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www.law.uh.edu/LawCenter/Programs/IHELG

MICHAEL A. OLIVAS
William B. Bates
Distinguished Chair in Law
Director, IHELG
molivas@uh.edu
713.743.2078

DEBORAH Y. JONES
Program Manager
dyjones@uh.edu

**Concealing Campus Sexual Assault:
An Empirical Examination of Clery Act Data**

IHELG Monograph

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Corey Rayburn Yung
Professor of Law
University of Kansas School of Law
Green Hall
1535 W. 15th Street
Lawrence, KS 66045-7577
785-864-4152
coreyyung@ku.edu

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CONCEALING CAMPUS SEXUAL ASSAULT: AN EMPIRICAL EXAMINATION OF CLERY ACT DATA

ABSTRACT

This study tests whether there is substantial undercounting of sexual assault by universities. It compares the sexual assault data submitted by universities while being audited for Clery Act violations with the data from years before and after such audits. If schools report higher rates of sexual assault during times of higher regulatory scrutiny (audits), then that result would support the conclusion that universities are failing to accurately tally incidents of sexual assault during other time periods. The study finds that university reports of sexual assault increase by approximately 44% during the audit period. However, after the audit is completed, the reported sexual assault rates drop to levels statistically indistinguishable from the pre-audit time frame. The results are consistent with the hypothesis that the ordinary practice of universities is to undercount incidents of sexual assault. Only during periods in which schools are audited do they appear to offer a more complete picture of sexual assault levels on campus. Further, the data indicate that the audits have no long-term effect on the reported levels of sexual assault as those crime rates return to previous levels after the audit is completed. This last finding is supported even in instances when fines are issued for non-compliance. The study tests for a similar result with the tracked crimes of aggravated assault, robbery, and burglary, but reported crimes show no statistically significant differences before, during, or after audits. The results of the study point toward two broader conclusions directly relevant to policymaking in this area. First, greater financial and personnel resources should be allocated commensurate with the severity of the problem and not based solely on university reports of sexual assault levels. Second, the frequency of auditing should be increased and statutorily-capped fines should be raised in order to deter transgressors from continuing to undercount sexual violence. The Campus Accountability and Safety Act, presently before Congress, provides an important step in that direction.

CONCEALING CAMPUS SEXUAL ASSAULT: AN EMPIRICAL EXAMINATION OF CLERY ACT DATA

*Corey Rayburn Yung**

In early 2014, President Barack Obama directed the national spotlight toward sexual violence at universities¹ (Calmes, 2014). Unfortunately, there remain serious holes in our understanding of the nature and magnitude of campus sexual assault that inhibit effective policy formulation (Bialik, 2014). In particular, it has proven difficult to reliably and validly determine the number of reported sexual assaults on university campuses. This is due to the uncertainty as to whether higher education institutions are accurately disclosing their sexual assault statistics and because of apparent inconsistencies with survey and municipal police data. Due to differing methods, conflicting definitions, and other vagaries of the comparable data sources, there is an open issue as to whether the university-provided and other data are simply measuring different types of incidents and/or reporting levels. This study attempts to address this concern through an empirical analysis of Clery Act² data submitted by schools before, during, and after audits by the Department of Education (“DoE”).

This study seeks to test whether there is substantial undercounting of sexual assault by universities by examining statistical patterns in data submitted by universities. To that end, the study compares the sexual assault, aggravated assault, robbery, and burglary data from periods during DoE audits for Clery Act violations with the data from years before and after such audits. Based upon differences in before, during, and after investigation sexual assault statistics, the study aims to determine if there is significant undercounting by universities. If schools report higher rates of sexual assault during times of higher regulatory scrutiny (audits), particularly in comparison to other crimes, then that result would support the conclusion that universities are failing to accurately tally incidents of sexual assault during other time periods.

* Professor of Law, University of Kansas School of Law. This article is dedicated to Andrew Taslitz who taught me so much about the law of sexual violence and teaching. He was taken from us too soon. I would like to thank Lindsey Collins, Christopher Drahozal, and David L. Schwartz for the comments and assistance.

¹ For simplicity, this Article will refer to colleges and universities in the United States as “universities.” The use of that shorthand does not imply the omission of colleges from this article or the underlying study that it describes. However, because the study sample includes larger schools, the term “university” is the most appropriate.

² The full name of what is commonly known as the Clery Act is The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.

Clery Act

On November 8, 1990, President George H.W. Bush signed into law the Clery Act. The Act requires that, among other mandates, higher education institutions submit yearly data to the DoE regarding designated crimes on campuses (Clery Act, 1990; Clery Act Regulations, 2014). In particular, universities must provide tallies in the categories of: murder/non-negligent manslaughter, negligent manslaughter, sex offenses – forcible, sex offenses – non-forcible, robbery, aggravated assault, burglary, motor vehicle theft, and arson. This study is primarily concerned with the category designated as “sex offenses – forcible.” Those crimes are referred to as “sexual assaults” for purposes of this study.

