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A New Diagnosis of the Title IX Problem: Barriers to Ending Campus Sexual Harassment and Sexual Violence through Civil Rights Law

DISSERTATION

submitted in partial satisfaction of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

in Sociology

by

Jessica Grace Cabrera

Dissertation Committee:
Professor Francesca Polletta, Co-Chair
Professor Shauhin Talesh, Co-Chair
Professor Valerie Jenness, Member
Professor Lauren Edelman, Member
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2021

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DEDICATION

To my strong they/them spouse, Adrian Williams. Without you, I would never have made it this far.

To my friends and family who love and support me in countless wonderful ways.

To all the survivors of violence in all its forms, and to those we lost to COVID-19 and police brutality.

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ABSTRACT OF THE DISSERTATION

A New Diagnosis of the Title IX Problem: Barriers to Ending Campus Sexual Harassment and Sexual Violence through Civil Rights Law

Jessica Cabrera

Doctor of Philosophy in Sociology

University of California, Irvine, 2020

Professor Francesca Polletta, co-chair

Professor Shauhin Talesh, co-chair

In this dissertation, I examine how various stakeholders shaped the meaning of compliance with Title IX sexual harassment laws in the United States. Title IX of the Education Amendments of 1972 is a widely recognized law that is intended to achieve gender equality in education, and more recently, has been used to address campus sexual violence. However, experts have questioned whether Title IX has actually reduced gender and sexual violence in educational settings. Extant literature suggests that university administrators constructed the meaning of Title IX law to defend the interests of the university over the rights of targets of harassment, rendering Title IX ineffective in fulfilling its intended function. These scholars draw from socio-legal studies on Title VII that explore the relationship between law and organizations and show how organizations construct anti-discrimination policies mainly to shield themselves from liability. Situated in a tradition of scholarship that studies the relationship between law, organizations, and social movements, I advance knowledge on Title IX by considering the role that various stakeholders play alongside university administrators in altering the meaning of Title IX. My study is based on the University of California (UC). I draw on multiple, qualitative methods: a historical genealogy of Title IX (case law, statutory law, and administrative law), a genealogy of Title IX policy in the UC, 30 interviews with survivor advocates in the UC, 30 interviews with UC Title IX administrators, and a focus group study of 73 college age women in the UC. In Chapter Two, I argue that legal strategies by feminist survivor advocates and university administrators enabled the men's rights movement to weaken Title IX. In Chapter Three, I account for why feminist survivor advocates and Title IX administrators used the legal strategies that they did, pointing to fissures in the feminist movement about the task of Title IX. In Chapter Four, I argue that because white activist women originally lead the charge to get universities to comply with Title IX, non-activist women of color have long been marginalized in the law shaping process.

Key words: Title IX, survivor movement, men's rights movement, legal endogeneity, sociology of law and organizations, social movements, civil rights, #metoo, intersectionality

CHAPTER ONE

In this dissertation, I examine how various stakeholders associated with the University of California shaped the meaning of Title IX sexual harassment laws and university-level policies from 1972 to 2020. In line with new institutional approaches to the law (Albiston 1999; Dobbin 2009; Dobbin & Kalev 2017, 2018, 2019; Dobbin & Kelly 2007; Dobbin et al. 2015; Dobbin et al. 2011; Edelman 2016, 1992; Edelman et al. 2011; Edelman & Talesh 2011; Kalev et al. 2006; Kelly & Dobbin 1999; Marshall 2003, 2005; Talesh 2009, 2012, 2014, 2015), I theorize the processes and mechanisms by which organizational actors shape the meaning of compliance to the laws that are meant to regulate them, challenging the idea that law flows in a singular direction from legal structures and into organizations. Rather, law is a highly constitutive and cultural process (Berezin 1997; Campbell 2002; Skrenty 1996; Steensland 2009; Kahn 2012). More than new institutionalists have done, however, I draw attention to the role of multiple actors in altering law's meaning. In this case, along with government agencies, legislatures, and courts, I show how social movement groups, university administrators, and marginalized university constituents constructed law in higher education at multiple levels of law and policymaking, with powerful consequences.

Feminist advocates of survivors, progressive social movements, lawmakers, legal advocates, and university administrators have searched urgently for solutions to the problem of sexual harassment on college campuses. In a 2003 study, United States universities were found to have the highest rate of sexual harassment behind the country's military (Ilies et al. 2003). Existing research indicates that sexual harassment on college campuses is rampant among faculty, staff, graduate and undergraduate students, and can negatively affect the target's educational opportunity, societal advancement, and overall well-being (AAUW 2005; NASEM

2018; NIJ 2007). Feminist social movements spent decades mobilizing to win legal protections for targets of sexual harassment under Title IX, a 1972 law administered by the Department of Education that is intended to regulate how schools respond to gender discrimination on their campuses. However, these protections have not successfully reduced sexual harassment in universities. The dissertation investigates the role of various stakeholders in rendering Title IX laws ineffective in fulfilling their intended function.

Feminist lawmakers and legal activists like Catharine MacKinnon (1979, 2016) originally modeled Title IX law in the education context after Title VII anti-harassment laws meant to regulate organizations (Ali 2011). Proponents of Title IX believed that punitive regulatory laws could help push organizational management to discipline, fire, and/or expel perpetrators of harassment, thereby reducing harassment itself. For this reason, sociologists are inclined to believe that Title IX is failing to work for the same reasons that Title VII failed to work (see: Pappas 2016): because organizations' management constructs the meaning of laws through lobbying and litigation, and centers managerial priorities at the expense of workers' civil rights (Edelman 2016). But universities are unique settings in many ways. Universities have a large activist presence, and people who espouse social movement values are sometimes in management and administrative positions. Universities are also typically obligated to apply socially-conscious laws and policies in a way that balances the interests of increasingly polarized ideological groups, especially in regards to social issues like race, immigration status, and gender (Norrander and Wilcox 2008). Finally, universities have diverse constituencies with unequal positions of power, knowledge, and access to institutional resources.

These differences account for the fact that the legal regulation of a university is likely to look very different from that of other kinds of organizations. In this case, the fact that activists in

favor of Title IX were in positions of administrative responsibility challenges the idea that management here sought to skirt regulation. Instead, several social actors, including men's rights groups, contributed to the weakening of Title IX. Because administrators took on a restorative justice approach to Title IX and attempted to balance the needs of both survivors and perpetrators, both groups representing survivors and representing accused perpetrators saw administrators as unfair. But Title IX administrators were not "managerializing" law in the university. Rather, feminists in different positions had different ideas about what substantive compliance to Title IX should look like. The rift within the feminist social movement, I argue, allowed men's rights groups to have more power in controlling the law.

The university is also different from other types of organizations in that its members have vastly different abilities to affect law. There are not just employees and management; there are students, administrators, faculty, staff, in-house lawyers, and mental health and healthcare workers, all with varying degrees of political interest and engagement. Non-activist college age women of color do not affect Title IX in the same way as those who are mobilized, such as white undergraduate student survivor activists. Feminists in administrative positions differ from student survivor activists in how they believe Title IX should be carried out. Together, these distinctive features of universities account for the fact that Title IX laws were constructed quite differently than were Title VII laws. The Title IX context provides an opportunity to understand how administrators, activists, robust counter-movements, and non-activist constituents enable or hinder one another in changing the law's meaning. Social movements – not just organizations – play a huge role in how law plays out on the ground.

Sociology of law, organizations, and movements

The dissertation bridges and contributes to literatures in the sociology of law and organizations and the sociology of social movements. New-institutional literature in sociology shows how organizations change the meaning of anti-discrimination law in favor of their own interests and at the expense of victims' rights (Edelman 2016; Galanter 1974; Albiston 1999). Further, research on Title VII finds that management typically does not espouse social movement values, take seriously the legal and organizational goals of the movement, or think about laws as civil rights work (Dobbin & Kalev 2019; Tinkler 2012; Edelman 2016). However, studies of the Title VII context focused little on how social movements and counter-movements may construct law within organizations. They hypothesized that organizational actors who champion social movement values can play a role in driving substantive compliance to law in organizations (Edelman 2016), but overall, few new-institutional studies find that organizational actors are "insider activists," a term more used in social movements literature (Scully and Segal 2002; Bell et al. 2003; Buchter 2019; DeCelles, Sonenshein, and King 2019).

Scholars developed the term "insider activists" in order to understand how actors internal to organizations can drive social change (Scully and Segal 2002; Bell et al. 2003; Buchter 2019; DeCelles, Sonenshein, and King 2019). This literature examines how insider activists frame strategies (Snow et al. 1986; Raeburn 2004) or "package moves" (Dutton et al. 2001) to sell specific issues to management (Dutton and Ashford 1993; Dutton et al. 2001; Howard-Grenville 2007; Alt and Craig 2016). Insider activists are also known to challenge the diversity commitments of their hiring corporations (Scully and Segal 2002), choosing to voice concerns (Hirschman 1970) with the current issues of discrimination in organizations and to "capitalize on apparent hypocrisies to urge change" (Scully and Segal 2002: 161). Insider activists push

organizations to "walk the talk" of their overbroad commitments around diversity (Meyerson and Scully 1995; Raeburn 2004; Scully and Segal 2002; Briscoe and Safford 2008). I claim that many Title IX administrators are "insider activists" who are committed to constructing and implementing Title IX in line with feminist social movement principles and legal ideals. However, the "insider activist" literature does little to explain why insider activists might be seen as adversarial to the movement by other movement members. I contribute to the literature by showing how insider activists can alienate the members of the cause they fight for – not because they serve the interests of the institution, but because their professional backgrounds and lack of direct threat of violence lead them to see the task of Title IX differently from how survivors see it.

Unlike organizations scholars, social movement scholars have done much to explore how social movements shape formal laws and organizational policies (Amenta et al. 2010; Andrews & Edwards 2004; Jenness 1999; Meyer 2006; Pedriana 2006, 2011; Polletta 2000, 2006; Zippel 2006). Social movements can affect the formal law by lobbying regulatory agencies (Pedriana 2006) and legislatures (Polletta 2000), and by deliberately picking court cases (Brown-Nagin 2005) and writing amicus briefs (Pedriana 2011) to change case law. They can also change organizational policies by mobilizing to change the formal law, and directly through their organizations, such as through union organizing, protest, and negotiation with policy elites (Amenta et al. 1992, 1994, 1999). Scholars have shown that social movements do not just seek to change written laws and policies so that they are sympathetic with movement goals; they also do "interpretive work" to shape how authorities and lay people enact laws in their favor. Ewick and Silbey (1998, 2003) and Merry (1990) show how social movements affect legal consciousness. Short (2005) shows how feminist social movements informed K-12 schools' implementation of

Title IX anti-harassment policies in the 70s and 80s before the courts ruled that schools could be found liable for peer-to-peer harassment. Katuna & Holzer (2016) show how feminists shaped how survivors mobilized early Title IX laws through legal education.

In sum, social movement scholars have demonstrated how social movements affect formal law, organizational policy, and the implementation and mobilization of laws by authorities and lay people, and have even examined some of these phenomena in the early years of Title IX in K-12 education. However, social movement scholars have yet to systematically examine the extent to which social movements interact with regulated organizations' management as well as with counter-movements to shape law in different kinds of organizations (Edelman et al. 2010). I set out do this by offering a systematic analysis of how social movements, counter-movements, and university management interacted in defining Title IX sexual harassment laws in universities. Substantial attention has been given to how ordinary people interpret law through varying forms of legal consciousness that they glean from everyday situations (Ewick and Silbey 1998; Sarat and Kearns 1995; Marshall and Barclay 2003; Nielsen 2000; Levine and Mellema 2001). But scholars are just beginning to explore how different stakeholder groups shape Title IX based on varying forms of legal consciousness (Albrecht and Nielsen 2020). This dissertation builds on a tradition that follows the work of Davis et al. (2005) in bringing social movements and law and organizations scholarship together (Davis and Thompson 1994; Davis and Zald 2005; Lounsbury, Ventresca, and Hirsch 2003; Morrill, Zao, and Rao 2003; Schneiberg, King and Smith 2008) in order to capture the conditions under which civil rights laws become ineffective in protecting marginalized groups.

This project highlights the interplay between organizations and social movement actors. I do so in four main ways. First, I argue that movements may challenge the meaning, legality, or

scope of regulation after it has been put in place. Men's rights groups – not just the regulated organizations – challenged the meaning of Title IX.

Second, I posit that social movement goals are often championed by people within the organization being regulated. In the Title IX context, I depict UC Title IX administrators as "insider activists" who were interested in implementing Title IX in line with feminist goals and visions. In doing so, I challenge literature that suggests that organizational management create legalized structures (i.e. internal policies and procedures) that protect the interests of the organization at the expense of potential rights claimants (Edelman, Uggen, and Erlander 1999; Marshall 2005; Edelman 2016). It is not just managerial logics that can influence the way in which organizations understand law and compliance; it is also social movement forces (men's rights groups, Title IX administrators, and survivor advocates) that influence the construction and implementation of legalized structures in organizations. I contribute to the traditional literature on organizations by capturing how the push and pull among organizations and social movement actors affects the implementation and interpretation of these legalized structures.

Third, I demonstrate that movements may create fissures among people ostensibly on the same side. There was division among feminists over what it means to move beyond merely symbolic compliance (Edelman 1992; Edelman and Petterson 1999; Edelman 2016), and to substantively comply with Title IX civil rights law. I find that Title IX administrators – who are feminists – differed from survivor advocates in what they thought successful Title IX outcomes look like. Contestation over how laws should be implemented in the university led both Title IX administrators and survivor advocates to engage in legal strategies that left the door wide open significant challenge by conservatives.

Fourth, I show how activists' experiences may shape the law more than the experiences of non-activists. Through the focus group and survey study, I illuminate how non-activist, college age women of color have not been in a position to trust the kind of legal protection that Title IX provides. As a result, the law has not reflected their experience or needs, such as the inclusion of a definition of intersectional discrimination in laws or university-level policies.

The theoretical contributions of this dissertation may be applicable to other cases involving the legal regulation of organizations. Most notably, affirmative action laws in universities have been subject to a similar push and pull among government, administrative, and social movement actors. When federal affirmative action policies were adopted in the 1960s under Democrats, university administrators were already on the side of the groups that stood to benefit from such policies and that later fought to preserve them. University administrators in that case too may have seen themselves as "insider activists" who believed that affirmative action laws could produce racial equity. Pusser (2004) conducted a study on affirmative action in the University of California, and found that many administrators, including the president, provost, chancellors, academic senates, and student associations all believed in affirmative action and fought to preserve the policies in the face of opposition movements. Administrators may have benefitted from law's initial ambiguity not because they wanted to avoid being regulated, but because they wanted to implement affirmative action laws in the best way that they saw fit. There would later be a conservative movement both within and external to government (see, for example: Hopwood v. Texas 1996 and Fisher v. University of Texas 2013) that organized to roll back affirmative action, arguing that the policy disadvantaged white people (Teles 2010). Had university administrators and activists known that there would later be challenges to the meaning

of the law from conservative groups, they may have sought to clarify initial ambiguities in the law.

Methods overview

The findings of the dissertation are based on a multi-method qualitative analysis. First, I conducted a genealogy of law (Grattet and Jenness 2005), a technique used to trace changes in laws and policies over time and code the stakeholder groups that fought for these changes. I conducted two levels of genealogy. In the first, I collected policies and procedures on peer harassment in the University of California, which I gathered from 1981-2020. Second, I gathered relevant legal documents on Title IX from 1972, the year of publication of the original federal Title IX statute, through 2020. These documents totaled to hundreds of pages, and included federal statutes from Congress, administrative documents from the Department of Education, and case law via lawsuits against the UC in the courts. In each round of coding, I kept record of the key producers, point of origin, and the destination of each change in law or policy.

Once I identified important changes in law and policy and the key stakeholders involved, I wanted to account for why these changes happened. I conducted 30 semi-structured interviews with Title IX administrators from two campuses in the University of California system. Key informants helped me understand when a change in UC investigation policy happened because of a change in law, or if it happened for some other reason, such as because of a protest, or the implementation of a task force. I also asked key informants about their own personal values, their views on how laws were constructed and implemented, and their moral stake in Title IX administrative work.

I then conducted 30 interviews with survivor advocates at the University of California. I distinguish survivor advocates from survivors. In my usage, “survivor advocate” or “ally” does

not mean that an individual in this group has experienced harassment or assault – it simply means that they advocate for the right of survivors. Participants included representatives from the graduate student union, advisory boards, task forces, identity centers, and counseling centers on campus. I followed a semi-structured interview guide and asked participants questions such as what they thought positive Title IX outcomes look like, what they thought about their school's response to sexual harassment and sexual violence, and how they define safety.

Finally, I conducted a survey and focus group study of 73 college attending, non-activist women of color at the University of California, Irvine. Participants were 22 years of age on average. The surveys I administered allowed participants to write in their race and/or ethnicity, their experiences with gender-based violence, and their experiences with contacting police. For the video recorded focus groups, I prompted participants to respond to a semi-structured interview guide that asked about their concerns with reporting interpersonal violence or sexual assault to authorities.

Throughout the dissertation, I triangulate the various forms of data. In Chapter Two, I primarily draw from the genealogy of law and the interviews of Title IX officers for my analysis. In Chapter Three, I use data from interviews of Title IX officers, interviews of survivor advocates, and survivor lawsuits against the UC, which I analyzed in the genealogy. In Chapter Four, I draw most heavily from the focus group study, while referring back to interviews with Title IX officers. I explain my methods more in-depth in the chapters.

Plan of the dissertation

The overarching story of Title IX in this dissertation tracks the interplay among various social movement and organizational stakeholders and how they enabled or hindered one another in altering law's meaning. In the next chapter, I conduct a "genealogy of law" (Grattet and

Jenness 2005), a method of tracing changes in laws and policies and coding the stakeholder groups that fought for these changes. I show how the failure of feminists to specify ambiguities in Title IX law allowed the men's rights movement to weaken Title IX both in the courts and under the Trump administration's Department of Education. Neither feminist survivor activists nor Title IX administrators – who I argue are feminist – fought to codify how university-level investigation procedures should be carried out in schools. They did not specify details about major important procedures that could affect the outcome of an investigation: Who should interview perpetrators, witnesses, and those coming forward with complaints? Should different processes and standards of evidence be used for faculty versus students? Who should produce an investigation finding? Who at the university should carry out the discipline associated with a given behavior? Are educational sanctions enough, or should perpetrators be fired and expelled? I show how men's rights groups benefitted from these ambiguities, changing the meaning of Title IX so that it treated men as a protected class.

In Chapter Three, I seek to account for why neither Title IX administrators nor survivor advocates pushed earlier to get investigation procedures clarified. Part of the answer, I argue, lies in the conflict between two groups on the same side. My analysis is based on 30 semi-structured interviews with survivor advocates, 30 semi-structured interviews with Title IX administrators, and an analysis of survivor court cases against the University of California. Title IX administrators, because of their role as educators and their frustrating past experiences with litigation, saw the task of Title IX as to educate and reintegrate offenders into the university. They saw this approach as consistent with their feminist principles. By contrast, survivor advocates wanted offenders to be expelled, which they believed would make victims safer on

campus. Survivor advocates saw administrators' "going too soft" on offenders as a way of protecting institutional interests over survivors' safety.

Further, survivor activists were focused on publicizing the problem: that sexual harassment was an issue in which the institution needed to intervene. Because the survivor movement consisted of young, college age activist women with little expertise in law, they did not have the knowledge or strategy required to offer schools specific guidance on how to construct investigatory procedures. When survivors felt that administrators were not doing enough to fire and expel perpetrators – a measure survivor activists thought would ensure safety on campus – they sued and filed OCR complaints that focused on the outcome of an investigation (i.e. whether a perpetrator was expelled), rather than on the procedures it followed (i.e. the standard of evidence used).

Why did administrators not press for a clarification of the investigatory procedures? Administrators benefitted from ambiguity in the law. Ambiguity allowed Title IX administrators to create Title IX policies that were consistent with what they believed were the regulation's purpose. They wanted to be able to pursue Title IX cases effectively and, although the ambiguity in the law was certainly confusing, it also allowed administrators to pursue Title IX cases in line with their feminist vision. Under these conditions, men's rights groups were able to define investigation procedures used in Title IX cases in a way that benefitted men and accused perpetrators.

In Chapter Four, I explore how activists' experiences may have influenced the law in comparison to the experiences of non-activists. I conducted a survey and focus group study of 73 college age women of color at the University of California, Irvine. I find that young women of color anticipate facing both racism and sexism when contacting authorities, including university

resources like Title IX and campus police. They are unsure that the Title IX office will treat women of color better than comparable institutions and systems like the criminal justice system. Building on the legal consciousness literature on idle rights (Marshall 2005), I show that, for understandable reasons, college attending women of color have long left their Title IX rights idle. This has effectively sidelined them from expanding the law's meaning to include intersectional discrimination (EEOC 1980; Crenshaw 1991). This chapter reveals that feminist activist proponents of Title IX, who are predominantly white women, shape the law more than do non-activists, resulting in a law that does not reflect the experience or needs of women of color.

In the conclusion, I review the overarching argument and the contributions of each chapter. I then lay out the relevance of my argument to cases beyond Title IX, drawing parallels between the Title IX context and the implementation of affirmative action in United States universities. Finally, I offer suggestions for future research.

CHAPTER TWO

Co-Opted Compliance: How Men's Rights Groups Shaped the Meaning of Title IX in Universities (1972-2020)

ABSTRACT

Drawing from the theory of legal endogeneity, this chapter offers a field-level analysis of how progressive social movements, organizations, and conservative counter-movements shaped the meaning of Title IX anti-harassment laws in U.S. universities. In order to accomplish this, I construct a genealogy of amendments in Title IX law and school-level policy at the University of California (UC). I supplement this data with 30 key informant interviews with UC Title IX staff. I advance knowledge on how legal and social movement strategies employed by feminist movements and Title IX administrators rendered Title IX susceptible to what I call "co-opted compliance" by the men's rights movement.

