

Report on Sexual Harassment at Yale

A Case Study on Jed Rubenfeld

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STATEMENT TO PRESIDENT SALOVEY

Dear President Salovey,

We are writing today in the aftermath of the investigation into Jed Rubenfeld's misconduct to urge Yale University to permanently suspend Jed Rubenfeld, release the findings of the investigation to the extent legally possible, and make critical changes in the University Wide Committee (UWC) Title IX Process.

Jed Rubenfeld's unacceptable behavior is alleged to have happened at YLS for at least twenty years, with accusations ranging from sex with students to forcible kissing and groping. The first section of our report chronicles the documented history of Jed Rubenfeld's case based on publicly available information, including news articles, online posts, course catalogues, and recordings of student performances.

Our study of Jed Rubenfeld's case has uncovered critical problems in the UWC process. The changes we recommend today can be adopted by the University without violating federal or state law or contravening the recent Trump Administration rule changes to Title IX. First, we ask that the University adopt a system for tracking anonymous reports that will allow survivors to file an anonymous record of misconduct and be notified when other reports are filed for the same offender. Second, we reiterate our earlier advocacy asking the university to provide pro bono legal representation to all student-claimants and student-respondents in the UWC process, despite the university's recent rejection of our request. Third, we ask that the UWC adopt a new framework for determining the result of an investigation that explicitly considers the safety of the broader Yale community.

Particularly in the case of Jed Rubenfeld, we ask that the University permanently remove Jed Rubenfeld from campus and release information regarding the nature of the allegations and findings of the investigation.

When Jed Rubenfeld is allowed to return to YLS and resume teaching, in just two years, he will still be dangerous. There is no reason to believe there will be any change in his behavior—the only change will be that all the students who are aware of his transgressions will have graduated, thereby impairing institutional memory. We do not want Jed Rubenfeld to prey on a new generation of students.

We urge the University to permanently remove dangerous faculty from campus and make changes to the UWC process that will support future survivors.

In solidarity,
Yale Law Women Board, 2020-21

TIMELINE OF THE JED RUBENFELD CASE

<u>Date</u>	<u>Event</u>	<u>Source</u>
April 2008	<i>Top Law Schools</i> forum post: “Then there's the (what seem like) monthly soirees at the Chua/Rubinfeld house, but I suppose that's for another post.”	Kalessebo, TOP LAW SCHOOLS (Apr. 23, 2008, 4:55 AM) [included in Appendix IV].
2009 to 2014	Law Revue repeatedly made jokes about drinking heavily with Amy Chua and Jed Rubinfeld and implied that Jed Rubinfeld was odd or creepy. These references (listed in Appendix II) show that the YLS community was aware of at least mildly inappropriate behavior by Rubinfeld for many years, including as early as 2009.	Law Revue video recordings. See Appendix II.
Fall 2015	Jed Rubinfeld’s small group was reassigned.	Student accounts & Yale Records.
April 2017	Anonymous <i>Top Law School</i> user posts: “Ladies of, or considering attending, YLS: Unless you enjoy being hit on by a middle-aged, married man who wields power over your career, seriously stay away from Tiger Dad when he is drunk (which is surprisingly often). At least two of my friends were subject to his machinations. I'm told that each ‘generation’ of YLS women has had to learn this the hard way.”	Anonymous User, TOP LAW SCHOOLS (Apr. 5, 2017, 12:44 AM) [included in Appendix IV].
June 2018	Jed Rubinfeld claims he was informed of the investigation and told that his position as a “long-tenured member of the faculty” was not in jeopardy.	Stephanie Kirchgaessner & Jessica Glenza, <i>No Accident’ Brett Kavanaugh’s Female Law Clerks ‘Looked Like Models’, Yale Professor Told Students</i> , GUARDIAN (Sept. 20, 2018, 10:16 EDT), https://www.theguardian.com/us-news/2018/sep/20/brett-kavanaugh-supreme-court-yale-amy-chua .
September 2018	<i>The Guardian</i> reports that Jed Rubinfeld told a prospective Kavanaugh clerk that the judge “hires women with a certain look.” <i>Above the Law</i> reports that a letter was sent to alumni asking them to reach out to the outside investigator “if they have something to share” about Jed Rubinfeld’s misconduct.	Stephanie Kirchgaessner & Jessica Glenza, <i>No Accident’ Brett Kavanaugh’s Female Law Clerks ‘Looked Like Models’, Yale Professor Told Students</i> , GUARDIAN (Sept. 20, 2018, 10:16 EDT), https://www.theguardian.com/us-news/2018/sep/20/brett-kavanaugh-supreme-court-yale-amy-chua . Elie Mystal, <i>Details On The Allegations Against, And Yale Law School Investigation Into, Professor Jed Rubinfeld</i> , ABOVE THE LAW (Sept. 20, 2018, 1:01 PM), https://abovethelaw.com/2018/09/detail-s-on-the-allegations-against-and-yale-law-school-investigation-into-professor-jed-rubinfeld .