The differentiation between “forcible” and “non-forcible” sex offenses in the Clery Act is likely misleading to those familiar with rape and sexual assault law. Of primary interest, the Clery Act includes as “forcible” crimes incidents where the defendant either uses force *or* the sex act is non-consensual. In contrast, criminal statutes treat force, when an element of the crime, as a requirement *in addition* to non-consent. Under the Clery Act, “forcible” sex offenses include the following types of incidents:

A. Forcible Rape—The carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).

B. Forcible Sodomy—Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

C. Sexual Assault With An Object—The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

D. Forcible Fondling—The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity (Clery Act Regulations, 2014).

Notably, tabulations of sexual assaults under the Clery Act include numerous events that are not defined as “rape” in any American jurisdiction. The subcategory forcible fondling is particularly significant in that regard as unwanted sexual touching, without penetration, is included in the incident counts. In contrast, non-forcible sex offenses are limited to incest and statutory rape (Clery Act Regulations, 2014). Unsurprisingly, because of the rarity of incest and the norm of university students being above the state age

of consent, forcible sex offenses far outnumber non-forcible ones using the Clery Act definitions.

University Reporting of Campus Crime

On or before every October 1, universities are required to submit Clery Act reports that include crime statistics for the previous full-calendar-year to the DoE and to make those reports publically available (Clery Act Regulations, 2014). To ensure accuracy of reported crime statistics, the DoE engages in periodic audits of college and university crime statistics and reporting policies.³ The ordinary in-person audit only takes two or three days, but wrangling over the findings of the investigators can last for years.

The in-person audit begins with entrance interviews with persons responsible for campus security and discipline. The federal auditors then review the university crime log, incident reports, and all other documents relevant to campus crime during a specific time period. Universities are obligated to give unlimited access to such records and information sources. Auditors may also conduct interviews with students, faculty, and staff based upon the review of documents. Amalgamating all of the documentary and interview information, the DoE auditors issue a set of findings about the university's compliance with Clery Act requirements.

After issuance of the initial findings, assuming there is evidence of at least one violation, universities have a choice as how to proceed. They may simply acknowledge the error(s) and commit to better future performance. Normally, though, schools issue formal responses denying wrongdoing. This triggers follow-up reviews of the auditor findings at the DoE. These appellate processes rely on the documents and interviews made available through the previously-completed audits. The subsequent reviews can reject, accept, or partially reject the responses of universities.

Based upon the results of the audits and any subsequent review, the Clery Act authorizes the DoE to level fines against institutions that are noncompliant with the requirements of the Act. Presently, the statutory cap for Clery Act fines is \$35,000 per violation. In some cases, the university transgressions are so severe that the DoE needs to monitor required policy change implementation until the institution has fully complied with the Clery Act.

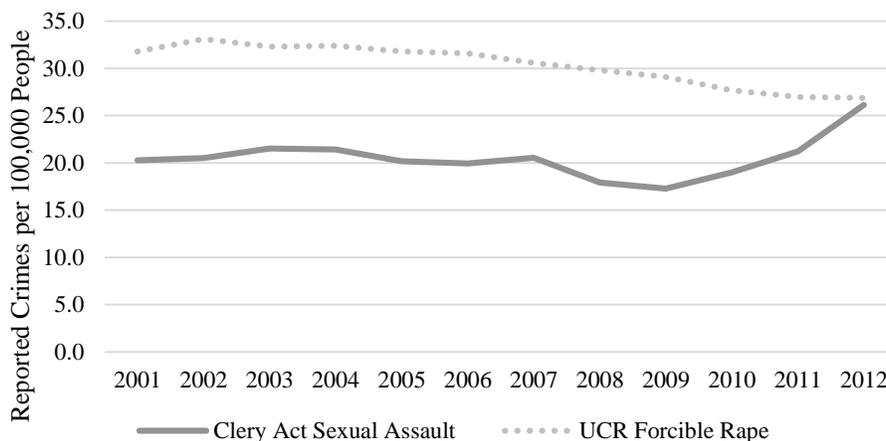
³ Audits performed without a filed complaint are ordinarily timed to correspond with quality assurance reports in the same jurisdiction by the Federal Bureau of Investigation for Uniform Crime Report data.

Previous Research and Data

Diane Moyer, the Legal Director of the Pennsylvania Coalition against Rape succinctly summarized the belief among people in the field that universities are not providing accurate information about incidents of sexual assault: “This will sound counter-intuitive, but I actually tell parents to send their kids to the college or university with the highest number of sexual assaults reported through the Clery Act, because these schools are probably most aware of the campus sexual assault problems.” (Police Executive Research Forum, 2012). There are at least two reasons based upon comparisons to other data to suspect that universities are undercounting incidents of sexual assault. However, as discussed below, there is not currently, based upon prior research, solid or definitive evidence to support that hypothesis.

First, the reported rates of sexual assault on university campuses are far less than would be expected based upon incidents of rape reported by municipal police. Figure 1 shows the rates of sexual assault for schools in the study sample under Clery Act reporting versus the rates of forcible rape reported to the Federal Bureau of Investigation as part of the Uniform Crime Reports (“UCR”) (Uniform Crime Reporting Statistics, 2014).

