

No. 21-12562

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

A.P.,

Plaintiff-Appellant,

v.

Fayette County School District et. al.,

Defendants-Appellees,

On Appeal from a Final Judgment of the
United States District Court for the Northern District of Georgia
Case No. 3:19-cv-00109-TCB, Hon. Timothy C. Batten

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*
DR. JENNIFER FREYD, DR. SARA E. BOYD, AND 18
OTHER MENTAL HEALTH EXPERTS IN SUPPORT
OF PLAINTIFF-APPELLANT A.P. AND REVERSAL**

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Eleventh Circuit Rule 26.1-1, the following trial judges, attorneys, persons, associations of persons, firms, partnerships, and corporations are known to have an interest in the outcome of this case or appeal:

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- Artrip, Eric J.
- Barrow, Joseph, Jr.
- Batton, Timothy C., U.S. District Judge
- Buechner, William H., Jr.
- Chandy, Sunu
- Chaudhry, Neena
- Cole, Alexandra “Sachi”
- Deakins, Kyle A.
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- Freeman Mathis & Gray, LLP
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- Wolfman, Brian

No. 21-12562, *A.P. v. Fayette County School District*

Pursuant to Eleventh Circuit Rule 26.1-3, no publicly traded company or corporation has an interest in the outcome of this case or appeal.

October 22, 2021

Respectfully submitted,

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CORPORATE DISCLOSURE

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Eleventh Circuit Rule 26.1-1, *amici curiae* make the following disclosures:

- For nongovernmental corporate parties please list all parent corporations:
None.
- For nongovernmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock: None.

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

Pursuant to Rule 29(a)(2) of the Federal Rules of Appellate Procedure, legal counsel for proposed *amici curiae* inquired with counsel for Appellees whether they would consent to the filing of this *amici* brief. Appellees do not consent. Accordingly, pursuant to Rule 29 of the Federal Rules of Appellate Procedure and Eleventh Circuit Rule 29-1, proposed *amici curiae* Dr. Jennifer Freyd, Dr. Sara E. Boyd, and 18 other mental health experts respectfully file this Motion seeking leave of the Court to file the attached Brief of *Amici Curiae* in Support of Plaintiff-Appellant A.P. In support of their Motion, proposed *amici* state as follows:

1. Proposed *amici* possess vast experience and knowledge as mental health professionals, trauma specialists, and education authorities, with expertise on sexual violence, victim behaviors, and the impact of institutional responses to reports of sexual assault, and they seek leave of the Court to file their brief attached as Exhibit 1 to this Motion. They believe that the information contained in their brief will be helpful and important for the Court to consider in its disposition of this case, particularly because the district court based its decision in large part on Plaintiff-Appellant A.P.'s post-assault conduct and disclosures. The brief describes long-standing scientific research findings about victim behavior during and after sexual assault, and when disclosing the assault, with emphasis on adolescent victims. These findings often differ significantly from popular

misperceptions and common myths regarding how “real victims” act. The brief also discusses how institutional responses to disclosures of sexual assault can harm the victim, including with respect to their willingness to continue in the investigatory process. Finally, affirming the district court’s decision will encourage institutions like schools to rely upon disproven stereotypes and myths when responding to reports of peer sexual harassment and assault, and to engage in “institutional betrayal,” which can have a devastating impact on survivors of sexual assault

2. Jennifer Freyd, Ph.D. is a widely-published and renowned expert on interpersonal and institutional betrayal trauma and sexual violence and discrimination within institutional settings. Dr. Freyd is Professor Emerit of Psychology at the University of Oregon, Adjunct Professor of Psychiatry and Behavior Sciences in the School of Medicine at Stanford University, a Faculty Fellow at the Clayman Institute, Faculty Affiliate of the VMware Women’s Leadership Innovation Lab at Stanford University, and Founder and President of the Center for Institutional Courage. She serves as Editor of the *Journal of Trauma & Dissociation*, has authored or coauthored over 200 articles and op-eds, and is the author of the Harvard Press award-winning book *Betrayal Trauma: The Logic of Forgetting Childhood Abuse*. Dr. Freyd has been a John Simon Guggenheim Fellow, an Erskine Fellow at the University of Canterbury in New

Zealand, and is currently a Fellow of the American Association for the Advancement of Science. In April 2016, Dr. Freyd was awarded the Lifetime Achievement Award from the International Society for the Study of Trauma & Dissociation.

3. Sara E. Boyd, Ph.D. is a Licensed Clinical Psychologist at the Institute of Law, Psychiatry, and Public Policy, University of Virginia Health System, where she completed her forensic psychology postdoctoral fellowship. She is an expert on sexual violence, working with individuals with intellectual and developmental disabilities, and forensic evaluations in adult and juvenile criminal and civil matters. Dr. Boyd also supervises students and post-doctoral fellows and develops professional trainings for forensic evaluators and attorneys.

4. Carolyn Allard, Ph.D., ABPP, is Professor and Program Director of the Ph.D. Program at the California School of Professional Psychology at Alliant International University and has an appointment in the Research Service of the Veterans Affairs (“VA”) San Diego Healthcare System. Prior to her current position, she served as Program Director of the Military Sexual Trauma and Interpersonal Trauma Clinic and the San Diego Advanced Fellowship in Women's Health for over 10 years at the VA San Diego and the University of California San Diego Department of Psychiatry (where she was Associate Professor). She is Past President of the American Psychological Association’s Trauma Division (Division

56), with the mission of bridging culturally informed trauma research, practice, and advocacy to effect positive change in our local and global communities.