Key words: Title IX, campus sexual assault, sexual harassment, legal endogeneity, co-opted compliance

INTRODUCTION

As I noted in the last chapter, alongside the popularization of the #MeToo movement, the United States has also seen shifts in Title IX law that have decentered the priorities of survivors of sexual harassment and sexual violence (SVSH). Left wing media often suggest that once the conservative Trump administration appointed Education Secretary Betsy DeVos, progressive aspects of the law written by the Obama administration were quickly gutted (see for example: Grayer and Stracqualursi 2020). However, little academic scholarship has systematically examined how different stakeholders – or "field actors,"[1] as I will refer to them – have altered Title IX over time, and in particular, how they may have enabled or hindered one another from changing the meaning of the law. Through a "genealogy of law," (Grattet and Jenness 2005), I investigate how various field actors have used the formal law to alter university-level Title IX policies on formal investigation procedures for peer sexual harassment in the University of California (UC). I identify three main groups of actors who have influenced the meaning of Title IX law on sexual harassment investigations: feminist survivor activists, Title IX administrators, and men's rights groups. I characterize each group more in-depth in the Findings section below.

I draw from the theory of legal endogeneity (Edelman 2016) in order to try to understand how various field actors constructed Title IX in the face of ambiguous written law. In this paper, I make contributions both to scholarship on how Title IX laws are constructed, as well as to socio-legal theory on the relationship between law, organizations, and social movements. First, I contribute to knowledge on Title IX sexual harassment law in three main ways: 1) I identify the origins of changes in formal law and university-level policy on how Title IX investigation

[1] The term "field actors" draws from sociological literatures on actors who exist in organizational, social movement, and legal fields. See "Field Level Analysis" section of this paper for more information.

procedures for peer harassment are constructed; and 2) I describe the key actors, dominant institutions, and various logics involved in changing the meaning of Title IX law nationally; and 3) I theorize how these key field actors enabled and hindered one another in shaping Title IX. Most importantly, I introduce a new concept called "co-opted compliance," which describes when conservative social movements leverage law to obligate organizations to treat the dominant class as the protected, marginalized class. In doing so, the counter-movement overshadows the interests of both organizations and the progressive social movement that fought for the law in the first place. I conclude with a discussion of the contributions of my work.

My aim in this chapter is not to analyze men's rights groups' motivation or strategy, nor is it to understand the nuanced differences between respondents' rights proponents and men's rights organizations[2]. Instead, I focus on how the failure of feminists to specify ambiguities in Title IX law allowed the men's rights movement to weaken Title IX both in the courts and under the Trump administration's Department of Education. I conclude with a discussion of the theoretical contributions of my work.

THEORETICAL CONSIDERATIONS AND CONTRIBUTIONS

Legal Endogeneity Theory and Symbolic Compliance

The theory of legal endogeneity demonstrates how organizations influence the meaning of Title VII[3] workplace anti-discrimination laws (Edelman 2016). Signaling attention to

[2] An important distinction should be made between men's rights groups and respondent's rights groups. Although both groups argue for some of the same provisions, men's rights groups are distinctly anti-feminist, and form men's rights organizations. Respondents' rights advocates may not necessarily form organizations. Some are professors at high profile universities. Many have called themselves feminists and believe in defending due process rights and fair administrative processes (see for example: Kipnis 2017).

[3] Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex and national origin.

ambiguous civil rights law, organizations adopt anti-discrimination policies and procedures that center managerial priorities (Edelman 2016). Courts defer to the existence of these policies as evidence of non-discrimination – a process known as "judicial deference" (Edelman, Uggen and Erlander 1999; Edelman et al. 2011; Edelman 2016). Work by Albiston (1999) also shows how organizations use strategic settlement behavior in social reform laws like Title VII to control the content of law and create precedent favorable to their interests (see also: Galanter 1974). Typically, these processes negatively affect survivors' rights mobilization both within the organization's internal grievance processes (Marshall 2005) and in court against their employer (Albiston 1999, Edelman 2016).

Addressing these problems, Edelman (2016: 3) says that we have become "a symbolic civil rights society: one in which symbols of equal opportunity are ubiquitous and yet often mask discrimination and help to perpetuate inequality." In her work, she uses the concept of "symbolic structures": policies or procedures that are infused with value irrespective of their effectiveness (Edelman 2016: 5). She explains that symbolic structures exist along a continuum from "*symbolic and substantive*, meaning that they signal attention to law and are effective at achieving legal ideals, to *merely symbolic*, meaning that they are ineffective at achieving legal ideals but retain symbolic value" (Edelman 2016: 5). Merely symbolic structures are structures that exude legitimacy to the public and look lawlike, but provide little tangible relief and do not do much to effectuate the stated goals. By contrast, co-opted compliance involves written law with such specifically laid out conservative counter-movement demands that organizations are obligated to comply. Organizational actors then construct legal structures (i.e. policies and procedures) in a way that treats the historically dominant group as the marginalized class. Under

both symbolic compliance and co-opted compliance, inequality continues to be reproduced, but the driving forces behind the inequality differ.

The theory of legal endogeneity (Edelman 2007, 2016) and the symbolic compliance concept (Edelman 1992, 2016; Edelman and Petterson 1999) are widely cited, but, as I show in this chapter, they do not entirely explain why sexual harassment laws are ineffective in the Title IX context. Research on Title VII did not consider the possibility that counter-movements might influence the meaning of the law, which I do. Further, in the Title VII context, many organizations' responses to civil rights law were "merely symbolic," especially given that they were constructed by HR professionals who drove the "managerialization"[4] of anti-discrimination policies (Edelman, Fuller, and Maria-Drita 2001; Edelman et al. 1991). In contrast, I show how Title IX staff in the UC attempted to construct investigation procedures that were both symbolic and substantive, but their attempts were undermined by the men's rights movement. I suggest that "co-opted compliance," more than "merely symbolic compliance," better helps to explain why sexual harassment investigation procedures were rendered ineffective in reducing SVSH in the UC.

Applying Legal Endogeneity Theory and Symbolic Compliance to Title IX

Because Title IX laws were modeled after Title VII laws in many ways (Edelman and Cabrera 2020; DOE 2011; Miller 1995), research aiming to understand why Title IX laws are ineffective in reducing sexual harassment draw analogies between the Title IX context and what Edelman found in the Title VII context. One of the most important recent statements about sexual harassment comes from a 2018 report by the National Academies of Sciences,

[4] When law becomes "managerialized," it becomes infused with managerial values, goals, and purviews, such as mitigating risk to the organization.

Engineering, and Medicine (NASEM 2018) titled *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine.* It lists symbolic compliance to Title IX as a major factor that enables ongoing sexual harassment in academia:

> An increased focus on symbolic compliance with Title IX and Title VII has resulted in policies and procedures that protect the liability of the institution but are not effective in preventing sexual harassment… Fortunately, if there is a will among campus leaders to reduce and eliminate sexual harassment, there are policy and programmatic paths forward to achieve that goal (NASEM 2018: 4).

Other academic works have analyzed the "managerialization" of Title IX laws and the ways in which schools may be merely symbolically compliant to Title IX law (Gualtieri 2020; Pappas 2016; Albrecht and Nielsen 2020). However, these studies have yet to map the field of all the different possible actors associated with Title IX, going beyond an analysis of how organizations construct law. They have yet to examine how feminist survivor activists and counter-movements like the men's rights movement have been able to affect Title IX. In this article, I begin to map the field of various social actors involved in altering Title IX law and examine the processes and mechanisms by which they change law over time.

The Relationship Between Law, Organizations, and Social Movements

Neo-institutional literature in sociology explores how organizations construct law, with a particular interest in how organizations shape the meaning of law that is meant to regulate them (Albiston 1999; Dobbin and Kalev 2017: 808–828, 2018, 2019; Dobbin, Schrage, and Kalev 2015; Dobbin et al. 2011; Edelman 2016, 1992; Edelman et al. 2011; Edelman and Talesh 2011; Kalev et al. 2006; Kelly and Dobbin 1999; Marshall 2003, 2005; Selznick 1948; Talesh 2009, 2012, 2014, 2015). Other sociological studies address the relationship between law, organizations, and social movements (Edelman, Leachman, and McAdam 2010). Since the publication of *Social Movements and Organizational Theory* (Davis et al. 2005), many

organizations theorists – often with social movements scholars – have explored the intersection of organizations and social movements. My work builds on a tradition that follows the work of Davis et al. (2005) in bringing social movements and organizations scholarship together (see, for example, Davis and Thompson 1994; Davis and Zald 2005; Lounsbury, Ventresca, and Hirsch 2003; Morrill, Zao, and Rao 2003; Schneiberg, King and Smith 2008).

Some scholars have examined the role of social movements in affecting how Title IX laws are adopted and implemented in schools. Short (2005) shows how feminist social movements informed K-12 schools' implementation of Title IX anti-harassment policies in the 70s and 80s before the courts ruled that schools could be found liable for peer sexual harassment. Katuna and Holzer (2016) show how feminists influenced how survivors mobilized early Title IX sex discrimination laws through legal education, examining pamphlets created by feminist organizations from 1978-1980. Much less is known about how various groups have altered Title IX, especially over the last decade, from 2010-2020, and in particular, how they influence investigation processes for sexual violence in universities.

In addition to new-institutional scholars in sociology, political scientists and economists have also studied business influence on policy. "Capture" arguments show how competing interest groups reshape regulatory agencies so that they become a friendly protector of private interests by exerting direct influence on regulatory bodies, by inserting people within agencies who have sympathetic views toward business, and by isolating regulatory agencies and making their survival dependent on the existence of groups that need continued oversight (Gormley 1983; Sabatier 1975; Kolko 1965; Bernstein 1955; Huntington 1952; Herring 1936; Shapiro 1999). The "co-opted compliance" term that I introduce in this chapter is distinct from the capture concept. While capture involves getting organizations off the hook from regulatory

oversight that hinders business interests, "co-opted compliance," describes the process of conservative social movements leveraging law to obligate organizations into treating the dominant class as the protected, marginalized class. Conservative social movements drive this process, not organizations. In the Title IX case, the organization was never interested in skirting regulation, and many administrators saw themselves as champions of the survivor movement. It was the men's rights movement that organized to change the meaning of law, gained support from the Trump administration, and cost universities both money and trust in their equity policies.

Field-Level Analysis

Organizational theorists are interested in studying organizational fields, referring to "organizations that, in the aggregate, constitute a recognized area of institutional life around key suppliers, resource and product consumers, regulatory agencies, and other organizations that produce similar services and products" (DiMaggio and Powell 1983). The term "field" incorporates social movements and legal institutions as well (Edelman et al. 2010). Social movement fields are constituted by actors, including organizations, individual activists, and sympathetic politicians who seek change in social institutions (Armstrong 2002; Levitsky 2007). Legal fields are constituted by lawyers and their professional organizations (courts, administrative bodies, and legislatures) in which they operate, and the everyday people who implement legal requirements and ideals (Bourdieu 1987; Edelman et al. 2001; Edelman 2007). More recent scholarship examines the "interorganizational field" – a population of organizations within a particular market or other social sphere that are engaged in similar work (Scott 1992; Edelman et al. 2001; Stryker 2000; Grattet and Jenness 2005).

New institutional scholars use field-level analysis as a way of theorizing the process through which a field produces the culture and behavior of organizations within the field. Field level analysis can be achieved using a variety of methods, both qualitative and quantitative. Using qualitative methods, the relationship between legal, organizational, and social movement fields can be traced by analyzing the language and behavior that different field actors within each field employ, and by coding to identify their prerogatives in written formal laws and organizational policies and practices over time. In his investigation of how automobile manufacturers (the organizational field) shape the meaning of consumer protection laws (the legal field), Talesh (2012, 2015) examines the meta-linguistic frames (Mertz 2007; Conley and O'Barr 2005; Talesh 2012) of various field actors and traces them through amendments in consumer protection laws in two states. Edelman's theory of legal endogeneity is based on a field-level analysis that focuses on how organizational fields and legal fields affect one another in the construction of various Equal Employment Opportunity policies and practices. In this article, I conduct a field-level analysis of the relationship between social movement, organizational, and legal fields in examining how Title IX SVSH laws are constructed in universities.

CASE SELECTION, GATHERING DATA, AND ANALYSIS

In order to theorize how various field actors contributed to men's rights' co-optation of Title IX, I created a "genealogy of law," a method used to trace legal constructs – such as definitions and other legal concepts – in laws and policies over time (Grattet and Jenness 2005). The goal of a genealogy of law is to keep record of the key producers, the point of origin, and the destination of each change in a law or policy (Grattet and Jenness 2005). I began the research with the following question: how do various field actors use the formal law to shape university-

level Title IX policy on formal investigation procedures for peer harassment in the University of California from 1972-2020? Answering this question required two levels of genealogy. The first was a genealogy of policies and procedures on peer harassment in the UC, which I gathered from 1981-2020. The second was a genealogy of the formal law on Title IX that may have motivated changes in the policy. I gathered relevant legal documents on Title IX from 1972, the year of publication of the original federal Title IX statute, through 2020. I simultaneously conducted 30 key informant interviews from Title IX staff in the UC, who helped inform me about important changes in investigation policies and procedures from 1981-2020, relevant laws that contributed to these changes, and insight into the key field actors who pushed for these changes. Before describing how I gathered and analyzed these data, I briefly articulate my case selection.

Case Selection

The goals of this chapter are to identify the origins of changes in formal law and university level policy on sexual harassment investigations over time; to identify and characterize the field actors who affected these changes; and to theorize how they enabled or hindered one another from affecting Title IX in schools via the law. Instead of constructing a genealogy of law and policy that studied many different schools' policies in a single year or a limited number of years (methods used by Grattet and Jenness (2005) to study hate crime laws), I chose to construct a genealogy from data that spanned across five decades. In order to conduct an in-depth, multi-method, qualitative analysis of such an enormous amount of data, I chose to focus on changes that occurred in one major public university with national recognition as a leader in advancing civil rights: the University of California.

The UC was an early adopter and a "mature case" in implementing Title IX policy – they implemented Title IX compliance as early as the 1980s, while other schools did not do so until as

late as the 2010s. The UC had many years of policies and procedures available for analysis, and their status as a public institution also made it easier for me to access archival documents relevant to my research. Their status as a secular, non-religious institution meant that there would be no exemptions for them under Title IX law.

Further, the UC retained staff who implemented original Title IX policies, whereas other schools may have high turnover rates of Title IX staff due to legal trouble and general burnout. The UC also hired leadership who worked on Title IX as part of the Department of Education during the Obama administration. Key informants with this level of historical and interorganizational insight were vital in helping me construct my genealogy.

Finally, California is an important location for studying civil rights in higher education. While California is known as a progressive and Democratic state, it is also the home of men's rights organizations and lawyers that advertise their services as "defense attorneys" for respondents in Title IX cases. Being a leader in Title IX implementation, the UC is a high-profile and attractive target for both complainant and respondent lawsuits, as well as OCR complaints, which were important tools in my analysis. By studying the UC, I was able to conduct an in-depth analysis of the widest possible breadth of legal documents involved in the construction of Title IX law.

Gathering Data

i. UC Policies (1981-2020)

With the help of Title IX staff in the UC, I compiled past university-level policies and procedures on sexual harassment from 1981-2020. Within this time frame, I identified 12 years in which there was a new sexual harassment policy published. Eight different versions of the Title IX policy were published between 2010 and 2020. I also had access to archival documents

from Title IX staff that included flowcharts demonstrating procedures for investigations in different years, as well as worksheets that succinctly described changes in policies and procedures. These documents were originally intended to educate community stakeholders on changing Title IX procedures, but they served as an important tool for my analysis.

ii. Formal Law on Title IX (1972-2020)

Title IX is a complex law that is constructed via federal statutes from Congress, administrative documents from the Department of Education, and case law in the courts. I wanted to understand which of these many laws could help me study the legal origins of investigation policies and procedures in the UC, as well as how various field actors used the formal law to bring about changes in investigation policies and procedures in the UC. Studying changes in law that affected changes in the UC rather than all schools helped me narrow my focus, and enabled me to conduct an in-depth qualitative content analysis of different types of legal documents. This also helped to control for different dynamics across different types of schools (for example, religious or private), and different state-level dynamics.

For federal statutes, I analyzed the original 1972 statute on Title IX (42 U.S.C. §§1681) and tracked changes in its implementing regulations over time (34 C.F.R. Part 106). I researched state statutes related to Title IX in the California State Assembly, although I did not find that they had much of a role in changing how investigation procedures were constructed in schools. Next, I gathered administrative documents from the Department of Education's Office of Civil Rights (OCR). These documents included dear colleague letters, guidances, question and answer documents, OCR case processing guides, a notice of proposed rulemaking on Title IX, a public comment submitted by the UC during the open notice and comment period for the proposed rule, and the Final Rule to the proposed rule. I also analyzed an OCR investigation against UC

Berkeley. Finally, I studied case law on Title IX by examining eight survivor (or complainant) lawsuits against the UC, and six men's rights (or respondent) lawsuits against the UC. Key informants I interviewed also pointed me to three other men's rights lawsuits in California that affected how they constructed their policies and procedures for investigations. I examined six respondent cases in total. I used Westlaw to study the history of schools' liability under Title IX. And, I accessed case summaries on Title IX cases nationally from the National Association of College and University Attorneys listserv, released weekly from March 2020-June 2020. For federal statutes, state statutes, and documents from OCR, I gathered documents from publicly available online archives. For OCR complaints against the UC, I found documents publicly available on UC websites. For case law, I used Westlaw, an online legal research tool.

iii. Key Informant Interviews (2020)

I interviewed 30 key informants, consisting of Title IX staff from two campuses in the UC. I prepared a semi-structured interview guide for each interview, but also allowed time for open-ended discussion with key informants. Participants guided me on what laws and policies to investigate, as well as which field actors fought for changes in these laws. Key informants helped me understand when a change in UC investigation policy happened because of a change in law, or if it happened for some other reason, such as because of a protest, or the implementation of a task force. I also asked key informants about their own personal values, their views on how laws were constructed and implemented, and their moral stake in Title IX administrative work. I interviewed participants anywhere from one to three hours, with an average of about 2.5 hours per participant. I contacted participants a second time if I needed help gathering more information, or had follow up questions regarding our interview. I recorded and transcribed interviews for coding, removing identifying information like names from transcript data. In the

findings, I omit the names of the campuses I recruited from as well as any identifying information about key informants in order to protect the anonymity of my participants.

The Title IX administrators I interviewed had striking consensus in their answers to interview questions. Here, I detail the factors that may have contributed to the similarity in their perspectives. Title IX administrators tended to have similar racial backgrounds and gender identities; all 30 of the interviewees were white women. I avoided interviewing the few men and people of color on staff because this would have risked their anonymity. Title IX administrators' professional backgrounds may have contributed to the commonalities in their perspectives as well. Most Title IX administrators I interviewed had training in law, counseling, or advocacy in domestic violence and rape crisis centers, although these were not requirements for the job. I gathered interview participants through snowball sampling; I asked participants who else I could interview and reached out to the potential interviewees via email using the campus directory. The sampling technique may have contributed to gathering likeminded people. Additionally, some of the Title IX administrators described themselves as tight-knit. They worked together closely on cases and attended meetings with campus partners to make sure every violence response unit understood policies in the same way. They went through the same orientation trainings when first hired, and they attended many of the same professional development events. Most grappled with the moral dilemmas of their work both through past experiences in the legal field and on the job working with complainants and respondents. In order to avoid interviewer bias, I asked interviewees the same sets of baseline questions before varying the questioning.

iv. Studying Men's Rights Groups

For multiple reasons, I did not interview members of men's rights groups. One reason was concern for my personal safety, as many men's rights organizations engage in harassment

(Banet-Weiser and Miltner 2016) and terrorism (Jaki et al. 2019; Blommaert 2017). Another reason is my positionality as a woman and my online public identity as a feminist Title IX scholar and activist; I doubt I would have been able to gain the trust of these groups for interviews. Other scholars who study men's rights talk about these concerns, and typically study men's rights groups through online forums, court records, or organizational documents (Dragiewicz 2011; Menzies 2011). I assessed court cases by men's rights groups against major universities in California, triangulated data with key informant interviews, and traced men's rights language by coding content on websites associated with the men's rights lawyers who filed lawsuits, as well as in the court documents.

Data Analysis

In order to construct the genealogy of Title IX policy in the UC and the genealogy of formal law, I conducted two rounds of coding. In round one, I traced changes in Title IX policy and Title IX law across nine items:

- The definition of "sexual harassment" and "sexual violence"
- Requirements for staff trainings
- Responsibilities and tasks of Title IX officers in investigations
- Laws on whether parties in a Title IX investigation are allowed to bring representation (advisers/ lawyers)
- The use of hearings; both indirect and live hearings
- The use of cross-examination
- The standard of evidence
- The definition of "discrimination on the basis of sex"

In round two, I coded for the different field actors who fought for the changes. I wrote reflexive memos throughout the coding process. My goal was to describe the key actors, dominant institutions, and various logics involved in shaping the meaning of Title IX law nationally. In doing so, I identify feminist survivor activists, university Title IX administrators, and men's rights groups as the three main groups relevant to my analysis. In some instances, key informant interviews helped me characterize the actors who fought for certain changes. In other instances, I was able to trace language that field actors employ through the documents I analyzed. For example, older Dear Colleague Letters under the Obama administration employed the term "survivor," to talk about respondents, while the 2017 Dear Colleague Letter from the administration used the terms "accused" and "accuser" to talk about respondents and complainants, respectively. Additionally, some documents detailed the actors who fought for the law. Court documents, for example, listed the lawyers representing plaintiffs in cases against the UC. Lawyers' websites online typically clearly advertised their position as survivor advocates or men's rights advocates.