Slate publishes a long investigative piece on Jed Rubenfeld, which reports that:

- Rubenfeld had previously had his small group taken away after an “informal investigation” into his behavior.
- “Several current students told us that Rubenfeld had gotten drunk at small group gatherings and that when he did, his behavior would become more provocative. Many of his students told us that these sorts of interactions made them uncomfortable.”
- Jed Rubenfeld verbally harassed students in multiple interactions on and off campus, according to former students who chose to remain anonymous.
- None of the students with whom *Slate* spoke for the article “were willing to be named in this story, for fear of reprisal by Yale faculty, for fear of hurting their clerkship chances, or, for those who already are or were law clerks, for fear of embarrassing the prestigious judges they work or have worked for.”

Dahlia Lithwick & Susan Matthews, *Investigation at Yale Law School*, SLATE (Oct. 5, 2018, 3:58 PM), <https://slate.com/news-and-politics/2018/10/jed-rubenfeld-amy-chua-yale-law-school.html>.

Asha Prihar, *YLS Alumni Reflect on Rubenfeld Allegations*, YALE DAILY NEWS (Oct. 26, 2018, 3:26 AM), <https://yaledailynews.com/blog/2018/10/26/yls-alumni-reflect-on-rubenfeld-allegations>.

October
2018

Yale Daily News publishes interviews with alumni about Jed Rubenfeld.

Jed Rubenfeld is suspended from Yale Law School for two years.

- “The allegations, which spanned decades, included verbal harassment, unwanted touching, and attempted kissing, both in the classroom and at parties at Rubenfeld’s home.”

Irin Carmon, *Yale Law Professor Jed Rubenfeld Has Been Suspended for Sexual Harassment*, N.Y. MAG. (Aug. 26, 2020), <https://nymag.com/intelligencer/2020/08/yale-professor-jed-rubenfeld-suspended-for-sexual-harassment.html>.

August
2020

REVIEW OF UNIVERSITY-WIDE COMMITTEE POLICIES AND PROPOSED CHANGES

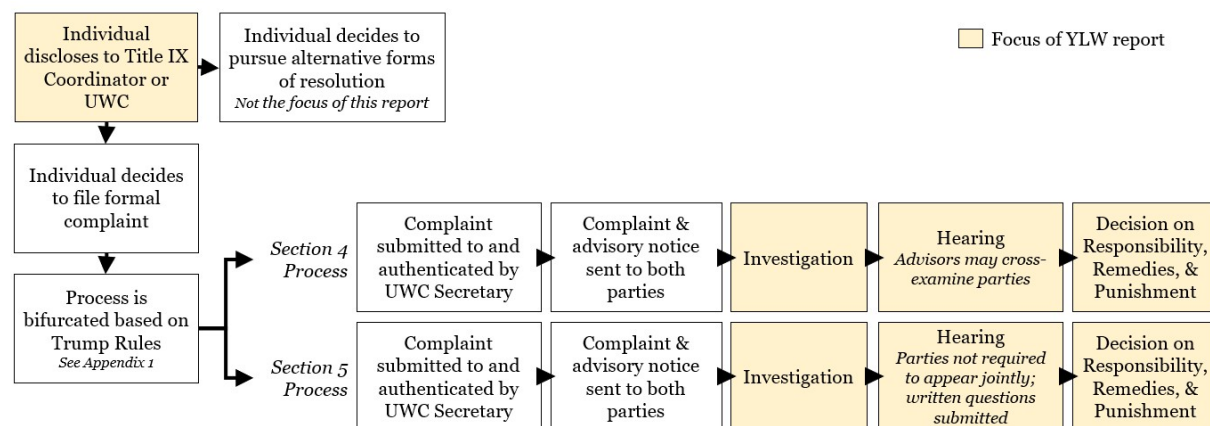
Jed Rubinfeld's case was handled directly by the University-Wide Committee on Sexual Misconduct (UWC). Our review of this process revealed significant opportunities for improvement. This section of the report evaluates the UWC process to advocate for better outcomes for Jed Rubinfeld's accusers, as well as for future survivors of sexual harassment, assault, and rape at the University.

We believe that these changes are particularly important now, as the Trump administration has issued destructive new Title IX guidelines that seek to silence accusers and protect predators. All of our recommendations can be implemented by the University, without any policy changes at the national or state level.

Process Review & Recommendations

The new UWC process is bifurcated after the release of the Trump Administration's new Title IX rules. A general overview of the process is shown in the figure below:

Figure I: Overview of Current UWC Process¹



Our report has identified necessary changes at three phases of this process: initial disclosure, investigation/hearing, and the final decision.

Initial Disclosure | Platform for Anonymous Reporting and Survivor Matching

Sexual misconduct is dramatically underreported. A study at the University of Massachusetts Amherst Center for Employment Equity found that 99.8% of victims of workplace sexual harassment never file a formal report.² At least two-thirds of rapes and sexual

¹ *UWC Procedures*, UNIVERSITY-WIDE COMMITTEE ON SEXUAL MISCONDUCT (Aug. 12, 2020), <https://uwc.yale.edu/policies-procedures/uwc-procedures>.

² *Employer's Responses to Sexual Harassment*, U. MASSACHUSETTS AMHERST, <https://www.umass.edu/employmentequity/employers-responses-sexual-harassment>

assaults are never reported to the police.³ This problem persists on university campuses. Estimates vary, but the consensus is that only about a quarter of sexual assaults on campus are ever reported.⁴ Survivors may fear that their accusations won't be taken seriously—or, if the perpetrator is someone with power, that they will face retaliation for speaking up.

