct to law enforcement or the courts unless it involves minors, in which case law

enforcement must be informed (Administrator, personal communication, June 18th, 2017). If law enforcement does become involved in a case, the police and the state prosecutor can pursue the case even if the complainant does not request that they do so. However, the University of Oregon has a relatively unique arrangement with local law enforcement whereby they will halt an investigation and not pursue a case if the complainant expressly requests that they do so (Legal Counsel, personal communication, October 9th, 2017)

The current process in place at the University of Oregon for addressing sexual misconduct (separate from the traditional justice system exemplified police or court system) is referred to as the administrative conference process. Administrative conferences are a collaboration between the Dean of Students Office, the Office of Affirmative Action and Equal Opportunity (AAEO), the Title IX Coordinator, the students involved in the incident and whatever legal counsel or other advisor they choose to retain. A selected, abbreviated description of the process is outlined below (Legal Counsel, personal communication, October 9th, 2017; University of Oregon, Office of the Dean of Students, 2017):

1. A report of sexual misconduct is received by the U of O and sent to the AAEO, Title IX coordinator and Dean of Students Office.
2. The director of the AAEO, in collaboration with the Title IX Coordinator, immediately assess whether the report represents a situation requiring emergency action. Such action is informed by information like whether the suspect has prior convictions for similar crimes, or other evidence that suggests they might be an

- immediate risk to the campus community. Options for emergency action include suspension.
3. The U of O reaches out to the complainant to request their permission to investigate the potential misconduct.
  4. If a complainant does not consent to an investigation, then a risk assessment a la step two is conducted. If a complainant does consent, then their case is assigned a Title IX investigator from the AAEO.
  5. The investigator looks over the details of the initial report, and determines whether the event described would constitute a conduct code violation if it were true. If so, then a letter is sent to the suspect, who must schedule an interview with the investigator.
  6. Both the complainant and the suspect work to collect information (like text messages, Emails, call logs etc.), interviews and witnesses to present as evidence to the investigator over the next 35 days.
  7. The administrative conference. At this point the students involved, and their legal counsel or advisor, meet with the investigator to go over and debate the previously gathered evidence. This is an opportunity to test and challenge the evidence, and for the investigator to meet with both students at the same time. Accommodations can be made so that suspects and complainants need not be in direct contact.
  8. The investigator determines the responsibility/culpability/guilt of the suspect (a ruling which either side can appeal). The standard of evidence needed to assign responsibility is “a preponderance of evidence,” i.e. that it is more likely than not

that sexual misconduct occurred. This is a much less stringent standard than that of “beyond a reasonable doubt” present in criminal court cases.

If a suspect is found responsible for sexual misconduct, they face a mandatory, base-line sanction of 2 years suspension with the option of an extended suspension, expulsion, and notation on an academic transcript at the discretion of the Title IX investigator. Prior to 2017 it was possible for administrative conferences to impose education sanctions designed to require perpetrators to learn from their misconduct. An example of such a sanction would be taking some sort of class on consent. Education sanctions are not currently possible outcomes of administrative conferences due to controversy surrounding their effectiveness and appropriateness. Almost all data on these conferences, excluding the number of them that take place, is FERPA protected. This means that information on the specific outcomes of administrative conferences is not publicly available. The minimum standard timeframe for these conference processes is 3-4 months, with some cases (with appeals and counter-appeals) lasting multiple years (Legal Counsel, personal communication, October 9th, 2017). During this timeframe, the University of Oregon can unilaterally enact interim measures designed to protect complainants and not unduly punish suspects, “these measures include, but are not limited to, counseling and health services, academic accommodations (such as class withdrawals, incomplete grades and alternative course completion), housing accommodations and other support services”((Administrator, personal communication, June 18th, 2017; University of Oregon, Office of the Dean of Students, 2017). Any of these outcomes that might impact a perpetrator/suspect’s access to classes or educational resources must come as a result of a review by the Office of Student Conduct - which

usually involves at least one-in person meeting between a perpetrator/suspect and a U of O employee (Administrator, personal communication, June 18th, 2017)

The entire administrative conference model is a student-lead process, meaning that students are responsible for presenting their own cases (although they can be supported by legal counsel) in a legalistic process that privileges the sort of processes, terminology, types of evidence and knowledge usually used in the traditional legal system. In effect, students are their own lawyers and may be challenged to effectively respond to issues as complex as the testimony of expert witnesses like toxicologists. This may be challenging for students to navigate given the specialized knowledge such a process relies on, their ongoing responsibilities as students, and their potential emotional distress (Legal Counsel, personal communication, October 9th, 2017).

## CHAPTER V

### ANALYSIS

What does the above mean for the viability of a RJ response to sexual misconduct at the U of O? What can be said about the risks, rewards and challenges of such a response? Answering this question is difficult because of the lack of directly applicable quantitative data related to comparable programs (of which there aren't any). That being said one can speculate about the risks and rewards of RJ programs based on what is known about the nature of sexual misconduct and RJ. The challenges of a university-lead RJ responses to sexual misconduct are generally related to the laws and statutes discussed previously. This means that the challenges are based on concrete issues, and are therefore less speculative than the risks and rewards.

#### **Risks**

An obvious risk of any justice process, including RJ, is that it might be ineffective. As mentioned previously, RJ processes have been shown to have favorable recidivism, satisfaction and restitution rates compared to the traditional justice system. However this does not mean that an RJ process will be effective in all situations. RJ has been shown to be less effective when dealing with high-risk offenders (i.e. offenders who have social, psychological or chemical dependence issues that affect their engagement in criminal behavior) than when dealing with low risk ones, especially when compared to psychologically informed treatment. Such treatment attempts to address the psychological, social, and physical factors that promote recidivism (Bonta, Jesseman, Ruge & Cormier, 2006; Daly, 2005; Latimer, Dowden & Muise, 2005). This may be

particularly important when considering an RJ-based response to sexual misconduct given the pervasive role alcohol and dehumanization play in it, both of which may be components of a high-risk offender. Additionally the fact that most RJ processes are voluntary skews data on their efficacy. When considering the usefulness of RJ processes it is necessary to note that they only work well for people who self-select to participate in them. This means that their efficacy is limited to a select group of voluntary participants (Latimer, Dowden & Muise, 2005).

RJ may be poorly suited for dealing with serial offenders (i.e. offenders who repeatedly commit acts of sexual misconduct). This could be in part because stronger punitive measures that remove an offender from a population on which they are preying better protects that population. Additionally, serial offenders may have a limited capacity for feeling empathy and taking responsibility that are crucial components of RJ. Worse yet, serial offenders may be adept at misleading and/or manipulating survivors and the operators of a potential RJ program into believing they are sincere when in fact they are putting on an act (Administrator, personal communication, June 18th, 2017).

A major risk of an RJ response at the U of O is that it might cause more harm than it heals. Studies found that poorly conceived, staffed, run or applied (i.e. ones that are used by people who are not properly prepared or dispositionally suited) programs can not only be ineffective, but re-traumatizing (Coates, Burns & Umbreit, 2002; Daly, 2005; Karp, Shackford-Bradley, Wilson & Williamson, 2016). This could be the result of placing survivors and their perpetrators in contact with each other without proper support, training, expectations etc. In this context a poorly executed RJ process could cause more harm than it repairs. The severity of this risk is supported by data analyzing the reasons

survivors choose not to report their victimization to the authorities. A major reason was found to be a fear of reprisal from the perpetrator, their peers etc. (Fisher, Cullen & Turner, 2000). This suggests that survivors might often be concerned about the consequences of interacting with and/or attempting to exact justice from perpetrators. This is probably the most visible risk of RJ in any serious interpersonal crime: the risk that a survivor will be re-victimized and re-traumatized by the experience of interacting with their perpetrator.

The risk of RJ being traumatizing was echoed by several interview subjects. The administrative conference model currently used by the University of Oregon as a response to sexual misconduct has found it valuable to have the ability to operate without suspects/perpetrators and complainant/survivors being in contact with each other. An example of this is a conference in which each party was in a different room communicating by phone and the complainant chose to mute the phone so that she could be heard but would never hear the voice of the suspect due to the traumatizing effect of any contact with them. RJ (especially in the most basic form of victim-offender mediation) relies on communication between the parties, which could itself be traumatizing (Administrator, personal communication, June 18th, 2017; Legal Counsel, personal communication, October 9th, 2017).

This risk is compounded by the danger of institutional betrayal. Institutional betrayal is a phenomenon based on betrayal trauma theory, which posits that mismanaged responses to traumatic experiences by people or institutions in positions of authority or trust can exacerbate the initial trauma (Smith & Freyd, 2013). The uniquely harmful aspect of institutional betrayal stems from the fact that the betrayed often trust and

depend on their relationship with the institution (Goldsmith, Freyd, & DePrince, 2012). Institutional betrayal in the context of the University of Oregon might refer to a situation in which the institution either creates an environment where sexual misconduct is more likely than it otherwise would be, and/or in which it makes the reporting of sexual misconduct difficult. The consequence might be in line with research undertaken by Smith & Freyd (2013), which found that women who reported institutional betrayal in relation to the sexual misconduct they survived reported increased levels of anxiety, PTSD, and dissociation. Student concern over the mishandling of sexual misconduct reports by their university may be evidenced by data from the CCSSASM. The survey found that 58.7% of students felt it was very or extremely likely that a report of sexual misconduct would be taken seriously by campus officials, 55.0% of students thought it very or extremely likely that the safety of a survivor would be protected, and 28.1% of students said it was very or extremely likely that campus officials would take action against the offender (Cantor et al., 2015).

The risk of institutional betrayal can cast a long shadow. The special nature of the relationship between a person and the institution they rely on may make the cost of risking that relationship too great, which encourages people to keep quiet about complaints and problems that might risk damaging their relationship with the institution they rely on (Gobin & Freyd, 2009). This risk of institutional betrayal and the accompanying urge to not risk being betrayed by an institution you rely on is exacerbated by the fact that institutional environments are often expected to be safe (Platt, Barton, & Freyd, 2009). These problems might manifest themselves in the context of responses to sexual misconduct by the U of O as students choosing not to report their victimization for

fear of risking their necessary relationship with the school; or, having reported their victimization, feeling a sense of betrayal at the way the school handled their case which might result in increased trauma. Such a mishandling might involve a student feeling like they were not believed, that their needs were not met, that the timeframe for the justice process was too attenuated, and that sufficient action wasn't taken by the institution to punish or change the behavior of a perpetrator.

Additional risks inherent in all RJ programs include offenders abusing the system, a lack of real change (i.e. a lack of setting of legal precedence and the raising of awareness) in the way that sexual misconduct is treated, survivors feeling social/institutional pressure to forgive their perpetrator, social perceptions of RJ as “soft” on crime (Zehr, 2005), the risk to perpetrators of being held criminally liable for disclosures made during an RJ process (i.e. the risk of the limits of confidentiality), and a mismatch between the ethics of the community and the needs of survivors (Daly, 2005).

