December 19, 2016

President David W. Pershing Office Of The President 201 President's Circle, Room 203 Salt Lake City, Utah 84112

Dear President Pershing,

We are writing to you and the University of Utah's administration as a group of students, alumni, employees, and members of the University community who are concerned about how recent campus sexual assault investigations were handled and how messages from the administration were received.

In May of this year *The Salt Lake Tribune* reported a University student's long struggle to reach resolution in her Title IX investigation after being sexually assaulted on campus¹. The assault occurred in February of 2015 and more than a year later, after she and the perpetrator had both graduated, the school finally finished the entire review and appeal process. In January of 2016, the University's disciplinary panel "decided it was more likely than not that the male student had sexually assaulted her."²

On December 8th, *The Daily Utah Chronicle* reported on another student's difficulty in seeking justice after being sexually assaulted by a member of the ASUU student government³. After pressing charges through the campus police and filing a complaint with the Title IX office in early spring of 2015, the University found the perpetrator "more likely than not" guilty and expelled him. He appealed the decision, extending the process by 10 months. During this time, Alison (a pseudonym) and her mother had difficulty contacting campus police despite many attempts to receive an update on the case, and *The Chronicle* reported "campus police did not return phone calls for long periods of time." Alison did not hear back from the campus police about the state of her case until she and her mother called them from a different phone number, only to find out her rape kit had not even been processed. After the initial decision, the perpetrator left his position in ASUU and transferred to another school. The review and appeal process ultimately upheld the original ruling, but the sanctions and admission of guilt did not follow him to his new school. A landmark 2002 study of undetected rapists found that "almost two-thirds of them raped more than once, and a majority also committed other acts of interpersonal violence," committing an average of six rapes each and an average of 14 acts of

³ Elise Vandersteen, "Nowhere to Turn: One U Student's Experience with Sexual Assault," *The Daily Utah Chronicle*, December 8, 2016, http://dailyutahchronicle.com/2016/12/08/nowhere-to-turn-one-students-experience-with-sexual-assault/.

¹ Alex Stuckey and Annie Knox, "Former U. Student Files Federal Complaint, Says School Investigation into Her Sexual Assault Was Unduly Long," *The Salt Lake Tribune*, May 4, 2016, www.sltrib.com/home/3850379-155/new-graduate-says-university-of-utah.

² Ibid

⁴ "Dear colleague," U.S. Department of Education, Office for Civil Rights, p. 11, accessed December 15, 2016, http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf.

interpersonal violence each.⁵ In light of this information, it is difficult to understand why the University chose not to release the name of the perpetrator to prevent him from committing sexual assault again.

On October 31, 2016, a student reported a masked man raped her at gunpoint in her car. President Pershing, you sent an email to the University on November 3rd addressing the assault and investigations being led by the Department of Public Safety and stated, "Although our Department of Public Safety has undertaken many efforts on campus to keep it safe, we must ask, how can we confront a culture of rape that exists almost everywhere in our society?" You went on to list the ways in which the University has sought to improve sexual assault prevention and campus safety. You ended the email by saying, "Our conversations on sexual assault prevention will continue, because this problem is so central and important to all of us." A sentiment that many of us felt was sincere.

Then, on December 6th, you sent an email to the University community with an update on the October 31st assault. You quoted Police Chief Dale Brophy on the summary of the case in which he said,

When investigating sexual assaults, we start by believing the victim, complete a thorough investigation, and follow the evidence. Over the past five weeks, our detective unit has spent hundreds of hours working on the report. With help from state crime lab personnel, we have processed evidence from the scene. We have reviewed footage from multiple area cameras and interviewed the owners of hundreds of vehicles parked in the lot on that day, and no leads emerged. At this time our department is not able to determine that an incident consistent with the report given occurred at the Merrill Engineering Building parking lot that day.

We are not calling into question that this person may have experienced something terrible at some point in her life, but we are not able to find evidence that a crime occurred at the place, date, and time reported. We are not closing this case; we are suspending it until more evidence becomes available or until someone comes forward with additional information.

