**“Dear Colleague: The Challenge of Student Sexual Misconduct on College Campuses”**

**(Adapted from a program created by U.S. Magistrate Judge Robert S. Ballou, U. S District Court, Western District of Virginia, 2017. Used with permission.)**

**OVERVIEW**

The following activity exposes students to the timely issue of sexual misconduct on college campuses. While not every student will attend college, every student should understand their personal rights protected by the Bill of Rights. The following scenario and the three questions students debate for this activity will resonate with all students. The teacher should review relevant amendments and other regulations – Title IX, for example – before beginning the activity.

**LOGISTICS**

The following plan suggests one way to organize this activity. Divide class into teams of three students each. Half the teams will debate the “General Counsel” response to the questions while the other half will debate the questions from the “Accused Student” perspective. Each member of each team has five minutes to argue their response (total of 15 minutes per team). Teams argue before a panel of judges drawn from the class or, ideally, three volunteers from the local bar association. Judges score each team’s performance using the attached rubric or one created by the teacher. At the end of the activity, the best “General Counsel” team and the best “Accused Student” team receive awards for their performance.

We encourage teachers to adapt this activity to suit their class size and content focus.

**SCENARIO AND QUESTIONS**

The Department of Education has issued a "Dear Colleague" letter to public colleges and institutions of higher learning. The letter is intended to make clear to colleges and universities their obligation to provide a safe environment to all students attending the school. Consequently, schools are expected to address quickly allegations of sexual misconduct by one student against another.

The two groups for the debate are the general counsel's office for a large public university, Whyse Union Polytechnic University (Whyse UP U.) who will speak in favor of moving these investigations quickly. The other side represents the national Student Council for the Accused’s Rights and Equality of Discipline (SCARED) who will speak in favor of protecting the rights of the accused. Your problem is as follows:

A student charged with misconduct retains all Fifth Amendment rights against self-incrimination. However, schools frequently do not delay proceedings for those students who may also face criminal charges. Consequently, the student faces a dilemma in a student misconduct proceeding:

1. Offer a defense against the charges by testifying and run the risk that anything said could be used against them later during criminal proceedings, or
2. Invoke their Fifth Amendment right not to testify and risk the negative impact such an action may have on their defense.

You will debate the following questions:

1. What purposes are served (or not served) by requiring a student to defend against a student misconduct charge while criminal charges are pending or threatened?
2. What rule should the law follow - allow criminal proceedings to resolve the case before beginning student misconduct proceedings or follow the college's rule and why?
3. How are the rights of the victim and those of the accused properly balanced in this situation and should either take precedence over the other?