Offenders can abuse the system by choosing to participate in an RJ program that will offer them an alternative to the traditional justice system (e.g. they can elect to participate in an RJ program and as a result avoid or receive leniency/benefit from the court system). In this context they may insincerely adopt a restorative, listening, apologetic demeanor to avoid harsher penalties (Koss, 2014; Zehr, 2005). Offender misuse and abuse of the system could also include using the process to attempt to trivialize their crime, try and shift the blame, and/or convince the victim of something beneficial to the offender. This is in some ways a unique risk of RJ compared to the traditional justice system since RJ processes are informal and interpersonal (Daly, 2005).

The risk of a lack of real change refers to the fact that much of the American justice system works through the setting of precedent and the creation of public awareness. A vivid, public trial of a crime not only makes a type of crime visible to the public (especially important for under reported/misunderstood crimes like sexual misconduct), but it sets a legal precedent for how such crimes will be treated in the future by courts of equal or lesser standing. RJ programs are comparatively individualized and confidential, and so their use might make crimes less visible and prosecutable (Zehr, 2005), as well as reducing public awareness of the prevalence and seriousness of a crime (Daly, 2005). Additionally, any positive benefit caused by incarceration (including protecting potential future victims by removing a perpetrator from society) could be negatively impacted by an RJ process that either replaces or amends traditional justice system responses. This risk can be mitigated because participation in an RJ process does not preclude participation in a traditional justice or campus justice process.

The risk of survivors feeling pressure to forgive their perpetrators is linked to the risk of offenders essentially gaming the system and acting contrite to avoid the traditional justice system. In both cases participants in an RJ program may go through the motions without actually committing to, being served by, or benefiting from the process. This may be a particularly important risk because some perpetrators of sexual misconduct may be especially skilled at manipulation and psychologically predisposed towards not feeling empathy. For survivors, an RJ process can be erroneously presented as a setting in which they receive the apology of a perpetrator and then forgive them. Neither of these steps are necessary or even necessarily beneficial aspects of RJ, but there may still be social pressure or an expectation to take them (Zehr, 2005). This is a risk for survivors of sexual

misconduct because the format and philosophy of an RJ program may encourage them to conceal their true feelings and forgive or not confront their perpetrator due to a desire to be restorative or to comply with the expectations of the program. This in turn could be re-traumatizing or at best meaningless for the survivor (Daly, 2005). This relates to the risk of a power imbalance between the participants in an RJ process. If a perpetrator can exert an undue influence over a survivor or a process (e.g. they have financial control over a survivor, or are a respected community member), then the RJ process may produce biased results (Administrator, personal communication, June 18th, 2017; Support Specialist, personal communication, September 29th, 2017).

Offenders can also find themselves placed at risk by a RJ program. RJ processes can present a legal risk to offenders in that they may find themselves exposed to additional criminal liability if they admit to additional prosecutable offenses in the course of the process. This is especially challenging because one of the great potential benefits of RJ is providing a space where offenders can voice an apology to a victim, which might naturally involve a full admission of crime (RJ Practitioner, personal communication, October 10th, 2017).

RJ programs that address sexual misconduct also present a public relations risk for the institutions that provide them. RJ has often been maligned as being “soft” on crime and criminals, especially when compared with punitive measures like imprisonment ((Administrator, personal communication, June 18th, 2017; Zehr, 2005). While the accuracy of this viewpoint and the value of being “hard” and punitive on crime - when the impact on recidivism rates has been shown to be poorly correlated to the severity of punishment - are debatable, the public perception of RJ offering an easy out

for offenders is not. Any RJ program that addresses a serious interpersonal crime will have to contend with the risk of being perceived as permissive and generous to offenders. This risk can affect offenders and the public in general. If they believe that RJ is an easy way out, it may encourage the belief that the offense for which an RJ process is being applied really wasn't that bad - if it was then it would face a stiffer justice process (Daly, 2005).

A particularly insidious risk of an RJ process that includes input and support from the community is that community norms might in some ways support or identify with perpetrators of sexual misconduct rather than survivors. Even if the community is not damagingly permissive of sexual misconduct, it may lack the resources to fully support survivors and/or work to reintegrate offenders. Additionally, especially in a close-knit community like the U of O campus, community members may have divided loyalties between survivors and offenders. Any RJ process that relies on the input, presence, and support of community members is naturally limited by their abilities and mores (Daly, 2005; Support Specialist, personal communication, September 29th, 2017).

### **Rewards**

An RJ program offered by the University of Oregon in response to cases of sexual misconduct also offers many potential rewards. The potential positive impact of such a program on recidivism, survivor and perpetrator satisfaction, and completion of restitution agreements has been discussed previously. Additional benefits relate to the limitations of the current justice system (both the traditional justice system and campus justice processes), the affective needs of survivors, the mindset of perpetrators, and the well-being of the campus community as a whole.

As detailed in the “sexual misconduct” section of the present research, sexual misconduct is prevalent, under-reported and under-prosecuted in the U.S. in general and on campuses in particular. This illustrates a need for a different approach to responding to sexual misconduct. A RJ program designed to provide an alternative to the traditional justice system and/or campus justice processes might offer a valuable option that addresses the needs of people involved in sexual misconduct and responds to some of the primary reasons people report being unwilling to report instances of sexual misconduct to the traditional justice system. The NCWSV, CSA, CCSSASM, and research undertaken by Koss, Gidycz & Wisniewski (1987) all found that the most common reason survivors of sexual misconduct at universities chose not to report their victimization was the feeling that the incident wasn’t serious enough to report to the authorities (Cantor et al., 2015; Fisher, Cullen & Turner, 2000; Krebs et al., 2007). Other common reasons for not reporting included a desire to keep the incident secret (linked to a fear of the public scrutiny that might accompany a trial), and a sense that no harm was intended by the perpetrator (and presumably that a punitive response to them would not be equitable), and a concern that contact with the traditional legal system and/or campus justice processes would be personally damaging - which some 52% rape survivors (consistent with sections one and two of sexual misconduct) found such contact to be (Campbell, Wasco, Ahrens, Sefl, & Barnes, 2001). These major reasons for under-reporting could all be potentially addressed by an RJ-based alternative/supplement to the traditional justice system and/or campus justice processes. An RJ process could offer a more accessible, less intense (in the sense of the intensity of dealing with lawyers, judges, the police, the press, and potentially detailing and being challenged to defend the veracity of your

victimization in front of a jury) public, and punishing way to address sexual misconduct, which might mitigate the primary reasons survivors report choosing not to report their victimization. In short, a RJ-based alternative to the options presented by the current justice system might improve the very low rate of reporting sexual misconduct (Daly, 2005; Karp, Shackford-Bradley, Wilson & Williamson, 2016).

Survivors report having affective needs that are poorly met by the traditional justice system and/or campus justice processes which might be served by an RJ process. Rape survivors often express the need “to tell their story, to be heard, have input into how to resolve the violation, receive answers to questions, observe offender remorse, and experience a justice process that counteracts isolation in the aftermath of the crime” (Brenner, 2013b, p. 15). These needs are not often met by the traditional justice system and/or campus justice processes, which emphasize proving guilt and choosing between competing narratives over telling a story of an experience, place control over outcomes in the hands of a judge and jury or a university official rather than a survivor or community, and may do little to support survivors.

Support for the survivor is a particularly salient potential benefit of RJ. Survivor needs have been categorized as a need to be believed (to have their story affirmed and to not be victim-blamed), a need for voice and empowerment (to tell their story), a need to grieve (to have a safe space to fully explore the harm they suffered), the need to have options in what to do next (a reasonable array of actions they can take that relate to their needs), a need for support (from the community, institution etc.) and perhaps most obviously a need for safety (to have their physical and emotional well-being protected) (Daly, 2005; Karp, Shackford-Bradley, Wilson & Williamson, 2016). Additionally, RJ

offers an opportunity to repair relationships. Many instances of sexual misconduct occur between people who have some form of relationship that is deeply damaged by the victimization. While not all survivors are interested in repairing a relationship, some are.

Perhaps the main potential benefit RJ offers is options for survivors. Often the only justice options available are serious and punitive, like expulsion or incarceration. Not only do these options risk re-traumatization and rarely result in the desired punishment, but they do not offer a way to meet other survivor needs like having their story told and heard, and supporting the repair of relationships. An RJ process centered on supporting a survivor as they explain the harm they suffered to a perpetrator has the potential to meet all of these needs in ways that the traditional justice system, with its' adversarial model guided by the goal of proving guilt, struggles to (RJ Practitioner, personal communication, October 10th, 2017).

Survivors also report the need for speedy resolutions to their cases. This could include both immediate relief in terms of limiting contact with a perpetrator and a quick resolution to whatever justice process they choose to access. Current University of Oregon responses to sexual misconduct can take a long time to complete, although they do offer the option of immediate no-contact orders. As mentioned previously the administrative conference model used by the University can last anywhere from a few months to several years. While RJ is not a speedy process, it can potentially meet survivors' needs for a swifter response than the traditional justice system assuming the perpetrator's guilt is admitted or established. Since RJ in the end constitutes an agreement between a survivor and a perpetrator, its time frame is more influenced by the parties directly involved in an incident than a traditional legal process whose time frame is

controlled by an external organization (Legal Counsel, personal communication, October 9th, 2017). In addition to potentially being a quicker (although still time consuming) process than traditional justice responses to sexual misconduct, RJ may be simpler to participate in. As discussed previously, the administrative conference model currently used at the University of Oregon tasks students with acting as their own advocates in a legalistic process that they may be educationally, dispositionally and emotionally (given their potential recent trauma) poorly equipped to accomplish. RJ is more focused on dialogue, story-telling and support, and as such may be significantly more intuitive for students to navigate than the administrative conference model (Legal Counsel, personal communication, October 9th, 2017). In short, RJ provides options to survivors who currently have a limited number of ways to respond to sexual misconduct, many of which involve long and challenging legal processes that are (or are at least perceived to be) re-traumatizing for survivors (Administrator, personal communication, June 18th, 2017).

Campus-based RJ responses to sexual misconduct could be of benefit to people other than the survivor, including the broader campus community and the perpetrator. RJ programs that include the broader community (e.g. group conferencing and RJ circles) represent an opportunity to go beyond meeting the needs of a survivor (i.e. their need to be heard, to receive restitution, to see change in the perpetrator etc.), and be of benefit to the community as a whole. This benefit might involve supporting both survivors and offenders reintegrating into their community and showing united support for survivors. By placing the locus of control for a justice process in the hands of those directly affected by a crime and the community they are a part of, RJ processes can empower a community to show its condemnation of certain acts, set norms, and have some control over the way

community members act (Zehr, 2005). Any process that works to reduce the recidivism of perpetrators would be of benefit to the campus community. While there is debate in the research over the prevalence of serial offenders in the context of sexual misconduct on campuses, there is agreement that perpetrators do recidivate. The percentage of recidivists ranges from roughly 10% (Swartout et al., 2015) to over 60% (Lisak & Miller, 2002). Even if the research which found comparatively low rates of recidivism is accurate, the benefits of reduced recidivism would be still be shared across the campus community.