FINDINGS: HOW SOCIAL MOVEMENTS AND ADMINISTRATORS SHAPED TITLE IX

My findings reveal how survivors and their feminist advocates, feminist Title IX staff, and men's rights counter-movements interacted with one another, altering UC policy via the formal law in the face of ambiguous Title IX legal requirements. Specifically, I offer five stages that explain how feminist activists and feminist university administrators left the door open for men's rights groups to change the meaning of Title IX. In Stage 1, I show how Title IX was ambiguous in its mandates about how schools should construct investigation procedures for peer harassment. In Stage 2, I show how the feminist survivor movement leveraged law to punish schools for the outcomes of investigations (i.e. whether an alleged perpetrator was fired or

expelled), instead of advocating for lawmakers to specify how investigation procedures should be constructed. In Stage 3, I show how Title IX administrators purposefully avoided clarifying law. Ambiguity in law allowed them to pursue Title IX cases and construct policies in line with a feminist vision. In Stage 4, I show how men's rights groups counter-mobilized against feminist activists and Title IX administrators, citing the progressive implementation of the law as biased against men. In Stage 5, I demonstrate how men's rights groups finally achieved "co-opted compliance" over Title IX laws by targeting ambiguities in formal law and specifying how investigation procedures should be constructed so that universities were legally obligated to treat men as a disadvantaged group.

Stage 1: Ambiguous Law

The Progressive Spirit of Title IX

Title IX of the Education Amendments of 1972 originated as a federal statute intended to ensure racial and gender equality in educational institutions in receipt of federal funding, applying to both public and private institutions, as well as universities and K-12 schools. It has not always included provisions on sexual harassment. Originally, Title IX was drafted by progressive legal activists, passed by Congress, and signed into effect by President Nixon in 1972. Congresswoman Patsy Takemoto Mink, the first Japanese-American woman to win a seat in Congress[5], led the charge in using the federal statute as a tool to widen access to education for women and minorities by allocating government funding into programs for underrepresented populations (Wu n.d). In 1980, feminist legal scholar Catharine MacKinnon argued in *Alexander v. Yale* (1980) that sexual harassment constitutes a form of sex discrimination, and helped apply

[5] Title IX is also known as the Patsy Takemoto Mink Equal Opportunity in Education Act.

Title IX to sexual harassment cases in educational settings. The 1980s also marked a transition in how federal laws on Title IX were administered. Congress allocated the administration of Title IX to the newly formed cabinet-level Department of Health, Education, and Welfare – known today as the Department of Education (Radin and Howley 1988).

In 1990s, feminist legal activism in the courts established schools' liability for money damages for sexual harassment by teachers in *Gebser v. Lago Vista Independent School District* (1998), and for peer harassment in the case *Davis v. Monroe County Board of Education* (1999). Following activity in the courts, the Department's Office of Civil Rights (OCR) produced a series of Dear Colleague Letters (DCLs) and Guidances on how schools should address campus sexual harassment and other forms of gender-based violence (see: DOE 1997, 2001, 2011). These administrative documents echoed progressive, feminist social movement concerns that sexual harassment on college campuses is rampant, and negatively affects women's access to education, therefore reproducing gender inequality[6].

Ambiguity in Federal Statutes and Department of Education Communications

In 1997 and 2001, the Department of Education released Guidances to help schools interpret how to comply with federal statutes and early court cases on Title IX; in particular, the *Monroe* court decision. The Guidances offered ambiguous suggestions on how to construct investigation procedures for sexual harassment and violence cases. The 1997 and 2001 Guidances did not require a school to create new, separate policies and procedures for Title IX

[6] The 2011 DCL specifically references a study by the National Institute of Justice that found that 1 in 5 women are victims of completed or attempted sexual assault while in college, and that 6.1% of males were victims of completed or attempted sexual assault during college (NIJ 2007). The DCL states "The Department is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school's programs and activities."

besides what a school had in place for handling discrimination and misconduct complaints (DOE 2001: 19). The Guidances outlined the following baseline requirements for investigations: that schools must notify parties involved that an investigation is occurring; that schools maintain "adequate, reliable and impartial investigation of complaints" and "reasonably prompt time frames"; that schools give "notice to the parties of the outcome of the complaint"; and, lastly, that schools give "assurance that the school will take steps to prevent recurrence of harassment and to correct its discriminatory effects on the complainant and others, if appropriate" (DOE 2001: 20). The 2001 Guidance also provided some insight into what types of evidence might be helpful to gather in resolving a dispute (DOE 2001: 9).

The 2001 Guidance acknowledged that the specifics of investigation policies and procedures may vary widely in schools across the country, and left discretion up to schools and Title IX Coordinators to fill in the blanks. It stated:

> Procedures adopted by schools will vary considerably in detail, specificity, and components, reflecting differences in audiences, school sizes and administrative structures, State or local requirements, and past experience. (DOE 2001: 20)

A decade later, the Department of Education under the Obama administration published the 2011 DCL, reminding schools of their obligation to comply with Title IX law. The document reiterated much of the language from the 2001 Guidance that a school's investigation procedures "will vary" depending on a variety of factors unique to each school.

It did offer slightly more detail into how schools can provide an "adequate, reliable, and impartial" investigation of complaints, but it offered more suggestions than mandates. The DCL made two notable requirements. First, it pointed to a requirement in the 2010 OCR Case

Processing Manual (DOE 2010) that schools use the preponderance of the evidence standard[7] as they review evidence in their investigations. Second, it required that schools build in appeals processes for both parties to contest the findings of an investigation, as well as opportunities for both parties to present witnesses and other evidence. The 2011 DCL also made suggestions, using softer language like "schools may allow" and "OCR discourages schools." These suggestions included that schools may allow or restrict parties from having their lawyers participate in proceedings, as long as the rules were consistent for both parties. Additionally, OCR discouraged schools from allowing the parties in a case to cross-examine each other during the hearing, citing that cross-examination "may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment" (DOE 2011: 12). With few legal mandates and some bare-bones suggestions on how to build investigation processes, much discretion was left up to university administrators.

Ambiguity in Department of Education Communications as Formal Law

Not only was there ambiguity in the text of DCLs and Guidance documents from the Department of Education on how to construct investigation procedures; there was also a wave of criticism from legal scholars and lawmakers that the documents did not hold the weight of a legal mandate. Critics – a mix of respondents' rights proponents and men's rights organizations – argued that in order for documents from an administrative agency to hold the weight of administrative law, the Department would have to propose a new rule and hold an open notice and comment period. The DCL and the Guidances did not go through this process, and therefore, should not be considered "law."

[7] The preponderance of the evidence standard is a low-level evidentiary standard typically used in civil courts. It is the lowest burden of proof, and means that it is more likely than not that the alleged claims in a complaint are true.

For the most part, critics who championed this argument were concerned with respondents' due process rights in Title IX investigations. In 2016, Senator James Lankford, Oklahoma, wrote a letter to the Department of Education to express his concern that the 2011 DCL is merely "interpretive" of law because it fails to cite "precise governing statutory or regulatory language that support their sweeping policy changes." Two high profile critiques cited in the Senator's letter were penned by 28 law faculty from Harvard University in *The Boston Globe* in 2014[8] and 16 law faculty from the University of Pennsylvania in *The Wall Street Journal* in 2015[9]. The Harvard op-ed, in particular, frames their school not as rushing to comply with law, but instead, inappropriately going "beyond" what the law states, and "jettisoning balance and fairness in the rush to appease certain federal administrative officials."

Stage 2: Activists Focus on Outcomes, Not Processes

In Stage 2, I show how the feminist movement did not focus on codifying into law the specifics of how schools should interpret and implement investigation procedures for peer sexual harassment. Instead, the feminist movement took issue with the outcomes of Title IX investigations, such as whether a university fired or expelled a perpetrator. Feminist activists – mainly college age women (Heldman et al. 2018) – organized around two main strategies that they hoped would get schools to come down harder on respondents: 1) they filed complaints through the Department of Education's Office for Civil Rights, which they saw as a body of

[8] Bartholet et al. 2014. "Rethink Harvard's sexual harassment policy." *The Boston Globe*, https://www.bostonglobe.com/opinion/2014/10/14/rethink-harvard-sexual-harassment-policy/HFDDiZN7nU2UwuUuWMnqbM/story.html (Accessed July 28, 2020).
[9] Gershman, Jacob. 2015. "Penn Law Professors Blast University's Sexual-Misconduct Policy." *The Wall Street Journal*, https://blogs.wsj.com/law/2015/02/18/penn-professors-blast-universitys-sexual-misconduct-policy/ (Accessed July 28, 2020).

oversight that could revoke federal funds from schools; and 2) they focused on legal strategies that would make it easier for survivors to sue schools and win money for damages.

Filing Complaints through OCR

The original federal statute on Title IX – which did not yet include provisions on sexual harassment – granted the Department of Education the right to terminate federal funding for schools that did not comply with the Department's "rules, regulations and orders of general applicability."[10] Research by Reynolds (2019) shows how that both individuals and organizations like the American Civil Liberties Union filed hundreds of OCR Title IX complaints annually from 1994-2014 for a variety of reasons, including disagreement with how schools have handled internal complaints about sexual harassment, inequality in athletics, and concerns of academics. My data demonstrate that feminist survivor activists in the UC used OCR complaints to hold schools accountable to achieving Title IX's intended function of reducing harassment in schools by removing perpetrators. As depicted in the documentary *The Hunting Ground* (Dick 2015), survivors of sexual assault from campuses across the country collaborated in filing Title IX complaints against their schools around 2013. Heldman, Ackerman, and Breckenridge-Jackson (2018) identify this era – from 2013 forward – as the "New Campus Anti-Rape Movement," when student survivors mobilized to get their schools to comply with Title IX anti-harassment mandates by adopting and implementing Title IX policies.

I qualitatively analyzed documents related to a student survivor activist led OCR complaint against UC Berkeley that investigated whether Berkeley's sexual harassment policies

[10] The ability of an administrative department to revoke federal funds for non-compliance with department rules and regulations was constructed after Title VI (42 U.S.C. §2000d (1964)), which was used to address racial discrimination in schools, but not gender discrimination (Mango 1991).

and procedures were compliant with Title IX in the years 2011-2012, 2012-2013, 2013-2014, and 2014-2015. A letter OCR wrote to Berkeley's chancellor in 2018 summarized the findings of their multi-year investigative report, which was based on an analysis of 401 oral reports or written complaints that the UC classified as sexual harassment and/or sexual violence (Faer 2018: 17). Of that number, 171 reports involved student-to-student sexual harassment or sexual violence (Faer 2018: 17).

The findings of the OCR investigation did not make suggestions to school officials to reform how they construct and implement the specifics of their internal formal investigation policies and procedures. It left much discretion up to university administrators. Instead, the OCR letter asked the school to make sure survivors had a clearer pathway to proceed with a formal investigation at any point in the complaint process (Faer 2018: 25). Formal investigations have typically resulted in discipline to the perpetrator, while other informal and alternative resolution processes have not. Other concerns in the OCR letter included the amount of time it took to resolve complaints, which could stretch to over 12 months when the investigation and adjudication processes were both taken into account (Faer 2018: 29). The findings stressed the importance of a timely conclusion to an investigation for survivors' safety, but did not instruct schools on how to build the investigation procedures, specifically.

Expanding Schools' Liability

In addition to filing complaints through OCR, survivor activists expanded schools' liability under Title IX. In particular, legal activists focused on developing and expanding the standard by which survivors could sue schools for money damages. Currently, the standard is "the standard of deliberate indifference," which allows survivors to sue schools for money damages when a school's "response to the harassment [was] clearly unreasonable in light of the

known circumstances" (*Davis v. Monroe* 1999). This concept is defined in the *Davis* case in 1999, and was developed in many key survivor cases against the UC, including *Lopez v. Regents of the University of California* (2013), *Takla and Glasgow v. Regents* (2015), and *Karasek et al. v. Regents* (2015, July 2016, December 2016, 2018, 2020). The lawsuits cited mention many of the same grievances with UC Title IX policy and procedure as in the OCR complaints, including long timelines for resolving complaints, lack of sufficient notice of investigation outcomes, and lack of sufficient discipline for serial harassers and potential repeat offenders. However, instead of focusing on how schools should construct the specifics of investigation policies and procedures in these lawsuits, feminist activists used the lawsuits to continue expanding survivors' ability to sue schools.

Rights claims for survivors have certainly been costly to the university – the California State Audit reported that the UC paid out $45 million in settlements related to sexual harassment complaints from January 2008 through December 2017[11]. However, the threat and cost of legal action has not been a motivation for schools to fire and expel perpetrators or make complaint resolution more fast, transparent, and efficient. It has been extremely difficult for targets of harassment and discrimination to mobilize lawsuit as a tool in affecting policy in schools, a phenomenon well documented by socio-legal scholars (Ayres 2018; Berrey et al. 2017; Edelman 2016; Edelman et al. 2011; Nakamura and Edelman 2019; Sperino and Thomas 2017; Krieger and Fox 1985; Brownmiller 1975; Hemel and Lund 2018; McCann et al. 2018). According to key informant interviews, few survivor lawsuits have made it past the settlement stage, and when they have, it was difficult to demonstrate that a school had been deliberately indifferent to

[11] Nine of ten settlements in this data set were with complainants, and one was with a respondent (Howle 2018).

harassment (MacKinnon 2016). And, even if survivors did win in court, survivor lawsuits only pushed schools to comply with ambiguous federal laws and administrative rules that threw the ball back to schools, giving university administrators ultimate discretion over how to interpret the law.

Stage 3: Feminist University Administrators Benefit from Legal Ambiguity

In the face of ambiguity in the formal law, it was up to schools to construct their own investigation procedures for handling sexual harassment and sexual violence on their campuses. In the UC, Title IX staff lead the effort to construct policies and procedures that not only responded to civil rights law, but went "beyond" the law, paying particular attention to the needs of survivors of sexual harassment and sexual violence. In tandem with the rise of the "New Campus Anti-Rape Movement" (Heldman et al. 2018), the UC system transformed their Title IX response from 2013 to 2016 by hiring more Title IX staff and creating reformed policies. Instead of centering the university's priorities in constructing investigation and adjudication policies and procedures, Title IX staff turned to victim advocacy trainings by rape crisis and domestic violence centers, which helped them construct investigation procedures that were "trauma-informed" and "survivor-centered." One key informant said:

> We didn't know how to do it [how to construct investigations], so I went and took the advocate courses for domestic violence and sexual assault… Mostly we got training from the advocates, but they were the only ones doing the work. That's why it all seems so victim centered." –Title IX Officer in the UC

Another key informant explained that Title IX staff have done the work out of a genuine interest in intervening in sexual harassment and violence and doing right by survivors. She relayed a sense that Title IX officers have had general freedom under university management to construct policies and procedures in a way that aligns with feminist social movement values. She said:

> The irony is that so many of my Title IX colleagues both in the system and across the country… they do this work for love and not for money. They do this work because they believe in the prevention of sexual harassment and discrimination, and they believe in the institution's responsibility to do the right thing. We have been lucky to have been a really independent and highly supportive shop for lots of years. So, I have never been in a position where I was being told what to do, or where I had to protect the institution. – Title IX Officer in the UC

In the Title IX investigation policies and procedures in the UC from 2011 to 2019, administrators wrote a broad, inclusive definition of sexual harassment and sexual violence, and worked with their colleagues to think through different kinds of behaviors that might be appropriate to include in their policy. They went beyond the most physically violent forms of sexual misconduct, and included a huge spectrum of problematic behavior. They also constructed multiple types of grievance procedures, offering informal, formal, and alternative resolution processes to sexual harassment complainants. Formal investigations consisted of a Title IX Investigator taking statements from complaining parties and their witnesses, determining the credibility of the statements and any other corroborating evidence like emails or text messages, and making a "policy determination" – whether or not the investigator believes the respondent has violated the UC's Title IX Policy. In compliance with the 2011 DCL, the UC implemented a low standard of evidence – the preponderance of evidence standard – making it easier than the criminal standard to find that a respondent had violated their sexual harassment policy. And, they took measures to make sure that survivors were not asked traumatizing questions too many times, or asked inappropriate, victim-blaming questions during investigations. Certain measures included hiring external hearing officers to gather and relay questions that the complaining and responding parties may have of each other, and filtering these questions for relevance and appropriateness. With the discretion that they had, all the Title IX Officers I interviewed interpreted law and constructed investigation policies and procedures in a survivor-centered

manner. They benefitted from ambiguity in the law, not because they wanted to avoid regulation, but because they wanted to implement Title IX in line with a feminist vision.

Stage 4: The Right Counter-Mobilizes by Specifying Legal Ambiguities

By 2016, the UC had expanded their Title IX staff, brought on a systemwide team to coordinate efforts across the UC's multiple campuses, and established robust policies and procedures for investigating and adjudicating sexual violence and sexual harassment. This coincided with mass media attention to the issue of Title IX as schools across the United States addressed new demands from the Department of Education from 2011 forward (DOE 2011; 2015). Despite the feminist spirit of Title IX, the release of multiple Dear Colleague Letters and Guidance documents from the Department of Education, the diligent work of survivor activists and allies to sue and file OCR complaints, and the attention of Title IX staff to creating university-level policies and procedures, specific measures addressing how schools should construct investigation procedures were still were not codified into formal law.

Starting in about 2013, men's rights groups began organizing to undermine Title IX's sexual harassment provisions. Research has documented growing male supremacist organizing over the last several decades (Ging 2017). There are many branches of male supremacist organizing with distinct ideologies, including the men's rights movement (Ribeiro et al. 2020; Wright et al. 2020). Today, the men's rights movement holds that feminism has created a foothold in politics, the media, academia, and other important institutions to privilege women and disadvantage men (Hodapp 2017; Messner 1997). Consensus among scholars is that the men's rights movement is an antifeminist and misogynist movement. Research has consistently found antifeminist themes on men's rights websites (Menzies 2011; Rafail and Freitas 2019; Schmitz and Kazyak 2016), claiming that men are victims of feminism (Rafail and Freitas 2019).

Specific events illustrate that men's rights activists seek to strip women of resources and exclude them from male-dominated spaces, often through a networked system of harassment (Banet-Weiser and Miltner 2016) and terrorism (Jaki et al. 2019; Blommaert 2017) under the guise of pursuing "men's equality." For example, Dragiewicz (2011) shows how men's rights groups used "equal protection" to attempt to defund battered women's shelters in the state of Minnesota. In a controversy referred to as Gamergate, a group that included men's rights activists attacked women video game developers, video game journalists, and game studies academics in what Chess and Shaw (2015) describe as the reaction of a male-dominated space to the growing participation of women and feminists. The men's rights movement targeted Title IX as part of a broader trend of male supremacist organizing against feminism and gender equity.

Existing research on men's rights movements documents movement issues by analyzing men's rights websites, court records, and organizational documents (Dragiewicz 2011; Menzies 2011). Title IX for All, a men's rights organization with an online database of Title IX lawsuits, reports that, since 2013, they collected 735 Title IX lawsuits in the United States filed against schools by students and school personnel who claim their rights were violated during school investigations of Title IX complaints (Title IX for All 2021). Key informant interviews with Title IX investigators allowed me to identify six court cases filed by lawyers associated with men's rights organizations in California; two of these lawsuits were filed against the University of California (*Doe v. Regents of University of California* 2016 and *John Doe v. Regents* 2018); three were filed against the University of Southern California (*John Doe v. University of Southern California* 2016; *John Doe v. USC* 2018; and *Doe v. Allee et al.* 2019); and one was filed against Claremont McKenna College (*John Doe v. Claremont McKenna College* 2018).

I accessed these cases in Westlaw and coded the relevant stakeholders involved in each case, as well as the language they employed. I then used these documents to research online profiles and websites of the representing lawyers. All six of the cases were represented by the same lawyers at Hathaway Parker, a California based law firm that advertised their services as defense attorneys for men disciplined under their school's Title IX policy (although, they actually helped plaintiffs sue universities). When I conducted my analysis of lawyer and men's rights groups websites, I noted that the Hathaway Parker website home page quoted the original Title IX statute: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." This statute is used in this context to suggest that Title IX should protect accused men and not exclude them from educational opportunity.

The Hathaway Parker website listed men's rights organizations as resources for potential clients. These groups included the National Coalition for Men (NCFM), Stop Abusive and Violent Environments (SAVE), Foundation for Individual Rights in Education (FIRE), Families Advocating for Campus Equality (FACE), Title IX for All, A Voice for Men, and Save our Sons. I analyzed language about Title IX, women's equality, and feminism on their websites and compared the language with arguments made by Hathaway Parker in the courts. I then examined documents on Title IX sexual harassment provisions from the Department of Education, coding the documents for language commonly used by different stakeholder groups, including the men's

rights movement. Here, I document how men's rights language appeared in California court cases and Department of Education administrative law.[12]

Mobilizing in the Courts

In about 2016, the law firm Hathaway Parker began filing lawsuits against universities for lacking procedural fairness in their Title IX investigation and adjudication processes. The lawsuits, however, were not private right of action lawsuits under Title IX. Instead, the firm filed writ of administrative mandamus lawsuits in trial courts and then contested unfavorable trial court holdings by taking the cases to state level appellate courts in California. Hathaway Parker used these writ lawsuits to attack the credibility of schools' disciplinary actions by arguing that the school's Title IX investigative processes were not constructed or conducted fairly, and were neither in compliance with the California Code of Civil Procedure, nor due process rights guaranteed by the 14th Amendment of the Constitution.