This problem is particularly pronounced when the offender is a serial predator and a faculty or staff member. Survivors of the same offender may span decades and not even know that there are other students with similar experiences. When one student is unable or unwilling to file a complaint, future students are put at risk of similar predatory behavior.

The university needs a formal system to track unfiled complaints and give victims of serial predators an opportunity to come forward together. Callisto⁵ is an example of a technology that could enable victims to come forward together, while protecting the rights of all parties. The platform allows survivors to file anonymous, sealed allegations. If another survivor inputs an allegation against the same offender, both survivors will be notified and given the opportunity to come forward together. Callisto was first adopted in 2015 by Pomona College and the University of San Francisco.⁶ Its adoption has fluctuated over the years, at one point reaching over a dozen schools.

Of course, which particular technology Yale chooses is unimportant. What matters is that students have the opportunity to make a sealed complaint and be notified when other accusers come forward—an opportunity they do not currently have. The absence of this option currently allows serial predators to continue to harm the community and serves to dissuade survivors from coming forward.

Technology like Callisto would have been exceptionally helpful in detecting an alleged serial predator like Jed Rubenfeld. As documented in the timeline above, the allegations against Jed Rubenfeld were numerous, and they can be traced back over many years. However, the current UWC / Title IX process was not well equipped to support individual survivors or to aggregate multiple allegations into a single meaningful action. Students were afraid to speak out against Jed Rubenfeld individually because they feared retribution and harm to their careers. Multiple news stories have reported how this fear allowed Jed Rubenfeld to escape responsibility for his actions over many years:

“The two main obstacles that made it difficult for [Rubenfeld’s accusers] to report this behavior were a Title IX process that seems incapable of tracking multiple complaints against a single faculty member and this particular faculty member’s

³ Rachel E. Morgan & Jennifer L. Truman, *Criminal Victimization, 2019*, U.S. DEP’T OF JUST. 8 (Sept. 2020), <https://www.bjs.gov/content/pub/pdf/cv19.pdf>.

⁴ Brian A. Pappas, *Sexual Misconduct on Campus*, AMERICAN BAR ASS’N (2019), https://www.americanbar.org/groups/dispute_resolution/publications/dispute_resolution_magazine/2019/winter-2019-me-too/sexual-misconduct-on-campus/; Kimberly Hefling, *Justice Department: Majority of Campus Sexual Assault Goes Unreported to Police*, PBS (Dec. 11, 2014, 1:30 PM EDT), <https://www.pbs.org/newshour/education/four-five-acts-campus-sexual-assault-go-unreported-police>.

⁵ CALLISTO, <https://mycallisto.org>.

⁶ Ian Ayres, Opinion, *Meet Callisto, the Tinder-Like Platform that Aims to Fight Sexual Assault*, WASH. POST (Oct. 9, 2015), https://www.washingtonpost.com/opinions/using-game-theory-technology-to-fight-sexual-assault/2015/10/09/f8ebd44e-6e02-11e5-aa5b-f78a98956699_story.html.

connection to a clerkship process that makes students enormously reliant on pleasing certain professors.”⁷

“Sources who spoke to the Guardian about their experiences with Chua and Rubenfeld would only speak under the condition of anonymity because they feared retribution and damage to their future careers.”⁸

Grace Kao, LAW '15 told the Yale Daily News that “She said that ‘the idea of retaliation’ [from Amy Chua and Jed Rubenfeld] when it came to getting prestigious clerkships was ‘very real.’”⁹

There is strength in numbers. If accusers were able to be notified about one another’s existence, they could organize to collectively file formal complaints against the relevant predator.

In the past, administrators have objected to implementing systems like Callisto at Yale because of “due process” concerns. However, these concerns do not accurately reflect the role of Callisto. Even if Callisto is implemented, any individual with an allegation must still come forward with their own complaint, and anonymous complaints still cannot be considered as part of a Title IX process. The UWC policies protect accused predators from evidence like “previous accusations of other acts of sexual misconduct that did not result in formal discipline.”¹⁰ Callisto does not reduce the protections for accused predators; it simply allows victims to coordinate with one another. Victims who may not have otherwise felt comfortable moving forward with a complaint on their own can collaborate with other survivors.

We have also heard that administrators are concerned that survivors may be somehow confused by Callisto and think that they are filing a formal complaint with the university. This concern is misplaced. Callisto outlines the options available to a survivor, and the platform is very clear that information filed with Callisto will be held confidentially until a match is made. Complainants will always have the option to file a formal Title IX complaint through the existing process, regardless of the implementation of the Callisto system at Yale. This problem has also not been reported at the schools that have already implemented Callisto.

Additionally, certain Title IX violations can only be properly investigated when multiple claimants are able to file a Title IX complaint together. If a complainant wishes to allege a “pattern or practice” of discrimination, they will need to substantiate their claims with other allegations. The current system, which siloes survivors and makes no effort to connect them, effectively eliminates a survivor’s ability to make this claim in the absence of an independent investigator or other special initiative.

⁷ Dahlia Lithwick & Susan Matthews, *Investigation at Yale Law School*, SLATE (Oct. 5, 2018, 3:58 PM), <https://slate.com/news-and-politics/2018/10/jed-rubenfeld-amy-chua-yale-law-school.html>.