5. Stacey Boyer, Ph.D. is a licensed clinical and forensic psychologist in Delaware, Pennsylvania, and New Jersey. After earning her doctorate from Widener University's Institute for Graduate Clinical Psychology in 2014, she completed the Sheppard Pratt Trauma Disorders Fellowship. Dr. Boyer specializes in the assessment and treatment of trauma. She provides individual trauma-focused psychotherapy, psychological assessment, and trauma-focused supervision to clinicians nationally and internationally. In 2021, she received the Compassionate Champion award from Delaware's Governor Carney for her leadership in Trauma-Informed Care. She is currently co-authoring a toolkit on trauma-informed leadership for the American Medical Association and guidelines for the assessment of psychological trauma in adults for the American Psychological Association.

6. Bethany Brand, Ph.D. is a Professor at Towson University and an expert in trauma disorders. Dr. Brand has published over 100 professional papers and chapters related to the impact of trauma as well as the assessment and treatment of trauma and attachment. She has particular expertise in dissociative reactions among trauma survivors.

7. Richard A. Chefetz, M.D. is a psychiatrist in private practice in Washington, D.C. He was the President of the International Society for the Study of Trauma and Dissociation (2002-2003), and Co-Founder and Chair of its Psychotherapy Training Program (2000-2008). Dr. Chefetz is a Distinguished Visiting Lecturer at the William Alanson White Institute of Psychiatry, Psychoanalysis, and Psychology. He also is a faculty member at the Washington School of Psychiatry, the Institute of Contemporary Psychotherapy & Psychoanalysis, and the Washington-Baltimore Center for Psychoanalysis. In 2015 he published *Intensive Psychotherapy for Persistent Dissociative Process: The Fear of Feeling Real*, with W.W. Norton, in its Interpersonal Neurobiology series.

8. James A. Chu, M.D. is Associate Professor of Psychiatry at Harvard Medical School and a Medical School Consultant in Psychiatry at McLean Hospital in Belmont, Massachusetts. He is the author of *Rebuilding Shattered Lives*, second edition published in 2011, an authoritative text concerning the evaluation and treatment of trauma survivors. Dr. Chu is a Distinguished Life Fellow of the American Psychiatric Association, a Fellow and past President of the International Society for the Study of Trauma and Dissociation, and the recipient of that organization's Cornelia B. Wilbur Award, Distinguished Achievement Award, Pierre Janet Writing Award, and President's Award for outstanding

contributions in the field of dissociative disorders. Dr. Chu has served as Editor-In-Chief of the Journal of Trauma & Dissociation and is Field Editor for Post-Traumatic Stress Disorder of the Harvard Review of Psychiatry.

9. Catherine C. Classen, Ph.D. is a clinical psychologist, adjunct professor at the University of Toronto, former president of the International Society for the Study of Trauma and Dissociation, and has over 30 years of experience treating survivors of sexual violence along with conducting research and publishing in the area of interpersonal violence.

10. Lisa Cromer, Ph.D. is a licensed psychologist and Associate Professor of Psychology at The University of Tulsa, and Executive Director of the University of Tulsa Institute of Trauma, Adversity, and Injustice, and Director for SPARTA Lab. She has studied trauma and trauma responses for over 20 years, has conducted research on sexual abuse myths and on believing disclosures, and is an expert in trauma assessment and treatment.

11. Abbie M. Ellicott, Ph.D. has more than 30 years of experience treating adult survivors of abuse, violence, and interpersonal trauma. Dr. Ellicott obtained her doctorate in clinical psychology from the University of Kansas and has been licensed to practice psychology in Maryland since 1995.

12. William F. Flack, Jr., Ph.D. is Professor and Chair of the Psychology Department at Bucknell University in Lewisburg, Pennsylvania. He has conducted

research on the causes, characteristics, and consequences of sexual assault among university students for over 20 years. He is a member of the Administrator-Researcher Campus Climate Collaborative, which produced a widely adopted survey on gender-based violence among university students. He has also conducted research and consulted on sexual misconduct policy in higher education as a Fulbright Scholar at Ulster University (2015) in Northern Ireland and the National University of Ireland-Galway (2019) in the Republic of Ireland.

13. Julian D. Ford, Ph.D., ABPP, is Professor of Psychiatry and Law at the University of Connecticut School of Medicine, where he is Director of the Center for the Treatment of Developmental Trauma Disorders. He has served as President of the International Society for Traumatic Stress Studies and is a Fellow of the American Psychological Association. Dr. Ford has published more than 250 articles and book chapters.

14. Jennifer M. Gómez, Ph.D. is a Fellow to Stanford University's Center for Advanced Study in the Behavior Sciences, and incoming Assistant Professor in the School of Social Work at Boston University. She is a nationally and internationally known expert on cultural betrayal trauma theory regarding the impact of sexual violence on Black and other marginalized populations, and her research has been recognized by, among others, the National Academy of Sciences and Ford Foundation.

15. Kathryn Holland, Ph.D. is an Assistant Professor in the Department of Psychology and the Program in Women's and Gender Studies at the University of Nebraska – Lincoln. She received her Ph.D. in Psychology and Women's studies from the University of Michigan.

16. Bridget Klest, Ph.D. is an Associate Professor of clinical psychology at the University of Regina. Her research is focused on traumatic stress and institutional responsibility in a variety of settings, including healthcare, universities, and victims' services.