After receiving this email, many members of the campus community questioned the language used and the message sent in the police chief's statement. While it is not explicitly stated, the subtext of Chief Brophy's statement is that the survivor lied about the assault. Using the preface "we start by believing the victim," followed by the department's inability to "determine that [the] incident ... occurred" suggests the logical conclusion that the woman must have lied and that the assault did not occur. It places the victim on trial rather than the perpetrator, which is a particularly harmful message to send to those who have been sexually assaulted. The suggestion that this woman "may have experienced something terrible at some point in her life" questions her character and motives at best, and at worst, breaks confidentiality regarding past trauma that she may have experienced. It is important to note that it is notoriously difficult to find evidence

⁵ David Lisak and Paul M. Miller, "Repeat Rape and Multiple Offending Among Undetected Rapists," *Violence and Victims* 17 (2002): 80, accessed December 15, 2016, http://www.davidlisak.com/wp-content/uploads/pdf/RepeatRapeinUndetectedRapists.pdf.

of and prove sexual assault cases. This is why the U.S. Department of Education's 2011 "Dear Colleague" letter instructs university officials to decide cases of sexual assault by a "preponderance of evidence" rather than by the criminal justice system's standard of "beyond a reasonable doubt." It is possible that although the campus police were not able to find evidence of the incident, the sexual assault did in fact occur at the place, date, and time reported. Neither you nor Chief Brophy address this alternative in the email.

We are and will always be grateful to the campus police and the University for the time and effort spent investigating cases of sexual assault, including this one, and working to protect our campus. We are not trying to invalidate that effort. However, we take issue with Chief Brophy's implication that the survivor of the October 31st assault lied and your endorsement of this message by including it in your email to the entire University community.

The National Sexual Violence Resource Center reports that one in five women and one in sixteen men are sexually assaulted while in college in the United States⁷. In a 2016 campus climate survey at the University of Utah, 13% of respondents reported they experienced sexual assault since coming to the University⁸. The University's Clery report stated there were 41 reported sex offenses in 2015⁹, which *The Chronicle* reports is higher than at "other universities in the state when adjusted for total headcount."¹⁰ It is clear to us that the University of Utah has a significant sexual assault problem. We are aware that the University's "It's On Us" campaign to educate students about consent has likely increased sexual assault reporting rates. We acknowledge this is a step in the right direction to encourage reporting. We understand that the University is not alone among Utah's institutions of higher education in dealing with this problem, but we want to emphasize that it is the University's responsibility to address them on our campus.

You are undoubtedly aware of the many barriers that prevent survivors from reporting sexual assault. The Utah Department of Health reports that, "According to Uniform Crime Reports, the rape rate in Utah has been consistently higher than the U.S. rate. In 2014, Utah's reported rape rate was significantly higher than the U.S. rate (67.7 and 51.9 per 100,000 females [respectively]). However, the majority of rapes (88.2%) are never reported to law enforcement, indicating that sexual violence in Utah is grossly underestimated." BYU researcher, Dr. Julie Valentine, found in a 2014 study that only six percent of sexual assault cases reported in Salt Lake County are prosecuted. If only approximately 12% of all sexual assaults are reported, and

⁶ "Dear colleague," U.S. Department of Education, pg. 11.

⁷ "Statistics About Sexual Violence," National Sexual Violence Resource Center, 2015,

http://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf.

8 Elizabeth Duszak, Stacy Ackerlind, and Lori McDonald, "Campus Climate Survey on Sexual Assault 2016: Summary,"

University of Utah's @theU, October 24, 2016, pg. 2, http://attheu.utah.edu/wp-content/uploads/2016/10/Campus-Climate-Survey-Summary.pdf.

9 "Safety: Staying Safe and Secure at the U," University of Utah Annual Security & Fire Report, October 2016,

⁹ "Safety: Staying Safe and Secure at the U," University of Utah Annual Security & Fire Report, October 2016, http://dps.utah.edu/wp-content/uploads/sites/3/2016/09/17-0173-2016-17-Fire-Safety-Clery-Report-v4.pdf.

Vandersteen, "Nowhere to Turn: One U Student's Experience with Sexual Assault."

^{11 &}quot;Rape and Sexual Assault," Utah Department of Health, accessed December 15, 2016, http://www.health.utah.gov/vipp/topics/rape-sexual-assault/.