⁸ Stephanie Kirchgaessner & Jessica Glenza, ‘No Accident’ Brett Kavanaugh’s Female Law Clerks ‘Looked Like Models’, *Yale Professor Told Students*, GUARDIAN (Sept. 20, 2018, 10:16 EDT), <https://www.theguardian.com/us-news/2018/sep/20/brett-kavanaugh-supreme-court-yale-amy-chua>.

⁹ Asha Prihar, *YLS Alumni Reflect on Rubenfeld Allegations*, YALE DAILY NEWS (Oct. 26, 2018, 3:26 AM), <https://yaledailynews.com/blog/2018/10/26/yls-alumni-reflect-on-rubenfeld-allegations>.

¹⁰ *UWC Procedures*, *supra* note 1.

At a minimum, the Jed Rubenfeld case demonstrates the importance of enabling survivors to come forward when other accusations have surfaced. As detailed in multiple news stories in Appendix III, when the formal investigation against Jed Rubenfeld began, the law school sent a message to alumni asking them to “reach out” to the outside investigator if they had “something to share” about Jed Rubenfeld’s conduct.¹¹ These claims would have been much easier to substantiate if the survivors could have made a contemporaneous record of the misconduct through a system like Callisto.

Serial predators threaten the safety of all Yale students. The University must take every step possible to empower survivors to speak up. Callisto will enable individuals who otherwise may have never spoken to coordinate and support one another.

Investigation & Hearing | Attorney Representation in UWC Proceedings

The Trump Administration’s new Title IX rules have altered the investigation and hearing phases of the UWC process. Now, accusers may be directly cross-examined as part of the UWC Section 4 process.¹² The Title IX process increasingly resembles a legal proceeding, and parties should be entitled to adequate legal representation.

In all Title IX proceedings, and especially in the new Section 4 hearings, survivors are expected to navigate complex, emotionally charged, and draining processes. While all parties are entitled to appoint their own “advisor,” the university provides no financial support to survivors seeking legal representation. Student-claimants may be as young as eighteen, and it is unreasonable to expect that they can navigate such a complex process without professional support.

On September 1, 2020, the Title IX Working Group Chairs and the YLW Board sent a letter to Stephanie Spangler (University Title IX Coordinator) and Mark Solomon (Chair of the UWC) urging the University to provide student-claimants and student-respondents with attorneys in all proceedings before the UWC on a pro bono basis throughout the duration of the UWC process.¹³ The text of the letter can also be found in Appendix III of this report. This request was denied on October 9, 2020, and we firmly believe that this is the wrong outcome.

As the letter explains, it is well documented that a lack of legal resources for survivors of campus sexual misconduct limits survivors’ ability to make informed choices about reporting and deters reporting of sexual misconduct.¹⁴ Disparities in attorney representation may reflect and perpetuate racial inequality, as white students are more likely to have generational wealth

¹¹ Elie Mystal, *Details On The Allegations Against, And Yale Law School Investigation Into, Professor Jed Rubenfeld*, ABOVE THE LAW (Sept. 20, 2018, 1:01 PM), <https://abovethelaw.com/2018/09/details-on-the-allegations-against-and-yale-law-school-investigation-into-professor-jed-rubenfeld>.

¹² For a detailed overview, see the graphic on page 5.

¹³ Letter from Yale Law School Title IX Working Group Chairs & Yale Law Women Board, 2020-2021 to Stephanie Spangler, University Title IX Coordinator, Yale University & Mark Solomon, Chair of the University Wide-Committee on Sexual Misconduct, Yale University (Sept. 1, 2020) (included in Appendix III)

¹⁴ Merle H. Weiner, *Legal Counsel for Survivors of Campus Sexual Violence*, 29 YALE J.L. & FEMINISM 123, 142 (2017).

and therefore more likely to have access to high-quality legal representation (or, for that matter, legal representation at all).¹⁵

When a student accuses a powerful and successful professor like Jed Rubenfeld, they are especially likely to be comparatively under resourced. Jed Rubenfeld has tremendous financial resources and unmatched connections within the legal profession. An individual student with no professional guidance is likely to be outmaneuvered by a skilled lawyer and possibly deterred from pursuing their legal claims in the first place.

Outcome & Resolution | Yale Community as a Stakeholder

The current UWC Decision, Outcomes, and Resolutions phase undervalues the interests of the broader Yale community. The process is adversarial and secret. While confidentiality is sometimes a necessity, it can leave students and other community members confused about results that may impact their safety and educational environment. This report advocates for a change to the resolution process: explicit consideration of the Yale community as a stakeholder for decisions about outcome and transparency.

We request that the hearing panel release a “community impact statement” any time an investigation finds Title IX misconduct or other wrongdoing that leads to disciplinary action. The statement should explain how (1) the disciplinary action sufficiently protects the Yale community from the offender, and (2) the panel has decided what information to release after the investigation is complete.

This required consideration of our community’s safety will change the problematic dynamic that occurs when high-powered serial predators are finally investigated. First, the process will focus on keeping the community safe, and not on simply “punishing” the respondent before allowing them to return to campus and possibly offend again. Second, clearer communication with the Yale community—even if certain pieces of information must be withheld—will reassure students and empower future survivors to come forward.