The appellants in all six of the cases I analyzed made arguments that matched men's rights language and philosophy. Some of the arguments overlapped with respondent's rights proponents' concerns about the lack of sufficient due process protections for respondents in university Title IX investigations. For example, Penn Law professors listed the following concerns in the lack of protections for the accused in their 2015 blog publication in *The Wall Street Journal*: they critiqued the inability of accused students to have a lawyer cross-examine

[12] Notably, during key informant interviews, I learned that men's rights groups like SAVE also filed OCR Title IX complaints against the UC and lobbied the California State Legislature about Title IX. However, their efforts in these arenas mostly targeted scholarships and affirmative action programs intended to advance women, citing these women-only programs as discriminatory towards men. In this chapter, I focus on how men's rights groups targeted sexual harassment provisions under Title IX, and more specifically, how they made arguments for the use of certain investigation procedures in schools.

witnesses, and their school's lowering of the evidentiary standard from "clear and convincing" to "preponderance of evidence." Proponents of respondent's rights, however, justified their position differently than did men's rights groups. Respondent's rights proponents argued for certain policy changes out of concern for preserving procedural fairness to both parties, a principle they may have been inclined to support because of their legal backgrounds. Men's rights groups, on the other hand, used language in court lawsuits that suggested Title IX investigation processes – as schools were constructing them – were part of universities' feminist agenda to disadvantage men.

In *Doe v. Allee* (2019), Hathaway Parker argued that the disciplinary action that the accused student incurred should be overturned because the investigation conducted by USC staff was unfair. Specifically, the lawyers argued that the USC Title IX investigator assigned to the case was biased against the student based on her past work as an advocate for victims of sexual assault. The view that Title IX administrators are feminists who assume men must be guilty is a defining marker of men's rights ideology. Men's rights attorneys argued this exact point in *Doe v. USC* (2016): "the onus was put on John to prove his innocence rather than the other way around." The lawsuits took major issue with Title IX investigators exercising "discretion" and taking on too many roles. A common point of contention on men's rights blogs and websites is that schools have constructed "kangaroo courts," insinuating that universities have brought about lawlessness by allowing Title IX administrators to control the entire investigation process (see, for example: FIRE 2020). In *Doe v. University of Southern California* 2018, Hathaway Parker lawyers argued that: "the investigator exercised her discretion to chart the course and scope of the investigation and to determine credibility in questionable ways, and the investigator had overlapping and inconsistent roles of investigator, prosecutor, factfinder, and sentencer."

Of the court cases I examined in California, men's rights groups made limited advancements. Courts generally sided with universities, and made few decisions that granted men's rights groups their points. In *Doe v. Allee* (2019), the court found that the investigator's past work as a sexual assault advocate did not prove that she was likely biased against all men accused of sexual assault. In *Doe v. Regents of University of California* 2016, the court determined that university procedures that prevented students' attorneys from participating in hearings and that prevented students from cross examining witnesses did not render the university's processes unfair. The court reasoned that, "although a university must treat students fairly, it is not required to convert its classrooms into courtrooms." By 2018, the courts changed course slightly on this issue. In *John Doe v. USC* (2018), the court required schools to build a hearing process into their procedures so that respondents had the opportunity to respond to the allegations brought against them, and required that the responding party should be able to cross-examine critical witnesses of the complaining party, even if indirectly. This case caused the UC to pause Title IX investigations occurring at the time so that they could restructure their procedures in compliance with new case law requirements. Changes in hearing processes and cross-examination of critical witnesses, however, had been broader concerns espoused by many individuals concerned with procedural fairness generally, and are not an indication that California courts were particularly receptive to men's rights ideology. This trend may differ for men's rights groups suing universities in more conservative states.

Lobbying and the New Proposed Rule

Where men's rights groups could not make changes to Title IX in the California courts, they succeeded in lobbying Trump's Department of Education, led by Education Secretary Betsy DeVos. While some scholars suggest that the Trump presidency emboldened and expanded the

far right (Neiwert 2017), others suggest that the power of the far right was already quite expansive, and the Trump administration simply legitimated and mainstreamed their discourses (Barkun 2017). Scholarship shows a long history of men's rights organizing around various issues before the Trump administration (Messner 1997), and the men's rights organization Title IX for All suggests that they were organizing to combat Title IX's sexual harassment provisions as early as 2013 (Title IX for All 2021). During the Trump presidency, several media outlets covered deep collaboration between men's rights organizations and the Department of Education from 2016 to 2020 aiming to change provisions in Title IX that they claimed benefitted women and disadvantaged men (Barthelemy 2020; Einbinder 2017; Calacal 2017; Shugerman 2017).

Although men's rights groups and respondent's rights proponents often had overlapping concerns about the integrity and fairness of Title IX investigations, men's rights groups' discourse about men being disadvantaged and discriminated against under Title IX appears in Trump era documents through the Department of Education. An online article written in *The Nation* suggested that the anti-corruption organization Democracy Forward obtained 3,000 pages of e-mails between the Department of Education and men's rights groups via a Freedom of Information Act Request in 2017. That year, the Department of Education released a new Dear Colleague Letter that rescinded the Obama-era 2011 Dear Colleague Letter. Democracy Forward found that from May to September 2017, the Department of Education's Office of Civil Rights partnered with NCFM Carolinas, FACE, and SAVE to develop regulations on campus sexual assault. According to *The Nation,* the Department of Education hired the main funder of SAVE to help draft new regulations and teamed up with FACE to try to produce supportive op-eds (Barthelemy 2020).

The 2017 DCL adopted the argument that the 2011 DCL made it too easy for schools to discipline "the accused," and that the 2011 DCL was merely "interpretive," of law, rather than holding the weight of formal law. Among the investigation procedures criticized in the letter included the too-lenient preponderance of the evidence standard, a lack of appeals processes for accused students, and the discouraging cross examination of witnesses and the complainant by adversarial parties. The 2017 DCL undermined these past requirements by reiterating that the 2011 DCL did not hold the weight of formal administrative law because it did not go through a public open notice and comment period. The 2017 DCL concluded that the Department intended to implement new administrative law through a formal rulemaking process that would respond to public comments. Although these points have been argued by respondent's rights proponents, evidence documented by media outlets and civil rights organizations suggest that the Trump administration was particularly inclined to listen to and legitimize the discourse of far-right groups like men's rights organizations, rather than centrist civil liberties proponents concerned with basic procedural fairness.

In 2018, the Department of Education released their New Proposed Rule, a 144-page document (DOE 2018). The document not only aimed to fill in the specifics of how schools should investigate and adjudicate sexual harassment, it aimed to codify these specifics into formal law. The document was forthright in mentioning that "numerous stakeholders" – including students accused of sexual assault – contributed to how the DOE constructed new Title IX measures (DOE 2018: 12). It mentioned the "high stakes of sexual misconduct," not only for complainants, but also for the accused. It frequently co-opted the language of feminists who fought for the law in the first place, citing accusations of sexual misconduct as limiting respondents' access to equal educational opportunity:

> …for respondents, a finding of responsibility for a sexual offense can have a lasting impact on a student's personal life, in addition to [the student's] educational and employment opportunities… potentially life-altering consequences deserving of an accurate outcome. (DOE 2018: 68)

The language of the proposed rule required schools to alter the implementation of Title IX at the campus level. Here, I address seven of the most notable amendments to how investigation procedures should be carried out for peer harassment, detailing how each was informed by men's rights priorities.

First, the new proposed rule suggested a narrowing of the scope of what constitutes sexual harassment under Title IX, citing that the 2011 DCL "captured too wide of a range of misconduct, resulting in infringement on academic freedom and free speech and government regulation of consensual, non-criminal sexual activity" (DOE 2011: 11). The new proposed rule required that schools narrow the definition of harassment from "severe, pervasive, *or* objectively offensive" to "severe, pervasive, *and* objectively offensive." According to most key informant interviews, the first definition covered a wider range of possible discriminatory behavior. For example, a one-time rape may be severe, but not necessarily pervasive; ongoing domestic violence may be both severe and pervasive; and inappropriate comments in the workplace may be interpreted as pervasive, but not necessarily severe. The new proposed rule suggested that schools use the following definition of SVSH from the *Davis v. Monroe* court case, that the behavior must be "so severe, pervasive, *and* objectively offensive that it denies its victims equal access to education that Title IX is designed to protect" (DOE 2018: 9). All of the key informants I interviewed suggested that this definition of sexual misconduct narrowed the definition to the most violent and pervasive forms of behavior, betraying Title IX's purpose, which is to address various forms of sex discrimination, and not just sexual assault. Additionally, the proposed rule required what key informants referred to as "mandatory dismissals," a requirement that schools

dismiss a complaint when it does not meet the new, narrowed definition of sexual harassment (DOE 2018: 50).

Second, the document regarded Title IX staff as potentially biased in regards to "sex-stereotypes" about men (DOE 2018: 96), and as presuming the guilt of men before an investigation has occurred:

> Stakeholders have raised concerns that recipients sometimes ignore evidence that does not fit with a predetermined outcome, and that investigators and decision-makers have inappropriately discounted testimony based on whether it comes from the complainant or the respondent. (DOE 2018: 44)

Notably, this information was gathered from "stakeholder concerns," not actual analysis of evidence collected in schools' Title IX reports, OCR analysis documents in measuring schools' compliance with Title IX, or state Title IX audit reports. Media reports suggest that "stakeholder concerns" signify men's rights groups (Barthelemy 2020). The proposed rule proceeded to mandate that Title IX staff at schools should be re-trained away from victim-centered and trauma-informed practices, "using training materials that promote impartial decision making that are free from sex stereotypes" (DOE 2018: 69).

Third, the document attempted to take away decision making power from feminist, and therefore biased, Title IX administrators. In response to men's rights claims that Title IX investigators are "judge and jury" in "campus kangaroo courts," (FIRE 2020), the proposed rule revoked the old responsibility of Title IX investigators to make a policy finding (whether a respondent has violated their school's SVSH policy) after conducting an investigation. Research shows that it was already typical for schools to involve many different types of staff when investigating and adjudicating SVSH cases (Armstrong et al. 2020). In the UC, the investigator collected evidence, interviewed witnesses, and produced a policy finding under the preponderance of the evidence standard. If there was a finding of responsibility – of having

broken the SVSH policy – that finding of responsibility was then re-evaluated by an adjudicating body through another office on campus (for example, the Office of Student Conduct), usually with the clear and convincing standard. The new proposed rule took away the responsibility of Title IX investigators to produce a finding of responsibility (DOE 2018: 65). The new rule mandated universities to find someone else to create the policy finding, before then turning the policy finding over to an adjudication process. It is not clear whether the new proposed rule recognized that many schools already separated their adjudication processes from their investigation processes.

Fourth, the new proposed rule included a detailed section making major changes to the issue of parties' representation by advisors in a school's investigation process. Under the 2011 DCL, schools were instructed to either consistently allow or restrict parties from having advisors in Title IX investigation proceedings, and were discouraged from cross-examining witnesses and parties, as cross-examination is known to be re-traumatizing and victim-blaming. The new rule required that parties must "have the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice," (DOE 2018: 51), that the school must provide an advisor for anyone who requests one (DOE 2018: 57), and that parties have the option to hire an attorney as their advisor (DOE 2018: 57). Key informants cited this as a problem of inequity, given that people with more resources, like faculty and wealthy students, are likely to afford to bring trained defense lawyers into Title IX investigation processes, whereas complainants who experience disadvantage as a result of race, class, and gender, may get "stuck" with whoever schools appoint as advisors.

Fifth, the proposed rule required institutions of higher education to implement hearings with live, formal cross examination. Cases in the California courts required hearings with at least

indirect cross examination of critical witnesses. The new proposed rule required that advisors cross-examine parties and witnesses in view of the opposing party (DOE 2018: 56). The text mentioned that questions in cross-examination could be inappropriate or irrelevant, citing the purpose of rape shield laws, "which [are] intended to protect complainants against invasion of privacy, potential embarrassment, and stereotyping" (DOE 2018: 58). However, the only measure built into the text against this issue is that: "The decision-maker must explain to the party's advisor asking cross-examination questions any decision to exclude questions as not relevant" (DOE 2018: 52). Key informants suggested in their interviews that this would allow for inappropriate, retraumatizing and victim blaming questions to be posed to a complainant, even if the "decision-maker" later determines the question is inappropriate. Further, the rule suggested that past sexual behavior can be brought up during a cross-examination when, "the evidence concerns specific incidents of the complainant's sexual behavior with respect to the respondent and is offered to prove consent" (DOE 2018: 52). This provision clashed with feminist definitions of consent, which require that consent be obtained in every sexual encounter.

Sixth, men's rights groups argued that if the future of the accused person is at stake, a higher standard of evidence should be used in investigating claims of sexual harassment. The proposed rule did not directly require schools to implement the clear and convincing standard over the lower preponderance of the evidence standard. However, the proposed rule gave many schools a forced choice:

> The recipient must apply either the preponderance of the evidence standard or the clear and convincing standard. The recipient may, however, employ the preponderance of the evidence standard only if the recipient uses that standard for conduct code violations that do not involve sexual harassment but carry the same maximum disciplinary sanction. The recipient must also apply the same standard of evidence for complaints against students as it does for complaints against employees, including faculty. (DOE 2018: 61)

The UC has historically used the preponderance of the evidence standard to investigate peer harassment, and the clear and convincing standard for faculty who are investigated for harassment. Because faculty had "shared governance," over the school's Title IX policy, faculty were unlikely to give up the clear and convincing standard of evidence, which helps protect them from incurring disciplinary action for alleged SVSH. Therefore, according to one key informant interview, the UC would likely be obligated to apply the clear and convincing standard to peer harassment cases, making it increasingly difficult to find that someone has violated the SVSH policy.

Seventh, the new proposed rule changed the meaning of "discrimination on the basis of sex." The language shifted from viewing complainants – mainly women – as a protected category, to viewing respondents – mainly men – as a protected category, stating: "A [university's] treatment of the respondent may constitute discrimination on the basis of sex under Title IX" (DOE 2018: 40). The rule then stated that schools could be liable under Title IX for neglecting to implement the new proposed procedures:

> Deliberate indifference to a complainant's allegations of sexual harassment may violate Title IX by separating the student from his or her education on the basis of sex; likewise, a respondent can be unjustifiably separated from his or her education on the basis of sex, in violation of Title IX, if the recipient does not investigate and adjudicate using fair procedures before imposing discipline. (DOE 2018: 40)

The proposed rule granted respondents private right of action under Title IX for discrimination on the basis of sex.

Stage 5: Co-Opted Compliance

In Stage 5, men's rights groups achieve "co-opted compliance." Here, I show how the UC was obligated to comply with legal changes achieved by the men's rights movement, even

when it conflicted with their values and priorities. Further, I show how survivor activists and their advocates attempted to resist changes in formal law on Title IX.

It is of great importance to note that there was an enormous resistance effort by feminist survivors, university administrators, and other progressive advocates against the formalizing of the new proposed rule on Title IX. During the 60-day open notice and comment period for the proposed rule, college-age survivor activists and feminist organizations strategized to flood the Department with comments, knowing that the Department would be delayed in implementing the regulations in responding to every comment individually.

When finalized, the 2,000 page Final Rule gave schools a period of about three months to make massive changes to their investigation processes. Between 2018 and 2020, the UC was extremely vocal in condemning the practices written into the new regulations. The UC's president, Janet Napolitano, wrote an op-ed in *The Washington Post* in 2018 criticizing the requirements as "intimidating" to complainants and "undermining the very procedures designed to ensure fairness and justice" (Napolitano 2018). In the op-ed, President Napolitano said that the requirements for live hearings and cross examination, in particular, "Will discourage reporting." The UC also submitted a comment during the open notice and comment period, detailing the UC's primary concerns with the proposed regulations. The comment stated that the rules were in conflict with the UC's "principles of equity."

Leading up to the August 14th, 2020 implementation deadline, various progressive and civil liberties organizations including the ACLU and Know Your IX sued Betsy DeVos and the Department of Education in an attempt to block the new rule (*Know Your IX et al. v. Elisabeth DeVos* 2020). There was also action by dozens of Attorneys General. Eighteen Attorneys General, including the Attorney General of California, sued DeVos and the Department, citing

the rule as "revers[ing] decades of effort to end the corrosive effects of sexual harassment on equal access to education" (*Commonwealth of Pennsylvania et al. v. Elisabeth DeVos* 2020). Albeit, a separate group of 14 Attorneys General from more conservative states released an amicus brief that summarized the legal obligations of colleges and universities in complying with the Final Rule, additionally citing men's rights cases won nationally.

Despite intense efforts by feminist survivors, advocates, and administrators to resist the new regulations, the UC began preparing to comply with an interim policy for August 2020. Under co-opted compliance, men's rights interest groups – in collaboration with a presidential administration that championed far-right discourse – altered the meaning of compliance to Title IX. Schools became obligated to comply, even when they believed the new provisions of the law were immoral, unjust, and in conflict with the intended function of the law. Although feminist Title IX staff once benefitted from ambiguity in Title IX law, they subsequently experienced constraint when men's rights groups clarified these legal ambiguities. Because they successfully advocated for changes in federal administrative law, men's rights groups were then able to mobilize OCR complaints and private right of action to "hold schools accountable" to their conception of the law. Survivors, on the other hand, had a severely weakened ability to mobilize OCR complaints and lawsuits as a mechanism to push schools toward feminist, survivor-centered conceptions of Title IX. Men's rights not only co-opted the language of civil rights movements for marginalized populations, they gained power over how Title IX should be implemented in schools and enforced by the Department of Education and the courts.

DISCUSSION AND CONCLUSION

The findings of this study make several key contributions to theory on law, organizations, and social movements, as well as to research on Title IX. I build on scholarship that examines

how organizations and social movements affect civil rights law (Albiston 1999; Dobbin 2009; Dobbin & Kalev 2017, 2018, 2019; Dobbin & Kelly 2007; Dobbin et al. 2015; Dobbin et al. 2011; Edelman 2016, 1992; Edelman et al. 2011; Edelman & Talesh 2011; Kalev et al. 2006; Kelly & Dobbin 1999; Marshall 2003, 2005; Talesh 2009, 2012, 2014, 2015) by focusing on the interaction of social movement and organizational actors in the legal construction process. Here, I not only consider the impact of conservative counter-movements like the men's rights movement on how law plays out in organizations; I demonstrate how the behavior of progressive social movement activists and administrators within organizations can render law susceptible to challenge by counter-movements. The data analysis reveals that feminists' legal strategies left the door open to legal challenge by men's rights groups. Contrary to the emerging belief of recent Title IX scholars (Gualtieri 2020; Pappas 2016; Albrecht and Nielsen 2020) who depict Title IX administrators as motivated to protect university interests over the rights of victims, I show that Title IX administrators are actually "insider activists" (Scully and Segal 2002; Bell et al. 2003; Buchter 2019; DeCelles, Sonenshein, and King 2019) who champion feminist values, rather than managerial ones. Neither feminist activists nor insider activists clarified law on how investigation processes should be carried out. Activists focused their energies on challenging the outcomes of investigations (i.e. whether a perpetrator was fired or expelled) rather than codifying what types of procedures should be used in investigations. Before conservative movements counter-mobilized, administrators benefitted from ambiguity in the law. I expand on how the conflict among feminist survivor activists and Title IX administrators informed the legal strategies of each group in Chapter Three.

The mobilization of the men's rights movement and the shift to a Trump presidency presented significant legal challenge to feminist visions of how Title IX should be carried out.

Men's rights groups sued in the courts and lobbied Trump's Department of Education, making procedural arguments that ultimately would make it harder for schools to find that alleged perpetrators had violated their school's sexual harassment policy. University administrators became legally obligated to implement investigation procedures that they feared would be harmful to survivors. I argue that the problem of Title IX is not that administrators merely symbolically complied with Title IX law. Instead, I suggest that the problem is "co-opted compliance,": that a conservative group (in this case, men's rights organizations) co-opted the language of civil rights movements of marginalized people and leveraged the legal system to argue that the dominant group (men) should be the identity class protected under Title IX. Their strategy obligated university administrators to build legal structures that treat the dominant group as the protected and disadvantaged class.

There are important distinctions between the symbolic compliance and co-opted compliance concepts. Both offer an understanding of how anti-discrimination laws become ineffective at ameliorating inequality. However, there are different levels of intentionality. With symbolic compliance, what makes civil rights law ineffective is that it is crowded out by other managerial logics and norms. Inequality occurs through structural, unintentional, and even behavioral processes. With co-opted compliance, the law becomes ineffective as the result of highly intentional counter-movement advocacy. Feminist and men's rights groups had opposing interests, and their contestation was overt. The administrators also had clearly defined interests – siding mostly with feminists – and they were overridden by formal law. The organizations literature could benefit from further investigation into overt and intentional obstacles to inequality.

Finally, it is important to discuss the policy implications of this chapter. I argue that legal strategies by feminists enabled men's rights groups to have success in codifying into law investigation procedures that treat men as the class deserving of protection under Title IX. The conclusion, however, is not that feminists should have made law more specific, and therefore could have completely prevented legal challenges by counter-movements, or a conservative, far-right presidential administration. It may have equipped feminists better in the fight, but securing clarification was no absolute guarantee that the law would have held firm in the face of men's rights groups and the Trump administration's challenges. Another problematic conclusion of this chapter might be that, had feminists clarified legal ambiguities in investigation procedures, Title IX law would have been effective in reducing sexual harassment and sexual violence on college campuses. Socio-legal scholars have pointed out that policy and practice are often decoupled, even when policy is specific (Edelman 2016; Barnes and Burke 2006). Additionally, the investigation procedures are only one part of a bigger process of schools' intervention into sexual violence. Investigations help find whether someone has violated a school's harassment policy, but they do not help instruct schools on what the sanctions should be. This still leaves the feminist movement with major questions on whether violence is reduced most effectively through punishment or through educational, restorative justice approaches.