Additionally, the process could result in the offender working to repair the harm they caused by speaking to others about the impact of sexual misconduct. A recently publicized example of an outcome of an RJ response to sexual misconduct on a campus (Smith, 2017) described the survivor and perpetrator working together to share their experience with the campus community, raising awareness, illustrating the consequences of sometimes normalized sexual misconduct (e.g. lack of consent mediated by alcohol), and working to change campus culture to be less accepting of such offenses. While the outcomes of any RJ process first and foremost must meet the needs of the participants, it is reasonable to anticipate that some outcomes would involve similar acts designed to change campus culture.

In terms of a positive impact on perpetrators, RJ may be able to help disrupt some of the social and psychological problems that facilitate sexual misconduct. If sexual misconduct is considered as a “rupture in the process of human recognition” (Brenner, 2013a, p. 21), i.e. an act and result of dehumanization, then RJ may provide a method for combatting dehumanization by promoting empathy and social connection. The

willingness and ability to dehumanize is difficult counteract, and one of the few effective ways to do so is by promoting meaningful, positive contact that encourages people to see others as members of a shared identity group. Encouraging people to identify as part of the same shared, human identity illuminates the humanity of another person, making it much more difficult to dehumanize them (Bastian & Haslam, 2010). RJ programs focused on identifying the individual and interpersonal costs of crime through communication, and finding ways to repair the harm may be effective at this goal since they encourage perpetrators to learn about those they have victimized which in turn may encourage recognition of the human cost of their actions.

From an administrative standpoint, it has been suggested that RJ responses to sexual misconduct could enhance an institution's ability to be Title IX compliant (Koss, Wilgus, & Williamsen, 2014). As mentioned previously, campuses are mandated to not only provide effective responses to sexual misconduct, but also to work to change the culture of campuses so that such offenses are less common (Student Right-to-Know and Campus Security Act of 1990; Title IX, Education Amendments of 1972). RJ offers an alternative justice process that might raise reporting rates, and engage survivors, perpetrators, and the broader campus community in raising awareness of and lowering tolerance for the many forms that sexual misconduct and its harms can take. Additionally, RJ is a naturally educative and reintegrating process for offenders.

The goal of RJ is for offenders to understand the impact of their actions, learn to take responsibility for them, repair the harm they have caused as defined by the persons they harmed, and eventually be reintegrated into their community. These goals align well with ideals of universities, which exist to educate rather than to punish and ostracize

(Karp, Shackford-Bradley, Wilson & Williamson, 2016). This focus on education both aligns with the general focus of universities (to promote learning), and responds to some of the particular challenges of sexual misconduct, which may be perpetrated due to a lack of knowledge about consent and appropriate sexual relations. This shift from strictly punitive to educational could result in a perpetrator learning more about why their actions were unacceptable, rather than just learning that their actions result in punishment.

(Administrator, personal communication, June 18th, 2017; Legal Counsel, personal communication, October 9th, 2017; (RJ Practitioner, personal communication, October 10th, 2017).

Campuses in general might represent an excellent setting for an RJ response to sexual misconduct because they are places where the problem is acute, and because their social and institutional framework are conducive to RJ practices that focus on harm between students that affect the student community as a whole (Brenner, 2013b). The relatively close-knit, homogenous (in terms of age, stage of life etc.) and communal nature of the campuses may be ideal for RJ because it provides an engaged community presumably united in its interest in reducing the occurrence of sexual misconduct. Many RJ processes include direct participation from members of the community (in this case that community would include other students), which could provide the benefit of raising general awareness of the campus in general regarding the prevalence and impact of sexual misconduct. Ideally engaging the broader campus community in understanding and responding to sexual misconduct would result in increased awareness and understanding of, lowered tolerance for, and decreased instances of sexual misconduct (Brenner, 2013a; Brenner, 2013b).

A final potential benefit of RJ responses to sexual misconduct relates to the relationship between the survivor and the perpetrator. Our society commonly views sexual misconduct as an easily defined issue with black and white morality. If sexual misconduct occurs, we expect it to look like violent rape perpetrated by strangers, and we believe that harsh punishment and incarceration are the appropriate responses. (DuMont, Miller & Myhr, 2003). The reality, especially in a relatively tight-knit community like a campus, is that sexual misconduct often occurs between people who have some relationship with each other (Fisher, Cullen & Turner, 2000; Ullman, Karabatsos & Koss, 1999). In these cases, the needs of a survivor (and perpetrator) may include some form of relationship repair after the trauma of sexual misconduct. In such circumstances, RJ offers not only an opportunity for vindication and validation, but a way in which a relationship can be repaired (Daly, 2005). This array of possible outcomes reflects RJ's greatest possible benefit. It is not that RJ would perfectly meet the needs of all people, but that it would expand the array of options that survivors could choose from and allow them some control over the outcome of the justice process (Support Specialist, personal communication, September 29th, 2017).

### **Challenges**

This section examines challenges that would need to be overcome if the University of Oregon were to engage in RJ-based responses to sexual misconduct. These challenges include: cost, navigating relevant laws, codes and campus regulations, dealing with the relative novelty of this approach to sexual misconduct, and meeting the needs of a diverse array of survivors and perpetrators.

A prosaic challenge for any RJ programs is its cost in time and money. As mentioned previously, RJ programs (especially ones that deal with traumatic interpersonal crime and conflict) require a significant investment of time and the presence of skilled RJ practitioners. They require space in which to operate, connections with other programs, administrators, law-enforcement and traditional justice personnel, and a significant investment of time to develop procedures, support participants, track offenders and actually enact an RJ process. Although many RJ programs rely extensively on volunteers (Coates, Burns & Umbreit, 2002), they still require some professional presence. The RESTORE program (Koss, 2014), which provides post-trial RJ responses to sexual misconduct in the Arizona, required on average 24 days to locate, screen and get consent from participants, 2 months to prepare the attendees (i.e. to do the interpersonal work and support-building required to ensure that all parties are ready emotionally to participate), 45 minutes to conduct the RJ process, and one year of supervision during which the perpetrator's progress at completing their restitution agreement was tracked. Each case required roughly 48 hours of work by a professional case manager (Koss, 2014). This challenge may be particularly salient at the University of Oregon since the process is resource intensive in an institution in which resources are already stretched thin (Administrator, personal communication, June 18th, 2017). This challenge could be impacted by the fact that the University of Oregon has access relevant expertise and human resources in the form of its Conflict and Dispute Resolution Master's Program.

Another challenge faced by a potential RJ program is navigating compliance with the relevant laws that federally funded universities must adhere to when addressing

sexual misconduct. Koss, Wilgus & Williamsen (2014) outline these challenges, which include the mandate for universities to investigate claims of sexual misconduct (see United States Department of Justice, Office on Violence Against Women, 2017), assess their veracity, act in ways that discourage individual acts of sexual misconduct, work to change the overall culture that permits such misconduct, and make their policies and data on crime available to the public. All this often occurs while working with local law enforcement (usually at the discretion of the survivor, but sometimes by legal mandate if the survivor is under 18). Until recently all this also had to occur in compliance with the U of O's mandatory reporting policies, which required U of O employees to report any credible evidence of sexual misconduct that is revealed to them by a student regardless of the student's wishes. New policies now limit the number of mandatory reporters, resulting in an added layer of survivor choice when involving the U of O in responding to their situation (Schill, 2016). These challenges are compounded by the lack of clear language from relevant federal sources (e.g. Title IX) explicitly allowing/governing the use of RJ responses to sexual misconduct (Karp, Shackford-Bradley, Wilson & Williamson, 2016). While some sources suggest the RJ might be an ideal way to supplement existing campus processes to make them *more* Title IX compliant (American Bar Association, 2017; Karp al., 2016; Koss, Wilgus & Williamsen, 2014), the lack of explicit language to this effect and federal guidance on the subject is a challenge to be overcome.

Linked to the lack of explicit official guidance is the lack of data on relevant, existing RJ programs designed to respond to sexual misconduct. This lack of RJ responses to sexual misconduct is true in society in general as well as in the campus

setting. It is difficult to promote or develop programs for which there is little precedent, and both the lack of guidance and the lack of precedence/research data make investing in an RJ program somewhat risky. Large public institutions like the U of O have strong incentive to be risk averse. Any institution seeking to implement such a program essentially needs to go out on a limb with only theoretical support rather than a practical, proven model to follow. This challenge is exacerbated by the fact that there are presently no nationally recognized and regulated official training and licensure programs for RJ practitioners (i.e. something analogous to the bar exam for lawyers). It may be difficult for any university to trust that the individuals tasked with conducting an RJ program are competent to do so without some sort of regulatory body and licensure for RJ practitioners (RJ Practitioner, personal communication, October 10th, 2017). Without recognized credentials and professional standards for its practitioners, RJ may lack the appearance (or reality) of professionalism that would encourage a large institution to adopt it (Legal Counsel, personal communication, October 9th, 2017).

RJ programs are challenged by the need to operate in proper context. No RJ program will be able to meet the needs of an entire population; rather, it needs to be part of a combined response that involves the traditional legal system and/or campus justice processes and options for more intensive psychologically informed offender rehabilitation. As discussed previously in the “RJ” section of this thesis, RJ can have a positive impact on recidivism, participant satisfaction, offender restitution, the affective needs of survivors, and the creation of a positive community. However, RJ does have limitations. A key one is that RJ works best with people who have voluntarily chosen to participate in it, and who do not have serious psychological or systemic (e.g. severe

poverty, substance abuse, mental health etc.) issues. When people are categorized as having a high risk for recidivism (Lowenkamp & Latessa, 2004), their needs may require psychologically informed offender rehabilitation to be effective. Such rehabilitation seeks to meet the psychological needs of participants that precipitate their criminal activity, and have been shown to be much more effective than RJ in reducing the recidivism of such offenders (Bonta, Jesseman, Ruge & Cormier, 2006).

In the same vein, RJ responses to sexual misconduct on campuses will almost certainly never fully replace punitive justice approaches designed to assess guilt and administer sanctions. This is patently true for the simple reason that not all offenders will admit their guilt (a crucial first step in participating in RJ), and will need to have their culpability proven. RJ and punitive justice processes can actually complement one another, and need not be mutually exclusive (Crowe, 1998). Guilt in cases of sexual misconduct might be proven through the traditional legal system and/or the campus justice system, and the outcome of that guilt might be decided through an RJ process. The efficacy of this sort of complementary approach has been studied, although not in the context of sexual misconduct. A survey of burglary victims in Minneapolis, found that 80% of those who participated in Victim-Offender conferencing as a result of a traditional justice procedure (i.e. a judge allowed VOM as an option during sentencing) indicated that they found the criminal justice system to be fair compared to 38% of burglary victims who did not participate in VOM (Coates, Burns & Umbreit, (2002). A key challenge for any RJ program will be to effectively situate it in the broader context of punitive justice responses - using it as a situational or supplementary tool rather than as the one and only option.

There are other challenges found in the ways that RJ relates to the traditional legal system. As mentioned previously, RJ works when perpetrators either admit or have been found guilty of an offense, and have expressed interest in understanding and taking responsibility for repairing the damage of their offense. It is very difficult for the traditional legal system to assign guilt in cases of sexual misconduct (with roughly 2% of reported instances of sexual assault [consistent with sections one, two and three of sexual misconduct] resulting in a conviction). This means that it is relatively rare to find perpetrators whose guilt has been proven in court. It is possible that guilt is more frequently assigned in sexual misconduct cases that are investigated using the existing campus justice system (e.g. the administrative conference process), however information on the details of these proceedings at the U of O is FERPA protected and not accessible for the purposes of the present research (U of O Student Conduct Code).