Figure 1: Clery Act On-Campus Sexual Assault and UCR Forcible Rape Rates



At first blush, the data would appear relatively consistent, particularly after the increase in sexual assaults reported by universities after 2009. However, the differences in the UCR and Clery Act definitions of rape and sexual assault are substantial. As a result, it is expected that universities will report incidents of sexual assault at a far higher rate than police departments do through the UCR program. The UCR definition, during the study period, is limited to 1) forcible; 2) vaginal penetration; of 3) women. In contrast, the

Clery Act does not require force be used, includes other forms of penetration and non-penetrative acts, and includes male victims. There are also strong reasons to believe the police departments have been substantially undercounting rapes during the study period (Yung, 2014) which would indicate that the actual UCR rate should be much higher. As a result, Figure 1 illustrates that universities are reporting sexual assault rates far lower than expected based upon non-campus data.

Second, the surveys of university students are in sharp contrast to the Clery Act reports. For example, the Center for Disease Control (CDC) survey of sexual assaults on campuses found that 19.7% of students are sexually assaulted (Center for Disease Control, 2012). In contrast, the Clery Act data in the study indicated that .02% of students are sexually assaulted in a given year. Even adjusting that over a five-year enrollment period, the CDC and Clery Act data are in sharp contrast. As with the UCR, the CDC and Clery Act use differing definitions of sexual assault making reconciliation of the results difficult. Beyond those definitional inconsistencies, one major difference between the Clery Act and CDC data is that the CDC includes unreported sexual assaults. Nonetheless, the underreporting rate of sexual assault needed to explain the CDC to Clery Act discrepancy would far exceed any level that had ever been observed.

The definitional and other differences between the Clery Act, UCR, and CDC data make any inference of university undercounting based upon the CDC or UCR data difficult to support. Further, the data from the three sources could be reconciled with two other viable theories. First, it could simply be that university campuses are far safer than non-campus environments. This would account for the UCR data. Second, it might be that university students report sexual assault at a rate much lower than the general population. That contention would explain why survey data, which includes unreported sexual assaults, indicates a higher rate of sexual assault than would be expected. As a result of the shortcomings in applying external data sources, this study exclusively utilizes the data provided by universities to determine if undercounting of sexual assault is occurring. This should address whether the two alternate hypotheses (safe universities and higher underreporting) can effectively explain the CDC and UCR data results.

Data Sources and Coding

The study uses two major sources of data: submitted Clery Act crime statistics (“Crime Data”) (Clery Act Data Website, 2014); and documents detailing DoE audits of universities (“Audit Data”) (Clery Act Report Website, 2014). For the Crime Data, the study is limited temporally to reports for the years 2001 to 2012 and to four-year schools with at least 10,000

students and on-campus housing throughout that study period. The time limitation corresponds to all of the years for which data is available (Clery Act Data Website, 2014). The student minimum is adopted primarily because the larger schools in the study have established on-campus housing and are not online or commuter universities (where sexual assault is difficult or impossible to track).⁴ Further, smaller schools regularly create statistical problems with floor effects due to numerous years with zero reported sexual assaults.

The Audit Data consists of posted documents of different types related to various stages of each audit. It is gathered from an online repository (Clery Act Report Website, 2014) made available by the DoE for each school in the Crime Data who was audited or investigated during the study period. The beginning and end of an investigation is coded by using dates in the posted documents. The investigation start date is identified as the first day of the in-person audit or the filed complaint, if the complaint triggers the audit. These dates are chosen because they correspond to the moments when institutions are made aware of the nature of potential Clery Act violations. The end date for each investigation is determined to be the date that a fine letter is issued or, if no fine is assessed, the date of the last document pertaining to the investigation.

As a result of the different trajectories of the investigations, the time frame for each can vary, in the Audit Data, from a period less than one year to, in one unusual case, almost nine years. Notably, investigations begin and end at various dates throughout a year. To determine if a given calendar year of crime data is before, during, or after the investigation, a consistent cutoff point needs to be assigned. As previously noted, each school is required to submit its Clery Act report on October 1 of the year following the data in the report. As a result, an investigation is designated in this study as underway if, for the year for which the data was being prepared, the beginning date is before July 1. That determination is based upon the assumption that a school could not substantially alter its lengthy Clery Act report too close to the submission deadline. Nonetheless, the study is repeated using August 1, September 1, and October 1 as cutoff dates with no significant difference in results.⁵

⁴ Statistics for off-campus sexual assault are particularly problematic. Schools do not gather such data directly. Instead, regulations require a “good faith” effort to acquire such information from local police. Unfortunately, the data do not distinguish between when the police report zero incidents and when the police provide no data at all. In both instances, a zero value is submitted. The vast majority of schools submit zero for off-campus sexual assault in a given year.

⁵ For either an August 1 or September 1 cutoff date, sexual assault rates increased by 43% instead of 44% from the before to during investigation periods ($p < 0.001$ when controlling for other variables as described later). For an October 1, cutoff date, sexual

In the Crime Data, there are 269 universities. The incident totals for each university are based upon only on student reports of sexual assault and not any subsequent adjudication of guilt. Of those 269 schools, the DoE audited 31 (listed in the Appendix) during the study period. For each of the 31 schools, the study codes each year of crime data based upon whether it was before, during, or after an investigation. The study also codes for the following additional variables for each audited school: whether the audit is begun due to a complaint or to correspond in time with a Federal Bureau Investigation in the same jurisdiction; if the DoE finds that the school had undercounted sexual assaults, and whether a fine is assessed or settlement reached.