Erin Alberty and Janelle Stecklein, "Study: Most rape cases in Salt Lake County never prosecuted," *The Salt Lake Tribune*, January 7, 2014, http://archive.sltrib.com/story.php?ref=/sltrib/news/57323282-78/cases-rape-police-victim.html.csp.

only six percent of all cases are prosecuted, the chances of a sexual assault case even making it to the courts is less than 0.72%.

When faced with the choice between participating in a justice system that involves a lengthy, complicated, and disproportionately unjust process for survivors of sexual assault, and the option to avoid reporting the assault to begin with, it is clear why more than 90% of the hundreds of thousands of sexual assault survivors on college campuses do not report the assault¹³. The language used in your email about the October 31st assault, and its implication that the survivor was lying suggest that if a student were to report sexual assault, one possible outcome is an unduly public shaming. If you have any power to influence these survivors to come forward and report their sexual assault—and we believe that you do, as President of a PAC-12, Tier 1 Research Institution and nationally recognized university—why would you instead choose to discourage and discredit them?

It is important for the University to make it easy for survivors to report sexual assault and to provide them with the resources they need to recover and continue their education. This is why many of us were shocked by the message of the email last week. Following the email, many survivors of sexual assault expressed that they never reported because they were worried no one would believe them. Others who are especially at risk of sexual assault expressed that this email made them feel they could not report sexual assault on campus for fear of their character being questioned by the entire University community. Stories like those mentioned earlier have further confirmed this fear. The anxiety, trauma, and stress survivors face following a sexual assault is already a barrier to reporting. Learning of survivors who have reported and had their case dragged out 10 months and longer, were not kept informed of the case by campus police, and experienced severe anxiety from the University administration's response to cases of sexual assault only compounds the burden even further.

As a campus community, these are some of the concerns we have regarding how campus sexual assault cases are processed at the University. We understand it is a complex and sensitive issue and appreciate the amount of time and effort it takes to process even one case. We also understand the University provides a great number of resources to aid survivors of sexual assault and we have attached a list of local resources for survivors and secondary survivors. We understand there are University employees currently involved in efforts to adjust institutional policies, such as shortening the review and appeal process, expanding the pool of disciplinary panel members, and providing more consent education resources. We recognize these are important steps to improve the institutional process and appreciate the University's attention to these critical issues. The University's recognition that there is room for improvement and the policy changes already under review further support our concerns and validate the sense of urgency we feel.

We have a number of suggestions for addressing the concerns outlined above. We have contacted various University organizations in order to better understand the services already available and policies in place. With this information, we have agreed on a number of actions and policy changes the University can implement in order to increase prevention and reporting

^{13 &}quot;Statistics About Sexual Violence," National Sexual Violence Resource Center.

and ensure survivors have the resources they need. We acknowledge these are not the only solutions that could be implemented, but we hope you will take these recommendations seriously, in order to achieve our common goal to support students at the University of Utah.

First and foremost, we request that the University hold a campus-wide town hall meeting open to the public to gather input and information from the greater campus community (and especially those most at risk of sexual assault) on how the administration can better support survivors of sexual assault on our campus. Sexual assault is a community issue and in order to most effectively tackle it, the administration must hear and consider the needs of the whole community. We appreciate the information sessions advertised in your email, President Pershing, but we believe it is important that you ask us what we need before you conclude that the University's policies and resources are adequate. We are aware that we, as the four authors of this letter and members of a group with approximately 100 community members, do not represent the entire campus community, and therefore we cannot speak for everyone. Consequently, it is critical for the University administration to give community members the opportunity to express their perspectives and have a dialogue through which some consensus might be reached. Furthermore, this event will provide the University an excellent opportunity to inform the campus community of existing resources and introduce institutional changes that are already taking place.

We propose that consent training be required of all incoming freshman and transfer students to increase efforts. The consent section included in orientation is not enough by itself, and the greatest prevention effort to sexual assault is teaching students about consent. We understand that the University administration is considering the use of HAVEN, or Helping Advocates for Violence Ending Now, which is an online module to help students learn skills to aid sexual assault survivors. We appreciate this recognition of the importance of consent training, and we hope to see it implemented in the near future.