Without easy access to perpetrators whose guilt has been proven, an RJ process would need to rely on perpetrators willing to admit their own guilt. This presents its own challenges because perpetrators currently run extreme risks if they admit guilt in an offense for which they have not been prosecuted in court. An admission of guilt in the informal setting of an RJ conference could be used as evidence in the traditional legal system. Given the mandatory sentencing laws regarding many forms of sexual misconduct present in Oregon as a result of Measure 11, it would be exceptionally unwise from a legal standpoint for perpetrators to make any such admission. This means that, under the current legal system, it might be difficult to find perpetrators whose guilt has been established or who are willing to admit their guilt. This challenge was referenced in multiple interviews conducted as part of the present research

(Administrator, personal communication, June 18th, 2017; Legal Counsel, personal communication, October 9th, 2017; RJ Practitioner, personal communication, October 10th, 2017).

RJ cannot do some things, like establishing guilt or protecting the safety of a whole community. As mentioned previously, RJ is designed for people who (ideally) have already admitted their guilt, or (sub-optimally) people whose guilt has been proven by a different justice process. This suggests that RJ processes may often need to be done post-conviction/admission of guilt. RJ could still be viable in situations in which the offense in question is a minor misdemeanor that would not be criminally prosecutable. For instance sexual harassment (broadly consistent with section four of sexual misconduct) is not a prosecutable crime, and therefore an admission of guilt would not risk criminal liability (although it could still risk a lawsuit).

The challenge presented by the interaction between a RJ process and both the traditional legal and campus justice systems questions about confidentiality. Would participation in an RJ process waive a student's right to pursue a different justice option like an administrative conference? Would (also could or should) things discussed in an RJ process be confidential, and in what way? Confidentiality can range from none at all, to the type guaranteed by FERPA in which details of an RJ process could not be made public without the express permission of a student and/or their parent, to the confidentiality between a doctor and a patient that is not discoverable in a court process.

A major challenge of any response to sexual misconduct relates to how both the response and the act itself are perceived by the public. There is a significant media interest in cases of sexual misconduct on campuses, which can be a blessing or a curse.

On the one hand raised awareness of the problem is valuable. The risk is that people involved in cases of sexual misconduct (both perpetrator/suspects and survivor/complainants) may be damned in the court of public opinion regardless of the outcome of any justice process. An RJ program will be especially challenged by public perception of an event because many RJ processes rely on the participation and support of a community (whose views may be impacted by media reports), and because the alternative nature of RJ leaves a university that utilizes it open to the critical perception of being soft on crime (Administrator, personal communication, June 18th, 2017).

Additionally, RJ risks meeting the needs of some at the expense of others - for instance in scenarios in which the needs of the community and the needs of a survivor are not matched. In a scenario in which a survivor wanted to forgive and reintegrate a violent repeat offender, the community might reasonably wish to have that person expelled or incarcerated. This mismatch could challenge an RJ process that privileges the needs and views of a survivor. The possibility of competing interests raises the question of whose needs an RJ program seeks to meet first. A challenge/risk of a university-lead RJ program is that the institution itself has interests that can impact the process. For instance the institution might like to avoid public litigation involving sexual misconduct, and be subtly or overtly predisposed towards pushing the less public option of RJ even if a situation isn't well suited to it (Legal Counsel, personal communication, October 9th, 2017). How does an institution effectively monitor and regulate its own biases and interests in an RJ process? It is simple to say survivors' needs are paramount, but the reality may be more complex than that (Support Specialist, personal communication, September 29th, 2017).

## CHAPTER VI

### CONCLUSION

The conclusion considers what additional research/work needs to be started or completed to better understand the possibility of RJ responses to sexual misconduct on campuses. Additionally I will share my own views on the applicability of RJ responses to sexual misconduct.

Some of the previously mentioned challenges in creating an RJ program are beginning to be met. While there is still no official endorsement for campus-RJ programs dealing with sexual misconduct from federal government, the American Bar Association has spoken in favor of it. An ABA task force studying the issue concluded that in cases of sexual misconduct on campuses

“Where appropriate, the Task Force encourages schools to consider non-mediation alternatives to resolving complaints that are research or evidence-based, such as Restorative Justice processes. Both parties must freely and voluntarily agree to such processes in order for them to be utilized, and they may withdraw their consent to the process at any time, stopping its use.” (American Bar Association, June 2017, p. 4)

While there are still no existing university-lead RJ programs designed to address sexual misconduct, at least one is in development. In 2017 The federal government (specifically the Department of Justice and the Office on Violence Against Women) solicited grant proposals for the development and testing of supplemental or stand-alone

RJ processes designed specifically to address sexual misconduct on campuses. The stated goal of these grants is to expand the options available in responding to cases of sexual misconduct, and to essentially provide a proof of concept for the use of RJ in such contexts. The granting agency selected one university in the spring of 2017, and awarded them \$500,000 to develop their project over a 24 month period (United States Department of Justice, Office on Violence Against Women, 2017). This suggests that official endorsement of RJ responses to sexual misconduct - as well as a template for a viable process - is possible and under review.

The research and development of such an RJ program is also being undertaken by an interdisciplinary group of university researchers, administrators, and RJ practitioners based at Skidmore College called the PRISM Project. The project seeks to:

- “Create space for scholars and practitioners to explore the use of RJ for campus sexual and gender-based misconduct (which includes sexual harassment, sexual assault, and other forms of gender-based misconduct) as an alternative or complement to current practices.
- Consider the potential and challenges of RJ in light of the national concern about campus sexual assault.
- Apply lessons learned from the use of RJ in criminal justice sex offenses, e.g. Circles of Support and Accountability, restorative conferencing, and other trauma-informed practices.
- Gather and disseminate knowledge about RJ practice and research. •

- Explore the potential for multi-campus RJ pilots.” (Karp, Shackford-Bradley, Wilson & Williamson, 2016, p. 2-3)

The PRISM Project illustrates the academic firepower being brought to bear on assessing the potential for campus-based RJ responses to sexual misconduct. In tandem with new federal grants and endorsements from one section of the ABA, this program may work to concretize what an RJ program might actually look like, and assuage university stakeholders concerned with the viability of RJ and the lack of official regulation, support, and guidance for RJ programs.

Further research necessary to answering the research question should address the lack of input from the population that would be most directly affected by an RJ programs: survivors and perpetrators of sexual misconduct at the U of O. More primary qualitative and quantitative research should be done assessing their views on RJ programs, and the development of any such program would benefit from their experiences. While the views of affected populations are important in the development of any program, they are especially important in RJ programs. RJ is focused on creatively and flexibly meeting the needs of a particular community, and therefore works best when a program is formed by and conformed to an individual community (Coates, Burns & Umbreit, 2002; Latimer, Dowden & Muise, 2005; Zehr, 2005). Taken to its logical conclusion, this means that an RJ program for sexual misconduct at the U of O should directly reflect the views and needs of the people at the U of O who would be utilizing it.

Additional work to gain more applicable knowledge would include designing an actual RJ program for the U of O. As mentioned previously, RJ programs that are poorly

conceived, implemented, staffed and/or funded all run a risk of causing more harm than they repair. This means that a well-constructed program is necessary. Unfortunately, examples of these are sparse. Developers of such a program at the University of Oregon might benefit from the research undertaken by PRISM (Karp, Shackford-Bradley, Wilson & Williamson, 2016), any program developed using grant money administered by the Department of Justice (United States Department of Justice, Office on Violence Against Women, 2017), and the template established by the RESTORE project that provides an RJ program for adult perpetrators and survivors of sexual misconduct in Arizona (Koss, 2014). Since ideal RJ programs should be formed in response to the unique needs of a particular community, and the efficacy of an RJ program is closely tied to effective design, a crucial step in researching the viability of RJ at the University of Oregon involves designing a distinct program.

Beyond the need for additional research, the legal system and government regulations could (and might need to) be adjusted to be more amenable to RJ. A key challenge for an RJ program is that offenders should admit their wrongdoing prior to participation. As mentioned previously, this means that pre-conviction participation in an RJ program would be exceptionally risky for perpetrators of any form of criminal sexual misconduct (usually consistent with sections one, two and three of sexual misconduct). An admission of guilt in such an offense could expose perpetrators in Oregon to mandatory minimum sentencing. This would likely discourage any perpetrator from participating in a campus-based RJ process pre-conviction by the traditional justice system, which in turn would mean that the RJ process would be most applicable post-conviction or in cases where the offense is not criminal. An RJ process at the U of O

could operate with this limitation (especially given that the U of O has its own campus justice process by which the culpability of perpetrators can be determined), but such a process would likely be accessed by many more survivors and perpetrators if it were viable pre-conviction. One way to enhance the applicability of an RJ process would be to find a way for perpetrators to admit their guilt without necessarily exposing themselves to criminal liability. It is not strictly necessary for offenders to admit guilt in order to participate in an RJ process, however contesting their guilt is problematic given that RJ processes are not designed to determine guilt. Hypothetically an offender could neither admit nor contest their guilt (analogous to an “Alford Plea,” in which a suspect pleads innocent while simultaneously admitting that the evidence against them would likely be enough to convict them [Hinshaw, 1994]). It would be extremely difficult for an offender who neither admits nor denies their guilt to effectively participate in an RJ process because the central goal of RJ is identifying the harm (as defined by the victim) that an offender is responsible for, and empowering the offender to repair the damage. This goal would be difficult to achieve if the offender's culpability is unclear.

An option that could be adapted to solve this challenges can be found in Oregon state law. ORS 442.846 (2015) essentially created a loophole in the laws governing what material is admissible as court evidence. The law stipulates that healthcare providers can voluntarily provide information on an adverse medical events (e.g. a negative outcome of a medical procedure, or a patient contracting an illness while staying at a hospital) to a state agency without fear of legal repercussion. This means that a hospital could disclose potentially legally damaging details of a medical event (i.e. details that, if used in court, could open the hospital up to criminal or civil liability) with

the protection of state-sanctioned confidentiality. The disclosures by healthcare providers made in this way are not admissible evidence in a court. A similar law could be created that would make information disclosed as part of a campus-based RJ process inadmissible in court. This would open the door for people accused of sexual misconduct to participate in an RJ program, admit guilt, and take responsibility without placing themselves at heightened legal risk. This would help RJ be applied to cases in which guilt has not been assigned by an adjudicative process, allowing offenders to more safely admit responsibility. It seems reasonable to guess, even if the specifics discussed in an RJ process were to be inadmissible in court, that such disclosures might encourage survivors to press a future court case and thus offenders might remain cagey with their disclosures.

In assessing the value of an RJ response to sexual misconduct, it's important to note that *any* alternatives or supplements to current responses will appear valuable because of how poorly these current responses perform. As previously examined, sexual misconduct is common, infrequently reported, very rarely successfully prosecuted, and produces a host of affective needs for survivors that are poorly met by the traditional justice and campus justice systems . It's extremely easy to argue that some sort of change in our responses to sexual misconduct is necessary, the question is whether RJ offers the right type of change.