In order to reduce the influence of unobserved variables, such as social or economic factors affecting crime rates during specific years, it is helpful to put all of the crime data on the same scale. As seen in Figure 2, the rate of sexual assault on campus is not consistent during the study period (shown with statistics for aggravated assault and robbery as comparisons).

Figure 2: On-Campus Sexual Assault, Aggravated Assault, and Robbery Rates

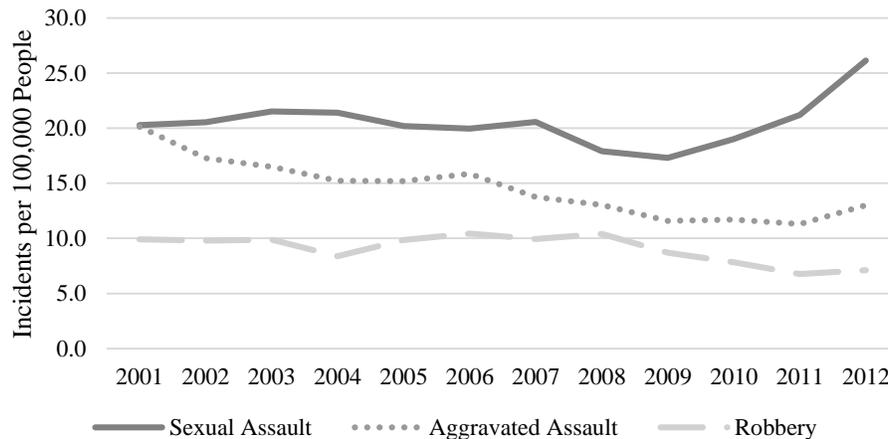


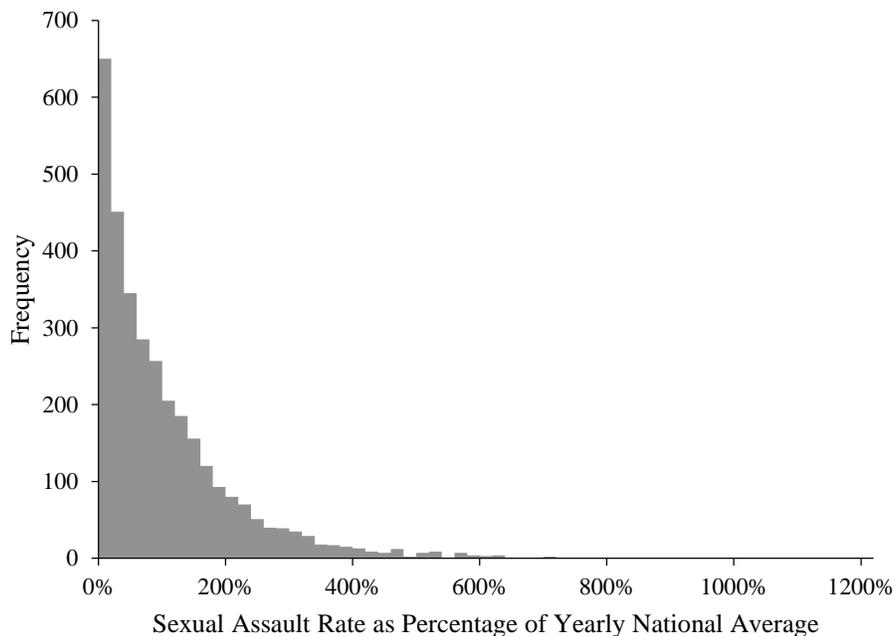
Figure 2 illustrates that sexual assault rates, like those of aggravated assault and robbery,⁶ have fairly consistent slopes until 2009. At that point, sexual assault rates change from a slow decline to a rapid increase (particularly from 2011 to 2012). Regardless of the reason, the 2009 shift in direction for sexual assault rates must be addressed in analyzing the Crime

assault rates increased by 45% instead of 44% from the before to during investigation periods ($p < 0.001$ when controlling for other variables as described later).

⁶ Burglary, although discussed later in the study, is omitted from Figure 2 because it occurs at a far higher rate than the three other crimes (ranging from 101.9 to 200.3 per 100,000 people during the study period). Inclusion of burglary would render differences between the other three crimes impossible to discern in graphical form.

Data. As a result, the study computes a normalized sexual assault, aggravated assault, robbery, and burglary rate for every school during each year as a percentage of the overall average for each crime in the Crime Data during that year. So, for example, the sexual assault rate in 2012 for Boston College is 34.2 per 100,000 students. The national average of the data sample during that same year is 26.1. The normalized sexual assault rate is thus 131.0% ($34.2 / 26.1$). This same technique was previously used in a similar study analyzing rape and murder data submitted by municipalities (Yung, 2014). These computed normalized sexual assault rates are used for the regression and other statistical analysis in this study. The distribution of the normalized school-year sexual assault rates is contained in Figure 3 below.

Figure 3: Distribution of Sexual Assault Rates



As the underlying nature of sexual assault data is based upon counts, the distribution of the percentage rates is unsurprising. The rates follow a general Poisson distribution with the possibility of some overdispersion. As a result, the regression analysis will have to use the appropriate tools based upon the distribution of the normalized sexual assault rates.