Jed Rubenfeld’s case demonstrates the problems with the current system. A two-year suspension, even with restrictions once Jed Rubenfeld returns to campus, is difficult to justify under a framework that considers the safety of the community. The panel found wrongdoing egregious enough to warrant a two-year suspension, and the allegations go back many years. There is no reason believe that anything about Jed Rubenfeld and his predatory tendencies will change in two years. Instead, he will be returning to a campus where students will need to rely on whisper networks to remain safe. This outcome will also entrench existing inequities. Privileged students who feel less threatened by rumors of sexual misconduct will still be able to benefit from Jed Rubenfeld’s recommendations, while women, LGBTQ+ individuals, and other marginalized groups will have to weigh concerns about physical safety against a desire to advance their careers. Less privileged students may also be less connected to the relevant “whisper networks” and more likely to fall prey to future misconduct by Jed Rubenfeld.

¹⁵ Racial disparities in attorney representation in the civil-law context are well documented. *See, e.g.,* Amy Myrick, Robert L. Nelson & Laura Beth Nielsen, *Race and Representation: Racial Disparities in Legal Representation for Employment Civil Rights Plaintiffs*, 15 N.Y.U. J. LEGIS. & PUB. POL’Y 705, 713-25 (2012).

Considering the safety of the community will lead to appropriately different outcomes in cases of misconduct by students and misconduct by faculty. In cases where a student has committed a Title IX violation, the panel may find that accommodations other than expulsion are an appropriate remedy. The student will leave the Yale community in a few years, so temporary measures may be sufficient. There may be less need to warn future generations of Yale students about the offender's behavior.

However, when a faculty member commits repeated Title IX violations over many years, the community's safety is tangibly threatened for as long as the offender is allowed to have any ties to the university. Students who do not know of the professor's past actions may endanger themselves unintentionally. Students who are aware of the threat to their safety may choose to take a risk—that is, expose themselves to a sexual predator—to advance their career. Students who belong to privileged demographics that are typically less threatened by Title IX offenses will be given yet another opportunity to entrench their privilege.

The aftermath of Jed Rubenfeld's case would be improved by greater transparency. The absence of a formal report to the community has allowed room for allies of Jed Rubenfeld to doubt the severity and veracity of the allegations; this allows retaliation to continue against survivors as Rubenfeld and his allies spread false information about the process. As mentioned above, if Jed Rubenfeld is allowed to return to campus in two years, the absence of a formal report or public documentation will compound the effects of a whisper network as students' only source of information about their safety.

The University must do more to protect accusers from retaliation, and transparency would be a helpful first step. Jed Rubenfeld and his allies have downplayed the accusations against him in an attempt to discredit his accusers. It would be much easier for complainants to protect their reputations if the results of the investigation became public. These retaliatory rumors are damaging to claimants and they dissuade future survivors from coming forward, which puts the safety of the entire community at risk.

Additionally, tenure should not be used as an excuse for retaining dangerous faculty. Tenured appointments are established to ensure academic freedom and not to excuse Title IX violations or other dangerous behavior. Jed Rubenfeld has attempted to leverage these academic-freedom protections by claiming that the allegations are a backlash to his 2014 op-ed arguing against affirmative consent standards (for example, he has stated, "I think subsequent to me having written some controversial articles about sexual assault, that I became a target of people making false allegations against me."¹⁶). This is false. News reports have also substantiated that the allegations against Jed Rubenfeld "spanned decades";¹⁷ it is impossible for allegations that span this timeframe to all have occurred in response to an article written in 2014. However, because the University has failed to release more details about the investigation, Jed Rubenfeld is still able to spread this baseless defense.

We know that greater transparency is possible. When an independent investigation was initiated against Yale professor of psychiatry Eugene Redmond in 2019, President Salovey issued a strongly worded statement that condemned Eugene Redmond's behavior and framed

¹⁶ Irin Carmon, *Yale Law Professor Jed Rubenfeld Has Been Suspended for Sexual Harassment*, N.Y. MAG. (Aug. 26, 2020), <https://nymag.com/intelligencer/2020/08/yale-professor-jed-rubenfeld-suspended-for-sexual-harassment.html>.

¹⁷ *Id.*

the investigation in the context of past investigations that were previously confidential.¹⁸ The full report was also released at the conclusion of the investigation.¹⁹ There is no reason to distinguish this case from the case of Jed Rubenfeld. If anything, it is even more important for the school to be transparent with students if Jed Rubenfeld is expected to return to campus in two years. Yale should live up to this precedent and release the Jed Rubenfeld report; student safety and wellbeing depends on it.

Conclusion | Yale must protect students from serial predators

The investigation into Jed Rubenfeld has resulted in disciplinary action after decades of alleged misconduct. However, the Yale community is not yet safe from Jed Rubenfeld, and the UWC process is not well equipped to stop alleged predators like him in the future.

Yale must permanently remove Jed Rubenfeld from campus and release the results of the investigation. It is not safe for him to return to campus in two years to students who have no knowledge of his past misconduct, and there is no reason to believe that his behavior will improve after his suspension. The University should release the results of the investigation, regardless of their decision to allow Jed Rubenfeld back on campus. Transparency will allow the law school to reckon with its past and heal as a community. Additional information will also prevent Jed Rubenfeld and his allies from continuing to discredit survivors and downplay the accusations against him.