Given the caveats noted, I believe RJ has enormous potential as a tool for addressing sexual misconduct on campuses. The real value is that the process empowers survivors and gives them some control over its outcomes. RJ allows for individual variation at the discretion of the party who has been most disempowered by the offense. This is important because of the private, interpersonal, emotionally and

psychologically fraught nature of the offense; and the unique goals and needs of each survivor.

RJ responses to sexual misconduct would work best as a supplement or alternative to existing campus justice processes at the U of O. As an alternative to existing processes, RJ offers flexibility, individualization, empowerment for the survivor, education for the perpetrator, and the possibility of repairing a relationship. This is in addition to potentially enhancing title IX compliance and changing campus culture to combat sexual misconduct. The process would work this way: A perpetrator would admit their culpability, and the perpetrator, survivor and a university administrator (e.g. the title IX coordinator) would give their informed consent to engage in the RJ process instead of utilizing an administrative conference.

As a supplement to existing campus justice processes RJ could allow survivors to share the story of their experience and have input on the sanctions imposed on perpetrators whose culpability has been established by the U of O. In this context, RJ would be offered post-adjudication (i.e. after guilt has been determined by an administrative conference). The RJ process could then help determine what the perpetrator will do to repair the harm they caused. If either party is unwilling to participate in the RJ process, then the regular process by which sanctions are assigned in an administrative conference (see the “Policies specific to the University of Oregon” section above for details) would be followed. A campus-based RJ process would ideally operate separately from the traditional legal system. That is, participation in the RJ process would not preclude a police investigation of a crime, and information revealed as part of the RJ process would not be discoverable in a court case. In this way, if RJ fails to

meet the needs of the survivor, then the traditional legal system could still be accessed. If, however, the RJ process is successful, it could replace the need for a police investigation or court case.

RJ is not appropriate in all situations (e.g. ones in which a serial offender threatened the safety of the broader campus community) and so would need to be used judiciously and be supported by other justice processes. While RJ would never be able to meet all the needs of all survivors, perpetrators and community members, it could provide an effective supplemental tool that can better meet the needs of some people who are currently poorly served by traditional justice and campus justice processes.

That said, there are significant hurdles to implementing a RJ response to sexual misconduct, including the cost (in both time and financial resources) and the lack of proven programs to emulate. Perhaps the most challenging of these hurdles is the real risk that offenders will be able to benefit from an RJ program in a way that is harmful to survivors, the campus community, and the university. Such benefit at the expense of survivors could involve perpetrators using the process as a venue to re-traumatize survivors, feigning compliance and contrition in order to avoid harsher disciplinary sanctions, or manipulating survivors into acting in ways beneficial to the perpetrator. Harm to the campus community could relate to an RJ process furthering the notion that sexual misconduct is a minor crime that can be addressed appropriately through an apology. Harm to the University of Oregon could take the form of public outcry and media excoriation if the institution is perceived as facilitating gentle punishment for perpetrators.

Identifying these risks is the first step toward designing a program that can avoid

them. However, the expectation that a RJ program (or any justice process) can completely avoid these pitfalls is unreasonable. While RJ could provide a valuable supplement to existing campus justice processes, an unfortunate reality of developing new ways of providing justice is that, no matter how thoughtfully they are designed and implemented, they will not work all the time. The flaws and risks of RJ are not fully avoidable, only mitigable. I would argue that in this case, the perfect is the enemy of the good. It is good to offer options. It is good to place power in the hands of survivors and communities. It is good to focus on education rather than fetishizing punishment. Choosing to rely exclusively on the traditional justice system and existing campus justice responses until a flawless alternative or supplement can be developed guarantees that these expressions of punitive justice, with all of their respective limitations, will remain the only options. Considering the well researched and documented shortcomings of the current punitive justice system in sexual misconduct cases, I would argue that a thoughtful alternative (or supplement) like RJ has the potential of providing benefit, even though it will almost certainly fail on occasion.

The real challenge of campus-based RJ responses to sexual misconduct is that, until someone takes the risk to develop and assess a pilot program, these benefits and risks remain hypothetical.

## APPENDIX A

### U OF O STUDENT CONDUCT CODE

#### “SEXUAL MISCONDUCT”

“**Sexual Misconduct**” means:

(a) Unwanted Penetration is Penetration of another person, or causing the Penetration of another person, when one:

(A) Does not first obtain Explicit Consent from that person; or

(B) Knows or should have known the person was incapable of consent by reason of Mental Disorder, Mental Incapacitation, or Physical Helplessness.

(b) Nonconsensual personal contact occurs when a student subjects another person to contact of a sexual nature when a reasonable person would know that such contact would cause emotional distress:

(A) Without having first obtained Explicit Consent; or

(B) When he or she knows or should have known the person was incapable of consent by reason of Mental Disorder, Mental Incapacitation, or Physical Helplessness.

(c) Sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that interferes with work or academic performance because it has created an intimidating, hostile, or degrading environment and would have such an effect on a reasonable person of the alleged complainant’s status when the conduct is unwelcome and sufficiently severe or pervasive that it deprives that person of benefits of the University’s educational environment.

**Definitions:**

(8) “Contacting” has its common meaning. It includes, but is not limited to, communicating with or remaining in the physical presence of the other person.

(9) “Contact of a Sexual Nature” for purposes of Sexual Misconduct in the Student Conduct Code means the touching of the genitalia, anus, buttocks or breasts of a person or causing such person to touch the genitalia, anus, buttocks or breasts of another.

(13) “Explicit Consent” for purposes of Sexual Misconduct in the Student Conduct Code means voluntary, non-coerced and clear communication indicating a willingness to engage in a particular act. “Explicit consent” includes an affirmative verbal response or voluntary acts unmistakable in their meaning.

(21) “Mental Disorder” for purposes of Sexual Misconduct in the Student Conduct Code means that a person suffers from a mental disease or disorder that renders that person incapable of appraising the nature of the conduct of another person.

(22) “Mental Incapacitation” for purposes of Sexual Misconduct in the Student Conduct Code means that a person is rendered incapable of appraising or controlling one’s own conduct at the time of the alleged offense because of the influence of a controlled or intoxicating substance or because of any act committed upon the person without consent.

(24) “Penetration” for purposes of Sexual Misconduct in the Student Conduct Code means any degree of insertion, however slight, of the penis or any object into the vagina or anus, or the penis into the mouth.

(25) “Physical Helplessness” for purposes of Sexual Misconduct in the Student Conduct Code means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to engage in an act.

## APPENDIX B

### SELECTION OF RELEVANT ORS STATUTES

**163.305 Definitions.** As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:

(1) “Deviate sexual intercourse” means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another.

(2) “Forcible compulsion” means to compel by:

(a) Physical force; or

(b) A threat, express or implied, that places a person in fear of immediate or future death or physical injury to self or another person, or in fear that the person or another person will immediately or in the future be kidnapped.

(3) “Mentally defective” means that a person suffers from a mental disease or defect that renders the person incapable of appraising the nature of the conduct of the person.

(4) “Mentally incapacitated” means that a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense.

(5) “Physically helpless” means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(6) “Sexual contact” means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(7) “Sexual intercourse” has its ordinary meaning and occurs upon any penetration, however slight; emission is not required. [1971 c.743 §104; 1975 c.461 §1; 1977 c.844 §1; 1979 c.744 §7; 1983 c.500 §1; 1999 c.949 §1; 2009 c.770 §1]

**163.375 Rape in the first degree.** (1) A person who has sexual intercourse with another person commits the crime of rape in the first degree if:

(a) The victim is subjected to forcible compulsion by the person;

(b) The victim is under 12 years of age;

(c) The victim is under 16 years of age and is the person’s sibling, of the whole or half blood, the person’s child or the person’s spouse’s child; or

(d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Rape in the first degree is a Class A felony. [1971 c.743 §111; 1989 c.359 §2; 1991 c.628 §3]

**163.411 Unlawful sexual penetration in the first degree.** (1) Except as permitted under ORS 163.412, a person commits the crime of unlawful sexual penetration in the first degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and:

(a) The victim is subjected to forcible compulsion;

(b) The victim is under 12 years of age; or

(c) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Unlawful sexual penetration in the first degree is a Class A felony. [1981 c.549 §3; 1989 c.359 §6; 1991 c.386 §2]

**163.415 Sexual abuse in the third degree.** (1) A person commits the crime of sexual abuse in the third degree if:

(a) The person subjects another person to sexual contact and:

(A) The victim does not consent to the sexual contact; or

(B) The victim is incapable of consent by reason of being under 18 years of age;

or

(b) For the purpose of arousing or gratifying the sexual desire of the person or another person, the person intentionally propels any dangerous substance at a victim without the consent of the victim.

(2) Sexual abuse in the third degree is a Class A misdemeanor.

(3) As used in this section, “dangerous substance” means blood, urine, semen or feces. [1971 c.743 §115; 1979 c.489 §1; 1991 c.830 §1; 1995 c.657 §11; 1995 c.671 §9; 2009 c.616 §1]

**163.465 Public indecency.** (1) A person commits the crime of public indecency if while in, or in view of, a public place the person performs:

(a) An act of sexual intercourse;

(b) An act of deviate sexual intercourse; or

(c) An act of exposing the genitals of the person with the intent of arousing the sexual desire of the person or another person.

(2)(a) Public indecency is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, public indecency is a Class C felony if the person has a prior conviction for public indecency or a crime described in ORS 163.355 to 163.445 or for a crime in another jurisdiction that, if committed in this state, would constitute public indecency or a crime described in ORS 163.355 to 163.445. [1971 c.743 §120; 1999 c.962 §1; 2005 c.434 §1]

**163.467 Private indecency.** (1) A person commits the crime of private indecency if the person exposes the genitals of the person with the intent of arousing the sexual desire of the person or another person and:

(a) The person is in a place where another person has a reasonable expectation of privacy;

(b) The person is in view of the other person;

(c) The exposure reasonably would be expected to alarm or annoy the other person; and

(d) The person knows that the other person did not consent to the exposure.

(2) Private indecency is a Class A misdemeanor.

(3) Subsection (1) of this section does not apply to a person who commits the act described in subsection (1) of this section if the person cohabits with and is involved in a sexually intimate relationship with the other person.

(4) For purposes of this section, “place where another person has a reasonable expectation of privacy” includes, but is not limited to, residences, yards of residences, working areas and offices. [1999 c.869 §2]

## APPENDIX C

### INTERVIEW MATERIAL: PARTICIPATION REQUEST AND CONFIDENTIALITY AGREEMENT

University of Oregon: Conflict and Dispute Resolution Master's Program  
Informed Consent for Participation as a Subject in: Restorative Justice in Cases of Sexual Assault at the University of Oregon - Possibilities, Risks and Challenges  
Principal Investigator: Zane Kessler Hager  
Type of consent: Adult Consent Form

#### Introduction

You are being asked to participate in a research study of regarding the use of restorative justice as a response to sexual assault at the University of Oregon. This research study involves identifying the risks, rewards and challenges related to such a response. You were selected as a possible participant because you have a professional connection to University of Oregon responses to sexual assault, restorative justice responses to sexual assault in general and/or the rights and well-being of survivors of sexual assault. We ask that you read this form and ask any questions that you may have before agreeing to be in the study.