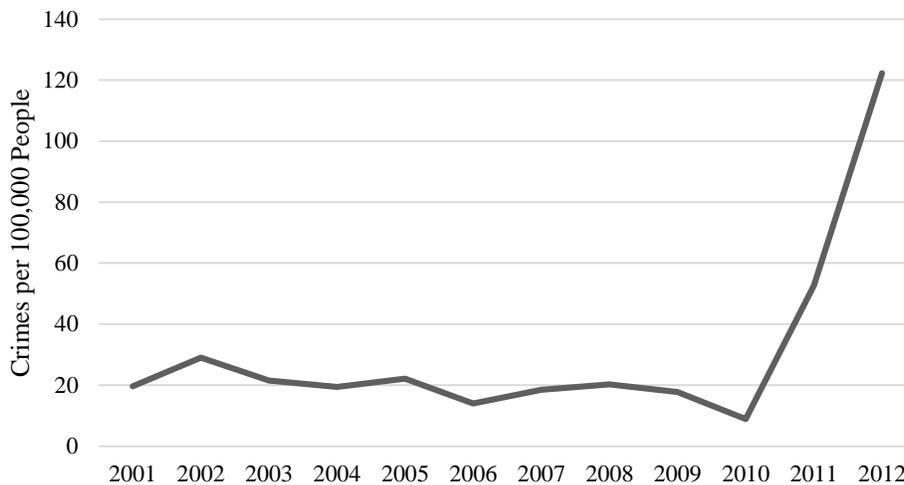
Method and Results

The study is focused on testing a singular hypothesis: universities substantially undercount incidents of sexual assault on campuses in their Clery Act submissions. To test that claim, a counterfactual baseline needs to

be established. That is, the study must have a means of determining when a school is accurately (at least relatively so) reporting sexual assault.

To test the validity of university-reported crime data under the Clery Act, the study focuses on values reported in three separate time frames: before, during, and after DoE audits. The study posits that an increase in the sexual assault rate during an audit is indicative of undercounting because the heightened scrutiny increases compliance in reporting. The investigation of Pennsylvania State University in the wake of the Jerry Sandusky scandal provides an extreme example supporting the study method. After the story about Sandusky broke, an intensive internal investigation was performed in part related to Clery Act non-compliance by the University. Figure 4 below illustrates that sexual assault reports increased an unbelievable 1389% from 2010 to 2012.

Figure 4: Penn State Sexual Assault Rates 2001 to 2012



Because there is a lag between when incidents occur and when the Clery Act annual report is issued, the 2010 data would have been submitted by October 1, 2011 when the school was under substantial regulatory scrutiny (consistent with the belief that the university had been undercounting incidents of sexual assault). The idea that federal investigation or auditing increases compliance is also warranted by general research about administrative regulation (May & Wood, 2003) and, as will become clear, the data in this study. However, contrary explanations for observed changes in sexual assault rates are also discussed below.

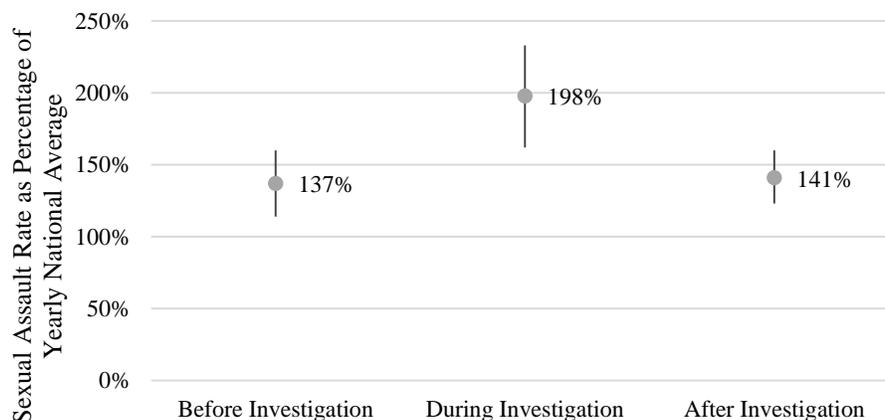
Regression analysis is utilized to assess whether the three time periods (before, during, and after audits) are correlated with changes in reported normalized sexual assault rates at universities. Initially, negative binomial

regression is used to assess statistical relationships between sexual assault rates and the dependent variables. The selection of the method is based upon the Poisson distribution with some overdispersion of the sexual assault rates. Nonetheless, because the overdispersion is slight, the analysis is repeated with ordinary Poisson regression with no appreciable difference in results.⁷

The negative binomial regression indicates a statistically significant relationship between reported sexual assault rates and whether a school is being audited by the DoE ($p = 0.004$).⁸ The correlation exists even when controlling for whether the DoE finds errors in the sexual assault data, assesses a fine or reaches a financial settlement, or the audit begins due to a complaint ($p < 0.001$).⁹ Notably, there is no statistically significant relationship found between the before and after investigation periods ($p = 0.808$).