After years of allowing Jed Rubenfeld to allegedly victimize students, the University must change its policies to prevent serial misconduct by faculty in the future. Students need a system for tracking anonymous reports that allows survivors to be notified when other reports are filed for the same offender. Additionally, our earlier advocacy asking the university to provide pro bono legal representation to all student-claimants and student respondents in the UWC Process is now more important than ever. Finally, panels hearing Title IX cases must explicitly consider the safety of the broader Yale community and communicate with us as a stakeholder in the UWC Process.

We hope our University will heed this call to action, make needed changes to the UWC Process, and keep our community safe from dangerous predators.

¹⁸ *Sexual Misconduct Complaints to be Subject of Investigation*, YALENEWS (Jan. 28, 2019), <https://news.yale.edu/2019/01/28/sexual-misconduct-complaints-be-subject-investigation>.

¹⁹ Dierdre M. Daly, *Report of Independent Investigation: Sexual Misconduct by Yale Professor D. Eugene Redmond*, YALENEWS (Aug. 14, 2019), https://news.yale.edu/sites/default/files/files/Daly-Report_Aug-14-2019.pdf.

APPENDIX I: STANDARDS FOR BIFURCATING THE TITLE IX PROCESS

As described on Yale's Title IX website, any complaint meeting the following criteria will be addressed through the new procedure established by the Trump Administration's rule:

- The alleged misconduct meets the definition of Title IX sexual misconduct under federal regulations.
- At the time the complaint is filed, the person bringing the complaint is participating in or seeking to participate in a Yale program or activity.
- The person accused of the misconduct is employed by Yale or is enrolled in a Yale program or activity.
- The alleged misconduct occurred on the Yale campus; at a Yale sponsored event; in another place, event, or circumstances over which Yale exercised substantial control; or in a building owned or controlled by a student organization officially recognized by Yale.
- The alleged misconduct was directed toward a person in the United States.
- The alleged misconduct occurred on or after August 14, 2020.

APPENDIX II: LAW REVUE REFERENCES TO AMY CHUA AND JED RUBENFELD

Law Revue is annual student-produced musical comedy about the past year at Yale Law School. Recordings were accessed through the Lillian Goldman Law Library.

<u>Year</u>	<u>Time in performance</u>	<u>Content</u>
2009	57:27	“Jed Rubenfeld” (played by a student) shows up to audition to play Harold Koh. Girl described as “skeptical” acts performatively creeped out by “Rubenfeld” and backs away from him slowly.
2010	53:02	[Song lyric about Amy Chua] “Please throw us one more party at your castle tonight! Free booze!”
2012	1:03:43	Jed Rubenfeld (himself, not a student impersonator) jokes about drinking with students. He looks sternly into the camera and says, “I know this audience can’t be knocked out by four drinks and a warm auditorium.”
2013	31:20	Song lyric about life at Yale Law School: “Drink all night with Chua”
2014	1:32:05	As part of a trivia show sketch, this question was posed: “Which of the following demographics have responded well to Rubenfeld’s book? A. Freudian psychoanalysts, B. <i>Tipsy students at Thali Too</i> , C. Stephen Carter (privately) D. Amy Chua (publicly)” The answer: “They were all right! Unlike Rubenfeld’s choice to write about rape.”

APPENDIX III: LETTER REGARDING ATTORNEY REPRESENTATION IN UWC
PROCEEDINGS FROM SEPTEMBER 1, 2020

September 1, 2020

Via Email

Dr. Stephanie Spangler
University Title IX Coordinator
Yale University
stephanie.spangler@yale.edu

Dr. Mark Solomon
Chair, University Wide-Committee on Sexual Misconduct
Yale University
mark.solomon@yale.edu

Re: Attorney Representation in UWC Proceedings

Dear Drs. Spangler and Solomon:

We write today to urge the University to provide student-claimants and student-respondents in all proceedings before the University-Wide Committee on Sexual Misconduct (UWC) with attorneys on a pro bono basis throughout the duration of the UWC process. We understand that the University, like most other educational institutions in this country, has had to make a number of difficult decisions resulting in changes to its UWC Procedures and Sexual Misconduct Policies over the last few months in response to the Trump Administration's recently finalized regulation. While the regulation in question presents a considerable obstacle to justice on campus, we appreciate that the University has made significant efforts toward maintaining a fair and equitable UWC process while complying with the law.

As you may know, the Yale Law School Title IX Working Group has long supported the provision of attorneys on a pro bono basis for both student-claimants and student-respondents in proceedings before the UWC. Absent legal representation, students are often left to navigate a complex, quasi-judicial process without adequate legal advice. Of course, some parties—likely faculty and students from wealthy, white families—can afford to pay for top-notch legal representation. This leads to a dynamic where one party may have access to a highly educated and compensated lawyer while the other party—who may be as young as eighteen years old, and perhaps struggling in the aftermath of a trauma—is left to fend for themselves, with only the support of a University-provided adviser who is not legally trained. These situations are inequitable on the individual level, leaving students with fewer financial resources to struggle through a complicated process that may have life-altering consequences without legal counsel. In addition, they have serious repercussions for the campus on a systemic level. As legal scholar Merle Weiner has pointed out, a lack of legal resources for survivors of campus sexual misconduct limits their ability to make informed choices about reporting, which in turn deters reporting of

sexual misconduct.¹ Further, disparities in attorney representation may reflect and perpetuate racial inequality, as white students are more likely to have generational wealth and therefore more likely to have access to high-quality legal representation (or, for that matter, legal representation at all).²