#### Purpose of Study:

The purpose of this study is to better understand the challenges and benefits associated with using restorative justice as a response to sexual assault at the University of Oregon. The idea is to better understand what it might take to implement a restorative justice program that responds to sexual assault, and what the risks and rewards of doing so might be.

Please note that the responsible investigator and/or other members of the research team do not have a significant financial interest in the outcome of this research.

#### Description of the Study Procedures:

If you agree to be in this study, we would ask you to do the following things: participate in one (1) interview with the principal investigator in person. This interview will involve answering questions and having a discussion about your professional views on restorative justice as a response by the University of Oregon to sexual assault involving students. Questions will ask your views on the risks and rewards of this kind of response, and how and if such a response would be possible. These interviews will be recorded (audio only) and transcribed for use in a written graduate thesis.

The duration of participation for people consenting to be interviewed will be between 30 and 60 minutes (depending on the length of their answers to interview questions)

This study is expected to involve between 5-10 participants.

Audio recordings will be made of all interviews using a handheld digital audio recording device. These recordings are necessary given the length and complexity of the interview process. These audio files will be stored securely, transcribed and destroyed by the

principal investigator. Please see the section below titled “Confidentiality” for more details. Participants will not be asked their name and occupation, and are not required to disclose this or any other personally identifiable information. No personally identifiable information will be used in the written thesis. Your name, occupation etc. will neither be asked for nor disclosed.

#### Risks/Discomforts of Being in the Study:

The study has the following risks.

Participants will discuss issues related to sexual assault. This topic by its very nature has the possibility of producing psychological harm or discomfort in those who discuss it. This risk has a minimal likelihood of occurring because research participants will be professionals giving their opinions on the relationship between sexual assault, University of Oregon policies and restorative justice. They will not be asked about any personal, traumatic experiences that might produce discomfort.

Employees of the University will be asked their opinion on the efficacy of current University responses to sexual assault, and areas in which that response could be improved. This could risk harm or discomfort since it involves recording and disseminating statements by employees of the University of Oregon that may be critical of the institution that employs them. Additionally these statements might cause discomfort for research participants if they were revealed to their colleagues, students, families etc. In order to mitigate this risk, the principal investigator will provide research participants with a variety of ways to protect their confidentiality including secure data storage, not requiring any personally identifiable information as part of the interview process and allowing participants to voluntarily withdraw themselves and any information they may have provided from the research study at any time for any reason. No research data will be used without the express written consent of the research participants.

Another risk is related to the process of recording information during the interviews. The principal investigator will utilize a handheld, digital audio recorder to record the interviews, and then transcribe them into a Microsoft Word document. The risk is that this information might be lost or stolen resulting in a loss of privacy or breach of confidentiality. This risk has a low likelihood of occurring because the disclosure of confidential information - including personally identifiable information like name, occupation etc. - is not required of any research participant. Furthermore, all gathered data will be stored and disposed of in a secure and timely fashion. All confidential material stored on the principal investigators computer will be doubly password protected. Furthermore, the audio recordings that contain the inherently identifiable sound of a research participant’s voice will be erased from the audio recording device within 1 day of their creation, and erased from the principal investigator’s computer immediately after their transcription (no later than 14 days from the time of the original recording). These security measures leave a limited window in which any personally identifiable data will be stored.

#### Benefits of Being in the Study:

The goal of this research project is not to advocate for particular changes, but rather to identify the problems and rewards associated with a potential university-lead restorative

justice program related to sexual assault. No direct benefit will be provided to participants in this research study as a result of their participation. This research may improve the ability of University of Oregon and employees of other University to find creative ways - especially those related to restorative justice - to attempt to address the problem of sexual assault on campuses. This may or may not be of indirect benefit to the participants in the research study by providing them with support and information that could be used to pursue new options and opportunities related to addressing the problem of sexual assault. This benefit could be both professional and personal. This research could positively impact society at large by increasing the number and variety of options for justice available to victims of sexual assault. This research is an important first step on a road that could lead to substantial social benefit in that it would provide a solid basis for later program development.

#### Compensation and Costs

Participating in this research study incurs no cost to you and will result in no compensation to you.

#### Confidentiality:

The records of this research study will be kept private. In any sort of report we may publish, we will not include any information that will make it possible to identify a participant. All Research records will stored digitally on the principal investigator's password protected personal computer

No personally identifiable information is required to be given during this interview, and no personally identifiable information (name, occupation etc.) will be used in any final form of the research distributed to others (like a graduate thesis).

All electronic information will be secured using a password protected file. All audio recordings will be accessible only by the principal investigator. These audio recordings will be recorded on a digital audio recorder, transcribed into a word document and used in a written graduate thesis. The principal investigator will be the sole transcriber of these audio files. All audio files (and the transcripts of those files) will be stored electronically within 1 day of their creation in a password protected file on the principal investigator's personal, password protected computer. The initial digital files will be erased from the audio recorder immediately after they have been transferred to the principal investigator's computer. These audio files will be deleted from the principal investigators computer once an accurate transcript has been made of them (no later than 14 days from the time of their initial recording). The text transcripts of these audio files will be erased when the principal investigator has successfully defended his thesis (no later than 9/27/17). All digital files will be deleted using Eraser - a secure deletion utility that overwrites files with random data so that they are completely unrecoverable.

Access to the records will be limited to the principal investigator; however, please note that regulatory agencies, and the Institutional Review Board and internal University of Oregon auditors may review the research records.

#### Voluntary Participation/Withdrawal:

Your participation is voluntary. If you choose not to participate, it will not affect your current or future relations with the University of Oregon or any other institution.

You are free to withdraw from this study at any time, for any reason.  
You will be provided with any significant new findings that develop during the course of the research that may make you decide that you want to stop participating.

**Dismissal From the Study:**

The principal investigator may withdraw you from the study at any time for the following reasons: (1) withdrawal is in your best interests (e.g. side effects or distress have resulted), (2) you have failed to comply with the study requirements, or (3) the principal investigator decides to terminate the study.

**Contacts and Questions:**

The principal investigator conducting this study is Zane Kessler Hager. For questions or more information concerning this research you may contact him by e-mail at [zkh@uoregon.edu](mailto:zkh@uoregon.edu) or by phone at 541-913-3229

If you believe you may have suffered a research related injury, please contact Zane Kessler Hager at 541-913-3229 who will give you further instructions.

If you have any questions about your rights as a research subject, you may contact: Research Compliance Services, University of Oregon at (541) 346-2510 or [ResearchCompliance@uoregon.edu](mailto:ResearchCompliance@uoregon.edu)

**Copy of Consent Form:**

You will be given a copy of this form to keep for your records and future reference.

**Statement of Consent:**

I have read (or have had read to me) the contents of this consent form and have been encouraged to ask questions. I have received answers to my questions. I give my consent to participate in this study. I have received (or will receive) a copy of this form.

I understand that I may make my own audio recording of the interview.

I know that after my interview, I may request that any information I provide in my interview be withdrawn from the research data.

I consent to this interview being audio recorded for transcription purposes.

**Signatures/Dates**

---

Study Participant (Print Name)

---

Participant or Legal Representative Signature

Date

## APPENDIX D

### INTERVIEW MATERIALS: INTERVIEW QUESTIONS

Study Title: Restorative Justice in Cases of Sexual Assault at the University of Oregon - Possibilities, Risks and Challenges

Protocol Number: TBD

Principal Investigator: Zane Kessler Hager

This document is an amendment to the attached Research Plan that provides the general questions the Principal Investigator will ask all research participants. This research will exclusively involve open-ended interviews. As such, the questions listed below do not constitute the sum total of all questions that will be asked of research participants. The questions listed below are a basic starting point and structure that will be built upon organically during the course of a given interview.

How does your job relate to the issue of sexual assault?

What do you understand to be the general idea of restorative justice?

What do you understand to be the current ways that the University of Oregon and/or the justice system in general responds to reports of sexual assault?

What do you think are the strengths and weaknesses of these current responses?

What do you think a restorative justice response by the University of Oregon to sexual assault would look like?

What do you think the risks are of applying a restorative justice process to cases of sexual assault, both in general and in the specific context of the University of Oregon?

What do you think are the possible rewards of applying a restorative justice process to cases of sexual assault, both in general and in the specific context of the University of Oregon?

What do you think are the challenges – institutional, legal, public relations etc. - of applying a restorative justice process to cases of sexual assault, both in general and in the specific context of the University of Oregon?

How would you try and address those challenges?

What do you think would need to change in order to allow the sort of response we've discussed to take place?

Ideally, what would you like to see happen regarding the issue of providing justice in cases of sexual assault involving U of O students?

## APPENDIX E

### INTERVIEW MATERIALS: IRB APPROVAL FORM

DATE: June 09, 2017 IRB Protocol Number: 01302017.034

TO: Zane Hager, Principal Investigator

Department of Dean of Students Operations

RE: Protocol entitled, "Restorative Justice in Cases of Sexual Assault at the University of Oregon - Possibilities, Risks and Challenges"

Notice of IRB Review and Approval Expedited Review as per Title 45 CFR Part 46 # 6, 7

The project identified above has been reviewed and approved by the Committee for Protection of Human Subjects (CPHS), the University of Oregon Institutional Review Board (IRB). This research has been determined to be no greater than minimal risk and qualifies for expedited review procedures. The IRB has approved the research to be conducted as described in the attached materials. As a reminder, it is your responsibility to submit any proposed changes for IRB review and approval prior to implementation. Approval period: June 09, 2017 - June 08, 2018 If you anticipate the research will continue beyond the IRB approval period, you must submit a request for continuing review approximately 60 days prior to the expiration date. Without continued approval, the protocol will expire on June 08, 2018 and human subject research activities must cease. A closure report must be submitted once human subject research activities are complete. Failure to maintain current approval or properly close the protocol constitutes non-compliance.

You are responsible for adhering to the Investigator Agreement submitted with the initial application for IRB review. The responsibilities of the agreement are reiterated at the end of this letter below. You are responsible for conduct of the research and must maintain oversight of all research personnel to ensure compliance with the IRB approved protocol. The University of Oregon and Research Compliance Services appreciate your commitment to the ethical and responsible conduct of research with human subjects.