The magnitude of the effect of sexual assault reporting during an audit is large. Schools are estimated to increase sexual assault reports so that the rate of sexual assault is 44% higher during the investigation (versus before) and almost identical after the investigation (versus before).¹⁰ Figure 5 shows the marginal effects of an investigation on the sexual assault rate.¹¹

Figure 5: Sexual Assault Rates Before, During, and After DoE Investigation with 95% Confidence Intervals



⁷ Using a Poisson regression, these are the results when controlling for all relevant variables: $p < 0.001$; Pseudo $R^2 = 0.042$; $n = 372$; log likelihood = -543.9349. The marginal effect of moving from the before to during audit period was a 45% (instead of 44%) increase in sexual assault rates.

⁸ Pseudo $R^2 = 0.010$; $n = 372$; log likelihood = -561.0217.

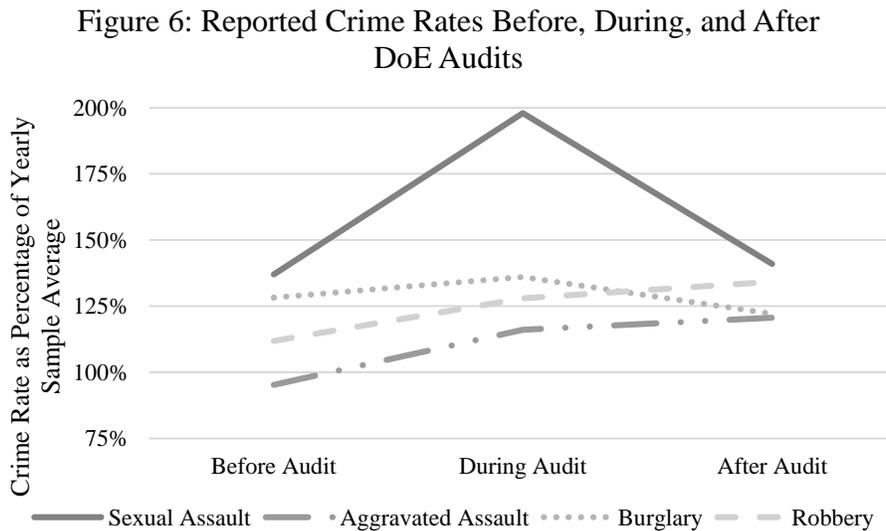
⁹ Pseudo $R^2 = 0.040$; $n = 372$; log likelihood = -543.9744.

¹⁰ The estimate is based upon the incident-rate ratio (“irr”) option in Stata 12 for the negative binomial regression.

¹¹ These results are obtained using the *margins* command in Stata 12.

As Figure 5 illustrates, in the pre-investigation period, the audited schools have an estimated rate of 137% versus the overall sample average. This higher-than-average rate is expected because some, but not all, of the audited schools are investigated due to complaints related to high levels of sexual assault on campus. The estimated sexual assault rate climbs to 198% of the sample average throughout the audit period. And once the investigation is concluded, the estimated sexual assault rate drops to 141%, a value statistically indistinguishable versus the before-investigation sexual assault rate.

Interestingly, when the same analysis is performed for three other crimes (aggravated assault, robbery and burglary)¹², no similarities in results are found. Figure 6 shows the estimated changes in reported crime rates for sexual assault, aggravated assault, robbery, and burglary before, during, and after audits.



Unlike for sexual assault, negative binomial regression results show no observed statistically significant differences for aggravated assault, burglary, and robbery during the three studied time frames.¹³ As illustrated in Figure 6,

¹² The study omits analysis of other crimes tracked under the Clery Act (murder/non-negligent manslaughter, negligent manslaughter, sex offenses – non-forcible, motor vehicle theft, and arson) because such crimes are so rarely reported. In each case, the average number of reported incidents per school per year is approximately zero. As a result, any observed changes on a school-by-school basis are not statistically comparable to changes in sexual assault rates.

¹³ Aggravated assault ($p = 0.195$ between the before and during periods and $p = 0.082$ between the before and after periods); Robbery ($p = 0.452$ between the before and during periods and $p = 0.887$ between the before and after periods); and, Burglary ($p = 0.669$ between the before and during periods and $p = 0.699$ between the before and after periods).

the marked increase from the before to during audit periods is only found for sexual assault. Similarly, the significant decrease from the during to after audit periods is only observed for sexual assault.

The results are consistent with the hypothesis that the ordinary practice of universities is to undercount incidents of sexual assault. Only during periods in which schools are audited do they appear to offer a more complete picture of sexual assault levels on campus. Further, the data indicate that the DoE has no long-term effect on the reported levels of sexual assault as those crime rates return to previous levels after the audit is completed. This last finding is supported even in instances when the DoE issues fines for non-compliance. Nonetheless, it is important to consider other possible explanations for the findings.

Discussion

The results of the study are alarming. During audits, universities submit sexual assault incident reports that are an estimated 44% higher than prior submissions. When the investigation is complete, reported rates of sexual assault return to levels prior to intervention by the DoE. This result is consistent with the contention that schools are undercounting incidents of sexual assault and only accurately (at least relatively) tallying on-campus sexual violence when under heightened federal government scrutiny. Further, the findings hold true even when controlling for whether the audit is commenced due to a filed complaint, the DoE identifies errors in the submitted sexual assault statistics, or a fine is issued or settlement reached.