Columbia University recognized these equity issues some time ago, implementing an innovative system of legal representation in its sexual misconduct proceedings. In or around 2015, Columbia adopted a system in which it pays for experienced attorneys to represent the parties on each side of its investigation and hearing process. Crucially, these attorneys are paid a flat fee per representation, meaning that their representation is not limited to a certain number of attorney hours or only to the hearing itself. In addition, Columbia provides student-claimants and student-respondents with representation from separate pools of attorneys experienced in this type of practice. Specifically, Sanctuary for Families' Campus Advocates Project—a group of attorneys with significant experience in representing student-claimants in Title IX proceedings—represents student-claimants, whereas experienced defense attorneys represent student-respondents.³

Though the need for legal representation in these proceedings has long been evident, it is now more acute than ever. As you know, Yale's UWC Procedures now provide for live cross-examination by the parties' advisers for Section 4 hearings. Cross-examination is a distinctly legal task, and its use in UWC hearings highlights the trial-like nature of both the Section 4 and Section 5 procedures. Since the rule change this past spring, more and more institutions of higher education are considering free provision of attorneys to student-claimants and student-respondents on a pro bono basis.⁴ Yale must do the same.

While there are a number of possible models of attorney representation programs, we believe the Columbia model, discussed above, is by far the most equitable. Other schools such as Stanford University provide more limited representation for students in their sexual misconduct proceedings. Students are either provided an attorney for the day of the hearing only or for a limited number of attorney hours. However, if some students have only limited access to their attorney, or are restricted in the amount of time the attorney may spend on their representation, these students' legal questions about the UWC process and its possible ramifications may go unanswered, and their attorney may not be appropriately prepared to support them at the hearing. This model of

¹ Merle H. Weiner, *Legal Counsel for Survivors of Campus Sexual Violence*, 29 YALE J.L. & FEMINISM 123, 142 (2017).

² Racial disparities in attorney representation in the civil law context are well documented. *See, e.g.*, Amy Myrick, Robert L. Nelson & Laura Beth Nielsen, *Race and Representation: Racial Disparities in Legal Representation for Employment Civil Rights Plaintiffs*, 15 N.Y.U. J. LEGIS. & PUB. POL'Y 705, 713-25 (2012).

³ An attorney with the Campus Advocates Project at Sanctuary for Families provided much of this information to members of the Title IX Working Group. Since the recent rule change, these attorneys have begun providing similar services to claimants at universities across the country. Should Yale consider adopting a similar program, the Title IX Working Group suggests that the University consider working with the attorneys at the Campus Advocates Project or other similarly experienced attorneys in this area.

⁴ For example, the University of Michigan recently informed student-advocates on its campus that it will be providing students with attorneys for the University's Title IX adjudicatory process.

representation would therefore perpetuate existing equity concerns, allowing wealthy parties to pay for better attorney access than other students are provided.

Further, though Section 5 hearings will not feature cross-examination, parties in Section 5 proceedings should be provided the same attorney representation and access as students in Section 4 proceedings. Even absent cross-examination, Section 5 procedures are complicated and quasi-judicial, and the new bifurcated system introduces additional jurisdictional complexities. All students attempting to navigate the UWC process should have access to expert legal counsel, regardless of whether they are involved in a Section 4 or Section 5 proceeding. Because the new definition of Title IX misconduct (which mirrors the Trump Administration’s definition and requires a Section 4 hearing) is arbitrarily narrow, distinguishing the provision of attorneys on the basis of whether misconduct is defined as “Title IX misconduct” (subject to a Section 4 hearing) or “[o]ther . . . sexual misconduct” (subject to a Section 5 hearing) would be arbitrary as well.

A simple example illustrates this point: imagine Student A sexually assaulted Student B in a dorm room on campus. If Student B were to file a complaint with a Title IX Coordinator, this would be routed through the Section 4 process, with attorney representation provided. But, if Student A assaulted Student B in an off-campus apartment that was not under “substantial control” by the University or a University-affiliated student organization, Student B’s complaint would go through the Section 5 process, which more or less mirrors the Section 4 process, but the students would not be provided with attorneys. The location where a student is raped, harassed, or stalked should not determine whether the University provides them with legal representation. The same is true for student-respondents: the arbitrary bounds of the Trump Administration’s narrow definition of “Title IX misconduct” should not determine whether they have access to legal representation.

Put bluntly, provision of cost-free⁵ legal representation for all parties in all UWC proceedings, from the time a claimant considers initiating a complaint through the appeals process, is crucial to ensuring equity and due process in UWC proceedings. We urge the University to waste no time in adopting and publicizing a policy that provides for this type of representation. We also urge the University to maintain such a policy even if the current Title IX regulation is struck down by a court or otherwise rescinded or altered at a future date.

Student members of the Title IX Working Group would be happy to discuss this matter further with you or with other members of the University administration. Please do not hesitate to contact Grace Judge (grace.judge@yale.edu) or Mollie Berkowitz (mollie.berkowitz@yale.edu).

⁵ Arguably, University-provided representation would not be “cost-free” because most students pay large sums in tuition and other fees to the University each year.