Sincerely,  
Kalindi Allen  
Research Compliance Administrator  
CC: Merle Weiner

## REFERENCES CITED

- Abbey, A. (2002). "Alcohol-related sexual assault: A common problem among college Students." *Journal of Studies on Alcohol*, 14, 118 –128.
- Administrator. (2017, June 18th). Personal Interview
- American Association of College Women (2006). "Drawing the Line: Sexual Harassment on Campus." <http://www.aauw.org/research/dtl.cfm>
- American Bar Association (June, 2017). *ABA Criminal Justice Section Task Force on College Due Process Rights and Victim Protections: Recommendations for Colleges and Universities in Resolving Allegations of Campus Sexual Misconduct*. Retrieved Sept. 27, 2017 from <https://www.americanbar.org/content/dam/aba/publications/criminaljustice/2017/ABA-Due-Process-Task-Force-Recommendations-and-Report.authcheckdam.pdf>
- Andrews, D. A., Zinger, I., Hoge, R. D., Bonta, J., Gendreau, P., & Cullen, F. T. (1990). "Does Correctional Treatment work? A clinically relevant and psychologically informed meta-analysis." *Criminology*, 28(3), 369-404.
- Bastian, B., & Haslam, N. (2010). "Excluded from humanity: The dehumanizing effects of social ostracism." *Journal of Experimental Social Psychology*, 46, 107–113
- Bletzer, K, Koss, M.P., Raskin, S., & Beach, L. (In press). "Restorative justice in criminal cases of sexual assault: Textual evidence of offender apology and acceptance of responsibility." In J. Ptacek (Ed.), *Feminism, Restorative Justice, and Violence Against Women*. Thousand Oaks, CA: Sage.
- Bonta, J, Jessman, R, Rugge, T. & Cormier, R. (2006) "Restorative justice and recidivism: Promises made, promises kept." In *Handbook of Restorative Justice: A global perspective* 108.
- Brenner, A. (2013a) "Resisting Simple Dichotomies: Critiquing Narratives of Victims, Perpetrators, and Harm in Feminist Theories of Rape," *36 Harv. J. L. & Gender* 503.
- Brenner, A. (2013b) "Transforming campus culture to prevent rape: the possibility and promise of restorative justice as a response to campus sexual violence." *Harvard Journal of Law & Gender* 10.
- Brown, S. L., & Forth, A. E. (1997). "Psychopathy and sexual assault: static risk factors, emotional precursors, and rapist subtypes." *Journal of Consulting and Clinical*

- Psychology*, 65(5), 848.
- Campbell, R., Dworkin, E., & Cabral, G. (2009). "An ecological model of the impact of sexual assault on women's mental health." *Trauma, Violence, & Abuse*.
- Campbell, R., & Raja, S. (1999). "Secondary victimization of rape victims: Insights from Mental health professionals who treat survivors of violence." *Violence and Victims*, 14, 261-275.
- Campbell, R., Wasco, S. M., Ahrens, C. E., Sefl, T., & Barnes, H. E. (2001). "Preventing the "second rape": Rape survivors' experiences with community service providers." *Journal of Interpersonal Violence*, 16, 1239-1259.
- Campus Sexual Assault Victims' Bill of Rights of 1992. An amendment to the Clery Act requiring that schools develop prevention policies and provide certain assurances to Victims. Amended again in 1998 to expand requirements, including the crime categories That must be reported.
- Cameron, A. (2006). "Stopping the violence: Canadian feminist debates on restorative justice and intimate violence." *Theoretical Criminology*, 10, 49-66  
<http://tcr.sagepub.com/cgi/reprint/10/1/49>, Retrieved August 16, 2007.
- Cantor, D., Fisher, B., Chibnall, S. H., Townsend, R., Lee, H., Thomas, G., Bruce, C., & Westat, Inc. (2015). *Report on the AAU campus climate survey on sexual assault and sexual misconduct*. Washington, DC: Association of American Universities.
- Caplan, N., & Nelson, S. D. (1973). "On being useful: The nature and consequences of psychological research on social problems." *American Psychologist*, 28(3), 199.
- Carr, J. & VanDeusen, K. (2004) "Risk Factors For Male Sexual Aggression on College Campuses." *J. Interpers. Violence* 19(5): 279-289.
- Coates, R. B., Burns, H. & Umbreit, M. S. (2002) "Victim Participation in Victim Offender Conferencing: Washington County." *Minnesota Community Justice Program* 2.
- Crowe, A. H. (1998). "Restorative justice and offender rehabilitation: A meeting of the minds." *Perspectives: Journal of the American Probation and Parole Association*, 22, 28-41.
- Curtis-Fawley, S. & Daly, K. (2005). "Gendered violence and restorative justice: The views of victim advocates." *Violence Against Women*, 11, 603-638.

- Daigle, L. E., Fisher, B. S., & Cullen, F. T. (2008). The violent and sexual victimization of college women: Is repeat victimization a problem? *Journal of interpersonal violence*, 23(9), 1296-1313.
- Daly, K. (2005). "Restorative justice and sexual assault: An archival study of court and conference cases." *British Journal of Criminology*, 46(2), 334-356.
- Daly, K., Curtis-Fawley, S., & Bouhours, B. (2003). "Sexual offense cases finalised in court, by conference, and by formal caution in South Australia for young offenders, 1995-2001: Final report, August 2003." Brisbane, Australia: School of Criminology and Criminal Justice, Griffith University. Available at [www.gu.edu.au/school/ccj/kdaly.html](http://www.gu.edu.au/school/ccj/kdaly.html)
- DeKeseredy, W., and Schwartz, M. (1998). "Women abuse on campus: Results from the Canadian National Survey," *Sage*, Thousand Oaks, CA.
- Du Mont, J., K.L. Miller, and T.L. Myhr. (April, 2003) "The Role of 'Real Rape' and 'Real Victim' Stereotypes in the Police Reporting Practices of Sexually Assaulted Women." *Violence Against Women* 9(4): 466-486.
- Family Educational Rights and Privacy Act. (1974) 20 U.S. Code § 1232g.
- Fisher, Bonnie S., Francis T. Cullen, and Michael G. Turner. (2000) "The Sexual Victimization of College Women." Research Report.
- Fogarty, M. (2017, March 26). AP Stylebook Updates: Singular 'They' Now Acceptable. Retrieved October 30, 2017
- Follette, V. M., Polusny, M. A., Bechtle, A. E., & Naugle, A. E. (1996). Cumulative trauma: The impact of child sexual abuse, adult sexual assault, and spouse abuse. *Journal of Traumatic Stress*, 9(1), 25-35.
- Franklin, C. A. (2010). "Physically forced, alcohol-induced, and verbally coerced sexual victimization: Assessing risk factors among university women." *Journal of Criminal Justice*, 38, 149-159. doi:10.1016/j.jcrimjus. 2010.02.004
- Freyd, J.J. , J. Gómez, M. Rosenthal, A. Smidt & C. P. Smith, (August, 2015). "Initial findings from the University of Oregon 2015 Sexual Violence and Institutional Betrayal Survey." Presented within the Keynote Panel entitled "Campus Sexual Assault: Current Research and Prevention Approaches" at the [20th International Summit & Training on Violence, Abuse, & Trauma](#), San Diego, CA, San Diego, CA, 23- 26 August 2015.

- Frohmann, Lisa (1991) "Discrediting victims' allegations of sexual assault: Prosecutorial accounts of case rejections." *Social Problems* 38:213–226.
- Gehm, J. (1990). "Mediated victim-offender restitution agreements: An exploratory analysis of factors related to victim participation." *Criminal Justice, Restitution, and Reconciliation*, 177-182.
- Gendreau, P., Little, T., & Goggin, C. (1996). "A meta-analysis of the predictors of adult offender recidivism: What works!" *Criminology*, 34(4), 575-608.
- Gervais, S. J., DiLillo, D., & McChargue, D. (2014). "Understanding the link between men's alcohol use and sexual violence perpetration: The mediating role of sexual objectification." *Psychology of Violence*, 4(2), 156.
- Gobin, R. L., & Freyd, J. J. (2009). "Betrayal and revictimization: Preliminary findings." *Psychological Trauma: Theory, Research, Practice, and Policy*, 1, 242–257. doi:10.1037/a0017469
- Goldsmith, R., Freyd, J. J., & DePrince, A. P. (2012). "Betrayal trauma: Associations with psychological and physical symptoms in young adults." *Journal of Interpersonal Violence*, 27, 547-567. doi: 10.1177/0886260511421672
- Greenberg, M. S., & Ruback, R. B. (1992). *After the crime: Victim decision making*. New York: Plenum.
- Handeyside, A., Wickliffe, S., Adams, J. (2007) *Striving for Justice: A Toolkit for Judicial Resolution Officers on College Campuses Responding to Sexual Assault and Dating and Domestic Violence* (University of Michigan Division SAPAC)
- Haslam, N., & Loughnan, S. (2014). "Dehumanization and infrahumanization." *Annual Review of Psychology*, 65, 399-423.
- Hattem, T. (2000). "Survey of sexual assault survivors" (Report No. 2000-4e). Ottawa: Department of Justice, Canada.
- Herman, J.(1994). *Trauma and Recovery*. Basic Books. New York, NY
- Hinshaw, A. J. (1994). "State v. Cameron: Making the Alford Plea an Effective Tool in Sex Offense Cases." *Mont. L. Rev.*, 55, 281.
- Hudson, B. (2002). "Restorative justice and gendered violence: Diversion or effective justice?" *British Journal of Criminology*, 42, 616-634.

- Jewkes, R., Sen, P., & Garcia-Moreno, C. (2002). "Sexual violence." Retrieved from popline.org, March 14, 201
- Jordan, J. (2013). "From victim to survivor - and from survivor to victim: Reconceptualising the survivor journey." *Sexual Abuse in Australia and New Zealand*, 5(2), 48-56. Retrieved from <http://libproxy.uoregon.edu>
- Karp, D. R., & Allena, T. (2004). *Restorative justice on the college campus: promoting student growth and responsibility, and reawakening the spirit of campus community*. Springfield, IL: C.C. Thomas Publisher.
- Karp, D.R., Shackford-Bradley, J., Wilson, R., Williamson, K. A. (2016) *Campus Prism: A Report on Promoting Restorative Initiatives for Sexual Misconduct on College Campuses*. Skidmore College Project on Restorative Justice. Saratoga Springs, NY.
- Kaplan, A. (1964). *The conduct of inquiry; methodology for behavioral science*. San Francisco: Chandler Pub. Co. pg. 31
- Koss, M. P. (2014). *The RESTORE program of restorative justice for sex crimes: Vision, process, and outcomes*. *Journal of Interpersonal Violence*, 29(9), 1623-1660. Chicago
- Koss, M. P. (2006). "Restoring rape survivors." *Annals of the New York Academy of Sciences*, 1087(1), 206-234.
- Koss, M., & Achilles, M. (February, 2008). "Restorative Justice Responses to Sexual Assault." *VAWnet: The National Online Resource Center on Violence Against Women*. [http://www.rjp.umn.edu/img/assets/18492/Marquette\\_RJ\\_21st\\_Century.pdf](http://www.rjp.umn.edu/img/assets/18492/Marquette_RJ_21st_Century.pdf), retrieved February 7, 2017.
- Koss, Mary P., Jay K. Wilgus, and Kaaren M. Williamsen. (2014) "Campus sexual misconduct restorative justice approaches to enhance compliance with Title IX guidance." *Trauma, Violence, & Abuse* 15.3: 242-257.
- Koss, M. P., Gidycz, C. A., & Wisniewski, N. (1987). "Incidence of Rape Among College Students." *PsycEXTRA Dataset*.
- Krebs, C. P., C. H. Lindquist, T. D. Warner, B. S. Fisher, S. L. Martin (2007) "The campus sexual assault (CSA) study: Final report." *Washington, DC: National Institute of Justice, US Department of Justice* .