CHAPTER THREE

Multiple Feminist Visions of Substantive Title IX Compliance: Disentangling Legal, Social Movement, and Managerial Logics

ABSTRACT

This chapter challenges a literature on Title IX that depicts Title IX administrators as the main culprits in rendering universities' sexual harassment policies merely symbolically compliant with federal civil rights law. Through 30 interviews with Title IX administrators at the University of California (UC), I explore how university administrators drew from various legal, social movement, and organizational logics to construct and implement Title IX policies and procedures from 2011 to 2015. Finally, I draw from interviews with 30 survivor advocates in the UC and an analysis of 8 survivor lawsuits against the UC to suggest why survivors and survivor advocates came to see Title IX administrators as aligned with management instead of feminist legal ideals. Title IX administrators, because of their role as educators and their past experiences with litigation, saw the task of Title IX as to educate and reintegrate offenders into the university. They saw this approach as consistent with their feminist principles. By contrast, survivor advocates wanted offenders to be expelled, which they believed would make victims safer on campus. Survivor advocates saw administrators' stance on offenders as a way of protecting institutional interests over survivors' safety. Because of this conflict, survivors leaned on legal strategies like lawsuits and OCR complaints that contested the outcomes of investigations (i.e. whether or not perpetrators were fired or expelled), rather than issues with the investigation procedures. I conclude that there are multiple feminist visions for what substantive compliance to Title IX looks like.

Key words: Title IX, #MeToo, legal endogeneity, symbolic compliance, substantive compliance, restorative justice

INTRODUCTION

Universities made massive changes to how they respond to campus sexual harassment between 2011 and 2020. In particular, universities have built offices to coordinate compliance with Title IX of the Education Amendments of 1972, a law intended to ensure gender equality and reduce sex discrimination in educational settings. However, experts have questioned whether Title IX has fulfilled it stated purpose (NASEM 2018). Extant literature suggests one problem is that university administrators have interpreted Title IX law so as to defend the interests of the university over the rights of people who are sexually harassed (Gualtieri 2020; Pappas 2016; Albrecht and Nielsen 2020). These scholars draw from socio-legal studies of Title VII[13] that explore the relationship between law and organizations and show how organizations construct anti-discrimination policies mainly to shield themselves from liability (Edelman 2016; Edelman and Cabrera 2020). Research on Title VII shows that organizations merely symbolically comply with anti-discrimination civil rights laws, meaning that organizations construct policies and offices that are ineffective at achieving legal ideals, but retain symbolic value (Edelman 2016; Edelman 1992; Edelman and Petterson 1999). Compliance professionals like HR professionals drive the "managerialization" of anti-discrimination policies, making policies more effective at protecting the organization from liability than individuals from violence (Edelman, Fuller, and Maria-Drita 2001; Edelman et al. 1991). Scholars are inclined to apply theory derived from the study of Title VII to the Title IX context, and have drawn comparisons without much supporting empirical evidence (see for example: NASEM 2018). Additionally, survivor advocates have been

[13] Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex and national origin.

vocal about their mistrust of the university in applying Title IX in line with a feminist vision (Cabrera 2020).

This chapter challenges the notion that Title IX administrators are the main culprits of ineffective and merely symbolic Title IX policy implementation. Building on a tradition of scholarship that interrogates the relationship between law, organizations, and social movements, I advance knowledge on Title IX by considering the role that social movements have played in constructing the meaning of Title IX. In the last chapter, I showed that men's rights groups and not university administrators had the most influence in defining the law from about 2015 to 2020. Men's rights groups – i.e. a backlash movement to the feminist movement – specified law where it was previously ambiguous. The result was that Title IX administrators wrote policies compliant with men's rights driven laws. In this chapter, I move back in time to study how university administrators implemented Title IX policies and procedures when they had more discretion. From 2011 to 2015, before men's rights groups became influential, Title IX administrators drew from legal, social movement, and organizational logics to understand the law and enact it. I trace the sources of these logics. Then I trace how survivor advocates came to see university administrators as aligned with management instead of feminist legal ideals. The result, I argue, was legal strategies that left the door open for men's rights groups to alter the meaning of Title IX.

In this chapter, I draw on interviews of 30 Title IX administrators who were in the University of California system, and 30 survivor advocates associated with the UC. I also analyze eight court cases by survivors against the UC from 2011 to 2020. Instead of viewing Title IX administrators as compliance professionals who aligned with the values and priorities of organizational management, I argue that Title IX administrators in the UC were typically

"insider activists" who did want to make the university a safer place. However, Title IX administrators, because of their role as educators and their frustrating past experiences with litigation, tended to see the task of Title IX differently from how survivors and survivor advocates viewed it. As legal professionals and educators, Title IX administrators drew on restorative justice practices to construct polices that helped them educate – rather than punish – perpetrators. Administrators wanted to use grievance procedures as an educational tool that could help prevent future "bad" behavior, not just at the university, but in the broader community of which alleged perpetrators may be a part. On the other hand, survivors feared violence and preferred that Title IX remove violent or potentially violent people from campus. Whether the perpetrator learned their lesson is not a risk they were willing to take to their bodies or their psychological wellbeing.

This discord, I argue, is not based on the fact that administrators wanted to protect the university and avoid regulation, while survivors and survivor advocates wanted to protect individuals on campus from violence. On the contrary, it was the professional socialization of administrators that put their views at odds with those of survivor advocates on what makes a community safe and what may bring an end to discriminatory behavior. Feminists were divided over what it means to move beyond merely symbolic compliance, and to substantively comply with Title IX civil rights law. Nonetheless, survivors and advocates felt unprotected, and saw their lack of protection as evidence that administrators serve managerial interests. This discord, I argue, played a part in why feminist activists pursued legal strategies that focused on contesting the outcomes of Title IX investigations, rather than codifying into law the investigation procedures that schools should use. Because feminists neglected to clarify how schools should

conduct investigations, men's rights groups were more easily able to alter Title IX in line with their own priorities.

REVIEW OF THE LITERATURE

Law and Organizations

As I noted in the last chapter, the theory of legal endogeneity explains how organizations shape the meaning of civil rights laws so that they become merely symbolic over time (Edelman 2016). This line of research shows that, when organizations construct anti-discrimination policies in compliance with law, the practices of compliance professionals reflect managerial interests at the expense of the rights of employees (Edelman, Uggen, and Erlander 1999; Marshall 2005). The process by which law begins to reflect managerial priorities is known as the "managerialization of law." Instead of being described as a conscious process by which management outright disregard civil rights law, Edelman (2016: 125) depicts managerialization as a gradual process that occurs as a result of the exchange of logics between legal and organizational fields (Edelman 2016: 23). Legal and organizational fields have different and often competing core logics, or principles, that drive the field (Edelman 2016: 23). Legal logics are centered on rules and rights and give great weight to ambiguous principles like due process, equal access to law, and equal protection of law. Legal logics hold that legal principles should be given deference over political or economic interests of any citizen or organizational entity (Edelman 2016: 23). In contrast, managerial logic is centered on market rationality, organizational efficiency, and managerial control. Managerial logic holds that organizational rulers (like managers or administrators) have legitimate authority to set workplace rules, to control workers, and to resolve disputes that arise within organizations (Edelman 2016: 23).

HR professionals typically include affirmative action officers, diversity officers, inclusion officers, equity officers, and ombudspersons (Edelman 2016: 78). They construct organizational policy from ambiguous legal requirements under Title VII by consulting with management consultants, who frame civil rights laws as risky to organizations, especially civil rights laws that give private right of action to victims (Edelman 2016: 79). Additionally, compliance professionals typically experience legal logics as abstract and remote, and business logic as clear and immediate, making them more inclined to build policies in line with business ideals.

Socio-legal literature that interrogates how organizations construct policy and managerialize law focuses on Title VII. Less is understood about how educational institutions construct Title IX policy and shape the law's meaning. Limited literature on Title IX falls in line with extant law and organizations theory and suggests Title IX administrators are to blame for Title IX's ineffectiveness in reducing violence on campus. Scholars characterize Title IX administrators as compliance professionals who privilege managerial logic and render policies merely symbolically compliant with law (Gualtieri 2020; Pappas 2016; Albrecht and Nielsen 2020; NASEM 2018). My interviews with Title IX administrators about how they believed Title IX should be implemented reveal a different picture. In part, this may be because current Title IX scholar base their findings on interviews with survivors, survivor advocates, and potential rights claimants, rather than administrators. Rather than bureaucrats who passively and unintentionally managerialize law in tune with organizational prerogatives, I suggest Title IX officers are "insider activists" who interpret IX according to one feminist vision for Title IX. They are driven by feminist social movement ideals and legal ideals – more so than managerial ones. The problem instead is that there are multiple, conflicting feminist visions for how Title IX should be

carried out, leading to discord among feminists over how the law should be constructed and implemented.

Insider Activists

Literature on "insider activists" contributes to understanding the relationship between social movements, law, and organizations (Zald and Berger 1978; Zald 2005; Briscoe and Gupta 2016; Weber and Waeger 2017; Edelman, Leachman, and McAdam 2010; Davis et al. 2005; Davis and Thompson 1994; Davis and Zald 2005; Lounsbury, Ventresca, and Hirsch 2003; Morrill, Zao, and Rao 2003; Schneiberg, King and Smith 2008). Scholars developed the term "insider activists" to understand how actors internal to organizations can drive social change (Scully and Segal 2002; Bell et al. 2003; Buchter 2019; DeCelles, Sonenshein, and King 2019). This literature examines how insider activists frame strategies (Snow et al. 1986; Raeburn 2004) or "package moves" (Dutton et al. 2001) to sell specific issues to management (Dutton and Ashford 1993; Dutton et al. 2001; Howard-Grenville 2007; Alt and Craig 2016). Insider activists are also known to challenge the diversity commitments of their hiring corporations (Scully and Segal 2002), choosing to voice concerns (Hirschman 1970) and to "capitalize on apparent hypocrisies to urge change" (Scully and Segal 2002: 161). Insider activists push organizations to "walk the talk" with respect to their commitments around diversity (Meyerson and Scully 1995; Raeburn 2004; Scully and Segal 2002; Briscoe and Safford 2008).

However, the "insider activist" literature does little to explain how insider activists learn different field logics, like social movement, legal, or managerial principles. I show that insider activists gain their views on Title IX implementation through their legal training and professional positions. "Insider activist" literature also does little to explain why insider activists might come to be seen as adversarial to the movement by other activists. I suggest that insider activists may

alienate the members of the cause they fight for, not because they serve the interests of the institution, but because their professional backgrounds lead them to see the task of change differently from how other activists see it.

METHODOLOGY

The findings of this chapter are based on data from three sources: interviews with Title IX administrators, interviews with survivor advocates, and an analysis of survivor court cases. In Chapter Two, I discuss the methodology I used to conduct interviews with Title IX administrators, as well as the justification of case selection and techniques used for data analysis. Here, I detail interviews with survivor advocates, and go in-depth into my analysis of survivor court cases, which I conducted as part of the genealogy of Title IX law.

I conducted 30 in-depth, semi-structured interviews with survivor advocates in the UC. Each interview lasted approximately 1 hour. I interviewed participants during the 2012-2013 school year and asked them to comment on recent events. I began by recruiting for anyone who classified as a "responsible employee" – employees of the university who are required to report instances of sexual harassment and sexual violence to their Title IX Office. This designation applies to almost everyone on campus, including student employees, graduate students, faculty, staff, administrators, medical staff, and counseling staff. I used snowball sampling to identify responsible employees who felt that they were feminists who support survivors. The individuals I spoke with considered themselves allies to survivors. 22 out of 30 talked about how they helped someone they knew navigate getting help from campus resources after experiencing harassment. 10 of the survivor advocates I spoke with came from the graduate student workers' union, which has done a lot of activism around sexual harassment and sexual violence over the last decade.

Others came from advisory boards, task forces, identity centers, and counseling centers on campus.

Finally, in order to capture points of the survivor movement without conducting potentially retraumatizing interviews, I read Title IX court cases by survivors against the UC. I examined eight survivor (or complainant) lawsuits against the UC from 2011-2020. I used Westlaw to gain access to the court cases. The court cases demonstrated arguments made by survivors and their lawyers about how schools neglected to keep them safe from violence (via the deliberate indifference standard) and from the threat of future violence (through "pre-assault" claims). The court cases detailed instances of violence experienced by survivors, and how survivors believe their schools should have responded.

FINDINGS: HOW FISSURES DEVELOPED IN THE FEMINIST TITLE IX MOVEMENT

Here, I organize my findings into four sections. First, I examine the field logics that Title IX administrators drew on to construct and implement university-level policies and procedures from 2011 to 2016, when they had more discretion in interpreting ambiguous law. Second, I draw attention to the processes and mechanisms by which Title IX administrators learned to adopt these logics. Third, I show how survivors and survivor advocates came to think of Title IX administrators as serving the institution, rather than survivors. Fourth, I elaborate on how the discord among feminist survivor activists and Title IX administrators lead each group to engage in legal strategies that left the door open for conservative counter-movements to change Title IX.

Field logics: Social Movement, Legal, or Managerial Logics?

I find that Title IX administrators primarily draw from legal logics and feminist social movement principles in how they describe their work in constructing and implementing Title IX policies at the university level. Every interviewee went into detail about how they were affected

by the massive student-led movement that drew renewed attention to Title IX in 2013. As depicted in the documentary *The Hunting Ground* (Dick 2015), survivors of sexual assault from campuses across the country collaborated in filing Title IX complaints against their schools. Heldman, Ackerman, and Breckenridge-Jackson (2018) identify this era – from 2013 forward – as the "New Campus Anti-Rape Movement," when student survivors mobilized to get their schools to comply with Title IX anti-harassment mandates.

Several Title IX administrators I interviewed talked about having watched *The Hunting Ground* documentary, and conveyed that they felt student survivors were justified in demanding better responses from universities. Many participants condemned universities for causing so much pain to survivors in the past, and acknowledged that institutions can be hurtful and retraumatizing when they do not take appropriate action. The individuals I interviewed were extremely conscious of feminist social movement demands, and wanted to be part of the solution, not the problem. Helen, a Title IX administrator I interviewed, mirrored talking points of the survivor movement by acknowledging that the university has previously silenced those who report violence, refused to intervene in any way, and retaliated against those who spoke out publicly. Helen said:

> In 2011, the department had a terrible story straight out of *The Hunting Ground*… The student movement is what changed Title IX at that time. Most of what I've heard on what the responses students got from Title IX offices that were understaffed are terrible stories that no one should ever be told when they have this sort of experience. To be told that [administrators] are not able to assist them, or that this will ruin [a student's] career, or that they shouldn't report it, that would be really outrageous.

Title IX administrators adamantly talked about how they wanted to help construct university level Title IX policies and procedures as a way of mending universities' historic maltreatment of survivors. They often recognized that the law was ambiguous, and that the ambiguity in law from 2011-2016 worked in their favor as insider activists. They wrote policies

that were as broad and inclusive as possible in order to be able to intervene in a wide range of problematic and violent behavior. Managerial logics would require administrators to take responsibility for as little bad behavior as possible in order to avoid legal risk. Instead, Title IX administrators wrote Title IX policies so that the university became responsible for a huge range of discriminatory behavior beyond rape, from spitting on someone to name calling. Title IX administrator Kathy spoke highly of the UC for creating such a broad policy:

> The UC policy definition of sex harassment is one of the broadest that I've seen. I don't think our policies at [my previous institution] were even as broad as in the UC. I think the UC has been as progressive, or they've done their best to incorporate many different things that can fall under the policy… They've done the best that they can do. I do think that the UC policy is particularly positive in that way, that it encompasses quite a bit.

When I asked participants if they could tell me about a time they ever felt constrained in constructing and implementing broad, inclusive, and progressive policies, they more readily cited being constrained by legal gains of the men's rights movement than by politics internal to the UC. One participant, Ariana, addressed the myth head-on that Title IX administrators were constrained by higher ups at the university. Ariana said:

> The irony is that so many of my Title IX colleagues both in the system and across the country do this work for love and not for money. They do this work because they believe in the prevention of sexual harassment and discrimination, and they believe in the institution's responsibility to do the right thing. We have been lucky at [my campus] to have been a really independent and highly supportive shop for lots of years. So, I have never been in a position where I was being told what to do, or I had to protect the institution. Maybe that happens other places, I can't say that it doesn't, I don't know that it does, but I can only speak to my experience in the places that I've worked both in the UC system and previously at other institutions.

One participant, Riley, made it clear that it was central to her professional identity that she helps keep the university honest and not just "shove stuff under the rug," which has been a big talking point of the survivor movement. She pointed out that her role is never to defend the interests of the institution over survivors, and believed in reporting honest numbers of

discrimination cases. In line with legal logic, she believed that justice is more important than deference to the political or economic interests of the university. When asked "what motivates you to stay in this job?" Riley responded:

> What motivates me is hearing and reading about cases on college campuses where [administrators] shove stuff under the rug, where they're too afraid to speak on behalf of things they are beholden to, like money, or needing a job at the institution. But I don't understand lying on behalf of others. My motivation is to be honest in reporting what we report. People are innocent until proven otherwise, but if we don't report, we won't hold people accountable who need to be. So far, I believe [my campus] does a pretty good job of that.

Participants emphasized the importance of fairness in the Title IX policies that they constructed, both for survivors (complainants) and those who respond to allegations (respondents). Although they were heavily guided by survivor movement talking points in describing their motivations for doing Title IX work, they also drew from legal logics in describing how they constructed policies and procedures in the UC. In their interviews, they emphasized the importance of fairness in investigative processes to both parties. Research shows that fairness is how compliance professionals understand legal principles (Edelman, Erlanger and Lande 1993; Edelman 2016). Title IX administrators stressed the importance of due process, which includes offering the respondent thorough information about what has been alleged. Additionally, administrators were proud of building equal protection under the policy by creating a Respondent Services resource office, which was established before legal pressure from the men's rights movement. Title IX investigator Rachel said:

> I did an interview with a current law student, but she graduated now, she had done her MPH focused on Title IX policies, and she had worked with Harvard's Title IX Office and she was trying to get into the Title IX sphere. She had never even heard of a Respondent Services Coordinator. That sounded so outside of the realm of Title IX that she had worked under, that it seems really obvious to me that the UC has tried really hard to be trauma informed and survivor centered, while also maintaining protections for potential respondents.

Instead of narrowing the policy and describing issues in terms of legal risk to the university, Title IX administrators drew from social movement principles to describe their desire to advance some of the demands of the survivor movement. Additionally, they drew from legal logics to explain how they built policies that are fair both to complainants and respondents in internal grievance processes, and that held universities accountable in honest reporting and swift response.

Interviewees drew on the language of the campus anti-rape movement and on broad legal principles, but their preference for educating perpetrators rather than punishing them comes from their professional backgrounds. Attending law school was not a requirement to be a Title IX investigator, but the administrators I interviewed each had some level of experience attending law school, working as a lawyer, or doing victim advocacy (i.e. working in domestic violence or rape crisis centers), which required legal knowledge. Because of their backgrounds, they experienced enormous internal conflict over whether punishment is an effective – and feminist – way of changing negative behavior and creating positive social change. I asked one participant, Beth, "Where do you feel like you are on the spectrum of viewpoints on how Title IX should be carried out, from survivor activist to men's rights?" Beth said that she used to believe punishing perpetrators was a good solution, but after going through law school and being a defense attorney, she realized that many people may simply not understand that their behavior is wrong. She was also conscious of the fact that systems that use punishment may disproportionately punish and further disadvantage people who are already marginalized. She said:

> If you had asked me before law school, I would have been on the survivor advocacy side. Without a doubt. That was my mindset, that's where I was, that's where my focus was… Going through law school, my experiences doing immigration detention defense, there's so much more than just the "get em all in trouble" mindset… In my immigration work, I was working with folks who were convicted of crimes, some rightfully, some wrongfully,

> and it's hard. By and large, from a larger cultural sociological perspective, the people who are more likely to get in trouble are already marginalized and already disenfranchised for whatever reason from society. They're already folks who are less privileged than others.

Interviewees came to see the limitation of punitive responses before they took on positions in administering Title IX. More than just dressing up activist rhetoric in order to protect the institution, Title IX administrators demonstrated that they have long put thought into moral dilemmas involving punishment.

Another administrator, Tiffany, drew from her victim advocacy background in explaining how she felt conflicted about the use of punishment. In her experience, some perpetrators can be educated and reformed, while some perpetrators have no interest in changing for the better. She said:

> I don't know if punishment works in every instance, sometimes it does, and sometimes it doesn't. I feel like I have some conflicting perspectives. I think that at my core, I always have that victim advocacy background, prevention background. For many folks it's a lack of information about what is and what is not acceptable. Other times people are just terrible people and it's going to happen anyways. If people are jerks and hurting other people, I do feel like there is a space for quote unquote punishment. I think that is up for debate.

Participants were deeply conflicted about the effectiveness of punishment and the limitations of trying to educate people. One high level Title IX administrator, Susan, mentioned that her office tried to balance using both forms of behavioral interventions in constructing and implementing Title IX policies and procedures, but preferred to use educational tools first before resorting to punishment. She framed it as her responsibility as an educator to make sure that people who work and learn at her school not only reform their behavior to make the campus safe, but to make the world a better place:

> We're an institution of higher education. Our entire job, the entire reason that we're all here, is to educate people, and to prepare them for their future life. If you're looking at

> the student focus of our job, we have to have that mindset. We have to be able to say, we can't just cut you out. I also think that having been in this work, you see a spectrum of conduct. The line where we remove people is so far down the road. There are touch points to help people grow and get them to a better place because I want these students to go into whatever workplace as [an] alum [of this campus] and not continue on that path. If we just remove folks, we just put them out into the world elsewhere. We're not really making the world a better place.