Sincerely,

Yale Law School Title IX Working Group Chairs
Yale Law Women Board, 2020-2021

cc: Ellen Cosgrove, Associate Dean, Yale Law School
Heather Gerken, Dean, Yale Law School
Alexander Dreier, Senior Vice President & General Counsel, Yale University
Aley Menon, Secretary, University-Wide Committee on Sexual Misconduct, Yale University

APPENDIX IV: TOP LAW SCHOOLS POSTS REFERENCING JED RUBENFELD'S
MISCONDUCT



tinman

BRONZE

Posts: 241

Joined: Sat Mar 14, 2009 11:17 pm

“ Brock2010 wrote:

damn really? was he at a t-14? or even a t-10?

Yes, he was at a t-10. But #1 may just mean all As. Maybe 5% of the class had all As and were tied for 1. I don't know the details exactly, but it seems like most transfers to YHS have near perfect grades. Most of the transfers come from T14s it seems.



instantwonton

NEW

Posts: 76

Joined: Mon Apr 25, 2011 9:30 pm

Re: Yale 1Ls/2Ls/3Ls Taking Questions

by instantwonton » Mon Apr 25, 2011 9:36 pm



In some of the guidebooks that I was reading about law schools, they indicated that YLS professors were hard to approach/reach outside of class. Have you found this to be true at all? Do you find that you are able to reach your professors outside of class? If you want to talk to them about something, are they willing to put in one-on-one time at all in your experience?

kalessebo

NEW

Posts: 25

Joined: Wed Apr 23, 2008 4:55 am

Re: Yale 1Ls/2Ls/3Ls Taking Questions

by kalessebo » Tue Apr 26, 2011 1:18 am



“ instantwonton wrote:

In some of the guidebooks that I was reading about law schools, they indicated that YLS professors were hard to approach/reach outside of class. Have you found this to be true at all? Do you find that you are able to reach your professors outside of class? If you want to talk to them about something, are they willing to put in one-on-one time at all in your experience?

In my experience (I'm a 2L), this is almost entirely false. I can't say entirely, since there are always exceptions, but I've found the vast majority of my professors to be about as welcoming as you could expect anyone to be. A couple of observations (in decreasing order of relevance):

1. Every single prof I've taken has had office hours for at least a couple of hours a week, and every single one has been open to meeting at other times if that's what you want/need to do.
2. I've also had several offer to talk by phone over the weekend when there was an important deadline coming up (paper or clinic filing due date, for example).
3. I often drop in on a professor unannounced if I have a pressing issue and happen to be in that part of the building, and I've never felt unwelcome.
4. I've had several profs who hold weekly lunches with students.
5. My small group professor literally looked sad that *more* people didn't go to his office hours.

A lot of office hours time revolves around talking about paper topics (since we have to write two big papers to graduate). If you have an idea, profs are usually itching to help. If it's their area of expertise, I've found that most will offer to supervise without you even having to ask. If not, they're really helpful in finding someone who can help. My paper supervisors make time outside of normal office hours so we can chat for as long as we need to uninterrupted, and I know others hold group workshops where several students writing a paper with a particular prof will get together with that prof to talk about/critique each other's papers.

But it's not just about papers. My professors have generally been very open to talking about class material, giving professional advice, or chatting about nothing. (One of my first semester profs asked specifically that we come by to talk about "anything but law school," since he wanted to get to know us all better.)

Then there's the (what seem like) monthly soirees at the Chua/Rubinfeld house, but I suppose that's for another post.





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by [Anonymous User](#)
Wed Apr 05, 2017 5:46 pm

Forum: [Judicial Clerkships](#)
Topic: [Judges who female or LGBT law clerks should avoid](#)
Replies: 232
Views: 27992

Re: Judges who female or LGBT law clerks should avoid

Anonymous User wrote:

Ladies of, or considering attending, YLS: Unless you enjoy being hit on by a middle-aged, married man who wields power over your career, seriously stay away from Tiger Dad when he is drunk (which is surprisingly often). At least two of my friends were subject to his machinations. I'm told that each "generation" of YLS women has had to learn this the hard way.

I've heard similar from a friend who attended YLS some years ago. Apparently "Tiger Dad" made both him and his girlfriend uncomfortable.

Re: judges. The only thing I've heard about Kozinski is that his clerks work horrible hours. In terms of mentoring, he's said to be pretty decent. As for general advice re: clerking, pick a judge that shares at least some of your background and beliefs. If you're biglaw, pick someone who doesn't hate biglaw (there are judges that hate biglaw). If you are PI, pick someone who shares your social outlook. If you have work experience, pick a judge that values that. If you don't, pick a more experienced judge and someone who doesn't mind mentoring young clerks.

Lastly, if you hate being an area, don't go there; no amount of telling yourself it'll just be for a few years will make it better.

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by [Anonymous User](#)
Wed Apr 05, 2017 12:44 am

Forum: [Judicial Clerkships](#)
Topic: [Judges who female or LGBT law clerks should avoid](#)
Replies: 232
Views: 27992

Re: Judges who female or LGBT law clerks should avoid

Ladies of, or considering attending, YLS: Unless you enjoy being hit on by a middle-aged, married man who wields power over your career, seriously stay away from Tiger Dad when he is drunk (which is surprisingly often). At least two of my friends were subject to his machinations. I'm told that each "generation" of YLS women has had to learn this the hard way.

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