- Latimer, J., Dowden, C., & Muise, D. (2005). "The effectiveness of restorative justice practices: A meta analysis." *The Prison Journal*, 85, 127-144.
- Legal Counsel. (2017. October 9th). Personal Interview
- Llewellyn, J., & Howse, R. (1998). *Restorative justice: A conceptual framework*. Ottawa: Law Commission of Canada.
- Littleton, H., & Breitkopf, C. R. (2006). "Coping with the experience of rape." *Psychology of Women Quarterly*, 30(1), 106-116.
- Lisak, D. and Miller, M. (2002) "Repeat Rape and Multiple Offending Among Undetected Rapists." *Violence Victims* 1: 73-84.
- Locke, K. D. (2009). "Aggression, narcissism, self-esteem, and the attribution of desirable and humanizing traits to self versus others." *Journal of Research in Personality*, 43(1), 99-102.
- Lonsway, K. A., Archambault, J., & Lisak, D. (2009). "False reports: Moving beyond the issue to successfully investigate and prosecute non-stranger sexual assault." *The Voice*, 3(1), 1-11. Retrieved from the National District Attorneys Association
- Loughnan, S., Pina, A., Vasquez, E. A., & Puvia, E. (2013). "Sexual objectification increases rape victim blame and decreases perceived suffering." *Psychology of Women Quarterly*, 37(4), 455-461
- Lowenkamp, C. T., & Latessa, E. J. (2004). "Understanding the risk principle: How and why correctional interventions can harm low-risk offenders." *Topics in Community Corrections*, 2004, 3-8.
- Marshall, T. F. (1996). "The evolution of restorative justice in Britain." *European Journal of Criminal Policy and Research*, 4, 21-42.
- Marshall, W. L., & Barbaree, H. E. (1990). "An integrated theory of the etiology of sexual offending." *Handbook of sexual assault: Issues, theories, and treatment of the offender*, 257-275.
- Miller, K. (2017). "What Counts As Sexual Assault (And What Doesn't) According to the Law." Retrieved February 21, 2017, from <http://www.self.com/story/sexual-assault-definition>
- Mohler-Kuo, M., Dowdall, G.W., Koss, M.P., & Wechsler, H. (2004). "Correlates of rape

- while intoxicated in a national sample of college women.” *Journal of Studies on Alcohol*, 65, 37–45.
- Morrison, S., Hardison, J., Mathew, A., & O'neil, J. (n.d.). “Evidence-Based Review of Rape and Sexual Assault Preventive Intervention Programs in the United States, 1990-2003.” *ICPSR Data Holdings*. doi:10.3886/icpsr04453
- NIJ. Most Victims Know Their Attacker. (n.d.). Retrieved February 04, 2017, from <https://www.nij.gov/topics/crime/rape-sexual-violence/campus/pages/know-attacker.aspx>
- ORS §§ 163.305-163.479, (2015). Oregon Revised Statutes, Oregon State Legislature.
- ORS §§ 442.846, (2015). Patient safety data not admissible in civil actions. Oregon Revised Statutes, Oregon State Legislature.
- ORS §§ 137.707, (1994). Measure 11, Mandatory Sentences for Violent Offenders. Oregon Revised Statutes, Oregon State Legislature.
- Orth, U., & Maercker, A. (2004, February). “Do trials of perpetrators retraumatize crime victims?” *Journal of Interpersonal Violence* , 19 , 212-227.
- Patrick, C., Fowles, D., & Krueger, R. (2009). “Triarchic conceptualization of psychopathy: Developmental origins of disinhibition, boldness, and meanness.” *Development and Psychopathology* 21 (3), 913-938.  
doi:10.1017/S0954579409000492
- Planty, M., Langton, L., Krebs, C., Berzofsky, M., & Smiley-McDonald, H. (March 2013). “Female Victims of Sexual Violence 1994-2010.” Washington, D.C. (810 Seventh St., N.W., Washington 20531): *U.S. Dept. of Justice, Bureau of Justice Statistics*.
- Platt, M., Barton, J., & Freyd, J. J. (2009). “A betrayal trauma perspective on domestic violence.” In E. Stark & E. S. Buzawa, (Eds.), *Violence against Women in Families and Relationships* (Vol. 1, pp. 185–207). Westport, CT: Greenwood Press.
- Pronin, E., Gilovich, T., & Ross, L. (2004). “Objectivity in the eye of the beholder: divergent perceptions of bias in self versus others.” *Psychological review*, 111(3), 781-799.
- Quinsey, V. L., Rice, M. E., & Harris, G. T. (1995). *Actuarial prediction of sexual recidivism. Journal of interpersonal violence*, 10(1), 85-105.

- RAINN (2017). Retrieved August 13, 2017, from <https://www.rainn.org/statistics/criminal-justice-system>
- Rennison, C.M. (2002) "Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992–2000." Washington, DC: *U.S. Department of Justice, Bureau of Justice Statistics*, August 2002, NCJ 194530.
- RJ Practitioners. (2017, October 10th). Phone Interview
- Rudman, L. A., & Mescher, K. (2012). "Of animals and objects men's implicit dehumanization of women and likelihood of sexual aggression." *Personality and Social Psychology Bulletin*, 38(6), 734-746.
- Sasson, E. (2016). "Summary of a Roundtable Discussion." In *Can Restorative Practices Address Intimate Partner Violence?* Center for Court Innovation.
- Schafran, L. (1993). "Writing and reading about rape: A Primer." *St. John's Law Review* 66: 979-1045.
- Schill, M. H. (2016, September 21). "Student Life Leadership Transition" [E-mail to the author].
- Shapland, J. (2003). "Restorative justice and criminal justice. Just responses to crime." In A. von Hirsch, J. Roberts, A.E. Bottoms, K. Roach & M. Schiff (Eds). *Restorative justice & criminal justice: Competing or reconcilable paradigms?* (pp. 195–218). Hart Publishing, Oxford and Portland, Oregon.
- Smith, C.P. & Freyd, J.J. (2013). "Dangerous Safe Havens: Institutional Betrayal Exacerbates Sexual Trauma." *Journal of Traumatic Stress*, 26, 119-124
- Smith, P., Gendreau, P., & Goggin, C. (2002). *The effects of prison sentences and intermediate sanctions on recidivism: General effects and individual differences*. Ottawa, ON: Solicitor General Canada.
- Smith, T. (Writer). (2017, July 25). *After Assault, Some Campuses Focus on Healing Over Punishment* [Radio broadcast]. In "All Things Considered," NPR.
- Sokulo, B. (2004) "Creating a Proactive Campus Sexual Misconduct Policy." *The National Center for Higher Education Risk Management*.
- Spohn, C., Beichner, D., & Davis-Frenzel, E. (2001). "Prosecutorial justifications for

- sexual assault case rejection: Guarding the gateway to justice.” *Social Problems*, 48, 206-235.
- Stewart, M. W., Dobbin, S. A., & Gatowski, S. I. (1996). “‘Real rapes’ and ‘real victims’: The shared reliance on common cultural definitions of rape.” *Feminist Legal Studies*, 4, 159-177.
- Strang, H., Sherman, L.W., Angel, C., Woods, D., Barnes, G.C., Bennett, S., & Inkpen, N. (2005). “Effects of face-to-face restorative justice on victims of crime in four randomized trials.” *Journal of Experimental Criminology*, 1, 367-395.
- “Strategies for the Treatment and Prevention of Sexual Assault.” (1995). American Medical Association. American Medical Association.
- Student Right-to-Know and Campus Security Act of 1990 (20 U.S.C. § 1092).
- Support Specialist. (2017, September 29th). Personal Interview
- Swartout, K. et al. (2015) *Trajectory Analysis of the Campus Serial Rapist Assumption*, 169 JAMA Pediatrics 1148, 1150-52 (2015)
- Title IX, Education Amendments of 1972, 20 USC §§1681–1688.
- Tjaden, P. G., & Thoennes, N. (2000). “Full report of the prevalence, incidence, and consequences of violence against women: findings from the National Violence Against Women Survey.” Washington, D.C. (810 Seventh St., N.W., Washington 20531): U.S. Dept. of Justice, Office of Justice Programs, National Institute of Justice.
- Truman, J. L., & Langton, L. (Sept. 2015). “Criminal Victimization,” 2014 Washington, D.C. (810 Seventh St., N.W., Washington 20531): U.S. Dept. of Justice, Bureau of Justice Statistics.
- Uggen, C., & Blackstone, A. (2004). “Sexual harassment as a gendered expression of power.” *American Sociological Review*, 69(1), 64-92
- Ullman, S.E., Karabatsos, G., & Koss, M.P. (1999). “Alcohol and sexual assault in a national sample of college women.” *Journal of Interpersonal Violence*.
- Umbreit, M. S., Lightfoot, E., & Fier, J. (2001). *Legislative statutes on victim offender mediation: A national review*. Center for Restorative Justice and Peacemaking, School of

- Social Work, University of Minnesota.
- Umbreit, M.S., Vos, B., Coates, R.B., & Lightfoot, E. (2006). "Restorative justice in the twenty first century: A social movement full of opportunities and pitfalls." *Marquette Law Review*, 1/11/2006 (on-line), 253-304.
- United States, Department of Justice, Office on Violence Against Women. (2017). *OVW Fiscal Year 2017 Restorative Justice Response to Sexual Assault, Domestic Violence and Dating Violence on Campus Demonstration Initiative Application Guidelines*
- United States, Department of Education, Office for Civil Rights. (April 4, 2011). *Dear Colleague Letter*. Office of the Assistant Secretary.
- United States Department of Education, Office of Civil Right, (September, 2017) *Q and A on Campus Sexual Misconduct*. Retrieved September 27th, 2017 from [https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)
- U.S. Department of Justice. (June 2001). "Criminal Victimization 2000: Changes 1999-2000 with Trends 1993-2000." *Bureau of Justice Statistics*.
- University of Oregon, Division of Student Life. (2015). *Student Conduct Code* .Retrieved on 2/23/17 from <http://policies.uoregon.edu/vol-3-administration-student-affairs>
- University of Oregon, Office of the Dean of Students (2017). *Student Conduct Standard Operating Procedures Regarding Sexual Misconduct, Sexual Harassment, and Unwanted Sexual Contact*. Retrieved 10/14/17 from <https://dos.uoregon.edu/sexual-misconduct>.
- Vaes, J., Paladino, P., & Puvia, E. (2011). Are sexualized women complete human beings? Why men and women dehumanize sexually objectified women. *European Journal of Social Psychology*, 41(6), 774-785
- Walmsley, Roy (November 21, 2013). "[World Prison Population List \(tenth edition\)](#)." *International Centre for Prison Studies*. Retrieved March 1, 2017.
- Wheaton, K. K. (2017). *Legal Issues in Higher Education*. Journal of Collective Bargaining in the Academy. Volume 0 National Center Proceedings 2017. Article 63
- Wiehe, V. R., & Richards, A. L. (1995). *Intimate betrayal. Understanding and*

*responding to the trauma of acquaintance rape.* Thousand Oaks, CA: Sage.

Wolfman, Rachel S. (2011) *Restorative Justice in Cases of Sexual Assault: A Comparative Study of Victim Offender Dialogue Programs in Vermont and New Hampshire.* Diss. Brandeis University.

Zehr, H. (2005). *Changing lenses: a new focus for crime and justice.* Scottdale, PA: Herald Press: 191