Title IX administrators gained a unique perspective on what successful Title IX outcomes are because they had experiences working within legal systems and in higher education. They understood the importance of bringing legal principles like fairness and due process for both complaining and responding parties into their policies and procedures. They grappled with the limitations of legal structures in creating positive social change, especially the counterproductive consequences of punishment. And, they conveyed optimism that they have the power to create positive social change through their roles as educators.

Restorative justice is one approach to altering patterns of negative, violent, or criminal human behavior. It aims to reintegrate the perpetrator back into their community, rather than punish or outcast them (McAlinden 2007; Naylor 2010; Oudshoorn et al. 2015). Restorative justice is based on reintegrative shaming theory (Braithwaite 1989), which emphasizes a community's educational power through processes of reintegrative (rather than stigmatizing) shaming, as well as socialization that relates to how individuals should behave moving forward. This approach is commonly used in legal cases, rather than organizational grievance procedures, but some universities like the University of California began considering how to incorporate restorative justice practices into their alternative resolution processes under Title IX around 2015. Restorative justice practices are known for being applied in sexual offence cases in which social and educational messages are of great importance, as is the inclusion of the offender in order to help them reintegrate back into the community (McAlinden 2007; Naylor 2010;

Oudshoorn et al. 2015). Restorative justice processes in sexual offense cases can also facilitate inclusion of victims who find themselves denounced following the offence and the stigma attached to it (Herman 2005; Julich et al. 2010). Typically, the restorative justice process is victim-centered, and designed to ensure the victim's safety (Wager 2013). Victims may receive validation of the offence, and vindication for not being to blame (Gustafson 2005; Umbreit and Armour 2011; Sherman and Strang 2007).

Because many Title IX administrators were trained as lawyers before entering their positions, they drew from their understanding of restorative justice practices in legal settings to think about what it means to successfully implement Title IX law in organizational settings. On the job, Title IX administrators were also trained both to construct policies that were trauma-informed and victim-centered, as well as to implement procedures in a way that neutrally investigates both the potential victim and the alleged perpetrator. Restorative justice frameworks allowed administrators to uphold a feminist vision of the legal ideals of Title IX, while also balancing concern for both parties. Finally, Title IX administrators had professional identities as educators. Long lasting behavioral change that may come from educating perpetrators, rather than punishing them, allowed administrators to believe they were making positive social change beyond just their campus.

How Survivors and Advocates Came to See Administrators as Managerial

Survivors and their advocates had quite a different view from Title IX administrators on how Title IX policies should be constructed and implemented. They tended to believe that perpetrators should be punished – meaning that they should be fired or expelled from the university as swiftly as possible. I argue that this perspective was informed by the direct threat of violence survivors experience, jeopardizing their physical and mental well-being. I then

demonstrate how they came to see administrators' lack of punishing perpetrators as defending the interests of the university over survivors.

There already exists an enormous body of psychological literature that discusses the negative mental health consequences of violence and the threat of violence on survivors in workplace and educational settings (see: NASEM 2018; Edelman and Cabrera 2020). Survivors filing Title IX lawsuits against their universities for mishandling their Title IX investigations consistently mentioned the psychological toll of fearing their perpetrator's presence on campus, even when they had not actually been in contact with their perpetrator for many months. In *Moore v. Regents of the University of California* (2016), the case details how the plaintiff experienced psychological distress, knowing her perpetrator could be anywhere on campus. The case reads:

> Moore avers she constantly feared for her safety due to the school's failure to provide accommodations, and at least one time during the semester, she saw John Doe on campus. The sighting induced a panic attack and she quickly left the area. She now believes Doe's unrestricted presence exposed her to a sexually hostile environment. At the time, her fear and anxiety caused her to avoid various parts of campus, and all social activities that took place on campus or that were sponsored by [the campus].

Survivor advocates were concerned about the immediate danger that people may be in, and were not put at ease when alleged perpetrators were assigned educational sanctions. In a survivor case against the UC in 2020, *Karasek et al v. Regents of the University of California*, one of the plaintiffs reported that their perpetrator had been assigned education as their only sanction, until the plaintiff pressed the administration further on the issue. At that point, the case says, new sanctions were applied. The sanctions involved disciplinary probation until the respondent graduated, consultation with a mental health practitioner of the respondent's choice, and an education meeting with the Alcohol and Other Drugs Counselor in UC's Social Services department. The plaintiffs argued in this case that the university should be held liable under "pre-

assault claims" when universities fail to take disciplinary action against perpetrators. The plaintiffs asserted that survivors and other individuals could be at heightened risk of assault in the future after a report has been made.

A different plaintiff on the same case argued that she would have preferred more serious disciplinary sanctions against her perpetrator, especially given that he had sexually assaulted multiple women who had also brought forward allegations to the university. The plaintiff asked for sanctions that she believed would have increased her safety, including barring the perpetrator from campus. The case read:

> UC could have immediately imposed interim sanctions on [the respondent], such as barring him from campus during UC's investigation or issuing a no-contact order, particularly given that UC was aware that multiple women reported being sexually assaulted by him. Indeed, in hindsight, UC's decision to initially discourage the Club president from expelling [the respondent] from the Club is troubling. UC instead attempted to resolve the complaints against [the respondent] informally through "an early resolution process."

During interviews, I asked survivor advocates what they thought about using punishment as a tool for social change. Survivor advocates repeatedly related to understanding what it was like to feel unsafe. They believed that disciplinary action – firing and expelling known perpetrators – would guarantee survivors' access to educational resources – a central tenet of Title IX. Several survivor advocates suggested that the punishment of being fired or expelled was not as big of a consequence as legal trouble, or actually being the victim of assault. Therefore – according to their thought process – Title IX administrators should not hesitate to fire and expel perpetrators. One activist, Matt, who sat on a task force related to sexual harassment and sexual violence, talked about how the stakes of being punished under a school's Title IX policy are not the same as the stakes of losing a criminal or civil legal proceeding, which may result in loss of liberty, or a loss of money. Matt explained:

> The accusation is that . . . the accused have no rights, you'll hear this argument a lot, generally from right wing news sources, that you know, what do you do if you're accused . . . it's not a criminal proceeding, like the stakes in a Title IX case are not you go to jail, the stakes are you lose your job, right? They're much lower stakes, and similarly in a civil case, you don't lose your freedom in a civil case, like you pay money... This is more like an internal proceeding is saying, you fucked up, your conduct is unbecoming of someone in this community, and you're not in this job any more.

Jenny, a staff member engaged in activism through an identity center on campus, felt that punishment from a school is not as serious as a student experiencing sexual assault. The participant alleged that by not punishing perpetrators, it showed that the school did not take complainants seriously. She talked about her fear sending her daughter to school:

> I was very happy when [my daughter] graduated having not been assaulted. Odds that perpetrators will get in trouble is low, so, the message is already out there that we don't find rape to be something of interest to us to pursue. So, we will talk you [the woman] out of it, we'll set it up so you're more embarrassed and ashamed than the perpetrator, and we're okay with that!

Despite Title IX administrators' position as insider activists to the survivor movement, survivors and advocates have come to see Title IX administrators as serving the interest of the institution over those of survivors. Interviewees suggested that administrators' lack of swiftness in removing perpetrators serves the university by avoiding bad press and upsetting elite stakeholders and donors. Participants suggested administrators care more about managerial priorities than protecting community members from violence and ensuring civil rights. Few interviewees were able to point to specific examples of where this was true, but talked broadly about universities being hypocritical institutions that both want equality, and are beholden to powerful people who benefit from inequality. One advocate, Ally, said:

> It's just the unfortunate reality of academia and higher education today. It's very corporate. You have a lot of different stakeholders. Um, but at the end of the day, it's an academic institution, they should be serving their institutional mission, which also includes, you know, not having predators on campus, and having mechanisms where people can be removed, and uh, you know, uh, survivors can get some sort of you know, *justice*.

Most of the survivor advocates I interviewed had limited practical knowledge of law, lawyers, or the legal system. They reasoned that, because universities frequently employ and consult lawyers, that this means that universities must intentionally create policies that help them avoid legal liability at the cost of survivors and civil rights. One participant, a sexual violence policy task force member, said the following about a meeting with a university administrator regarding an update to the school's Title IX policy:

> All this back and forth and [the university administrator] said they consulted with advocates. They also consulted with lawyers, of course. I mean the really important thing to know about this policy is that it's first and foremost the university trying to cover its own ass. That's its function. And [the administrator] all but admitted to that . . . So this is about legal protection for the University, and if they're throwing survivors under the bus in the process, well that's a shame. You know, collateral damage. You know, survivors and [Teaching Assistants] and student employees. Well that sucks, but they [the administrators] feel nice and comfy and legally protected.

Related to the theme of legal risk, survivor advocates also saw university administrators as trying to shirk responsibility for firing and expelling perpetrators, and they saw this as unfairly pushing responsibility onto other members of the campus community. Sullivan, an interviewee from the graduate student worker union, suggested that, because Title IX administrators would not remove perpetrators, departments had to find unconventional and inappropriate ways to get rid of them. In one instance, a department wanted to remove a Teaching Assistant who was a known perpetrator, but the Title IX process did not result in his firing. The department felt the only recourse was to fabricate that the harasser had violated his teaching contract. Sullivan said:

> Long story short, it seems like everybody in the department found him really creepy and inappropriate, and he was very aggressive toward one woman in particular, and she was not feeling safe. It was a real problem, because you have this guy and there wasn't necessarily a way to remove him, um, in a reasonable process. So, it seems like they were using this academic ineligibility thing inappropriately. Um, so now we're kindof pulled.

The characteristics that Title IX administrators saw as positives – hiring and consulting lawyers, as well as being on the "inside" as educators – were the very characteristics that caused survivor advocates to believe that Title IX administrators were inclined to betray the movement. In their interviews, survivor advocates only spoke about lawyers as existing to defend corporations, not as possible civil rights or social movement activists. They saw administrators as "insiders" in the negative sense – that they must automatically be beholden to those who care more about the company bottom line than safety and civil rights.

Peleg-Koriat and Klar-Chalamish (2020) show that the public is concerned that offenders might perceive restorative justice in sexual offences as a soft option, which they can use to evade punishment. Especially in light of the #MeToo movement, has been a strong social perception of the penal notion in sexual offence cases (Daly and Curtis-Fawley 2006; Koss 2000), even though victims rarely gain anything from legal procedures (Marsh and Wager 2015; McCann et al. 2018; Hemel and Lund 2018) or internal grievance procedures (Nakamura and Edelman 2019). On the other hand, researchers show that many victims do not seek out organizational grievance procedures or legal remedies because the victim does not want the perpetrator to be "in trouble" (Spencer et al. 2017).

Many individuals may be encouraged to report or take legal action because they fear future physical violence, even when the offense is non-physical (like verbal harassment, for example). Legal theory written in the district court case *Ellison v. Brady* (1991) accounts for the fact that individuals may have different views on what constitutes harassment and threat based on their gender. The district court developed the "reasonable woman standard," which suggests that women are far more susceptible to rape and sexual assault than men. Therefore, even when faced with "mild" harassment, women "may understandably worry whether a harasser's conduct

is merely a prelude to violent sexual assault" (Winterbauer 1991). In this chapter, I have shown how different people champion different solutions to harassment to some extent based on how susceptible to physical violence they are or perceive they are. For survivors, their susceptibility to violence and the fear of future violence afforded them little willingness to chance that their perpetrators could be successfully reformed by administrators.

How the Fissure in the Feminist Movement Enabled Men's Rights to Co-Opt Law

Survivor activists wanted Title IX to remove violent people from campus, while Title IX administrators believed that education could help reform violent behavior in society more broadly. Here, I argue that the fissure among feminists in how they believe Title IX should be implemented lead both groups to pursue legal strategies that left the door open for men's rights groups to change the meaning of Title IX in line with their own interests.

Because survivors saw university administrators as upholding managerial interests over survivors' rights, they primarily engaged in filing lawsuits and OCR complaints against their university. In lawsuits and OCR complaints, survivors took issue with the outcomes of investigations, rather than the processes used within the investigations. Legal challenges from survivors included schools' long timelines for resolving complaints, lack of sufficient notice of investigation outcomes, and lack of sufficient discipline for serial harassers and potential repeat offenders. The survivor movement also fought to expand schools' liability under Title IX, even though few survivor lawsuits made it past the settlement stage (Howle 2018). Survivors never contested the investigation procedures that Title IX administrators used until it was too late, after men's rights groups had already began lobbying and mobilizing in the courts to change these procedures.

Administrators, on the other hand, benefitted from ambiguity in the law because they believed they could construct policies in the most expansive, progressive, and effective way possible. They created policy with a broad definition of sexual harassment and sexual violence. They not only constructed formal investigation procedures in compliance with law, but they also created other avenues for reporting that would increase survivors' likelihood of coming forward. They explored what it might look like to implement restorative justice techniques where survivors might be able to read impact statements to perpetrators, and considered what educational sanctions (rather than disciplinary sanctions) might look like. Administrators neglected to clarify ambiguities in law on how investigation procedures for peer harassment should be carried out in part because ambiguity in the law allowed them to interpret and implement law in best way they saw fit.

In sum, survivors focused on legal strategies that contested the outcomes of investigations, rather than the procedures used, believing that Title IX officers did not care about survivors' safety. Title IX administrators neglected to clarify law because it allowed them to interpret law in line with their own feminist ideals, informed by their professional backgrounds. Under these conditions, men's rights groups had ample opportunity to specify how investigation procedures should be constructed so that it made it increasingly difficult for schools to find that someone violated their school's harassment policy. This tactic ended up protecting men from punishment, education, and accountability, and ultimately, enabled men to be treated as the class in need of protection under sex discrimination law.

DISCUSSION AND CONCLUSION

In the last chapter, I traced how men's rights groups were able to exploit ambiguity in the investigatory procedures used in Title IX cases. In this chapter, I have sought to account for that

ambiguity, and more specifically, to account for why neither Title IX administrators nor survivor advocates pushed earlier to get the investigatory procedures clarified. Part of the answer, I argue, lies in the conflict between two groups that were on the same side. Although survivor advocates came to see Title IX administrators as protecting the institution over the survivors of sexual violence, this is not the way administrators saw themselves. And indeed, rather than likening Title IX administrators to HR professionals – who hire management consultants and construct Title VII policy that protects management over rights claimants – I have characterized Title IX administrators as "insider activists." I show how Title IX administrators sympathized with the talking points of the survivor movement, and were motivated to end violence and discrimination on campus no matter the cost to the university. Instead of finding that Title IX administrators "managerialize" campus policy, I show how they made it as broad as possible, inviting both risk and responsibility for a broad range of bad behavior. Administrators objected to the argument that they were held hostage to the priorities of the university, insisting that they had freedom in constructing policy in a feminist manner. Title IX administrators constructed university-level policies from ambiguous law by drawing on survivor movement talking points, as well as their professional identities.

I explain how survivors and survivor advocates came to see Title IX administrators as managerial – and not as "insider activists." I suggest that the views of survivors and survivor advocates – while valuable – should not be taken as evidence that Title IX administrators drive the managerialization of Title IX law. The rift between Title IX administrators and survivors comes down to how universities should treat perpetrators in internal grievance procedures – whether perpetrators should be educated and given another chance, or fired and expelled. Because of their professional socialization in law, victim advocacy, and higher education, Title

IX administrators understood the limitations of punishment and championed the power of education. They drew from restorative justice principles to educate first, and punish as a last resort. Survivors, on the other hand, felt threatened by their perpetrator remaining on campus. They saw educational sanctions as a way of administrators shirking legal risk and responsibility at the expense of survivors and the campus community. Notably, characteristics that administrators saw as positives – hiring and consulting lawyers, as well as being on the "inside" as educators – were the very characteristics that caused survivor advocates to believe that Title IX administrators were inclined to betray the movement. Survivors see administrators as lawyers and insiders in the negative sense – that they prioritized the company bottom line.

Instead of concluding that Title IX administrators constructed policies that are "managerial," while survivors and advocates espoused social movement and legal principles, I instead argue that field research on Title IX must recognize that there are multiple feminist visions on what substantive compliance with Title IX looks like. Interdisciplinary work on Title IX will benefit from theory on the relationship between law and organizations, but must also look to social movements literature that sees movements as occurring within legal professions and other institutions as well as outside them. Title IX administrators' legal obligations to comply with men's rights driven laws from 2015-2020 may further drive survivor perceptions that Title IX administrators serve managerial interests over survivor movement goals and legal principles. This is ironic, since I argue that it was the fissures between administrators and survivors that unintentionally left the door open for men's rights groups to change the meaning of law in line with their own interests.

CHAPTER FOUR

Title IX's Race Problem: How Women of Color Think About and Shape Sex Discrimination Law

ABSTRACT

In this chapter, I explore non-activist women of color's relationship with Title IX law in comparison to that of white feminist survivor activists. I conducted a survey and focus group study of 73 college age women of color at the University of California, Irvine. I find that young, non-activist women of color anticipate facing both racism and sexism when contacting authorities generally, including university resources like Title IX and campus police. They are unsure that the Title IX office will treat women of color better than comparable institutions and systems like the criminal justice system. Building on the legal consciousness literature on idle rights (Marshall 2005), I show that, for understandable reasons, college attending women of color have long left their Title IX rights idle. This has effectively sidelined them in the effort to define the law, and has resulted in a failure of the law to acknowledge intersectional discrimination (EEOC 1980; Crenshaw 1991). This chapter reveals that feminist activist proponents of Title IX, who are predominantly white women, affect the law more than do non-activists, resulting in a law that does not reflect the experience or needs of women of color.

Key words: Title IX, legal consciousness, legal mobilization, legality, intersectionality

INTRODUCTION

Drawing from socio-legal literature on legal consciousness and legal mobilization, I investigate how non-activist women of color shape Title IX law in comparison to white feminist survivor activists. In previous chapters, I showed how multiple well-connected, well-educated, and highly enfranchised stakeholder groups have altered the meaning of Title IX law over time. These groups include feminist survivor advocates, Title IX administrators, and men's rights groups. Most recently, men's rights groups filled in ambiguity in the law, requiring Title IX administrators to implement university-level policy in line with men's rights groups' interests. This chapter has two goals: 1) to evaluate whether and to what extent various activists' constructions of law have affected how non-activists mobilize their Title IX rights on campus; and 2) to explore how activists' experiences may have shaped Title IX law in comparison to the experiences of non-activists.

When I interviewed UC Title IX staff at the University of California (UC) in 2020, they suggested that a new mandate on Title IX would make the UC's investigation processes look increasingly like criminal courts. Title IX staff cited these changes as driven by men's rights groups, who were interested in aspects of criminal court proceedings (e.g. higher standards of evidence, and cross examination of complainants and witnesses) that would make it more difficult for schools to demonstrate that a respondent had violated the Title IX policy. UC Title IX staff were concerned that making investigations look like criminal court proceedings would deter complainants from reporting to their office. Administrators assumed that survivors were more likely to come forward under feminist interpretations of the law than they would be under men's rights' interpretations of the law.

In this chapter, I show how various changing conceptions of Title IX law likely have had little effect on how non-activist, college attending women of color mobilize their Title IX rights. Drawing from focus group data and survey data I collected in 2017 of 73 college attending women of color, I argue that women of color saw Title IX as similar to the criminal justice system even before the Department of Education released men's rights driven regulations in 2020. College attending women of color have long believed they should avoid their school's Title IX office, citing the legacy of abuse by police, legal systems, and other authorities historically withstood by women of color. Building on the legal consciousness literature on idle rights (Marshall 2005), I show that, for understandable reasons, college attending women of color have long left their Title IX rights idle. This has effectively sidelined them from expanding the law's meaning to include intersectional discrimination (EEOC 1980; Crenshaw 1991). This chapter reveals that feminist activist proponents of Title IX, who are predominantly white women, impact law's meaning more than do the experiences of non-activists, resulting in a law that does not reflect the experience or needs of women of color. It is important that activists and administrators work to gain the trust of non-activist women of color so that women of color may play a part in expanding Title IX, making it a tool for dismantling racism alongside sexism for those who experience both simultaneously.

REVIEW OF THE LITERATURE

Legal Consciousness and Legal Mobilization

In her 2005 article, Marshall (2005) shows that women working at a university strategically only report the most egregious cases of sex discrimination in the workplace, as they anticipate that management will likely not take their claims seriously. She suggests that women and supervisors construct "legality" in particular workplaces that offers only limited protection

for women's rights. Ewick and Silbey (1998:22) define "legality" as: "the meanings, sources, authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what ends." Legality does not reside in an individual's attitudes, but is continually produced and worked on by both individual and group actors (Ewick and Silbey 1998; Sewell 1992). Legal consciousness is reflected in what people say and do, in addition to what they think (Ewick and Silbey 1998; Merry 1990). Legal consciousness can be informed by the formal law, for example through litigation (Tushnet 1987; MacKinnon 1979; McCann 1994; Eskridge 2002), or through organizational practices among coworkers and management (Marshall 2005).

Most importantly to this study, legal consciousness can also be formed in the everyday situations encountered by ordinary people (Ewick and Silbey 1998). Legal consciousness can be forged in neighborhoods, schools, and workplaces where everyday problems develop (Ewick and Silbey 1998). Not everyone thinks of solutions to social problems in legal terms. When they do, it may not indicate that they actually understand the details of formal rules and regulations (Ewick and Silbey 1998; Sarat and Kearns 1995; Marshall and Barclay 2003). Studies theorizing the cultural, constitutive theory of law demonstrate that ordinary people have different types of legal consciousness along the lines of social stratification (Nielsen 2000), the salience of law in particular settings (Levine and Mellema 2001), and the way law interacts with other frames in everyday life (Marshall 2003).