17. Lauren Lebois, Ph.D. is an Assistant Professor of Psychiatry at Harvard Medical School. She is a joint Director of the Dissociative Disorders and Trauma Research Program at McLean Hospital in Belmont, Massachusetts. Dr. Lebois is a cognitive psychologist and cognitive neuroscientist who uses neuroimaging, psychophysiological, and behavioral techniques in humans to understand how the mind, brain, and body adapt in the aftermath of trauma. Dr. Lebois has received federal funding from the National Institute of Mental Health to study the neurobiology of dissociation in trauma-spectrum disorders. Recently, she was awarded the Alfred Pope Award for Young Investigators from McLean Hospital, and the Morton Prince Award from the International Society for the Study of Trauma and Dissociation for her outstanding cumulative contributions to research on dissociative disorders.

18. Brian Marx, Ph.D. is a Professor of Psychiatry at the Boston University School of Medicine. He is an expert in behavior therapy, posttraumatic stress disorder (“PTSD”) assessment, and the effects of trauma. He serves on the editorial board of several scientific journals. Dr. Marx’s research includes the association between PTSD and functional impairment, PTSD and memory, identifying risk factors for posttraumatic difficulties, and developing brief, efficacious treatments for PTSD.

19. Kathryn Quina, Ph.D. is Emerit Professor of Psychology and Gender and Women’s Studies at the University of Rhode Island. Dr. Quina is a researcher who has published books and journal articles centered on sexual abuse and its harmful effects, including on HIV risk and incarceration, and discrimination and harassment in education.

20. Charol Shakeshaft, Ph.D. is a Professor of Educational Leadership at Virginia Commonwealth University. She has been studying equity in schools for more than three decades. She was elected an American Educational Research Association fellow in 2015 and currently teaches graduate courses in research design, policy research methods, and gender and race equity. Dr. Shakeshaft is the author of three books and more than 200 referred articles and papers, many of which have received national and state awards. Her research focuses on three strands: gender and leadership, sexual abuse of students by adults employed in

schools, and the effectiveness of technology for learning, particularly for students of color.

21. Shin Shin Tang, Ph.D. is a licensed psychologist with over two decades of experience providing psychotherapy with a focus on trauma and Asian culture. She received her doctorate in clinical psychology from the University of Oregon, where she has taught numerous undergraduate and graduate psychology courses on trauma, research methods, psychotherapy, and mental illness. Her scholarly work on the intersection of trauma, gender, and culture has appeared in peer-reviewed journals such as *The BMJ*, the *Journal of Nervous and Mental Disease*, and the *Journal of Trauma and Dissociation* for which she also has served on the editorial board for seven years.

WHEREFORE, proposed *amici curiae* respectfully request that this Court GRANT this Motion and accept their Brief for consideration in this case.

October 22, 2021

Respectfully submitted,

s/ Monica H. Beck

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App. P. 32(g)(1) and 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 2,067 words, as counted by Microsoft Office Home and Business 2019.

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s/ Monica H. Beck

Monica H. Beck

CERTIFICATE OF SERVICE

I certify that, on October 22, 2021, this motion was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

s/ Monica H. Beck

Monica H. Beck

EXHIBIT 1

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TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS C-1

CORPORATE DISCLOSURE C-4

TABLE OF CITATIONS iii

AMICI CURIAE'S IDENTITY, INTEREST, AND AUTHORITY TO FILE 1

SUMMARY OF ARGUMENT 2

BACKGROUND 3

ARGUMENT 6

 I. THE DISTRICT COURT RELIED ON DISPROVEN ASSUMPTIONS ABOUT SEXUAL ASSAULT AND SURVIVORS' BEHAVIOR IN THE REASONING PROVIDED FOR SUMMARY JUDGMENT. 6

 A. A victim's behaviors around and after the time of an assault are not necessarily indicative of whether an assault occurred. 6

 B. Some post-assault behavior, including the victim's communication with the offender, may appear counterintuitive to untrained lay individuals, but the behaviors in fact are not abnormal or indicators that an allegation of sexual violence is false. 9

 II. THE DISTRICT COURT INACCURATELY CHARACTERIZED A.P.'S DISCLOSURE BEHAVIORS AS RAISING "REASONABLE" DOUBTS ABOUT HER DISTRESS..... 12

 III. ACCUSATORY, BLAMING, AND SHAMING RESPONSES TO DISCLOSURE OF SEXUAL ASSAULT CONTRIBUTE TO SECONDARY VICTIMIZATION, INSTITUTIONAL BETRAYAL, AND THE VICTIM'S WITHDRAWAL FROM INVESTIGATORY PROCEDURES..... 16

 IV. IN LIGHT OF THE HIGH RATE OF ON-CAMPUS PEER SEXUAL ASSAULT AND LOW RATES OF FALSE REPORTING, IT WAS UNREASONABLE FOR

DEFENDANTS TO INTERROGATE, BLAME, AND
PUNISH A.P. FOR REPORTING SEXUAL ASSAULT..... 20

CONCLUSION22

CERTIFICATE OF COMPLIANCE.....23

CERTIFICATE OF SERVICE24

TABLE OF CITATIONS

Alexis A. Adams-Clark et al., *University crime alerts: Do they contribute to institutional betrayal and rape myths?* 5 *Dignity: J. on Sexual Exploitation & Violence* (Aug. 2020).....7

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AMICI CURIAE'S IDENTITY, INTEREST, AND AUTHORITY TO FILE

Amici are Dr. Jennifer Freyd, Dr. Sara E. Boyd, and 18 other mental health professionals and specialists with expertise in sexual violence, victim behaviors, and institutional betrayal. They provide information that is helpful and relevant to the Court's disposition of this case. More detailed statements of interest are contained in the accompanying motion seeking the Court's leave to file this brief.