To explain why universities might undercount sexual assault, and not other crimes, it is important to consider belief systems and incentive structures in reporting crime data. If they mirror patterns of society at large, individuals working at universities would be expected to have conscious motivations and unconscious beliefs that might lead them to undercount on-campus incidents of sexual violence (Cole & Smith, 2008; Yung, 2014). Widespread adoption of “rape myths” and exaggerated belief in false reporting are the prime culprits in such pervasive hostility to sexual assault complaints. Campus police and administrators might exhibit the same cultural attitudes hostile to rape and sexual assault complaints that have been found in the general population and law enforcement (Bouffard, 2000; Fisher, 1993; Human Rights Watch, 2013; Jordan, 2004; Lonsway & Archambault, 2012; Schulhofer, 1998; Spohn & Tellis, 2010-11; Taslitz, 1999; Walker & Katz, 2008).

Further, employees responsible for tabulating and submitting crime statistics might have professional incentives to report lower levels of sexual assaults in order to further career goals and preserve their institution’s

reputation (Cole & Smith, 2008; Yung, 2014). High reported rates of sexual violence typically undermine the assessed job performance of individuals responsible for addressing such crimes. However, consistently low sexual assault numbers can result in promotions or other forms of career advancement.

The public nature of Clery Act crime statistics also gives extra incentives for universities to undercount sexual assault. The Clery Act requires universities to supply sexual assault crime data both to students and the DoE. The Department has recently set up a website aggregating the data from all higher education institutions regulated under the Act (Clery Act Data Website, 2014). Prospective students and their parents utilize the crime data as part of the decision-making process in selecting universities to attend (Police Executive Research Forum, 2012). As a result, reporting high sexual assault rates can be viewed as a detriment to an institution's goal of recruiting quality students. Consequently, higher education institutions might have an incentive to downplay particularly salient crime statistics. For example, if a school stands out as having a high rate of sexual assault versus peer schools, it risks attracting fewer students and suffering long term reputational damage.

Administrators also have personal professional incentives to avoid scandals associated with high crime levels. If a university is perceived as having a rampant sexual assault problem, students or advocacy organizations might file a complaint leading to a Title IX investigation on the basis of gender discrimination (Wilson, 2014). Such investigations are performed by the Department of Justice and carry the risk of much larger fines and more significant public relations problems than with Clery Act audits (Wilson, 2014). A Title IX investigation would not ordinarily be based upon mishandling of aggravated assault, robbery, or burglary complaints because those crimes are not similarly gendered. Further, the attention given to sexual assault at higher education institutions is greater than to that of other crimes such as burglary or aggravated assault as demonstrated by the Obama administration's focus on the former without mention of the latter crimes.

Alternative Inferences

Although university undercounting because of conscious motives or unconscious beliefs is one possible inference that can be drawn from the study findings, other hypotheses are worth considering. Primarily, it might be that publicity from the audit increases victim reporting and/or the audit timing coincides with an increase in sexual assaults.

A viable argument could be made that the announcement of the audit itself is triggering an increase in reports by students. Such effects have been observed in the non-university context when law enforcement prioritizes

targeting of certain crimes. For this explanation to be viable, though, there would have to be some publicity surrounding the Clery Act audit. Otherwise, students would have no reason to increase reporting. A review of news articles in Lexis-Nexis pertaining to Clery Act audits before the Freeh Report, which brought more attention to the statute in 2009, illustrates the unlikelihood of an increased reporting effect.¹⁴ There were only seventeen unique articles found and only six of those pertained to schools in the sample (five regarding Eastern Michigan University and one concerning schools in the University of California system). Unlike recent Title IX investigations, it appears that the media and public are rarely made aware of Clery Act audits. Further, the varying lengths of investigations and the return to previous levels of sexual assault reporting are contrary to any increased victim reporting effect. Also of note, a statistically significant increase in aggravated assault, burglary, and robbery reporting would also be expected from publicity surrounding an audit but was not observed in the study.

Another explanation for the findings would be that the spike in sexual assault rate during the investigation is correlated to an unobserved variable that is also the basis for the audit. To address this concern, the study coded for whether the audit was triggered by a complaint or a coincident FBI investigation of UCR data in the same jurisdiction. If the FBI investigation was triggered by genuine concerns about sexual violence in the jurisdiction (which also affected campuses) that might explain the increase in reported sexual assaults.

However, this theory is, ultimately, not a good fit for the data. In particular, the data being audited by the FBI and DoE is not the data during which the spike occurs because of the reporting lag. That is, if an audit was scheduled in May of 2005, the school would still be preparing 2004 data. The DoE could only be looking at data prior to 2003. And yet, if the 2003 data triggered the FBI investigation, it is unclear why the 2004 would show a marked increase for a reason other than undercounting. Further, this alternative explanation does not incorporate reasons why the sexual assault rates would decline to pre-investigation levels after the audit is completed. Of possible significant, the unobserved variable in question would have to correlate with increase sexual assault rates, but not those of other studied crimes to fit the data.

Limitations

¹⁴ The search was performed in the “All English Language News” database with the following search terms: “Clery Act w/50 audit and date bef 1/1/2009”. The database includes national, regional, local, and some university newspapers, magazines, and other periodicals.

There are some limitations in the data and methods that need to be noted and discussed. The data sample was limited in at least four ways which could cause representativeness problems when applying the findings to all four-year universities.