This chapter details how college attending women of color mobilize their Title IX rights. Reynolds (2019) shows that there are many ways to mobilize Title IX: through university grievance procedures, Title IX lawsuits, and Title IX complaints through the U.S. Department of Education Office for Civil Rights. Unlike the engaged and aware survivors and survivor

advocates I describe in previous chapters, I posit that non-activist, college attending women of color are, for the most part, "ordinary people" who try to understand Title IX by drawing on that which is already familiar to them. My data suggest that college attending women of color are not inclined to report to Title IX, citing histories of women of color being victim blamed, dismissed, and wronged by other authorities like police, legal, and educational systems. Their legal consciousness is constructed not through interactions with Title IX officers – instead, it is constructed through media portrayals of reporting sexual violence to institutions, through stories and experiences of family members encountering authorities, and through word of mouth by other students on campus.

The legal mobilization literature explores the many barriers to rights mobilization in organizations, in particular for employees (Miller and Sarat 1980; Felstiner, Abel & Sarat 1980; Bumiller 1987; 1988; Sarat 1990). There are psychological factors such as fear of retaliation, fear of not being believed, fear of being viewed negatively by peers, resisting to adopting a victim identity, and the desire to feel resilient in the face of a difficult situation (Bumiller 1987, 1988; Major and Kaiser 2005). Societal norms also affect mobilization. Employees often decide not to mobilize their rights because they believe that doing so would be inconsistent with their roles as good workers, friends, spouses, or parents (Morgan 1999; Albiston 2010). Employees avoid mobilizing their rights because they want to fit in at the workplace; to maintain a sense of being a survivor or a member of the community; and to avoid being considered as a victim, a loser, a complainer, or a shirker (Bumiller 1987; Albiston 2010). Those who see themselves as victims of sexual harassment sometimes resist rights mobilization because they believe that to be accepted in the workplace, they must accept a certain amount of sexualized commentary (Quinn 2000). Most employees who believe their rights have been violated do nothing, or engage in extralegal

actions such as talking to friends, relatives, clergy, or praying (Morrill et al. 2010). Morrill et al. (2010) reported that students are more likely to use quasi-legal than legal forums and most likely to use extralegal forums. Below, I address interdisciplinary literature that documents barriers that women of color experience in reporting gender-based violence to authorities outside of the Title IX context. Understanding these many barriers – which have already been well-documented by scholars of color – is important in theorizing the connection between women of color's absence from the Title IX arena and Title IX's insufficiency in addressing the intersection of gender and racial discrimination.

Reporting Behaviors of Women of Color

Sexual harassment and sexual violence may occur between intimate partners, acquaintances, and strangers, although the literature shows that women are most likely to be assaulted by intimate partners and acquaintances rather than strangers (Logan and Cole 2007; Stermac et al.1998). Given cultural norms and rape myths, women in general may struggle with defining sexual assault from an intimate partner as such, lessening their likelihood of reporting violence to authorities (Lynch et al. 2016; Stermac et al. 1998). Other reasons women in general might not contact authorities in instances of sexual harassment and violence include: fearing that police interventions will not guarantee their future safety; fearing retaliation from an abuser because of police intervention; and socioeconomic factors like poverty and homelessness (Dichter and Gelles 2012; Women of Color Network 2006; Hetling and Zhang 2010; Sokoloff and Dupont 2005).

The literature suggests that women of color may resist reporting violence to authorities and other resources for a unique set of reasons (Comas-Díaz and Greene 1994). While the term "women of color" encompasses an extremely heterogeneous population, some commonalities

exist across racial and ethnic groups. The Women of Color Network (2006) suggests that these commonalities include: patriarchal hierarchies in familial structure (e.g. role as wife and mother); religious beliefs that reinforce the woman's victimization and legitimizes the abuser's behavior; fear of isolation and alienation; a strong loyalty to both immediate and extended family, as well as loyalty to race and culture (the "yoke of silence"); guarded trust and reluctance to discuss "private matters;" and fear of rejection from family, friends, congregation, and community. Women of color may also distrust law enforcement (fear of subjecting themselves and loved ones to a criminal and civil justice system they see as sexist, and/or racially and culturally biased); doubt that shelter and intervention services are not culturally or linguistically competent; and for immigrant women, fear deportation or separation from children (Women of Color Network 2006). Menjivar and Salcido (2002) show that immigrant women across race and class who experience domestic violence are especially vulnerable because of variables such as limited host-language skills, isolation from and contact with family and community, lack of access to dignified jobs, uncertain legal statuses, and negative experiences with authorities in their origin countries. Other literature shows that documentation status plays a big role in immigrant relations with legal authorities (Chavez 1992; Easteal 1996).

Structural problems also exist as obstacles for women of color seeking legal justice for sexual and racial violence. Crenshaw (1991) notes that, while racism and sexism intersect in the lives of real people, they seldom do in institutions intended to be antiracist and antisexist in their practices. Institutions, like criminal justice systems, tend to view the identities of women and people of color as either/or categories, marginalizing women of color (Crenshaw 1991). As a result, women of color must navigate legal systems that expect them to experience racial and sexual discrimination separately. Crenshaw's work looks at legal cases of women who attempted

to mobilize their civil rights. In this chapter, I suggest that women of color sit out from Title IX processes altogether because of their negative experiences reporting to legal authorities. Their extremely limited legalities prevent their concerns from being heard by those who shape laws and policies, allowing systems to continue to exist that ignore the intersection of racist and sexist abuse experienced by women of color in higher education.

In this article, I gather feedback from women of color across racial and ethnic categories, such as Black, Asian, and Hispanic/Latina women, as well as religious categories, like Muslims, whose religious identity category has become racialized in the context of the United States (Cainkar 2002). Debates across the social sciences demonstrate that identity categories such as race and ethnicity are ever-shifting, and that definitions of whiteness and non-whiteness are unstable (Giroux 1997; Yancey 2003; Cobas et al. 2009; Gross 2006). There are also nuances in within-group identity categories. For example, African women interviewed in this study felt that their perspectives were unique to Black and African-American women; white Latinas and light-skinned Asians were unsure if they "qualified" as people of color for the study. Some Muslim women interviewed were phenotypically white, while experiencing wearing the hijab as a target of racialized discrimination. Crenshaw (1991) warns that identity politics can conflate and ignore intragroup differences, which further politicizes the issue of violence against women. For the purposes of examining the breadth of literature on the racial and ethnic categories the women in our study identified with, and to attempt to make some sense of larger trends, I will review research here on Black women, Asian, South Asian, Asian Pacific Islander (API) women, Hispanic/Latina women, and Arab and Muslim women as coherent identity categories.

Black Women

The Bureau of Justice Statistics (2001) found that African American females experience intimate partner violence at a rate 35% higher than that of white females, and about 25 times the rate of other races (Women of Color Network 2006). African American women experience higher rates of intimate partner homicide when compared to their white counterparts (Lee et al. 2002). However, statistics may underrepresent the level of intimate partner violence against African American women, given evidence that African American women are less likely to report their intimate partner for abuse because of discrimination, African American men's vulnerability to police brutality, negative stereotyping about Black women by legal authorities and in society at large, and a fear of an abuse of power at the hands of police (Nash 2005; Women of Color Network 2006).

Myths that African American women are "domineering figures that require control" or are "exceptionally strong under stress and are resilient" increase their vulnerability and discourage some from speaking out about abuse (Bell and Mattis 2000; Women of Color Network 2006; Ammons 1995). According to Comas-Diaz and Greene (1994), Black women must navigate a series of paradoxes at the intersection of racial and gender stereotypes: they must be strong, resilient, instrumental, and self-affirming in order to survive and yet, cultural norms typically define "normal" women as weak, fragile, vulnerable, submissive and oppressed. Comas-Diaz and Greene (1994) show that the subordination of Black women is essential in establishing Black men's masculinity, especially in a racist context in which African American women are disposed to forgive mistreatment from Black men who have legitimate concerns with racist violence. "The sense of a conflict of loyalty between their own needs and the needs of others is a common practice" (Comas-Diaz and Greene 1994).

Asian, South Asian, and API Women

The Project AWARE (Asian Women Advocating Respect and Empowerment) 2000-2001 survey of 178 API women found that 81.1% reported experiencing at least one form of intimate partner violence in the past year (Women of Color Network 2006). A survey of immigrant Korean women found that 60% had been battered by their husbands (Women of Color Network 2006; Tjaden and Thoennes 2000). In a random telephone survey of 262 Chinese men and women in Los Angeles County, 18.1% of respondents reported experiencing "minor physical violence" by a spouse or intimate partner within their lifetime, and 8% of respondents reported "severe physical violence" experienced during their lifetime (Women of Color Network 2006; Asian Pacific Islander Institute on Domestic Violence 2002).

Different literatures attempt to theorize the cultural traits of the many subcultures under the umbrella term "Asian" that prevent Asian immigrant women from speaking out about intimate partner violence. It is impossible to include literature of every subgroup here; in this study, I mainly encountered Filipina, Korean, Chinese, Vietnamese, and South Asian (Indian and Sri Lankan) women. Wilson (2006) suggests that in API communities, emotional control, respect for authority, self-blame, perseverance, and the acceptance of suffering are considered highly valued virtues and traits. However, those culturally based responses contribute to API women's hesitance to express their victimization (even to people inside of a close circle of friends or family) (Women of Color Network 2006; Wilson 2006). Traditional family values, beliefs in traditional female roles, and perceptions about racial discrimination also prevent Vietnamese women from relying on formal systems to escape abuse (Bui and Morash 1999).

Hispanic and Latina Women

According to the National Violence Against Women Survey (USDOJ 2000), 23.4% Hispanic/Latino females are victimized by intimate partner violence (rape, physical assault, or

stalking) in their lifetime. Hispanic women were more likely than non-Hispanic women to report that they were raped by a current or former intimate partner at some time in their life (USDOJ 2000). In one study, 48% of Latinas reported that their partner's violence against them had increased since they immigrated to the U.S. (Dotton et al. 2000). The umbrella terms "Hispanic" and "Latina" encompass an extremely wide range of subcultures and nationalities; in this study, I mainly encountered Mexican-American and Central American women. South American women and women from Spanish speaking countries in the Caribbean were vastly underrepresented.

Wilson (2006) talks about cultural traits that constrain women from escaping violent households. Wilson (2006) suggests that Latina women are often relegated to the roles of wife and mother, and are typically looked down upon in instances of divorce, remarriage, remaining single, and/or having children out of wedlock. Lack of information and access to birth control, combined with aspects of Catholic doctrine, result in Latinas having larger families, which can make it difficult to move or find affordable child care (Wilson 2006). In Latino culture, the term "machismo" describes excessive masculinity; machistas typically believe in rigid gender roles (Wilson 2006). The female equivalent is marianismo, a term derived from Catholic beliefs on the Virgin Mary as a virgin and a Madonna, as well as the personification of the ideal woman (Wilson 2006). Studies show that Hispanics/Latinas are "more concentrated in low-paying semiskilled occupations than the overall workforce." Therefore, limited financial resources create substantial barriers for women trying to leave the abuse or trying to obtain legal assistance, housing, and child care (Wilson, 2006). For immigrant women, undocumented status and fear of being separated from family may also prevent this population from seeking out help from authorities (Women of Color Network 2006).

Arab and Muslim Women

As pointed out by Cainkar (2002), not all Muslims are Arab, and not all Arabs are Muslim (some 1.5 million are Christian). However, in a post 9/11 context in the United States, the media has contributed to a fusion of the images of the overlapping groups, resulting in discrimination in Arabs and Muslims as if they one group. One study finds that Arab American women often cope with special issues such as bicultural and multicultural backgrounds and the struggle for individual and group self-definition and determination (Shouhayib 2016; Yampolsky et al. 2013). The months after 9/11 marked a moment in which Arabs and Muslims in American society faced unprecedented levels of discrimination, defamation, and intolerance (Cainkar 2002). According to Cainkar (2002), the greatest source of discrimination against American Arabs and Muslims has been the United States government, mostly through Immigration and Naturalization Services (INS). Since 9/11, the U.S. government has led interrogations, raids, arrests, detentions, and institutional closures in Arab and Muslim communities (Human Rights Watch, 2002; American Civil Liberties Union, 2002; Dalgish and Leslie 2002).

It is no surprise that Arab and Muslim Americans feel antagonistic relationships with legal authorities. There are cultural reasons Muslim and Arab women avoid contacting legal authorities in instances of relationship violence as well. Mainly, the literature cites the influence of patriarchal ideologies, high levels of religiosity, and strong orientations toward preserving the family (Haj-Yahia 2002, 2003; Nobles and Sciarra, 2000). Haj-Yahia (2002) finds that Arab women often change their behavior toward their husbands, and assume responsibility for their husbands' violent behavior. They would rather keep the family together than seek help from formal agencies that they believe could jeopardize family unity (Haj-Yahia 2002).

DATA COLLECTION AND ANALYSIS

The findings of this study are based on descriptive survey data and transcribed focus group data collected from college attending women of color at the University of California, Irvine. I convened 9 focus groups with a total of 73 participants. Focus groups met from July 2017 through December 2018. Non-activist, college attending women included undergraduate students and graduate students, as well as university faculty and staff. Ages ranged from 18-30 years old; the average age was 22 years old, and the median was 21 years old. I recruited participants through the distribution of flyers in public places on campus, and through postings on university email listservs. After screening, participants were asked to meet with their designated group for 2.5 hours. Participants completed surveys[14] and sat for a focus group discussion. Participants were asked to share information about the study with anyone they know who may be interested.

The demographic survey I administered allowed participants to write in their race and/or ethnicity. I recoded the written responses to fit in the following categories: "Black/African/African-American," "Latinx/Hispanic," "Asian/Indian," "Mixed Race," and, "Other." I coded 42.5% as Latinx/ Hispanic[15], 31% as Asian/Indian[16], 12% as

[14] This study is funded by the University of California, Irvine Initiative to End Family Violence. Participants filled out a multitude of surveys; data was used for multiple studies and findings reports. I only draw from surveys that provided data about participants' gender identity, racial or ethnic identity, experiences with gender-based violence, and experiences contacting police. Participants were asked to fill out 8 survey instruments: The Mind Garden, Inc. Perceived Stress Scale; the Perceived Ethnic Discrimination Questionnaire (PEDQ); the MOS Social Support Survey; the General Sleep Disturbance Scale (GSDS); a brief demographic questionnaire; a questionnaire on household characteristics of the participant's home before age 18; the Connor-Davidson Resilience Scale 25 (CD-RISC-25); and the Beck Depression Inventory (BDI-2).

[15] This statistic does not include those who identified as mixed race or ethnicity between the Hispanic/Latina category and another category – 2/73, another 2.7% of participants, marked that they were Latina mixed with another race or ethnicity. Latinas who specified their country of origin overwhelmingly were of Mexican descent.

[16] 23/73 participants, approximately 31.5% of our sample, indicated that they were from countries within the Asian continent, or were API. Women wrote the following answers: Chinese, Vietnamese, Asian-American, Asian, Filipino, Asian/ Pacific Islander, Taiwanese, Southeast Asia, Central Asian, Sri Lankan, Indian, South Asian, Bengali, Indian-Asian, and Desi. Many written answers included that women had heritage in multiple combinations of Asian regions and countries. 4/73 participants, approximately 4% of the sample, indicated that they were from Arab and Middle Eastern countries; entries included: Iranian-American, Egyptian, Pakistani, and Middle Eastern/

Black/African/African-American[17], 8% as "Other" and 5% as "Mixed Race." The breakdown of participants by race was not reflective of the larger university setting in 2017 in which Asian students constituted the largest racial group (42.7%), and Hispanics/Latino students constituted the second largest group (31.2%). Black/African/African-American participants were overrepresented in the study, compared to UCI's Black/African-American student population of 1.9%.

For the focus groups, participants sat around a table in front of a video camera and were filmed. Participants who declined to be videotaped sat off camera and allowed their voices to be recorded for transcription. The discussion was semi-structured; I had a list of questions and probes prepared for the group, but generally let participants openly interpret questions and steer the discussion. Questions from the script included: "What do you think of when we ask about interpersonal violence and sexual assault?"; "What are some concerns you have with reporting interpersonal violence or sexual assault to the police/ university administration/ the judicial system?"; "How do you think these issues are or could be different for women of your race or ethnicity than for others?"; "Who influences how you think about these issues in your community?"; and "Has any organization been helpful with these issues in your experience?" I explicitly asked participants to nod their heads yes or no if they knew what the Title IX Office was on campus. Survey completion typically took about 45 minutes, and discussions lasted between 1 and 2 hours, depending on the size of the group. The largest focus group consisted of

Arab. The surveys alone do not allow for making distinctions between who is Arab/ Middle Eastern, and Muslim; the surveys also do not allow us to identify Muslim folks across the other racial and ethnic categories sampled.

[17] One participant used the term "African-American" to define themselves. Two participants specified that they are African in their surveys, and in the focus groups, these participants talked about cultural distinctions between being a recent African immigrant and being "Black" as an identity category specific to the United States context. One participant identified as Afro-Jamaican, and one participant identified as mixed-race Black. These participants are included in the 16% statistic.

15 women, and the smallest focus group consisted of 4 women. Participants were compensated for their time.

Studying legal consciousness in a single organization – UCI – has advantages. All the participants were subject to a single set of legal rules and a single set of policies and procedures that may have differed at other campuses. Thus, differences in behavior and meaning cannot be attributed to differences in law or policy. Conducting this study at UCI allowed for access to many students of color – white students made up only about 16% of the population at UCI in 2017. Despite a majority of students of color on campus, few participants suggested that they knew about Title IX at all. Because the UC system is a leader in adopting and implementing Title IX and has widely expanded their staff and policies over the last decade, women of color's lack of understanding of Title IX cannot be attributed to being at a small school or a school that has not advanced their school's Title IX structures. Instead, I argue, legal consciousness about Title IX for women of color is informed by their communities' historical experiences dealing with authorities. I suspect that non-activist college attending white women may have similarly low familiarity with the Title IX Office. However, the women in my focus groups talked about the Title IX office in ways suggesting that they saw little difference between it and other institutional authorities.

FINDINGS

How College Attending Women of Color Think About Reporting Gender-Based Violence to Authorities

Women of color in the study reported high rates of experiencing sexual or gender-based violence, and also reported on negative relationships with legal authorities. The demographic questionnaire administered before the focus group discussion included questions such as: "Have

you had any romantic relationships that you describe as abusive?" "Have you ever been sexually assaulted or raped?" "Have you ever reported anything to the police?" "Have you or anyone close to you ever gone to jail or prison?" and a write-in question: "Who was arrested?"

27.5% of participants said that they had been in a romantic relationship that they would describe as abusive. 32% of participants answered "yes" when asked if they had ever been assaulted or raped, and 18% reported that they were "not sure." That means that nearly half of the participants either experienced sexual assault, or had an experience that may have constituted sexual assault. The high number of "not sure" answers can be explained by the focus group data, where participants talked about not being sure if their experience was assault because it happened with someone they knew, or because they didn't think the experience was "that bad." 85% of participants said they had never reported anything to the police. Nearly 50% of participants said that they or someone they knew had gone to jail or prison, and raw data of write-in questions show that the overwhelming majority of participants answered "a family member" had been the one to go to jail or prison.

In the focus group sessions, participants were asked whether they would report gender-based violence to an authority in general, and whether they would report it specifically to the police. One participant, a Black woman, noted that she felt that white women can often count on being treated well by authorities when they report. Because of racism, Black women can not count on authorities to protect them in the same way, and regularly expect to be dismissed, undermined, and blamed. She said:

> But I think with like a white woman, [authorities] might feel the need to more protect her. But with a Black woman, it's kind of more expected. You might not feel as sorrow—sorrowful for a Black woman that is going through domestic violence. It's almost expected, like, "Oh, like you're with that guy, like duh, why are you with him," you know? But with a white woman, it's like, "Oh, like she's the victim. She's—you know, we have to protect her. We have to surround her."

Other participants suggested that reporting to authorities could mean being disloyal to men of your race, to your race/ethnicity/community as a whole, or to your family. A Muslim woman told a story about her brothers being abusive to her, but fearing that if she spoke out about it, it would only reinforce racist stereotypes that men from her community are inherently violent:

> If were to talk about like some of the things that my brothers have done to me or said to me, which I would like perceive as casual because I know them, and I know the experiences that we've had, another person can look at it and be like, "Oh, your brother sounds really abusive, like what is it about your culture that cultivated that abuse in him?" When I know that's not the case. It might be a little bit, but it might not necessarily be the whole picture. So, for me, I'm very careful about the kinds of words that I use, the kinds of stories that I tell, who I'm telling them to.

A woman from China explained that calling the police on violence occurring in one's family would be an embarrassment to the family. The idea that private matters should be intervened in by an authority and made a public issue is not shared in many cultures outside of the United States. This participant drew from cultural practices and norms in her country of origin in describing how she thinks about reporting gender-based violence in the U.S. She said:

> Yeah, I mean in my culture, in my community, calling—reporting to the police may be the last thing people will do. Yeah, as I said, for one thing, people just are afraid of losing their face. Yeah, it's kind of a private things, and people don't want to show to others. And the other thing is, the policemen, they don't care, or they don't do anything for this kind of things. They just are okay, maybe write the name of those—yeah, the reporters, and uh, yeah, just give a small talks about oh, please don't do this again. Don't beat each other. Don't fight. So, they just leave. And then, yeah, and you know, the violence is still happening.

In focus group discussion in which women were prompted to talk specifically about reporting to the police, women of color talked about how they expected police to be abusive as a baseline. One Black participant said that Black people do not associate police with safety at all.