We propose increased resources for organizations that address sexual assault issues on campus, such as the Women's Resource Center, the Center for Student Wellness, and the Counseling Center. As the only group of counselors that receive the 40-hour Sexual Assault Advocacy training on campus, the Women's Resource Center staff is best individualized to counsel survivors of sexual assault, and they should be given priority in funding in order to give our students the best treatment possible. Currently, only the Women's Resource Center counselors and one other counselor on campus are trained in this approach, which is the most progressive and survivor-friendly. As we understand it, there are no full-time employees at the Women's Resource Center and they have an extensive waitlist for counseling. We propose they receive more office space so they can increase patient capacity load and the funding to support full-time staff positions. We propose there be increased funding for the Center for Student Wellness to expand their programs in prevention education. We propose the Counseling Center's staff receive the Sexual Assault Advocacy training as well.

We propose the Women's Resource Center and the Victim Advocates be included as representatives in the "new presidential working group" along with Vice President Barbara Snyder and Associate General Counsel Michele Ballantyne. Including the organizations that

frequently assist survivors of sexual assault in the decision-making process is integral to improving the current system.

We propose all faculty and administration be provided with resources and support to be better prepared to help survivors of sexual assault or other traumas in situations of disclosure. Sexual assault survivors may experience intense anxiety, trauma, and stress and may be "harmed or retraumatized by insensitive, uninformed, or inadequate community" responses¹⁴. It is critical that University employees, particularly the faculty, staff, and administration likely to interact with students (who may or may not report incidents of sexual assault) and most likely to be involved with institutional policies to address sexual assault issues, have the skills to effectively support survivors.

We propose all officers of the campus police receive trauma-informed training, as they are often the first responders to incidents of sexual assault. We appreciate that detectives in the campus police force already receive this training, but we see a great need for all officers to do so. The first contact a victim has with an officer should be one that is sensitive to the stress of the situation at hand, so as to not further the depth of the trauma.

We propose the University create a standard limit on the length of sexual assault cases and inform the survivors of the timeline with updates at regular intervals. We understand the University's policy is to complete Title IX investigations within 45 business days (which is less than the U.S. Department of Education's 60-day requirement), but neither law nor University policy limits the length of the review and appeal process. We believe it is the responsibility of the University to ensure the entire length of sexual assault cases are kept to a minimum. We propose the University implement a policy that limits the length of the review and appeal process. Survivors should also be notified regularly on the status of the investigation.

We suggest more staff be hired for the Title IX office in order to decrease the lengthiness of investigations. Currently the University Campus Directory shows the Office of Equal Opportunity and Affirmative Action employs only seven staff members ¹⁵. Other PAC-12 schools with similar endowments to the University of Utah have significantly larger Title IX offices than our own. For example, the University of Colorado has 8 positions dedicated to investigating Title IX claims, in addition to several other staff members in their office ¹⁶. Oregon State University has 13 staff positions in their Office of Equal Opportunity and Access ¹⁷, and Washington State University has nine staff positions in their equivalent office ¹⁸. By hiring more staff the individual burden of investigations would be decreased, allowing the entire investigative process to proceed more efficiently.

¹⁴ "The Importance of Understanding Trauma-Informed Care and Self-Care for Victim Service Providers," The U.S. Department of Justice, accessed December 15, 2016, https://www.justice.gov/ovw/blog/importance-understanding-trauma-informed-care-and-self-care-victim-service-providers.

^{15 &}quot;Campus Directory, Equal Opport - Affirm Action," University of Utah, http://people.utah.edu/uWho/basic.hml?did=671.

¹⁶ "Contact Us," Office of Institutional Equity and Compliance, University of Colorado Boulder, http://www.colorado.edu/institutionalequity/contact-us.

^{17 &}quot;EOA Staff Directory," Equal Opportunity and Access, Oregon State University, http://eoa.oregonstate.edu/office-information.

^{18 &}quot;Contact Us," Office for Equal Opportunity, Washington State University, https://oeo.wsu.edu/contact-us/.

We propose the University of Utah follow precedent recently established by Utah State University to include statements on the transcripts of perpetrators found guilty by Title IX sexual assault investigations that note their status as a perpetrator so future schools can take appropriate precautions for their students¹⁹. This works as a preventative measure in two ways: 1) by alerting other universities of past perpetrators to help them reduce opportunities for new assaults, and 2) by discouraging would-be perpetrators from committing sexual assault, which would risk their reputation and future educational opportunities.