First, the study focuses exclusively on on-campus sexual assault. The study design was necessitated by the unreliability of the off-campus sexual assault data, but may have ramifications for the study significance. It might be warranted to conclude that the same factors driving undercounting of on-campus sexual assault would have a similar effect off-campus. However, the off-campus incidents are primarily filtered through separate departments, primarily municipal police, than on-campus sexual assaults. As a result, inferring a similar undercounting of off-campus incidents based upon this study is likely not supported. However, for on-campus incidents, the differences in results for sexual assault versus other crimes provides support for the hypothesis that sexual assault is particularly suppressed in official school-reported data. If similar undercounting were occurring for off-campus sexual assault, the gap between the CDC results, to the degree such results are comparable, could be further explained.

Second, the study assumes that the audit is able to detect all missing reports of sexual assault. Because of the well-documented practice of municipal police not creating a written record of rape complaints (Jordan, 2004; Lonsway, & Archambault, 2012; Yung, 2014), it is possible that, if a similar phenomenon occurred on campus, that this study understates the magnitude of missing sexual assaults. When no record of an incident report exists, there is no indication the auditors would know. Indeed, the change in reported sexual assaults observed in Figure 4 related to Pennsylvania State University is far greater than the result based upon this study. The result here also does not resolve the significant gap between the CDC survey results and Clery Act data for sexual assaults. Consequently, while the study does indicate a statistically significant level of undercounting, the actual rate of undercounting could be higher.

Third, the findings are limited insofar as the audits occurred at different times during the study period. Some schools, such as Miami University of Ohio, had their audit completed earlier in the study period. In contrast, some schools, such as the University of Northern Iowa, have only a single year after their audit was completed. It is possible that, given the varying distributions of audit periods, the treatment of the audit periods as a homogenous group omits unobserved variables.

Fourth, it might be that the large schools studied might have different reporting approaches than smaller institutions. There is, at present, no data to support or counter that claim. Nonetheless, the results would still hold for the 269 schools in the study sample.

Conclusion

The study results indicate that the sexual assault data supplied by schools is likely severely undercounting the number of reported incidents on campuses. As a result, policymakers, school administrators, campus police, municipal police, and the public are underestimating the actual severity of campus sexual assault. Further, depending upon the stage in the investigation that the sexual assault is dismissed from official counts, universities might actually be short-circuiting investigations of sexual assaults allowing serial offenders to prey on more victims. Such a pattern has been observed in several cities that have undercounted rape on a systemic basis (Yung, 2014). The moral implications and utilitarian effects of undercounting sexual assault at colleges and universities are substantial and warrant immediate policy changes.

The results of the study point toward two broader conclusions directly relevant to policymaking in this area. First, the magnitude of sexual violence on university campuses is likely worse than policymakers presently believe. The actual rate of sexual assault is likely at least an estimated 44% higher than the numbers that universities submit, as required by the Clery Act. Consequently, greater financial and personnel resources should be allocated commensurate with the severity of the problem. Second, the present mechanism of auditing, investigating, and punishing schools who violate the Clery Act requirements appears to be insufficient to deter misconduct in reporting sexual assault. The frequency of auditing should be increased and statutorily-capped fines should be raised in order to deter transgressors from continuing to undercount sexual violence. The Campus Accountability and Safety Act, presently before Congress, provides an important step in that direction.

There are three relatively easy-to-implement mechanisms that can be put into effect to achieve greater accuracy in sexual assault incident counts from higher education institutions. First, as currently being considered in a bipartisan bill before Congress, the DoE should be authorized to issue much greater fines for Clery Act violations. Currently, the dollar cap on such fines does not serve as an adequate deterrent to crime undercounting. The Campus Accountability and Safety Act would increase maximum penalties for each violation from \$35,000 to \$150,000. It is possible that an even higher limit might be necessary to effectively deter undercounting. Second, the DoE should increase the frequency and number of audits. Since 2001, the DoE has only performed 54 audits¹⁵ (Clery Act Audit Reports, 2014) even though

¹⁵ Some of those audits were excluded from the sample because they were performed on four-year schools with less than 10,000 students, online schools, or schools that primarily

there are thousands of schools providing crime data on an annual basis under the Clery Act. This will require extra monetary and personnel resources for the DoE, but would go a long way toward increasing the certainty of undercounting being detected and violators being punished. Third, schools with serious violations of Clery Act crime data reporting should be placed on a probation system that warrants greater punishment for future violations. This should help abate the current pattern of schools returning to apparent undercounting practices as soon as the DoE is no longer applying high levels of scrutiny as part of the audit process.

* * *

grant two-year degrees.

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APPENDIX

Schools audited during the study period with at least 10,000 students: California State University-Chico, California State University-Fullerton, California State University-Sacramento, Eastern Michigan University, Florida State University, Georgetown University, Louisiana State University, Miami University of Ohio, Ohio State University, Oklahoma State University, Oregon State University, University of Arkansas, University of California-Berkeley, University of California-Davis, University of California-Irvine, University of California-Los Angeles, University of California-Riverside, University of California-San Diego, University of California-Santa Barbara, University of Delaware, University of Michigan, University of North Dakota, University of Northern Iowa, University of Texas at Arlington, University of Utah, University of Vermont, University of Virginia, Virginia Tech, Washington State University, West Virginia University, and Yale University.