No party's counsel authored the brief in whole or in part; no party or party's counsel contributed money that was intended to fund the preparation or submission of this brief; and no person other than the *amici curiae*, its members, or its counsel contributed money that was intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

From the perspective of psychologists and professionals specializing in interpersonal violence, *amici curiae* provide a short overview of the history of the case – in which A.P., a sixteen-year-old high school student, was sexually assaulted by a peer on school grounds – followed by explanations of the relevant findings in the research literature with respect to how many victims of sexual assault typically behave around the time of an assault and afterwards, delayed disclosure, developmental considerations related to adolescent peer sexual assault, and institutional betrayal. It is important for the Court to consider well-established findings contained in this brief that counter the disproven mythologies surrounding sexual assault that served as the basis for the district court’s June 28, 2021 opinion granting summary judgment for Defendants. This brief specifically establishes the following:

1. The district court relied on faulty assumptions in the reasoning it provided as a basis for granting Defendants’ motion for summary judgment;
2. The district court inaccurately characterized A.P.’s disclosure behaviors as raising reasonable doubts about her distress;
3. Accusatory, blaming, and shaming responses to A.P. and other victims’ disclosure, such as telling the victim that, “it looked like [the victim]

- liked it or wanted it,” contribute to secondary victimization, harm associated with institutional betrayal, and the victim’s withdrawal from investigatory procedures; and
4. It was not reasonable, in light of longstanding findings regarding the prevalence of peer sexual assault at school and the low rate of false reporting, for educators and other school employees to have interrogated, blamed, and punished A.P. for the sexual encounter with J.B.

BACKGROUND

A.P. was in her second year of high school and had an Individualized Education Program for her learning-related disabilities when male student J.B. persuaded her to meet him in a hallway after school hours. Appellant Opening Br. (“OB”) at 15, 18–19.¹ J.B. and A.P. exchanged greetings and had some voluntary initial contact (e.g. a hug). *Id.* at 19. J.B. repeatedly asked A.P. to “give him head,” and she refused. *Id.* J.B. became physically aggressive, choked A.P. twice, and forced her to perform oral sex on him. *Id.* at 19–20. After the assault, A.P. was distressed and shocked by J.B.’s behavior. *Id.* at 20. However, because A.P. did not want to put herself at further risk by upsetting J.B., she hugged him before leaving school. *Id.*

¹ Citation page numbers refer to the CM/ECF number located at the top right-hand side of Plaintiff-Appellant’s Opening Brief.

The next day at school, Aminah Mitchell, a teacher who A.P. trusted, reportedly noticed that A.P. was visibly distressed and approached A.P. *Id.* at 20. A.P. disclosed to the teacher that J.B. “had put his hand around her neck” and “made her do things that she didn’t want to do.” *Id.* The teacher notified a school counselor that a student may have been sexually assaulted at school. *Id.* at 21. The counselor informed a school administrator “there might have [been] a rape in [the] school.” *Id.*

The guidance counselors interviewed A.P. *Id.* at 22–23. A.P. told them she had been forced to do “something [she] didn’t want to do” and wrote “head” on a note to explain what had happened. *Id.* at 21-22. The counselors thought A.P. appeared both “upset” and “giggly” during the interview. *Id.* at 22. A.P., who did not want to get J.B. in trouble and was worried about how he would react, did not identify him as the assailant. *Id.* However, a counselor asked A.P. if J.B. was the perpetrator because other students had complained about his harassing behavior. *Id.* at 23. A.P. confirmed that it was. *Id.*

Defendants concluded that they were dealing with a consensual sexual act and began treating A.P. like she was accused of violating the school Code of Conduct. *Id.* at 23–24. After her initial experience being questioned by school personnel, A.P. declined to speak further about the assault with assistant principals, and in response, the school placed her in In-School Suspension, took away her

phone, and did not provide her with coursework. *Id.* at 24–25. Later that day, school administrators told A.P. they had reviewed surveillance video (which did not show the assault itself, but did show some interactions between J.B. and A.P. prior to and after the assault). *Id.* at 25. When A.P. asked if they had seen J.B. choke her, an assistant principal responded, “Yes, but it looked like you liked it or wanted it.” *Id.*

The school suspended A.P. for ten days and referred her to a disciplinary hearing. *Id.* at 27. A.P. was charged with violating the school Code of Conduct “by committing sexual impropriety.” *Id.* at 28. At the hearing against A.P., she stated that she did not willingly engage in oral sex, that she repeatedly told J.B. “no,” and that J.B. choked her. *Id.* The school Principal, who presented the case against A.P., characterized the assault as A.P. “giv[ing] another student a gift” and recommended A.P. be expelled, which was the most severe sanction available to the school. *Id.* at 15, 28. The tribunal found A.P. in violation of the Code of Conduct and expelled her. *Id.* at 28–29. She was presented the option of attending an alternative school, but she did not feel safe attending that school because J.B. would also be a student there. *Id.* at 29. The record also indicates that the alternative school may not have provided her with disability-related accommodations. *Id.* Since being expelled, A.P. has not been able to complete her high school education. *Id.* at 15.