We propose the University make the names and violations of perpetrators found guilty through Title IX investigations publicly available. Although the University is not required by law to release Title IX investigation documents of sex crimes, this would fulfill its responsibility to, as you put it in your most recent email, "convey intolerance for harassment in any form." We agree that protecting the identity and privacy of sexual assault survivors is of utmost importance. Releasing the name of the perpetrator does not necessitate releasing the names of their victim(s). By setting a standard of identifying perpetrators of sexual assault on campus, the University would make a strong statement that harassment is not tolerated on campus by anyone.

We propose the University increase the transparency of procedural steps in Title IX sexual assault investigations. We suggest aggregating policies, resources, and general information for sexual assault survivors to a single webpage and ensuring this information is widely accessible. Though there are staff members available to assist survivors in navigating the institutional process, making this available online is an important initial resource for survivors. Making transparency a priority will ensure the University implements the best practices and institutional policies available, and continue the community-wide dialogue on how best to address sexual assault on campus. If the University is making substantial changes to keep the community safe, making this information public benefits the University's reputation as an institution committed to fighting sexual assault on campus. One such best practice the University could implement is to create a standard limit on how long cases can remain suspended before the status must be changed to closed, at which time investigative documents become available to the public.

Finally, we propose the language and messages used in correspondence related to sexual assault cases and investigations sent on behalf of the University shift from focusing on self-protection for those especially at risk to addressing the culture that perpetuates sexual assault by encouraging reporting and enforcing punishment of perpetrators. While better lighting and physical security on campus help decrease crime in general, the burden of protection should not be on the potential victims of sexual assault, but rather the burden of punishment should be on the University. Using language that does not call a survivor's character into question is the first step in addressing rape culture. For example, an alternative phrasing of Chief Brophy's words could have communicated the campus police have been unable to find evidence of the crime without insinuating the sexual assault survivor lied about the incident, such as "we have reached the limit of our investigation" and emphasizing the need for information from the campus community.

¹⁹ Alex Stuckey, "USU updates sexual assault policies for amnesty, confidentiality," *The Salt Lake Tribune*, October 21, 2016, http://www.sltrib.com/home/4493419-155/usu-updates-sexual-assault-policies-for.

President Pershing, we believe you when you say "violence has no place on our campus" and addressing sexual assault is one of your top priorities. We believe the administration wants to prevent campus sexual assault and support survivors. We believe you and many others are working in excess to address the needs of the campus community and ensure the safety of its individuals. So we hope in the sincerity of your efforts you recognize why the suggested actions and policies laid out in this letter by members of your campus community are important to continue to prevent sexual violence and increase survivor resources and support. We also hope you pay prompt attention to our first request, setting up a community town hall meeting regarding campus sexual assault, and making a sincere effort toward including diverse populations and those most vulnerable to sexual assault, as the opinions in this letter are not representative of the entire campus community and those affected by sexual assault.

The support in our campus community for this initiative is demonstrated by the number of signatures already obtained on the petition we published through *change.org*, titled "University of Utah, Change Policies about Campus Sexual Assault." The petition was published on December 15th and since then, more than 250 supporters have signed and the number continues to grow. If you read the comments of signatories, you will find sentiments of sexual assault survivors and those who support changes. A former University faculty member writes, "...I want students' safety protected. In the context of an undergraduate's life, justice delayed is justice denied." Another signatory writes, "I am personally affected by this as well as I am going through this process and find it heartbreaking that it could take this long ... There needs to be a change now."

As the nature of these items is time sensitive and extremely important, we request you respond to us no later than January 27th, 2017 with the efforts and actions you intend to take to address the concerns laid out in this letter. This issue does not just concern the safety of your students, but what is just, and we hope you and the administration recognize this. We believe this is an opportunity for the University to take the needs of its community into account and make important changes that could set a precedent for college campuses nationwide. We look forward to working with you, alongside many other members of our community at the University of Utah.