Another participant, a Nigerian woman, talked about how she worries about her youngest brother after seeing a white police officer shoot and kill 12-year-old Tamir Rice in the media:

> But for the boys, they're 7 and 17, so I was like, all right, so I have to worry about my 17-year-old brother; I can do that, all right, cool. And then um, Tamir Rice, and I was like the baby's not even safe? Like what in the world? Um, he doesn't know it, and I'm happy that he's living in childhood bliss, but the 17-year-old is being more diligent, and it's sad.

A participant from Jamaica discussed how police in Jamaica are known for sexually abusing women. She suggested this is why she would be afraid to report to the police, even in the United States:

> Like sometimes like growing up, too, like there were even—there's a lot of corruption in Jamaica. And so, like even a police officer it's been known for police officers to blackmail women for sex. Um, so that's again, it's definitely not something you would even bring it to a police officer.

Finally, participants talked about how they feared that one of the consequences of reporting to police could be the separation of their families, whether through the intervention of child protection services, or deportation at the hands of immigration authorities. One participant talked about the potential of losing her younger sibling should child protection services have to step in:

> So, like I know for my family, like I know—like since I was little, my mom's like, "No, we don't want social services to like look into anything," or you know, they just have to find one thing that's wrong, and like it's over, you know. And so, like um, you know, [my sibling and I] are older, but I still have a little 6-year-old in my house, so we don't want anything to happen to him. So, like if stuff happens, like all of us are thinking about him, so.

Another Mexican participant discussed the fear of members of her family being deported should she come forward to any authorities. She talked about learning to protect the family from immigration authorities, even if it meant learning to cope with family violence:

> Most of my family is undocumented, so when we ever see a problem like that, our first response um, compared to other communities, like white communities, it's not to like

> report it. It's almost like if it's reported, then that means we're deporting a family member or a loved one, even though they do commit like a—like abuse or whatever, at least by my family, it's always like, "Oh, but that's family," even when what they're doing is wrong. So, we've always um—I guess that's one of the reasons why we've been like keeping—being those issues, because we can't—in a way, you kindof don't see a solution to it.

Overall, women of color felt that the risks of contacting police and legal authorities far outweigh the potential benefits. Many suggested that they would not try to contact police or legal authorities because, as one participant put it, "speaking up doesn't even result in justice." When I asked what justice means, a participant respondent said: "Him [the assailant] going to jail." They feel they are inundated with images and reports of people of color being killed at the hands of police, but there are rarely consequences for those who are violent. Instead, the images and reports just contribute to psychological violence against those who are already afraid. A participant said:

> It's scary. It does a lot of damage because you're not seeing any justice being served on one hand, and two, it's like more violence. I see this on my Facebook feed. I'm scrolling down—the video that someone happened to shoot but didn't do anything is there.

Women of color have a long-standing and deeply ingrained sense of mistrust in looking to authorities to intervene in violence. In the following section, I show how women of color used some of the same reasoning in talking about their likely hesitation in reporting to their university's Title IX Office.

How College Attending Women of Color Think about Reporting to Title IX

Focus groups revealed that most women of color at UCI had very little to no understanding of what their Title IX office does, what kind of rights were available to them through the Title IX office, or whether Title IX is a safe space for women of color to report gender-based violence. Video recordings of focus groups and written transcripts show that most participants – save for about 1-2 women on average per group – nodded their heads "no" when I

asked if they knew what the Title IX office was. In the groups, I briefly explained what the Title IX office was, and gave an example of what a Title IX office might be able to do that was different from what a police department might do, such help get the victim a new dorm space. Having little knowledge of the Title IX office, women of color cited very similar reasons for hesitating to report to the Title IX office as they did for not wanting to report to legal authorities. Participants repeatedly described how they already thought of themselves as powerless in relationships with the institution and that would prevent them from ever coming forward.

One student said she felt "powerless, and like no one will believe me." I prompted the group to ask how they felt about contacting Title IX, specifically, but the participant treated Title IX and police as indistinguishable in her response. She said:

> Um, I'm really big like fanatic of the—the show Law and Order SVU. And so, I see like all these types of different like instances, where like the victims are blamed or shamed… I just feel like going to administration or just like going to the police can be really um, overwhelming and stressful because you never know what the response will be. I feel like a lot of the victims like don't even try because I know some of them are just like, oh, well, you know, it happened, like what else can I do? Like I'm powerless, and like no one will believe me. So, I think it—it's really like blurred in like what we should do, and like what they believe they should do, just because—like there's no like um, I guess like no one person they can go to and they'll be like, "Well, yeah, I believe you," because you never know what they're going to say. You never know if they're going to believe you or not. And they're going to like let your case go forward or not, or yeah, never know the outcome.

Just as they said police will likely victim blame and undermine their report, students of color feared their Title IX report would not be taken seriously or treated with a sense of urgency. One participant talked about a friend's experience reporting to the university about a case of harassment among roommates. The length of time it took to remove the friend from a dangerous situation made the participant feel that the university did not take these cases seriously.

> [My friend] called the police, and the police had to leave it to the university, but the university was like, "Well, we're out of like dorming spaces," so like they were just kind of like… didn't know what to do for like a while, and for like a week. But this person

> was still being like pretty much like harassed by the roommates. So, like they weren't taking like straight action to it, and seeing it as a super like um, I guess you could say um, like big issue, like they were just like, "Oh, she just needs another room, and she needs other roommates." But like they weren't acting on it like super quickly as like they should have.

A minority of participants who were aware of Title IX and paid attention to news about campus sexual harassment said that a report to the university might be subject to politics beyond the power of the victim. Universities may be invested in maintaining a positive image, they suggested, and might be inclined to sweep sexual assault cases under the rug. Participants repeatedly described how they already think of themselves as powerless in relationships with the institution, which stops them from coming forward:

> I've—I've never been trusting of like the system, just because after seeing [*The Hunting Ground*] documentary and like reading articles and doing my research, I realized that sometimes like it's better to just… deal with it a different way than with straight to the university… unfortunately, like there's been countless cases, whether it's like as small as like a roommate thing, or like sexual assault. And I feel like in bigger cases, with like power—when power comes into play, I think we're at a loss unfortunately.

Another participant said she was glad that resources like Title IX exist, but "would never have thought to reach out [to them] for help," and talked about the feeling of powerlessness that would prevent her from using a university resource.

Other participants talked about how they were not sure that the benefits of reporting to Title IX outweighed the costs of coming forward – much like how they talked about reporting to police. In several conversations, women of color talked about how they believed there would likely be "no justice" – insufficient punishment or consequences for people who are violent. One woman said:

> Yeah, building off of that, in my undergrad institution, like there—I just knew so many people that had reported, and it would just get lost. And I knew—I had a friend that um, she reported it. The person um, admitted to it. And then he was not—he was like put on academic probation, not allowed to go back for a certain time. It was like two years, I

> think. And then he was allowed to come back to school. And she was still a student. Um, so like things like that, it's like why would I report it, if it's like—like for what? What does that do?

Finally, women of color once again reported that it felt harmful to hear about constant reports of sexual violence without hearing about solutions or resolutions that suited the survivor. Women of color made the same point when talking about seeing police violence against people of color. Although universities attempted to be transparent about the number of assault cases that happened on their college campuses after 2011, the fact that there is little information about how these cases get solved made women of color skeptical about using the resource. One woman said:

> I guess just again being here, like I receive so many emails about sexual assaults that happen, or even rape that happens on campus, but we never get an email about having—it having been resolved. And so, I think that's also very discouraging as well, for even if something did happen to me or a friend, to like encourage him to report it, whereas, like we get all these emails that stuff happened, but is there ever a resolution? So, add the component of being Black, so I'm just like, 'No."

Having been socialized into a racist and sexist society in which women of color are accustomed to being undermined, dismissed, and abused by authorities, college attending women of color have long hesitated to think of Title IX as a resource that will act differently.

DISCUSSION

Scholars in the law and organizations arena ask whether organizations' construction of law affects how potential rights claimants mobilize, benefit from, and shape law. Talesh (2012), for example, explores how automobile manufacturers' conception of law mediates the effectiveness of consumer protection laws for consumers in lemon law disputes. Marshall (2005) shows how women only report the most egregious forms of sexual harassment for fear of not

being taken seriously by management, limiting the scope of how Title VII laws are actually used in workplace settings.

These studies, however, focus on the consequences of organizations' conceptions of law for rights claimants who *do* interact with the organization's or legal system's grievance processes. Unlike Talesh's (2012) study of consumers who engage in disputes and Maria-Marshall's (2005) study of sexual harassment victims who interact with management, women of color in this study never got far enough to even report to university administration. Women of color hardly knew about or understood Title IX, and they drew from their longstanding mistrust of reporting to authorities to inform how they felt about Title IX as a resource. When people do not know about, understand, or trust law (or the institutions that implement it), these are major barriers to a law's ability to deliver on its legal promises. Further, it prevents a law from protecting and including its most marginalized stakeholders.

In interviews, Title IX staff suggested that they were concerned that men's rights' conception of the law would deter survivors from coming forward to report to their office. As feminist "insider activists," they assumed that survivors had been more likely to come forward when Title IX was implemented in line with feminist values. Likewise, law, organizations, and social movement scholars might anticipate that the push and pull among social movement actors and organizational actors in determining law's meaning would have great consequences for the effectiveness of law in serving potential rights claimants. In contrast, I argue that even with the push and pull among feminist survivor activists, university administrators, and men's rights groups, Title IX has never served women of color. Women of color expected to encounter racism and sexism from authorities, and hesitated to mobilize their Title IX rights far before the men's rights movement weakened Title IX's protections for women. Women of color do not avoid

reporting to Title IX because organizations protect managerial interests by not taking seriously the needs of rights claimants; nor do they avoid reporting because counter-movements weakened the law. Women of color typically experience sexual violence at higher rates than white women, and are arguably most in need of legal protections for harassment and violence. Yet, they are the most marginalized potential stakeholder group under this gender equity law because white feminist survivor activists have relied on historically racist and sexist institutions to produce gender equity, and have ignored how racial discrimination intersects with sex discrimination in their movement. Women of color were skeptical that the law would work for them even at a time when feminist survivor activists, a progressive government administration, and "insider activist" administrators supported and upheld feminist visions of the law.

How Non-Activists Shape Law Differently from Activists

In the Title IX arena, feminist survivor activists are predominantly white women who focused on leveraging law to enforce gender equity in schools. The movement focused on two strategies that they believed would help eliminate violence on campus: punishing schools for lack of compliance with law, and punishing perpetrators by asking schools to remove them from campus. In doing so, the movement relied on the legal system, in combination with universities, to foster gender equity and help eliminate violence. The problem with this tactic is multifold. The literature on law, organizations, and social movements suggests that those with the most power and access to resources tend to control the meaning of law (see, for example: Talesh 2012; Galanter 1974; Albiston 1999). In the Title IX context, this dynamic has proven to prioritize the interests of white women and white men, leaving women of color on the sidelines.

Women of color scholars and activists have long warned white feminist movements about the problem of turning to institutions that privilege white, male power in the fight for racial and

gender equity (see, for example: Richie 2012; The Combahee River Collective 1974). Kim (2018) critiqued "carceral feminism" – a form of feminism that centers punishing perpetrators of domestic violence through incarceration, rather than transformative or restorative justice techniques. She suggests that there are visionaries developing "women-of-color feminism" who have thought out community centered alternatives to calling the police and incarcerating men of color. Scholars under the "women-of-color feminism" label see relying on white supremacist systems like prisons or police as antithetical to the goals of liberation movements.

In the Title IX case, white women activists led the charge to expand Title IX to protect women from sexual harassment in universities. They asked their government to change the law, and the law required schools to figure out how to investigate and sanction perpetrators. Feminist survivor activists fought for the ability to sue schools for damages, and file complaints through OCR. They fought for the ability to use grievance processes internally to schools. Because white women drove the push for Title IX's implementation to be overseen by the courts, government agencies, and universities, non-activist women of color attempted neither to mobilize policy nor shape law, given their longstanding marginalization and oppression by these institutions.

As a result of white women activists shaping law and non-activist women of color staying on the sidelines, Title IX fails to consider how racial discrimination may intersect with gender discrimination. When rights remain idle by marginalized people, marginalized people do not have the opportunity to help expand law and policy in a way that serves their needs. As of 2020, neither formal Title IX laws at the formal level nor university policies have done much to recognize that women of color may be experiencing discrimination on the basis of both race and sex. In general, they neglect to show how forms of discrimination may be multiple and intersecting. Crenshaw (1991) shows us how forcing women of color to choose between race and

sex is a form of institutional violence. The Equal Employment Opportunity Commission in 1980 recognized intersectional harassment alongside sex-based harassment, gender identity-based harassment, sexual orientation-based harassment, and race and ethnicity-based harassment. Written law and campus policies could do more to treat race and gender discrimination as intersectional, defining terms like "misogynoir" (Bailey and Trudy 2018) as discriminatory behavior that would constitute a violation of university policy. These terms and definitions could be of great use to Title IX, but the experiences of white feminist survivor activists have dominated the conversation around Title IX.

CONCLUSION

Non-activist women of color anticipate that they will be treated in the Title IX arena the way that women of color have been treated historically by legal and educational institutions: dismissed, undermined, and abused. They are not the well-connected, active, mobilized survivor advocates that began the student-led movement to end campus sexual violence (Heldman et al. 2013). In line with legal consciousness literature, the women of color who participated in the focus group study constructed understandings of Title IX law in ordinary ways – they drew on what they understood about reporting violence to authorities in other contexts to inform their views on Title IX.

Focus group data revealed that women of color learn how to expect how institutions will treat them from the media: they cited *The Hunting Ground* documentary, the Tamir Rice case, killings of Black men posted on Facebook and TV, *Law and Order SVU*, and the Brock Turner case at Stanford as evidence that institutions rarely deliver justice for victims, and especially for victims of color. They described conversations with their families. Some parents had given their children "the talk" about how to stay alive when encountering police. Others talked about being

guided by family members to reach out to religious authorities for help in situations of abuse, and subsequently being shamed and silenced. Finally, participants learned from word of mouth from those who have had experiences with Title IX that no solution was reached, confirming their suspicion that Title IX would not deliver justice.

White women survivor activists relied on historically racist and sexist institutions to attempt to deliver gender equity. Women of color, for their part, have sat out on the sidelines. The result is that Title IX law and university-level policies have not been expanded to protect women of color from intersecting racial and sex-based harassment. Neither university administrations nor conservative counter movements can be blamed for the marginalization of women of color under Title IX. This process was driven by white feminist survivor activists who started the Title IX movement.

CHAPTER FIVE

This dissertation is aimed at understanding Title IX's failure to reduce sexual harassment and sexual violence in United States universities. Building on research conducted by socio-legal scholars studying the intersection of law, organizations, and social movements, I approach legal meaning making as an iterative process among organizational and social movement actors. I also consider the role of some of the most marginalized stakeholders in determining law's meaning. I offer one of the first studies to identify the roles played by the many various stakeholders in Title IX sexual harassment law. Further, I try to show how various stakeholder groups enabled or hindered one another from affecting law nationally and within the University of California.

Departing from the law and organizations literature, I detail how counter-movements affect law. In Chapter Two, I introduce men's rights groups as a powerful and relevant stakeholder group in addition to feminist survivor activists and university administrators. More importantly, I show that both feminist survivor activists and Title IX administrators engaged in legal strategies that left the door open for men's rights groups to weaken Title IX's protections for survivors, and to co-opt Title IX law so that it treated men and alleged perpetrators as a protected class.

I then try to account for that failure by understanding Title IX administrators' relationship with the law in Chapter Three. Instead of finding that administrators espoused values that aligned more with the priorities of the organization (i.e. reducing the risk of lawsuit, avoiding bad press), I find that they aligned more with the values of feminist social movements. Title IX administrators are more accurately depicted as the "insider activists" described in the social movement literature, I argue.

Nonetheless, Title IX administrators and feminist survivor activists differed in how they saw the purpose of Title IX. Administrators wanted to implement techniques that centered educating perpetrators, while survivor advocates felt that firing or expelling perpetrators was the best way to keep the members of the university safe. This conflict, I argue, informed legal strategies by each group of feminists that left the door open for men's rights groups to effectively change the law's meaning. Statutory law and Department of Education documents on Title IX produced ambiguous mandates on how Title IX administrators should carry out formal investigations for peer sexual harassment cases. Feminist survivor activists focused on legal strategies that punished schools for the outcomes of investigations, but not the procedures themselves. Administrators, for their part, neglected to clarify ambiguity in the law with respect to investigatory procedures because they benefitted from the ambiguity. They were able to translate ambiguous law into university level policies that aligned with their feminist values.

Supported by the Trump administration, men's rights groups took to the courts and lobbied government representatives, making specific demands about how investigation procedures should be constructed. These investigation procedures (e.g. higher standards of evidence, cross-examination of complaining parties and witnesses) made it increasingly difficult for schools to find that someone had violated their sexual harassment policy. Ultimately, men's rights weakened Title IX by claiming that men were being discriminated against under the gender equity law, and flipped its meaning to treat men and alleged perpetrators as a vulnerable and protected class.

Finally, in Chapter Four, I examine non-activist women of color's relationship with Title IX law in comparison to that of white feminist survivor activists. After the rise of the Trump administration, feminists warned that men's rights' gains would deter survivors from coming

forward and reporting to their Title IX office. Women of color, however, have long left their Title IX rights idle because they expected legal and educational institutions to respond to their concerns in a racist and sexist way. I argue that white feminists who champion Title IX have fought for legal interventions that do not reflect the experiences or needs of women of color. By detailing the struggle among these stakeholder groups, I expose how different groups wielding different levels of power and privilege marginalize others from influencing the meaning of law.

In the dissertation, I make four main arguments that contribute to the law and organizations literature. First, I argue that movements may challenge the meaning, legality, or scope of regulation after it has been put in place. Second, I show that social movement goals are often championed by people within the organization being regulated. Third, I show why movements may create fissures among people ostensibly on the same side. Fourth, I demonstrate how activists' experiences may shape the law more than the experiences of non-activists.

In Chapter One, I noted that some of dynamics identified in this dissertation may be applicable to other cases involving the legal regulation of organizations. I draw comparisons between the dynamics surrounding Title IX and the implementation of affirmative action policies, pointing out that university administrators often championed affirmative action as a way of bringing about racial equity for Black people (Pusser 2004). There would later be a conservative movement both within and external to government that organized to roll back affirmative action (Teles 2010). In *Fisher v. University of Texas* (2013), white woman Abigail Fisher argued that she was denied admission because of her race. Similar to the Title IX context, the historically advantaged group argued that they were being excluded and oppressed by an equity policy, which, they claimed, unfairly favored the interests of the historically oppressed group. Teles' (2010) work well documents the strategies of the conservative counter-movement.

My research suggests that university administrators may similarly have recognized affirmative action rules around quotas and timetables, but not sought clarification of those rules as long as they were able to use the ambiguity to promote the cause of racial equality. This would be worth exploring further.

Another important context to which my research may be applicable is in the movement for transgender rights. Title IX laws were expanded in the last decade to include protections for transgender students, with a particular focus on trans students' ability to use campus bathrooms that align with their gender identity rather than their sex assigned at birth. A 2016 Dear Colleague Letter under the Obama administration instated protections for transgender students who may be harassed on the basis of their gender for using women-only or men-only school bathrooms (Lhamon and Gupta 2016). The Trump administration – in tandem with a robust conservative counter movement that claimed that trans people would harass women in bathrooms – rescinded the protections. The administration replaced the 2016 DCL with a new DCL that required transgender students to use the bathroom correlated with their sex assigned at birth (Battle and Wheeler 2017). Conservatives also attempted to use the courts to argue that allowing transgender people to use the bathroom appropriate to their gender identity violated the privacy of other students (see *Grimm v. Gloucester Country School Board* [400 F.Supp 3d 444 (E.D. Va. 2019)].

In this scenario, many university administrators who may have seen themselves as allied with the movement for transgender rights later became obligated to enforce legal mandates that served the interests of the conservative counter movement. More research is needed to identify the various stakeholder groups who have affected changes in Title IX's provisions on

transgender rights, and to understand how each group may have contributed to the law's susceptibility to influence by conservative, anti-trans rights movements.

The dissertation provides a beginning framework for understanding the social dynamics that resulted in Title IX's ineffectiveness in reducing campus sexual harassment. Moving forward, it would be useful to have a more in-depth understanding of the differences between men's rights groups and individuals voicing concerns about respondents' rights. There are many similarities between men's rights groups and respondents' rights' talking points. However, some respondents' rights proponents identify as feminist (Kipnis 2016), or are invested in protecting civil liberties broadly (for example, the ACLU). I am interested in exploring how respondents' rights advocates and men's rights groups enabled or hindered one another in altering the meaning of Title IX, and how respondents' rights advocates fit into the genealogy I constructed. Additionally, my analysis of Title IX could be expanded by delving into men of color's relationship to Title IX and inclusion or exclusion from various interest groups. Men's rights groups, for example, rarely argue that men of color are disproportionately targeted by Title IX complaints and disciplinary sanctions. The predominately white feminist movement also rarely brings up men of color as an interest group vulnerable to racist politics associated with institutions and criminalizing men of color.

In Chapter Three, I showed that Title IX administrators valued educational sanctions for potential perpetrators, instead of punitive ones. Equipped with time, resources, and legislative backing, schools may better serve people of color by further exploring restorative justice and transformative justice techniques that have been developed by scholars of color (Kim 2018), and in particular, by Black feminists (Richie 2012; Davis 1983). Community and educational

responses may be more productive in ending violence than punitive ones, and may be more inclusive and accessible solutions for historically marginalized groups.

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CHAPTER TWO

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