ARGUMENT

I. THE DISTRICT COURT RELIED ON DISPROVEN ASSUMPTIONS ABOUT SEXUAL ASSAULT AND SURVIVORS' BEHAVIOR IN THE REASONING PROVIDED FOR SUMMARY JUDGMENT.

The district court's order granting Defendants' motion for summary judgment asserted "the administrators' response to A.P.'s situation was reasonable." The order stated that A.P.'s post-assault behavior as reflected on surveillance video (which did not capture the assault itself) indicated that an assault did not occur, and that "[i]t is reasonable to interpret A.P.'s actions and behavior in the last twelve minutes of the video as demonstrating that J.B. had not just sexually assaulted her a few minutes earlier." The order also characterized A.P.'s disclosures that she "did something she did not want to do," as "more ambiguous than A.P. suggests."

Amici provide important information for this Court to consider with respect to how the district court's interpretations and conclusions are at odds with longstanding findings with professional consensus in the field of trauma psychology about rape myths, victim post-trauma behavior, and perpetrator behaviors and attitudes. For the Court's benefit, *amici* offer a summary of those relevant findings.

A. A victim's behaviors around and after the time of an assault are not necessarily indicative of whether an assault occurred.

The belief that a "real victim" would not engage in positive social

interaction with an abuser after they have been harmed is not rooted in the reality of interpersonal violence. Similarly, agreeing to meet alone is not tantamount to consent for sexual activity. Consent to some activity is not consent for future or additional forms of sexual contact. Appeasement, communication, or other positive social behaviors by the victim toward the perpetrator after an alleged assault are not dispositive of sexual abuse having occurred. These types of beliefs and attitudes—for example, that agreeing to meet alone either means consent has been provided or that seemingly positive interactions following an assault mean the assault did not take place—are consistent with rape myths that are common in the general public, including adolescents and young adults.²

Attitudes supportive of sexual assault (i.e. “rape myths”) are also expressed by offenders generally and in the aftermath of a completed assault.³ One study of sex offenders’ post-assault justifications, conducted by Wegner and colleagues, noted that,

Some rapists implied that the victims brought the rape on themselves or wanted to be raped because they flirted with them; others convinced themselves that when she stopped resisting, it was because she enjoyed it (even if they had

² See Alexis A. Adams-Clark et al., *University crime alerts: Do they contribute to institutional betrayal and rape myths?* 5 Dignity: J. on Sexual Exploitation & Violence (Aug. 2020), <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1188&context=dignity>.

³ In the risk assessment context, these beliefs are often referred to as “attitudes supportive of offending,” or “offense-supportive attitudes.”

threatened her with a weapon). Others cited the victim's reputation for being sexually promiscuous, her revealing clothing or willingness to go somewhere alone with them as evidence that the victim was asking to be raped.⁴

Endorsement of myths related to sexual assault is also associated with a tendency to have a lenient attitude toward perpetrators of sexually abusive behavior, and higher levels of victim-blaming and selective attention when assessing information related to an alleged assault.⁵

Although the attitudes and stereotypes described in the foregoing are fairly common in the lay public, school personnel charged with responding to sexual assault and/or abuse allegations, and mental health professionals, should possess an understanding of the available research on sexual assault generally and victimized adolescents specifically, before offering speculation about a victim's credibility and honesty, and certainly before questioning an alleged victim about a sexual assault. In the absence of sufficient education and experience in the reality of sexual abuse and assault, untrained individuals, unfortunately, tend to rely on what they intuitively believe must be true about abuse, and debunked stereotypes, rather

⁴ Rhiana Wegner et al., *Sexual assault perpetrators' justifications for their actions: relationships to rape supportive attitudes, incident characteristics, and future perpetration*, 21 *Violence Against Women* 1018 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4491036/>.

⁵ Craig A. Harper, et al., *Excusing and justifying rape cognitions in judgments of sexually coercive dating scenarios*, 32 *Sexual Abuse* 543 (2020).

than the findings in the scientific literature. This is particularly important because the responses of individuals in the victim's family, community, and school can exert major effects on how the abuse affects victims and their willingness to continue to disclose details about what happened to them in order to seek help and safety.⁶

B. Some post-assault behavior, including the victim's communication with the offender, may appear counterintuitive to untrained lay individuals, but the behaviors in fact are not abnormal or indicators that an allegation of sexual violence is false.

There are known neurobiological phenomena that occur in the aftermath of highly stressful events such as sexual assault. The "defense cascade," which is an evolved set of behavioral and physiological responses to threats, is not limited to fight or flight. The defense cascade also includes freezing behavior, seen in humans and non-human animals. Such responses are involuntary and not under conscious control.⁷ Because of the neurobiological consequences of sexual assault,⁸ the victim may show emotional responses that appear incongruous or

⁶ Rebecca Campbell, et al., *An ecological model of the impact of sexual assault on women's mental health*, 10 *Trauma, Violence, & Abuse* 225 (2009).

⁷ See Kasia Kozłowska, et al., *Fear and the defense cascade: clinical implications and management*, 23 *Harv. Rev. of Psychiatry* 264 (2015).

⁸ For an overview of these neurobiological responses, and how often and why others misunderstand and inappropriately react to victims, see *The Neurobiology of Sexual Assault: Implications for Law Enforcement, Prosecution, and Victim*

counterintuitive to untrained laypeople. For example, the person may giggle or engage in submissive smiling behaviors while discussing the assault or while interacting with the offender. They may not initially show or subjectively experience strong emotions due to the neurobiological effects of trauma, which include changes in pain and sensory processing, as well as brain regions that control movement, and these effects can produce seemingly counterintuitive victim responses such as emotional flatness, freezing, and analgesia (i.e. the loss of ability to feel pain) due to endogenous opioid release.⁹

Because humans are social animals, there are social factors related to pre- and post-assault behaviors, particularly when the victim and perpetrator know one another, which is the case for the majority of interpersonal violence incidents. For example, individuals who are assaulted by an acquaintance may engage in appeasement behaviors to avoid escalation, to preserve the social relationship between the victim and offender, and to generate a reassuring facade of normalcy in the aftermath of a traumatic event. The victim may communicate with the perpetrator in seemingly positive, neutral, or ambivalent language. Behaving in a

Advocacy (2012), <https://nij.gov/multimedia/presenter/presentercampbell/Pages/welcome.aspx>.

⁹ Endogenous opioids (e.g. endorphins) are opioids that are released by the body, typically in response to stress or pain. They have analgesic (i.e. pain relief) effects, which can cause a numbing and blunting of both emotional and physical pain.

socially appeasing fashion can be a strategy for the victim to attempt to avoid future abuse, harassment, and/or retaliation by the perpetrator.

It is well established in the field of psychology that victims of sexual assault, particularly assaults by people they know, will often express confusion about what they are supposed to think and feel about the experience,¹⁰ wondering if they must have contributed to the offense in some way, and puzzling over why someone they know (and may trust) would harm them. The capacity to hug a person for a few seconds when leaving a setting is not proof that the person was consenting to a prior encounter or is not distressed or harmed. Compliance with standard social scripts for greeting and leaving is not necessarily indicative of a person's underlying emotional state. In the immediate aftermath of the assault, it would be reasonable to conclude that a victim like A.P. may have not fully processed, comprehended, and labeled her experience, particularly given that she was a child with educationally relevant disabilities, as evidenced by her Individualized Education Program. Her behavior was also consistent with "betrayal blindness" which refers to a lack of accurate appraisal of abuse. This difficulty fully discerning and accepting a betrayal is, in some respects, adaptive, because

¹⁰ Courtney E. Ahrens, et al., *Deciding whom to tell: expectations and outcomes of rape survivors' first disclosures*, 31 *Women Q.* 38 (2007); see also Martin S. Greenberg & R. Barry Ruback, *A model of crime victim decision making*, 10 *Victimology: An Int'l J.* 600 (1985).

avoiding acknowledgment of betrayal “allows for the maintenance of necessary relationships, even those that contain mistreatment, in a way that supports attachment behaviors.”¹¹ There are also developmental considerations based on the sexual assault victim’s age or student status, which impacts their response to such violence. In adolescents, peer relationships are unusually salient and high-priority. The research is clear that adolescents evince greater emotional distress as a result of being rejected by peers (compared to adults), and social exclusion as an adolescent is associated with an increased lifetime risk of psychological disorders. Peer influence, especially the desire to avoid negative social evaluation, is a major determinant of adolescent behavior. Engaging in behavior that will result in peer rejection means that the adolescent is, by risking social rejection, risking major psychological consequences.¹²

II. THE DISTRICT COURT INACCURATELY CHARACTERIZED A.P.’S DISCLOSURE BEHAVIORS AS RAISING “REASONABLE” DOUBTS ABOUT HER DISTRESS.

The order granting summary judgment to Defendants noted that A.P. waited until the day after the assault to disclose to her teacher. It is important for this

¹¹ Carly P. Smith & Jennifer J. Freyd, *Institutional Betrayal*, 69 *Am. Psychol.* 575, 577 (2014); *see also generally* Jennifer J. Freyd & Pamela Birrell, *Blind to Betrayal* (John Wiley & Sons, Inc. 2013).

¹² Catherine Sebastian, et al., *Social brain development and the affective consequences of ostracism in adolescence*, 72 *Brain & Cognition* 134 (2010).

Court to consider that waiting a day to disclose is not unusual for adolescent victims of sexual violence, and even longer delays are normal as well. The delay between the event and the disclosure does not provide information about how distressed the victim was or will be, nor is it an unusual feature that should cast doubt on her credibility. In fact, delayed disclosure is a well-known victim behavior.¹³ A disclosure like A.P.'s, only one day later, is not particularly delayed at all, given that many victims wait longer or never tell.

Adolescents often do not disclose at all, and even fewer report. Progressive, unfolding disclosures are common as adolescents observe and analyze the responses of those to whom they did disclose.¹⁴ They use that information to determine if they should continue to disclose, or should disclose again in the future.¹⁵ For example, A.P.'s aversion to participating in subsequent interviews with school personnel, in light of how they reacted to her initial disclosures, is not surprising and may have conferred some protection against additional harm via

¹³ See Kamala London, et al., *Review of the contemporary literature on how children report sexual abuse to others: Findings, methodological issues, and implications for forensic interviewers*, 16 *Memory* 29 (2008); see also Giannina Fehler-Cabral & Rebecca Campbell, *Adolescent sexual assault disclosure: The impact of peers, families, and schools*, 52 *Am. J. of Cmty. Psychol.* 73 (2013).

¹⁴ Fehler-Cabral, *supra* note 13.

¹⁵ See Ahrens, *supra* note 10.

secondary victimization. In other words, a student's decision not to engage in additional interviews with school personnel may be a rational choice when interaction with those personnel risks the student's well-being and safety.

For students with disabilities, verbal disclosures may not be sufficiently accommodating of their disabilities, thus constraining their ability to effectively disclose.¹⁶ A.P. was a student who had an Individualized Education Program. Her choice of words, for example, that "J.B. made her do things she did not want to do and put his hand around her neck" is typical of the type of language that victims, particularly younger victims and some victims with learning challenges, would use to describe an assault. At the time of A.P.'s initial disclosure to Aminah Mitchell, her teacher, this teacher evidently understood that A.P. was referring to an assault. A.P.'s reticence to speak in detail about the event, and her choice to write down a single word on a piece of paper rather than verbally communicating, speaks to the barriers to her disclosure, not to her veracity or credibility.

Additionally, some of the queries purportedly posed to A.P. such as questioning whether she was made to do something she did not want to do, versus did something she would not normally do (but did because she "liked" J.B.), could be confusing for a student who is under stress, and particularly challenging for

¹⁶ Jesse Krohn, *Sexual harassment, sexual assault, and students with special needs: Crafting an effective response for schools*, 17 U. Pa. J.L. & Soc. Change 29 (2014), <https://scholarship.law.upenn.edu/jlasc/vol17/iss1/2>.

students with some types of disabilities. As Campbell noted when describing victims of sexual assault more broadly:

Victims are questioned about elements of the crime (e.g., penetrations, use of force, or other control tactics) over and over again to check for consistency in their accounts, which can be emotionally unsettling and, given that trauma can impede concentration and memory (Halligan, Michael, Clark, & Ehlers, 2003), cognitively challenging as well.¹⁷

For a youth with a disability, these questioning styles, particularly in the absence of accommodations for their disability, can significantly compromise their ability to be heard when they disclose. Individuals with disabilities who are victims of crime are entitled to accommodations under the Americans with Disabilities Act, and educators should be more familiar than most with the need to accommodate students with disabilities in the school setting. It did not appear that school personnel made efforts to assess A.P.'s needs with respect to effective communication supports during the disciplinary investigation and tribunal, despite her status as an identified individual with a disability. This is analogous to discounting an American Sign Language-utilizing Deaf child's disclosure because they cannot verbally communicate about an assault and would need an interpreter.

¹⁷ Rebecca Campbell, *The psychological impact of rape victims' experiences with the legal, medical, and mental health systems*, 63 *Am. Psychol.* 702 (2008) (citing Sarah L. Halligan et al., *Posttraumatic stress disorder following assault: The role of cognitive processing, trauma memory, and appraisals*, 71 *J. of Consulting & Clinical Psychol.* 419 (2003)).

III. ACCUSATORY, BLAMING, AND SHAMING RESPONSES TO DISCLOSURE OF SEXUAL ASSAULT CONTRIBUTE TO SECONDARY VICTIMIZATION, INSTITUTIONAL BETRAYAL, AND THE VICTIM'S WITHDRAWAL FROM INVESTIGATORY PROCEDURES.

Research has established that people, including adolescents, are most often assaulted by people they know and with whom they have had voluntary social contact. For adolescents, specifically, about half of peer sexual assaults are perpetrated by a friend.¹⁸ This is consistent with the broader finding that about two-thirds of adolescent assaults are perpetrated by an acquaintance of the victim.¹⁹ Responses like those of school personnel to A.P.'s disclosure of forced sexual assault are harmful to victims and counterproductive to a thorough and competent inquiry. The question suggesting that A.P. simply did something out of her normal behavior, rather than being a victim of sexually abusive behavior by J.B., carries an implication that A.P.'s initial characterization was incorrect or a lie and that there was a competing explanation. A.P.'s statement that she "liked" J.B., at least prior to the assault, does not mean that she was not assaulted.

¹⁸ Amy M. Young et al., *Adolescents' experiences of sexual assault by peers: prevalence and nature of victimization occurring within and outside of school*, 38 *J. of Youth & Adolescence* 1072 (2009).

¹⁹ Callie M. Rennison, *Rape and sexual assault: Reporting to police and medical attention, 1992-2000*, U.S. Dep't of Justice, Bureau of Justice Statistics (2002), <https://bjs.ojp.gov/content/pub/pdf/rsarp00.pdf>.

There are well-known and easily accessible guidelines and recommendations²⁰ for conducting interviews of possible adolescent victims of sexual abuse and assault, which assist individuals questioning a child to formulate prompts and queries in a manner that (a) minimizes secondary victimization, (b) elicits high-quality information, and (c) does not contaminate or otherwise interfere with subsequent criminal investigations. Unfortunately, many victims, including adolescent victims, have the experience of being aggressively questioned and blamed by friends, family, and other ostensible sources of support and safety, such as law enforcement or educators.²¹ Such questions are distressing and harmful for the victim and may negatively impact the quantity of information obtained via interview,²² reduce the likelihood that the victim may pursue formal recourse (such as pressing charges), increase the likelihood that the victim will develop serious

²⁰ For a summary of strategies and related considerations, see Chris Newlin, et al., *Child Forensic Interviewing: Best Practices*, U.S. Dep't of Justice, Juvenile Justice Bulletin (2015), <https://www.ojjdp.gov/pubs/248749.pdf>.

²¹ Megan R. Greeson et al., “*Nobody deserves this*”: Adolescent sexual assault victims’ perceptions of disbelief and victim blame from police, 44 *J. of Cmty. Psychol.* 90 (2016).

²² Debra Patterson, *The impact of detectives’ manner of questioning on rape victims’ disclosure*, 17 *Violence Against Women* 1349 (2012).

trauma-related mental health symptoms, and lessen the probability that the victim will seek help and support in the future.²³

Amici—experts in this field—consider the responses of school administrators in this case to be consistent with institutional betrayal. Institutional betrayal refers to the “institutional action and inaction that exacerbate the impact of traumatic experiences.”²⁴ There were a number of examples of institutional betrayal in this case, ranging from individual-level shaming and disbelieving responses (e.g., “It looked like you liked it or wanted it”) and minimizing characterizations (e.g., Principal Lane describing the assault as a voluntary “gift” offered by A.P. to J.B.), to higher-level failures to utilize appropriate procedures in investigating the assault and conducting disciplinary hearings, and the exclusion of A.P. from her educational setting via expulsion.

Institutional betrayal creates multiple forms of harm. A victim experiences harm when they are rejected, blamed, or punished for their disclosures, and then additional harm arising from the inadequacy of the institution’s response to sexual assault, which facilitates impunity and future or continued perpetration of sexual

²³ Megan R. Greeson, *Cold or caring? Adolescent sexual assault victims’ perceptions of their interactions with the police*, 29 *Violence & Victims* 636 (2014).

²⁴ Carly P. Smith & Jennifer J. Freyd, *Institutional betrayal*, 69 *Am. Psychol.* 575 (2014).

abuse. Institutional betrayal is a construct that can be applied to high schools and adolescent-aged youth, and it is associated with more severe psychological symptoms in youth who experience it.²⁵ After experiencing institutional betrayal, it is not at all uncommon for victims to withdraw from making themselves vulnerable to that institution again, because of the violation of trust and disillusionment that the victim experienced. In a sense, this pattern can reinforce institutional betrayal, because the institution is able to maintain denial of the sexual assault once victims are expelled or withdraw from the institution.

In this case, the school made it difficult to report sexually abusive behavior, responded inadequately to a report of sexually abusive behavior, denied the occurrence of sexually abusive behavior, punished the person who reported the sexually abusive behavior, created an environment where victims of sexually abusive behavior no longer felt like valued members of the institution and created an environment where continued involvement was difficult for the individual who reported abuse. These behaviors are consistent with a pattern of institutional

²⁵ Monika N. Lind et al., *Isn't high school bad enough already? Rates of gender harassment and institutional betrayal in high school and their association with trauma-related symptoms*, 15 PLoS ONE (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7444512/pdf/pone.0237713.pdf>.

betrayal as assessed by instruments such as the Institutional Betrayal

Questionnaire.²⁶

IV. IN LIGHT OF THE HIGH RATE OF ON-CAMPUS PEER SEXUAL ASSAULT AND LOW RATES OF FALSE REPORTING, IT WAS UNREASONABLE FOR DEFENDANTS TO INTERROGATE, BLAME, AND PUNISH A.P. FOR REPORTING SEXUAL ASSAULT.

It is well-established that peer sexual assault, particularly that perpetrated by a male student against a female student, on school grounds, is common.²⁷

Estimates vary somewhat according to how researchers define and ask about sexual violence, and whether the estimate relates to incidence or prevalence, but the overall pattern is that the research shows high rates of victimization among adolescents. A study of high school students showed that about half of female high school students, and about a quarter of male high school students, reported a history of sexual assault victimization. A survey of thousands of high school students showed that about 22% of the female students reported sexual abuse victimization, and about 10% of male students reported sexual abuse perpetration,

²⁶ *Id.*

²⁷ *See Young, supra* note 18.

in the year prior to the survey.²⁸ And it appears that school is the most common site for peer sexual victimization among adolescents.

At the same time, false reports of sexual assault are uncommon, with methodologically competent research typically ascertaining estimates of false reports ranging from about 2%–10%.²⁹

A student like A.P., who was already at risk of sexual assault due to age, gender, and setting, faces yet additional risk due to her status as a student with a disability, since youth with disabilities experience significantly higher rates of victimization compared to their non-disabled peers.³⁰ J.B., the alleged perpetrator, reportedly exhibited a pattern of harassing behaviors, such as telling female peers to “suck [his] dick.”³¹ App. II at 435. Given these factors, the reasonable course of action would have been to be careful and thoughtful in the inquiries of A.P., and

²⁸ Corrine M. Williams et al., *Victimization and perpetration of unwanted sexual activities among high school students: Frequency and correlates*, 20 *Violence Against Women* 1239 (2014).

²⁹ David Lisak et al., *False allegations of sexual assault: An analysis of ten years of reported cases*, 16 *Violence Against Women* 1318 (2010).

³⁰ Nancy A. Murphy & Ellen R. Elias, *Sexuality of Children and Adolescents With Developmental Disabilities*, 118 *Pediatrics* 398 (2006).

³¹ J.B. himself was hardly served by a response that failed to adequately examine his alleged conduct, since a competent and comprehensive school response to A.P.’s allegations should also have included examination of the possibility that he was facing behavioral challenges that could have been managed and treated.

to appropriately weigh A.P.'s account of sexual violence on school grounds in light of the high base rates of on-campus sexual assaults and the low base rate of false sexual assault reports.

CONCLUSION

For these reasons, this Court should reverse the judgment below and remand Plaintiff-Appellant A.P.'s case for further proceedings.

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Monica H. Beck

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I certify that, on October 22, 2021, this brief was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

s/ Monica H. Beck

Monica H. Beck