Very sincerely,

SLC Against Sexual Assault
Petition available at https://goo.gl/Rlt6AZ

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²⁰ "University of Utah, Change Policies about Campus Sexual Assault," *change.org* petition, December 15, 2016, https://www.change.org/p/president-pershing-the-university-of-utah-university-of-utah-change-policies-about-campus-sexual-assault.

Mahalia Lotz

Student

Resources for readers who are impacted by sexual assault

You are not alone. There are community resources available for survivors of sexual assault in the Salt Lake area as well as those close to them.

The Rape Recovery Center 24 hour crisis hotline: 801-467-7273 http://raperecoverycenter.org/

Rape, Abuse, Incest National Network (RAINN)
National crisis hotline:800-656-HOPE(4673)
https://www.rainn.org/index.php

Utah Coalition Against Sexual Assault (UCASA) 801-746-0404 http://www.ucasa.org/

Utah Office for Victims of Crime 801-238-2360, 800-621-7444 http://www.crimevictim.utah.gov/

Salt Lake Family Justice Center 24 hour crisis hotline: (801) 537-8600, 1-855-992-2752 http://slcfamilyjusticecenter.org/

Salt Lake Planned Parenthood Health Center 801-322-5571 https://www.plannedparenthood.org/health-

center/utah/salt-lake-city

University of Utah Women's Resource Center 801-581-8030 http://womenscenter.utah.edu/

University of Utah Victim Advocates 801-581-7779 http://advocate.wellness.utah.edu/

University of Utah Counseling Center 801-581-6826 http://counselingcenter.utah.edu/

University of Utah Center for Student Wellness 801-581-7776 http://wellness.utah.edu/

University of Utah LGBT Center 801-587-7973 http://lgbt.utah.edu/

University of Utah Center for Ethnic Student Affairs 801-851-8151 http://diversity.utah.edu/centers/cesa/

University of Utah Student Health Center 801-581-6431 http://studenthealth.utah.edu/

This is not meant to be a comprehensive list. Please reach out to these organizations if you need help or further referrals.

Notes

- Alex Stuckey, "USU updates sexual assault policies for amnesty, confidentiality," *The Salt Lake Tribune*, October 21, 2016, http://www.sltrib.com/home/4493419-155/usu-updates-sexual-assault-policies-for.
- Alex Stuckey and Annie Knox, "Former U. Student Files Federal Complaint, Says School Investigation into Her Sexual Assault Was Unduly Long," *The Salt Lake Tribune*, May 4, 2016, www.sltrib.com/home/3850379-155/new-graduate-says-university-of-utah.
- "Campus Directory, Equal Opport Affirm Action," University of Utah, http://people.utah.edu/uWho/basic.hml?did=671.
- "Contact Us," Office for Equal Opportunity, Washington State University, https://oeo.wsu.edu/contact-us/.
- "Contact Us," Office of Institutional Equity and Compliance, University of Colorado Boulder, http://www.colorado.edu/institutionalequity/contact-us.
- David Lisak and Paul M. Miller, "Repeat Rape and Multiple Offending Among Undetected Rapists," *Violence and Victims* 17 (2002): 80, accessed December 15, 2016, http://www.davidlisak.com/wp-content/uploads/pdf/RepeatRapeinUndetectedRapists.pdf.
- "Dear colleague," U.S. Department of Education, Office for Civil Rights, accessed December 15, 2016, http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf.
- Elise Vandersteen, "Nowhere to Turn: One U Student's Experience with Sexual Assault," *The Daily Utah Chronicle*, December 8, 2016, http://dailyutahchronicle.com/2016/12/08/nowhere-to-turn-one-students-experience-with-sexual-assault/.
- Elizabeth Duszak, Stacy Ackerlind, and Lori McDonald, "Campus Climate Survey on Sexual Assault 2016: Summary," University of Utah's @theU, October 24, 2016, pg. 2, http://attheu.utah.edu/wp-content/uploads/2016/10/Campus-Climate-Survey-Summary.pdf.
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- "The Importance of Understanding Trauma-Informed Care and Self-Care for Victim Service Providers," The U.S. Department of Justice, accessed December 15, 2016, https://www.justice.gov/ovw/blog/importance-understanding-trauma-informed-care-and-self-care-victim-service-providers.
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- "Statistics About Sexual Violence," National Sexual Violence Resource Center, 2015, http://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf.