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Procedural convergence

Brian A. Pappas

Political Science Department, Eastern Michigan University, Ypsilanti, Michigan, USA

Correspondence
Brian A. Pappas, Eastern Michigan University, 103 Boone Hall, Ypsilanti, MI 48197, USA.
Email: bpappas1@emich.edu

Abstract

Universities face a dilemma in determining how to create fair, consistent, and reliable processes that respect the rights of both alleged perpetrators and victims and encourage people to bring complaints forward. Using the literature on non-law forms of ordering and neo-institutional theory, this article examines university Ombuds and Title IX Coordinators and their handling of sexual misconduct disputes. Primary data collection included a review of 1200 documents and interviews with 14 Ombuds and 13 Title IX Coordinators from 22 large institutions of higher education between 2011 and 2014. This study concludes that Ombuds and Title IX Coordinators, despite being designed in sharply contrasting ways, converge (but not fully) toward a hybrid of formality and informality. This paper examines Title IX to understand what drives convergence behavior and to analyze how the recent changes in the law may alter the process of convergence. As Title IX law continues to develop, the theory of procedural convergence has important implications for the creation of non-law dispute mechanisms and the balance between individual rights and the organizational development of legal norms.

INTRODUCTION

Sexual misconduct is an ongoing problem on university campuses, and regulators and administrators are struggling to develop procedures to address it. Roughly one-third of female seniors report being a victim of non-consensual sexual contact at least once during college, and only 30% or less of the most serious incidents are reported (Cantor et al., 2019, pp. A7-14, A7-27). There are currently 305 open federal Title IX investigations against US colleges and universities (Chronicle for Higher Education, n.d.). With changing federal regulations and intense public scrutiny, universities continue to revise their sexual misconduct policies and procedures, and in the process create an opportunity to examine an age-old debate in American law and sociolegal studies between legal formality and informal alternatives. This article focuses on two alternative structures that frequently hear and respond to complaints of campus sexual misconduct: Ombuds and Title IX Coordinators. Title IX Coordinators are officials charged with enforcing the law through law-informed policies and procedures. In contrast, Ombuds are given no formally defined responsibilities and perform their roles

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through *no* law-like procedures. These two structures are characteristic of a long-standing tension in the US legal system between legal formality and informality. This is a story of how two institutional actors, facing public and legal pressures, depart or adhere to their archetypal models. It is a study comparing the institutionalized practices of legal formality and informality.

Ombuds and Title IX Coordinators differ significantly in their origins, development, institutional structures, and ideologies. Title IX Coordinators draw on a formal legal structure and ideology that emphasizes notice, law-like due process, and discipline. Title IX of the Educational Amendments of 1972 regulates gender-based discrimination in US schools and institutions of higher education. Title IX prohibits sexual harassment, sexual violence, and the hostile environments created by each. Today thousands of Title IX Coordinators ensure Title IX compliance in schools across the country by investigating complaints, determining violations, and developing and overseeing policies and trainings (35 C.F.R. § 106.8(a)).

In direct contrast to the formal complaint-handling role of a Title IX Coordinator, Ombuds are designed as informal mechanisms for resolving disputes. Where Title IX Coordinators must comply with a range of rules and regulations, Ombuds are guided by professional standards of practice. There are different types of Ombuds, and confusion exists due to a lack of a common definition (Levin-Finley & Carter 2010). "Classical" Ombuds originate from the Swedish parliament in the early 1800s and hold statutory independence, including the authority to investigate complaints and issue reports or recommendations (Gadlin, 2000). Organizational Ombuds are established by their organization's governance structure and do not have the authority to conduct formal investigations. This study is limited to the hundreds of college and university Ombuds, organizational in nature, who handle problems impacting students, faculty, and staff (Van Soye, 2007).

Like other organizational dispute resolution processes, Ombuds were initially seen as a way to respond to complaints, reduce litigation costs, and demonstrate organizational concern (Shapiro & Kolb, 1994). Ombuds hear concerns regarding university employees or policies and work to defuse situations before they become larger problems. Ombuds do not tell people what to do and have no authority to formally resolve a dispute, impose a sanction, or order a remedy. Instead, they listen, help people think through their options, and help people clarify their goals. Most importantly, Ombuds are a confidential resource and do not put the institution on "notice." Sharing information with an Ombuds does not create a legal responsibility for the organization to act. In sum, Ombuds are designed to provide procedural "voice" and a starkly informal process as compared to the formally designed Title IX Coordinator role.

Regulatory changes in 2011 led to significant changes for both Title IX Coordinators and Ombuds. The US Department of Education's Office of Civil Rights (OCR) oversees compliance with Title IX. OCR periodically issues notices, known as "Dear Colleague Letters" due to their greeting, which clarify Title IX's requirements. The letter issued on April 14, 2011, was intended to correct significant problems with campus sexual misconduct. For example, Karjane et al. (2002) examined campus policies and found 54% had no sexual harassment policy, 40% were not training students or faculty to understand Title IX policies, and 25% lacked the Title IX Coordinator's contact information.

The 2011 Dear Colleague Letter prescribed a preponderance-of-evidence, or "more likely than not," evidentiary standard for handling campus sexual misconduct disputes, and also required universities to handle all student-to-student sexual misconduct disputes, whether they occurred on or off campus (OCR, 2011, pp. 4, 11). A renewed focus on enforcement increased complaints, led to intense public scrutiny, and created uncertainty regarding how to effect compliance. For Ombuds, the same guidance restricted their ability to informally handle misconduct as the 2011 Dear Colleague Letter maintained a prohibition on the use of mediation in instances of sexual assault (OCR, 2011). Guidance in 2014 reinforced mandatory reporting requirements, pressuring Ombuds to be mandatory reporters and serve as "notice" to the institution (OCR, 2014, pp. 15–16).

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Changing legal norms and liability concerns regarding sexual misconduct heightens the pressure on Title IX Coordinators and Ombuds, who are conflicted by multiple competing values, considerations, and tensions. This article examines the archetypal "model" Coordinator and Ombuds and compares it to how Coordinators and Ombuds in practice fulfill their roles. This article finds the two mechanisms have converged (but not fully) toward a hybrid of formality and informality. This article examines Title IX to understand what drives this convergence behavior and also reviews recent changes to the law to analyze how it may alter the process of convergence.

This article is organized into four sections. First, this article reviews the literature and describes the theory of Procedural Convergence, followed by a description of the study's methodology. Next, the findings section articulates each role's archetypes favoring formality and informality, and then details how and why the two roles depart from their respective archetypes and resemble one another. This convergence is due to the regulatory environment, each role's need to navigate complex institutional environments, and the desire to help the individuals they serve. Finally, the discussion section analyzes how changes in the law may alter the process of convergence going forward.

LITERATURE REVIEW AND THEORY OF PROCEDURAL CONVERGENCE

A long history of sociolegal studies examines how closely the "law in the books" relates to the "law in action" and what are the expected and unintended effects as laws are enacted (Gould & Barclay, 2012; Pound, 1910). This paper examines institutional professionals' archetypal models, the role "in the books," and how those roles are effectuated "in action." The literatures used to study how universities respond to sexual misconduct include non-law forms of ordering and neo-institutional theory.

Title IX Coordinators and Ombuds can be differentiated using *Rules* versus *Relationships: The Ethnography of Legal Discourse* by Conley and O'Barr (1990). The authors describe litigants with a relational orientation who seek redress from the legal system for a range of personal and social wrongs. Those with a relational orientation—often women, the poor, the uneducated, and those denied access to social power—feel they do not have a proper opportunity in formal processes to tell their stories (Conley et al., 1978; Conley & O'Barr, 1990).

Meanwhile, litigants with a rule orientation "evaluate their problems in terms of neutral principles" and this rules discourse "rejects the fundamental premise of the relational orientation" (Conley & O'Barr, 1990, p. ix). The rules and relational litigants mirror the differences between the archetypal Title IX Coordinator and Ombuds, who operate with very different purposes, structures, and norms. The model Ombuds utilizes an informal, relational orientation grounded on the core principles of impartiality, confidentiality, and independence (Pappas, 2019a). The ideal Title IX Coordinator employs a formal, rule-based orientation based on compliance with and enforcement of Title IX (Pappas, 2019a).

Ombuds and Title IX Coordinators highlight the differences more generally between formal and informal procedures. Formal, court-like processes provide certainty and predictability because of due process, the requirement that judgments are made according to specific procedures like formal hearings with cross-examination, rules of procedure and evidence, and a record that forms a basis for judicial review (Hensler, 2014; Shapiro, 1986; Woll, 1961). Formal procedures are more costly and time consuming, can create additional barriers to justice for marginalized groups, and can result in additional trauma to survivors of violence and sexual misconduct (Bush & Folger, 1994; Campbell, 2006; Delgado et al., 1985; Grillo, 1991; Menkel-Meadow, 1984; Resnik, 1986).

In contrast, informal processes like mediation are consensual, voluntary, and promise flexibility and the ability to craft individually tailored solutions (Shapiro, 1986). Informal procedures provide self-determination to the participants, who may decide whether to participate and the extent of their participation. Informal procedures can also be used to promote understanding, to heal wounds, to repair community relationships, to provide opportunities for expression, to legitimize feelings, and

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to restore or build personal relationships (Menkel-Meadow, 1995; Woolford & Ratner, 2010). Informal procedures also have drawbacks, as they can entrench existing power dynamics and harm marginalized groups by trading the advancement of legal rights for "voice" (Delgado et al., 1985; Fiss, 1984; Grillo, 1991; Nolan-Haley, 2018; Resnik, 1986). Settlements also preference individual interests and moralities over law and policy and can limit the creation and dissemination of public values that can deter future violations (Fiss, 1984). Without careful planning, informal procedures similarly risk additional trauma for survivors of violence (McGlynn et al., 2012).

While following sharply different models based on rules/formality and voice/informality, this article hypothesizes that Ombuds and Title IX Coordinators are likely to be drawn in similar directions due to their institutional and legal environment. Both Ombuds and Title IX Coordinators are examples of "non-law" dispute-processing mechanisms that evolve into a hybrid quasi-law like organizational form due to the pressure of a complex and intertwined legal and institutional environment (Auerbach, 1983; Ellickson, 1991). Examining the classic studies on avoidance of law in the United States helps to explain "non-law" mechanisms. People and organizations that dislike the loss of control and publicity of formal procedures drive informality in dispute processes. As a result, attempts are made to resolve things informally and "behind the scenes." Multiple studies examine non-law order (Auerbach, 1983; Ellickson, 1991; Robinson, 2013) and how norms and law interact (Blocher, 2012; Kostritsky, 2013; McAdams, 1997). In *Justice without Law* (1983), Auerbach analyzes how particular communities of American society—including minority religious sects, commercial business associations, progressive policy reformers, and universities—resolve disputes without accessing the formal legal system. Non-law dispute systems are created by these groups to avoid the strictures and proceduralism of the formal legal system. Organizations also create non-law systems in order to comply with formal legal requirements. As a result, organizational theory offers an additional lens for studying campus sexual misconduct.

Classical organization theory emphasizes efficiency and control as the motivations driving the formalization of organizational governance (Blau & Schoenherr, 1971; Weber, 1978). In contrast, legal environment theory builds on the institutional perspective within organization theory and emphasizes the normative environment's isomorphic influence on organizational structure and behavior (DiMaggio & Powell, 1983; Meyer & Rowan, 1977; Scott & Meyer, 1983). More specifically, neo-institutional theorists argue that organizations tend to adopt internal structures that mimic responsiveness to external legal norms in order to be viewed as legitimate (Edelman, 1990, 1992; March & Olson, 1989, 1995). This neo-institutional literature describes how "non-law" processes and structures develop within bureaucratic organizations (Dobbin & Kelly, 2007; Edelman, 1990, 1992; Edelman et al., 1999, 2010, 2011).

Selznick (1969) first examined "non-law" organizational alternatives and noted how law acts as a normative influence to increase the level of formalism within organizational internal dispute-processing systems. More recently, scholarship views the organizational "responses" to external law as being so influential regarding what is meant by "compliance" that the organizations are actually "constructing" their legal environment (Edelman et al., 1999, 2010, 2011). Institutionalized organizational structures influence judicial views of what constitutes compliance. For example, courts eventually accepted organizations' internal Equal Employment Opportunity (EEO) and Affirmative Action (AA) policies and procedures as what the law required (Edelman et al., 2011).

While internal organizational dispute systems provide a "non-law" alternative, observers have long noted that they come under pressure to mimic formal legal processes (e.g., Selznick, 1969). Edelman has long argued that this mimicry is actually empty symbolism (1990, 1992) as the courts do not look behind the managerial structures to determine if they actually effectuate the law's intended results. Deference occurs because the managerial structures representing compliance are often quite formal in nature and look superficially like legal institutions. The more organizational procedures mimic the formality of a legal process (with organizational policies and rules resembling laws and procedures mimicking judicial processes), the greater the likelihood the courts will defer to the process and view it as legitimate (Edelman et al., 2011).

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Alternative non-law systems, due to criticism for a perceived lack of procedural fairness, are pressured to mimic formal processes. As a result, they subtly gravitate toward greater procedural formalism and many informal non-law dispute systems—particularly small claims courts and arbitration—eventually become significant parts of the legal system (Auerbach, 1983). The pressure toward legal formalism occurs both internally and externally. Contrary to the image of managerial control over this internal institutionalization of law (Edelman, 1990, 1992; Edelman et al., 2011), Epp (2009) argues that organizational managers are pressured by external threats of liability to adopt law-like policies and procedures that are more formalized and extensive than they initially preferred.

Title IX Coordinators and Ombuds can *both* be considered very different versions of "non-law" organizational dispute mechanisms. Ombuds typify the use of "non-law" community norms as the levers available to them are all persuasive in nature: Ombuds have no power to hire, fire, or enact and enforce organizational changes. An Ombuds's influence and legitimacy is organizationally created and is entirely determined by organizational members. Ombuds use an informal structure and ideology that emphasizes procedural justice and the psychological value of truly hearing everyone's perspectives and then using this knowledge to inform systemic change (Harrison, 2004; Harrison & Doerfel, 2006). Less obviously, Title IX Coordinators are also a version of the various internal organizational offices created to avoid automatically sending internal disputes to regular courts for resolution. Title IX Coordinators are formally and legally framed, but operate more informally than the court-like ideal. Ombuds and Title IX Coordinators are differing mechanisms that represent sharply divergent ways of addressing the difficult issues posed by campus sexual misconduct.

Although Title IX Coordinators and Ombuds start from very different institutional premises, these theories suggest that *both* are likely to be subject to contrasting institutional pressures favoring greater informality *and* law-like formality. How each mechanism responds in practice to these cross-cutting pressures is the subject of this study. This article proposes the following thesis: Formal and informal non-law organizational dispute mechanisms converge over time and begin to resemble one another in what will be called *procedural convergence*.

Because the ideal-type Title IX Coordinator is already quite formal, and the ideal-type Ombuds is already quite informal, I expect each office will be pulled toward their opposite: Ombuds will be pulled in practice toward greater formality, and Title IX Coordinators toward greater informality.

Procedural convergence occurs when formal and informal organizational dispute mechanisms, facing liability pressures and the need to achieve justice, depart from their respective models. A powerful force, the law paradoxically motivates Title IX Coordinators and Ombuds to utilize each other's core strategy. Fundamentally, procedural convergence occurs due to complex tradeoffs requiring Ombuds and Title IX Coordinators to maintain or relax their standards in the face of significant pressure to protect the university community and vulnerable individuals from harm.

METHODOLOGY

This research examines institutional administrators' archetypal roles versus their actions taken in practice when confronting campus sexual misconduct. Data analyzed includes 2011–2014 interviews of 14 Ombuds and 13 Title IX Coordinators from 22 large public and private institutions of higher education. The research methods consisted of open-ended interviews, content analysis of those interviews, and a review of 1200 documents totaling 7000 pages of information about these mechanisms. This study provides a window into the working world of Ombuds and Title IX Coordinators during a period of turbulent policy changes relating to campus sexual misconduct.

The study's population was limited in multiple ways. First, all of the universities included in the population are members of NCAA Division I and employ a full-time Title IX Coordinator operating in a centralized office. The most restrictive criteria required the university to employ an Ombuds providing informal services to faculty, staff, and students impacted by sexual misconduct. This restriction created the essential institutional variable distinguishing between formal and informal

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processes. This guarantees the Title IX Coordinators included in the population have informal options available to them and are not using a relational frame merely because no alternative exists.

Finally, the population was restricted to Ombuds and Title IX Coordinators observing the standards of practice of their fields. For purposes of analyzing the role's archetype and its possible departures, one key selection variable was whether Ombuds followed the International Ombudsman Association (IOA) Standards of Practice: Informality, independence, impartiality, and confidentiality (IOA, n.d.). Ombuds capable of receiving "notice" of problems on behalf of the institution were not included in the study. This ensured Ombuds were "real" instead of being an "Ombuds in name only" and provided that any observed variation by Ombuds away from the archetypal model is an informal, rather than an official, divergence. Individuals serving in a significant management role in addition to being Ombuds were also eliminated from consideration as they de facto serve as notice to the institution.

The resulting population included 41 institutions, of which 22 were represented in the sample. I informally spoke with multiple Ombuds and Coordinators and interviewed four outside of the population's parameters. Ultimately 13 Title IX Coordinators (31.7% of the population) and 14 Ombuds (34.1% of the population) agreed to formally participate in the study. The sensitive nature of the topic restricted the sample size as many deciding not to participate declined due to confidentiality concerns. Participants represented a broad distribution of geography, with five working at universities in the West, seven at universities in the Midwest, six at universities in the South, and four at universities in the East. Of the 22 institutions, 20 are doctoral level universities. All but two of the participants work at public universities, with the remainder at doctoral granting private institutions. Of the 13 Title IX Coordinators, 10 are female, three are male, seven are African American, four are Caucasian, and two are Hispanic. Of the 14 Ombuds, six are female, eight are male, three are African American, 10 are Caucasian, and one is Hispanic.

Due to the small sample size relative to the total number of national institutions, the results cannot be generalized to the entire population of Title IX Coordinators and Ombuds. Instead it is limited to a specific subset of institutions. Nonetheless, these results provide insights into the strategies Ombuds and Title IX Coordinators use in executing their roles. I suspect the participants are more typical than unique due to several factors. First, those who agreed to be interviewed were not only officials facing low-level uncontroversial cases. The participants described working on a wide range of sexual misconduct complaints, including some cases involving egregious abuse by high-level university employees. Second, the participants were neither primarily new to the role or seasoned veterans, but included a range of levels of experience. While the participants were relatively small in number, they do not appear to be systematically skewed in any obvious way.

Interviews occurred by phone and consumed up to 3 hours and multiple sessions. The purpose of the first interview was to gain basic information about the individual's role and background, and their institution's processes. A second interview included non-specific narratives of three types of cases: (1) the most recent case (to collect a quasi-random sample), (2) a case where the individual being served perceived a positive outcome, and (3) a case where the individual perceived a negative outcome. It was left to the interviewees' discretion regarding how they defined positive and negative and whether they perceived a positive or negative outcome or directly knew the served individual's views. Interviews continued until data collection reached saturation point of gaining no differentiating information (Gaskell, 2000; Green & Thorogood, 2004). In total, over 100 narratives were collected.

The findings emerged from an iterative process of coding, interpreting, and interviewing. Narrative inquiry was used to determine common elements and through this aggregation process themes emerged (Chase, 2005; Clandinin & Connelly, 2000; Jones et al., 2014; Polkinghorne, 1995; Stake, 2006). By design, the use of the narratives is restricted in this text to avoid revealing any information that may identify any individual, institution, or event. Due to the particular nature of each account, efforts to change key details often impacted the resulting interpretation and the particularity

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of the narratives made changing the details (i.e., the academic department) insufficient for providing anonymity. As a result, quotes from the narratives are used to support the findings and interpretations in lieu of detailing specific situations.

The procedural convergence phenomenon emerged in analyzing narratives and statements regarding how each mechanism practice in relation to the professional "ideal." It was not only the frequency but also the depth and focus on the statements that were important, as all interviewees defaulted to their formal or informal orientations when asked about the role's basic purpose and procedures. As Maynard-Moody and Musheno note (2003, p. 29), questioning often results in "more socially and organizationally acceptable answers than those revealed in the stories told on the same subject by the same individuals."

Finally, it is important to note the author's experience relating to these mechanisms. This study formed the basis of the author's 2015 dissertation (Pappas, 2015a). In addition to being an academic, the author is also a mediator and mediation trainer. In 2010, the author completed the International Ombudman Association's "Ombudsman 101" and "101 plus" trainings totaling 27 hours. This training helped to illuminate the Ombuds role and the principles imbedded within the "ideal" or archetypal model. Subsequently from 2016 to 2017, the author served as a Title IX Coordinator at a midwestern public university and in 2017–2019 handled informal institutional conflicts as a neutral in a variety of contexts at a western public university.

FINDINGS

This research articulates a new theory of procedural convergence: Formal and informal non-law organizational dispute mechanisms, needing to use both rules and relational-based strategies, converge over time and begin to resemble one another. The archetypal models are more or less clear in their requirements, but prove hard to follow in practice. Title IX Coordinators slide toward informality and Ombuds move toward formality under liability pressure and the desire to produce good outcomes in individual cases as opposed to strictly following a principled model.

Title IX coordinators and formality

The Title IX Coordinator archetype prefers formality as the role directs formal and timely investigations that provide for notice, due process, and other features common to formal processes. Similar to the police or a prosecutor, the ideal Title IX Coordinator operates an office that uses formal processes designed to identify, through formal investigation, whether the facts indicate compliance with the law and university policy. Coordinators adhering to the archetype use a formal process in which they enforce mandatory reporting requirements, conduct at least an initial investigation of every complaint, and issue an investigative report. Characteristics of Coordinators who follow the archetype will now be discussed.

First, Coordinators who adhere to the archetype are wholly committed to its formality and see considerable benefits in this formality. Several Title IX Coordinators celebrated the benefits of formal processes. For example:

> The more formal, the more you have a very, very clearly defined investigative process … confidentiality, outcomes, what you will be able to share, what you won't, the more you set all that up and have frankly a very legally sound final written report on the back end, the more I think people at least know what to expect when they come to your office and that it's not going to be all over the board (T1B12:33).

Second, Coordinators who adhere to the archetype see their office as a mechanism for investigating and preventing sexual misconduct, not necessarily to provide options or maintain confidential communications. For example, a Coordinator says he tells visitors:

> I do an investigation based upon the information you give me. My role is not to talk and give you options. Unless there is nothing in your conversation to suggest that you're being subjected to discrimination, and it is just bad behavior that you don't like and it doesn't rise to the level of protected activity, of course I won't do anything. But, for students who come in and say 'I've been sexually harassed in the last month but I don't want you to say anything,' I stop them and say 'I can't. This isn't the place for you' (T10A43:35).

Title IX Coordinators adhering to the archetype enforce mandatory reporting requirements and encourage all university employees, even the Ombuds, to notify the Title IX office of any suspected sexual improprieties. For example:

> Well, no [I do not interact with the Ombuds]. That office pretty consistently will and should refer any complaints that they get that are about discrimination or harassment to us, so in that sense we interact (T3A19:23).

Third, Title IX Coordinators who adhere to the archetype use a police/prosecutor model in which every complaint, without exception, must receive an initial investigation to determine if further steps are needed. This initial investigation begins within the initial interview as Coordinators interview the complainants to determine whether further action is needed. For example:

> Then if [the visitor] starts to ramble I will then say "let's get back on track, why are you here? What happened to make you come here … give me specific evidence that you're being sexually harassed." We really try to make sure we're in the world of [compliance]. As a result of that, either I can tell right then or there or the person will admit "I really don't think it's discrimination, I'm just not being treated well." Then we know it's not the [compliance] world … [but if there is evidence I will say] "it looks like there's enough to at least do an investigation to prove or not prove your case." Then I explain to them the investigation process… (T10A43:22).

Title IX processes vary widely. In some instances the Title IX Coordinator does not personally investigate, but rather a staff member investigates, providing some separation between the investigative and adjudicatory functions. The Title IX Coordinator's report then includes a recommendation regarding guilt and potential sanctions. The report then goes to a panel or to an administrator who makes the ultimate determination regarding guilt and sanctions. In other situations, the Title IX Coordinator's report determines whether there is a Title IX violation and a panel or administrator determines the sanctions. As a Coordinator described, "For students the hearing board determines [punishment]. Again, it's all about consistency. We just want to make sure for certain violations we're consistent in terms of how we implement those (T13A49:51)." In yet a third model, the Title IX Coordinator's report serves as an indictment, stating probable cause to proceed with charges, with the case then proceeding to a more formal hearing. For example:

> [S]o what we wind up doing is writing a summary of the investigation and providing findings of fact … with a recommendation, and it's only a recommendation, as to whether further proceedings are warranted or not … without a conclusion as to whether a policy has been violated or not (T7A32:23).

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Fifth, Coordinators who adhere to the archetype provide everyone with their constitutionally protected rights. This includes always providing notice to the respondent after receiving the initial complaint. Coordinators described a norm of talking to the respondent within a few days of receiving the complaint in order to guarantee equal treatment and fair process (T9A41:37). Title IX Coordinators who conform to the archetype use a formal investigative procedure that begins with mandatory reporting, continues with formal investigative techniques that mirror those of police and prosecutor, and conclude with an investigative report.

Informality and the Ombuds archetype

Where the ideal Title IX Coordinator directs formal and timely investigations that provide for notice, due process, and other features common of formal processes, the model Ombuds uses flexible, informal processes that empower visitors in achieving their goals. The archetypal Ombuds's informal process differs considerably from a Title IX investigation. First, the Ombuds model attempts to defuse situations before they become larger problems by informally helping individuals to think through their options, clarify their goals, and improve their communication. IOA Standard 4.2 states that the Ombuds is an informal and off-the-record resource for pursuing resolution of concerns, examining procedural irregularities and identifying broader systemic problems (IOA, n.d.). The Ombuds archetype is not to tell people what to do but to endeavor to listen without judgment. As indicated by IOA Standard 4.3, Ombuds must not mandate policies, formally adjudicate issues, or make binding decisions for the organization (IOA, n.d.). As a result, an Ombuds does not participate in any adjudication or formal investigation (including serving as a witness or conducting any investigations), but can provide information and make referrals to the organization's formal processes (IOA, n.d., Standard 4.5). Ombuds often described their preference for informal resolution. For example:

> I've never seen anybody win their case. I don't want to say that I deter people from that … [The formal process is] just kind of a system of frustration for students and staff and faculty to go through that, [and] I've never seen anything [be resolved to the visitor's satisfaction] (O8A51:40-53).

Ombuds who adhere to the archetype say they value providing their visitors with an opportunity for voice and expression:

> I want for [visitors] to feel safe, first and foremost . . . I let them drive the course of the conversation and the pace. I provide them with a little information about the office and just listen. [I] [a]sk some questions, I don't take notes. I just listen (O8A51:26).

Ombuds who follow the archetype help visitors to make decisions about what they want to do. An Ombuds explained: "It's all about what they feel most comfortable with…. I'm not going to force anybody to do anything they do not want to do (O3A21:42).

Second, Ombuds' informality is related to their impartiality and independence. As opposed to the Title IX Coordinator's prosecutor or police investigator model, Ombuds' impartiality is more like that of a Rabbi or a Priest, a role that serves as an advocate for overarching principles like fair process instead of advocating on behalf of any individual or the organization. Ombuds do not have administrative power and are unable to enforce policies or sanction violators. While Ombuds are employed by the university and report to the president, they are independent because they sit outside the formal administrative structure. IOA Standard 2.4 requires that the Ombuds serve no additional organizational role that may compromise the office's neutrality (IOA, n.d.).

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Ombuds who follow the standards of practice are very careful to maintain their independence and impartiality and strictly avoid participating in formal processes because they can be confused with advocacy. An Ombuds explained why participation in formal processes is inappropriate:

> I used to go to hearings as a neutral non-participating observer. People would say "there are going to be three or four people on the other side of the table and I'm all alone [at the disciplinary hearing], will you come along just so I have someone there?" I used to go, and say "As the Ombudsman I am a neutral party. My presence here should not be construed as support to any particular person or position in this matter." I was out at one such employee hearing, and I stood up to say my introduction, and before I could even finish, the hearing officer told me to 'shut up and sit down, we know who you're here for!' I was stunned. I shut up and sat down, it was his hearing. But I never went to another hearing because it occurred to me … the assumption's going to be made that it was the employee who asked me to go there and that I am there in support, at least morally, of that employee. [First] that's not going to be perceived as neutral, [second] it was wrong … the perceptions engendered from such activities are very risky when it comes to the standards of practice … and I quit doing it (O10A55:25).

Third, an Ombuds informality is related to confidentiality as the model Ombuds must provide confidentiality and anonymity to visitors, and must not keeping records for use in formal processes. In sharp contrast with Title IX Coordinators' formal reporting requirements, the Ombuds archetype provides informal feedback to the organization on general trends or generic information about the types of issues brought to their attention. The Ombuds must provide confidentiality to individuals in order to retain the office's informality and thus protect the institution from legal notice. No specific information about any case is to be reported and any information shared must be done anonymously in order to protect confidentiality. Through feedback, improvements can be instituted, but the model Ombuds do not administer any changes. The limited, informal feedback function of an Ombuds stands in sharp contrast with the formal reporting requirements of Title IX Coordinators.

One of the main reasons for the Ombuds function is that it provides an informal and confidential option and thus increases the likelihood that individuals will come forward with complaints. As one Ombuds observed, "We know from experience [that] people are more likely to address their situations if they know there is an informal option" (O14B64:44). Another Ombuds echoed this view:

> Those are what draw people here, and if they have to compromise their confidentiality and provide notice and … all those formal things, just to get those questions answered, they're not going to come. They want a safe place to come and discuss first, to use the words that some of them use: "am I crazy, or is this sexual harassment?" And then a safe and trusted place to come to say "ok, if I wanted to do something about it, what are the kinds of things I might consider doing?" Without obligating themselves to do any of them. And those are two functions that we as ombudsmen can perform only because we are not agents of notice and we are confidential (O10A55:31).

Ombuds who adhere to the archetype do not collect or keep records about their visitors, as an Ombuds described:

> [O]ne of the reasons behind my practices around record keeping is that I don't want to become a witness in litigation, so I don't keep the names of people, I don't keep any documentation… (O7A37:25).

Ombuds who adhere to the archetype argue Ombuds help potential visitors make decisions and understand the benefits of various options:

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> [A]t first she wasn't going to report it at all, ever. And I think, had it not been for us discussing it, I think she ended up bringing that sexual harassment complaint forward, and would not have otherwise had she not talked to me. So, I think that's a good example of how the Ombuds office can also encourage people to come forward because it's confidential [and] gives them enough time to think about it and sort out their thoughts and make a decision for themselves, and so it eventually does get reported (O12B60:8).

In sharp contrast to the Title IX Coordinator archetype that uses formal procedures and mandatory reporting to determine violations of Title IX, the model Ombuds informally helps individuals think through their options and clarify their goals. Ombuds do not advocate for any individual or the organization, and do not participate in any formal process or procedure. To maintain their informality, they provide confidentiality to their visitors and do not maintain records.

Procedural convergence

This section first describes the rules changes that impacted both the formal and informal procedures used for handling sexual misconduct. Then the section examines how Ombuds and Title IX Coordinators responded to those changes. While designed in sharp contrast to one another, in practice, Title IX Coordinators and Ombuds both depart from their archetypes and begin to resemble one another.

Rules impacting formality

The 2011 and 2014 policy guidance impacted the formal procedures and created significant challenges for Title IX Coordinators. Enormous public pressure mounted to reach the correct decisions in campus misconduct cases. Unfortunately, the formal procedures lacked the procedural protections that would insulate against further legal challenges (Harris & Johnson, 2019). For example, the 2014 guidance required an "adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence" (OCR, 2014, p. 12). This investigation could be conducted by the Title IX Coordinator, but the role lacks any ability to subpoena evidence or compel either a witness or a complainant to testify (OCR, 2014, p. 25). The new guidelines did not require universities to hold hearings, to allow either side to be represented by lawyers, or to provide opportunity for appeals (OCR, 2014, p. 25, 26, 29). If a hearing was held, a complainant could not be required to be present and direct cross-examination was discouraged as possibly perpetuating a hostile environment (OCR, 2014, p. 30–31). The guidance also required the use of the preponderance evidentiary standard, a standard many argued did not adequately protect the accused given the lack of robust procedural protections (Harris & Johnson, 2019).

Universities faced a choice of what constituted the larger risk: OCR enforcement or civil lawsuits? Did universities want to replicate court-like procedures to protect against civil lawsuits or could they maintain traditional organizational procedures for enforcing policies designed to comply with OCR and Title IX? In 2014, OCR began publishing lists of universities under investigation for violating Title IX, further increasing pressure on universities to comply as they could ill afford to be seen as indifferent to victims. By 2017, 60% of the nation's top 53 universities provided no right to cross-examination and 100% adopted the preponderance evidentiary standard (FIRE, 2017). As Harris and Johnson (2019, p. 63) noted, "With federal funds at stake, the same financial pressures that lead some universities to sweep accusations of sexual assault under the rug can lead others to abandon basic fairness for those accused of the offense, as can pressure from faculty, students, and community activists."

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While the universities might satisfy OCR requirements, The 2011 and 2014 guidance did not require enough "formality" to guarantee the consistency and reliability of university decisions when tested in court. Between 2011 and 2019, nearly 500 lawsuits challenged the Title IX policy change, and universities more often than not lost in court (Harris & Johnson, 2019, p. 64). Federal courts acted to protect accused students' rights to due process, to cross-examine witnesses, to hold a live hearing, to access all the evidence, and to present witness testimony (Harris & Johnson, 2019, p. 72).

Title IX Coordinators Informalize

Enter the Title IX Coordinator, a mid-level administrator hired to successfully change the campus culture. With varied educational backgrounds and multiple titles and areas of responsibility, Title IX Coordinators are a fragmented professional group working in a complex organizational and regulatory environment. In the face of extreme legal, publicity, and social pressures that risked potential damage to their careers, Title IX Coordinators informalized their practices. Title IX Coordinators did so in order to (1) manage a large and unwieldy workload with inadequate resources, (2) minimize liability and negative publicity, (3) reduce the negative impact of the formal process on survivors and alleged perpetrators, and (4) encourage survivors to make reports.

For Title IX Coordinators, the amount of work resulting from the 2011 and 2014 guidance was immense. The 2014 guidance required Coordinators to complete the entire process from complaint to sanctions in 60 days (OCR, 2014, p. 31). One Coordinator noted the challenge of the time limit: "[Y]ou try to handle them within 60 days or less, and I don't look at the 60 days, I just want to handle them" (T4A15:18–20). The time constraint is especially difficult given that only 33% of Coordinators report the role is their sole, full time position, only 51% of Coordinators believe they have adequate funding, and only 49% believe they have adequate staffing to ensure compliance (Wiersma-Mosley & DiLoreto, 2018, p. 5; Van Brunt, 2015, p. 40). One Coordinator noted how informality helps manage the workload and speed up the process: "Informal resolution sometimes also means we can bump somebody out of the institution on the bas[is] of which you already know without having to go through a full investigation" (T7A32:44).

Coordinators also informalize in order to protect the institution, minimize liability, and avoid negative publicity. One of the benefits of informal resolution is the ability to avoid lawsuits and liability, as described by this Coordinator: "We had a change of president here who didn't like all the investigative reports we were turning out because whenever we had findings of discrimination or sexual harassment, those reports, they always become attachment A to the lawsuit against the institution. Now I've been given the green light to sort of identify cases that maybe can reach an informal resolution without having to go through a full investigation" (T7A32:44).

Third, Coordinators informalize in order to reduce the negative impact of the formal process on survivors and alleged perpetrators. First, many general counsels insisted on going beyond the due process requirements of the 2011 and 2014 guidance, creating tension with Title IX Coordinators. Here a Coordinator described the tension most aptly:

> General Counsel said [the student has] a due process right to an adjudicated hearing … in every other way and in every other situation, [I] make decisions and recommendations. … But [now I can't]… I've had a real trouble dovetailing my process with theirs because they are very rigid, very process-driven, to the point of dotting the I's and crossing the T's…. You know what I'm saying? And it's primarily staff with young, ambitious professionals who are really more interested in making a name for themselves [than in] cur[ing] students, in my personal opinion (T12B48:7; 4:17-5:12).

Another Coordinator described a greater goal than rules enforcement: "For me it's far more than an issue of non-discrimination or that we are following the letter of the law. It is about making sure we

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are creating an environment that is safe and conducive for people to do their best work, whether that's academically or professionally" (T5A4:35–38).

While the formal requirements were not enough to guarantee against liability, they were still experienced as harmful to survivors. Coordinators expressed strong dissatisfaction with the impact of formal procedures on survivors. For example: "Knowing what our adjudication process is like… when they first come [in], I just dread it. Because I know what's coming. I just think 'oh my God, how can I do this to this person'" (T12B48:23)? Another Coordinator echoed the frustration with the formalized process for all participants:

> Students don't sign up to be infused in the formalized process of a grievance structure, that's not why they're here. They're here to study and to learn and to have the greatest four years of their life … I think once you're into a process such as a Title IX process, it's so formal at that particular point, and the requirements are so different that it's hard to maintain that sense of safety and security of why you came to university… (T10A43:51).

As a result, many Title IX Coordinators depart from the archetype because they see the formal process as too confrontational and thus harmful to survivors. For example:

> You don't know how it's burdened [me]. I often see them right after, the day after. They're traumatized. They cry…they [are often] furious at the panel. Furious. [They say] everyone over there was incompetent, unfeeling … our process is so victim unfriendly (T12B48:13, 19, 23).

To help survivors, Coordinators often described using informal means of resolution:

> [I]f we've got an especially fragile complainant, let's say, rather than proceeding through our formal, full investigative process, we might figure out a way to handle it informally. We have a couple of options in terms of handling it informally. Typically… we sit down with the respondent, we explain how they've impacted the complainant, we hear their side of the story, but we're not making findings, we're really trying to educate the respondent on how their behavior was coming across and making sure they understand that the behavior has to stop (T1A11:28).

Another Coordinator described a similar situation that helped the perpetrator:

> So in the particular instance [there was touching but] the [respondent] said "I may have done that, but I in no way intended it to mean that." After questioning both parties I saw where we could resolve the matter through mediation. The matter was very positively resolved, resulting in a beautiful card being sent to me by the alleged perpetrator (T4B25:3).

Finally, Title IX Coordinators informalize in order to encourage survivors to report, something that departs from their archetype' norms. Coordinators often relax the formality of reporting requirements by not asking for specific information about a complaint, not requiring permission prior to other offices' handling complaints, or not enforcing mandatory reporting policies. Many Coordinators understand how the rigidity of reporting requirements inhibits reporting, as expressed by one Coordinator:

> I'll talk to anybody…[I am] very open, very informal in the first meeting trying to help guide people where they need to go… I'd rather know what's going on or suspect what's

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> going on, nip it in the bud, give people some tools they can use to help themselves and recognize when they should report and what they should report, than be caught unawares all the time (T11B46:24).

In this way, Coordinators act very much like Ombuds, as noted by an Ombuds describing their Title IX Coordinator:

> I suspect, I happen to believe that our [Title IX Coordinator] does a lot of that informal coaching when somebody doesn't want to file something. One distinction, one important distinction is that in the course of that conversation [is] if the visitor would say to me, "here's what he said to me." [The Title IX Coordinator] may be obligated … to respond to that…. [T]hose are the sorts of behaviors that I [can] informally approach (O13B62:8).

Title IX Coordinators who depart from the archetype often provide the complainant with control and self-determination in ways that may undermine protections for the broader community. Coordinators described providing complainants with control very similar to that provided by an Ombuds. For example:

> Once I hear their story and I tell them what their options are…. Ombuds or me, or if they want to deal with it on their own, because that's always an option, or do they just want to drop it? They always have options. Once they tell me where they want to go with it … I tell them "here's the form" because I never want them to make a decision in the heat of the moment… And I ask them to write out or type up their complaint, which requires them to go away, think about what they've said, what they want to do, and come back. Sometimes I never see them again because once they put it in writing and they see it they change their minds. I also tell them "it needs to be the truth. If I find out in my investigation or in the course of having a conversation with them that things are not quite right, that I reserve the right to report them back to student code of conduct for an illegal complaint" (T11A45:20).

The above practice provides self-determination but also may suppress complaints and fail to effectively document violations. One Coordinator described not utilizing an intake form or recording the conversation, to the dismay of the general counsel:

> We have a complaint form, but I am … loathe to require that they complete it until we talk. And so because I'm also loathe to tape record, because it changes the tenor of a meeting when you put that thing between the two of you, and the general counsel and I have gone round and round on that issue (T12A47:22).

Title IX Coordinators informalize their procedures in order to manage a crushing workload, to protect the institution from liability and negative publicity, to better support survivors and the accused, and to encourage greater numbers of complaints.

Rules impacting informality

The guidance changes did not, by themselves, limit universities' ability to use informal procedures—it was general counsels' interpretation of those changes. While prohibiting the use of mediation in instances of sexual assault, the guidance did not address restorative justice and other informal options (OCR 2011; 2014). The 2001 OCR guidance, continued under the 2011 Dear Colleague

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Letter, allowed the use of "informal mechanisms for resolving sexual harassment complaints… if the parties agree to do so" (OCR, 2001, p. 21). In 2010, an investigation found 51 complainants were pressured to mediate with the accused, and university counsel feared violating OCR guidance and any liability that might result from pressuring survivors and perpetrators to bypass formal procedures (Center for Public Integrity, 2010). As a result, general counsels argued against using informal procedures or allowing any meetings between complainants and respondents outside of a formal hearing (Coker, 2016; Pappas, 2019b).

Additionally, OCR rules did not mandate widespread mandatory reporting requirements (Weiner, 2017). With employees failing to make reports of misconduct, widespread mandatory reporting is seen as a way to make sure misconduct is identified, perpetrators disciplined, and future occurrences prevented (Weiner, 2017). Under the 2014 guidance, "responsible" employees must report instances of sexual misconduct, including the victim's and perpetrator's names, regardless of whether the reporter wants the school to take further action (OCR, 2014, pp. 14, 16). OCR defines a responsible employee as any employee with the authority to take action to redress the misconduct, who has the duty to report the misconduct to appropriate school officials, or whom a student could reasonably believe has this authority or responsibility (OCR, 2001, p. 13; OCR, 2014, pp. 15–16; OCR, 2017a, 2017b DCL: 2).

Widespread Mandatory reporting policies became the norm at universities through a series of steps. First trade publications debated whether anyone with the duty to report became automatically responsible for taking action, followed by professional organizations like ATIXA (the Association for Title IX Administrators, 2013) encouraging universities to use their model policy (Weiner, 2017). The press reported on these developments and widely distributed the policy. Attorneys then recommended the policy to general counsels, leading to widespread adoption given no viable alternative approach and the diffusion of the policy at similar institutions (Weiner, 2017). Administrators concluded that anyone with a duty to report automatically must be responsible and thus should be a mandatory reporter. This interpretation was then reinforced by OCR resolution letters (OCR CUNY-Hunter College, 2016b; OCR Wesley College, 2016a; Weiner, 2017). As a result, mandatory reporting policies appeared consistent with Title IX and a way to demonstrate an institutional commitments to reduce misconduct (Weiner, 2017). Despite no requirement that every employee be a "responsible employee," 69% of universities in a 2017 study of 150 campuses designated all employees as mandatory reporters (Holland et al., 2018).

Universities, viewed as negligent in enforcing Title IX and sweeping misconduct under the rug, needed to be seen as following the rules and holding perpetrators responsible. Ombuds were most negatively impacted by universities interpreting the new rules as requiring mandatory reporting. While administrators view mandatory reporting policies as encouraging reporting, widespread mandatory reporting may actually contravene the purpose of Title IX as it weakens survivors' autonomy, undermines their feelings of institutional support, and deters them from reporting and seeking help (Wiener, 2017; Karjane et al., 2002, pp. 77, 79). Underreporting occurs because survivors do not want the person to get into trouble, do not want to be retraumatized through the retelling of the event, or do not want to go through the strictures of the formal resolution process (Cantor et al., 2019; Madigan & Gamble, 1991; OJP, 2014; Pappas, 2016). Without informal options and few places to have a conversation without putting the institution on notice, survivors frequently choose not to report, or to report but not move forward with the formal process (Orcutt et al., 2020).

Ombuds formalize

Enter the Ombuds, a mid-level administrator guided by standards but without the formal authority to change policy or procedure or to enforce the rules. With universities struggling to establish reliable formal systems and survivors hesitant to go through the formal process, Ombuds faced a deluge of visitors requesting help. Ombuds depart from their archetype and formalize their procedures in

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order to (1) maintain their institutional legitimacy by demonstrating adherence to the law, policy, and institutional directives, (2) protect the institution against liability and negative publicity, and (3) help survivors and hold perpetrators accountable.

Ombuds first depart from the archetype and formalize in order to maintain their legitimacy and be seen as following the rules. Ombuds described the challenge in the current environment of utilizing informal processes on highly scrutinized topics like sexual misconduct:

> I think we're much more likely be able to [utilize informal processes] in cases that don't involve sexual harassment. That is such a loaded topic for our campus and so there is very little room to move on that, but … [for racial discrimination]…we might be able to do something informally there because it's just not as loaded (O14B64:45).

In the face of pressure to act as mandatory reporters, there are Ombuds willing to sacrifice their jobs in order to maintain their standards:

> I know some Ombuds offices have to report sexual harassment, but to me, that's against the standards of practice and what's the point of having an Ombuds office if it's going to be treated like a formal office,…so I honestly would resign in protest if I had to do something like that (O12A59:28-29).

Other Ombuds reluctantly accept the new limitations:

> [T]here are [Ombuds] offices that have been told that they have to report. That's the nightmare. I am willing to live with [it] … It does put limitations [on the office], but frankly, given the alternatives, that's fine (O14B64:37, 29-30).

Ombuds frequently described the difficulty of maintaining their confidentiality standards given pressure from the formal office, as indicated by this Ombuds:

> The Director of our [Title IX] office is an attorney [and]…wants just the facts, [and tells me] "I can't single out…three departments. If they ask me how come they got singled out, what am I going to say? Either we give training to the whole campus or we don't, and we don't have the resources to do it for the whole campus so it ain't gonna happen. Now, if you have a victim, I want to see them, you send them to me and we'll start an investigation and we'll follow the numbers, but in the absence of that I don't want to hear about it" (O10B56:35).

Under pressure, Ombuds depart from the informal archetype by violating confidentiality in ways that make the Ombuds a part of the formal process. The violations can be indirect, as one Ombuds observed:

> If one office keeps records and one doesn't, sometimes me sharing what is happening on a case and linking it to earlier cases… It's important for them to keep the records, but it's important for us to piece things together for them sometimes (O8B52:23).

The violations can also be direct, with Ombuds creating records like waivers and intake forms that can be used in formal processes. For example, an Ombuds stated:

> There is a formal intake process. The student…comes to my office and [fills out] intake forms. We…ask them [about] the [type] of complaint … which department, which faculty person….we have many things for them to fill in (O5A28:24).

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Ombuds also depart and mimic more formal processes by conducting investigations and enforcing policies. Ombuds described engaging in fact-finding and determining valid violations of Title IX law or university policy. For example, one Ombuds indicated, "I explain to them that my job is to sift through what you share with me for what is a legitimate concern" (O1B9:25). Another Ombuds described using a quasi-formal escalation of steps that violates the impartiality standard:

> I will try to get the person's permission to take it forward and if I get that permission we'll try to talk to the offending person and see if there was a mistake made and if they want to correct [it]. And if they don't want to correct that and we think that it was a violation of policy and we give them an opportunity to make it right and they don't, then we'll probably go onto their supervisor and [we] will work our way up the chain (O9A53:43).

Second, Ombuds formalize their roles and violate the archetype in order to protect the institution against liability and negative publicity. This was best stated by the following Ombuds who describes violating the confidentiality standard in order to protect the institution:

> Sometimes I have to make an executive decision. If something [is] going to do significant damage to the institution I might decide to [share] that information. But I have to be careful because people didn't give me express permission [and so I] weigh [the situation] and I [conclude] 'you know, this office needs to be aware of this, it may cause significant damage to the institution.' [P]art of my job as an Ombudsman is to give decision makers a head's up (O1A8:32-35).

The same Ombuds also described the administration's expectations regarding minimizing liability and avoiding negative publicity:

> [O]rganizations prefer that issues [are] resolved at the lowest possible level to minimize lawsuits or people going to the press and saying not so nice things about people within the organization. Prevention is something that's valued…they don't say it, but I think it's an expectation that [the administration] would like us to prevent problems that are sensitive from going outside the organization. Decision makers prefer that [issues like that] are contained and dealt with accordingly (O1A8:23-25).

Third, Ombuds formalize their roles in order to hold perpetrators accountable and help survivors. Ombuds frequently expressed frustration at the administration's refusal to stop misconduct, as best stated by this Ombuds:

> [The administrators] know who the bullies and victimizers are on this campus. I know because I've told them … And I know that these victimizers are going to send more victims to me this coming semester…[they] are going to be in my office…destroyed psychologically, educationally, professionally, other ways by these people's outrageous, immoral behaviors and then the people in power [who can] do something about it aren't going to do a damn thing. They could prevent this pain and this suffering very easily, and they refuse to do it. And that's the hardest part of my job. (O10A55:33)

As a result, Ombuds formalize in order to help survivors. One Ombuds described doing whatever it would take:

> [For Title IX Issues] we would never do nothing, we would keep moving forward until this thing got addressed. That would be my commitment. I would do whatever it would take (O7A37:35).

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In summary, Ombuds formalize in order to maintain their institutional legitimacy, to protect the institution against liability and negative publicity, and to hold perpetrators accountable and help survivors. Title IX Coordinators informalize their procedures in order to manage their workload, to protect the institution from liability and negative publicity, and to better support survivors and the accused.

DISCUSSION

Procedural Convergence occurs due to complex tradeoffs that require Ombuds and Title IX Coordinators to maintain or relax their standards in the face of significant pressure to protect the university community from harm. Put another way, in both instances these are understandable responses to real moral dilemmas, occurring while each role attempts to establish professional worth and influence in organizations pressuring them to ensure protection from liability. Navigating these pressures results in both mechanisms departing from their professional norms and becoming more formal (Ombuds) or more informal (Title IX Coordinators). The resulting picture of university sexual misconduct dispute handling is one in which the practices of Title IX Coordinators and Ombuds converge, although not entirely.

The theory of procedural convergence

The present study illustrates the complicated ways in which rules changes and liability pressures affect organizational disputing processes. This includes not only ways in which organizations seek to create managerial solutions illustrated by the theory of legal endogeneity but also more generally the organizational responses to external law and liability pressures illustrated by the theory of legalized accountability (Edelman et al., 1999; Epp, 2009). The theory of procedural convergence can be contrasted with Edelman's (1992) concept of symbolic mimicry and her claim that organizational procedures mimic law but in reality are far from law-like. Symbolic mimicry can be considered procedural *divergence* from law as organizations mimic due process in order to achieve managerial values. The present study suggests that even as university processes mimic the law, they are drawn into carrying it out more than the theory of symbolic mimicry might seem to imply. When universities wrestle with how to address sexual misconduct, they are influenced by the powerful pull of the law and pressure to comply with its requirements.

As opposed to symbolic mimicry, procedural convergence occurs when formal and informal organizational dispute mechanisms, facing external and internal liability pressures, depart from their respective models. They converge toward a hybrid style of management *and* law that incorporates some elements of each. Thus, Ombuds, the quintessentially *non*-formal dispute-processing entities, are drawn toward more law-like processes. Title IX Coordinators, under pressure to mimic *formal* law-like procedures, are pulled toward informality, voice, and resolution. Despite very different forms, functions, and missions, Ombuds and Title IX Coordinators are often more alike than different. The result is organizational processes that often mimic formal legal processes, but without providing certain and reliable results.

Rules changes increase formality

The law is a powerful force that paradoxically pushes Title IX Coordinators and Ombuds to utilize each other's core strategy. New rules enacted in 2020 impact both the formality and informality of university procedures. In 2017, the Trump Administration rescinded the 2011 and 2014 guidance and released a new Q&A document as interim authority (OCR, 2017a; 2017b; OCR, 2014). Following

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notice and comment administrative rulemaking procedures, OCR released a notice of proposed rulemaking (NPRM) (OCR, 2018) and subsequently a new rule (OCR, 2020).

The rules changes will alter convergence in several ways. First, the new rules may limit the numbers of complaints. As the alleged conduct must occur within the university's education programs or activities, the new rules narrow the university's responsibility for responding to misconduct (OCR, 2020, p. 2). While schools may optionally address issues falling outside of this jurisdiction, off-campus misconduct does not in itself trigger a university's responsibility to respond. Further, the procedures used to handle misconduct may further chill survivors from reporting. Under the new rules, universities must replace the commonly used single-investigator model, where an investigative report recommends a finding without a hearing, with a live hearing that includes cross-examination (OCR, 2020, p. 7–8).

Complaints also may be limited because the new rules changes make it more difficult to prove misconduct occurred. The rules change the definition of sexual harassment from severe *or* pervasive *or* objectively offensive conduct to now require severe *and* pervasive *and* objectively offensive conduct (OCR, 2020, p. 1). As a result, a one-time incident, regardless of its severity, will not qualify as violating a sexual harassment policy. Universities may also now use the higher "clear and convincing" standard of proof, requiring greater certainty in order to prove instances of misconduct (OCR, 2020, p. 8). The potential result of the 2020 changes are: (1) fewer cases which the institution is responsible for investigating, (2) a higher threshold definition for behavior to constitute misconduct, (3) a more formal process for determining what occurred, and (4) a potentially higher standard of proof to prove the misconduct happened. Under these new requirements, Title IX Coordinators are likely to receive fewer complaints but will handle them with an increasingly formalized and legal process. While there may be fewer findings of misconduct, those determinations will be more reliable and will better withstand judicial scrutiny.

Rules changes increasing informality

At the same time the rules increase formality, they also relax restrictions on the use of informal dispute mechanisms. Both the 2017 guidance and the final rule reversed the prohibition against using mediation to handle complaints of sexual assault and permit informal resolution mechanisms for handling all types of sexual misconduct cases (OCR, 2017b; OCR, 2018). The Department of Education recognized it is "important to take into account the needs of the parties involved in each case, some of whom may prefer not to go through a formal complaint process" (OCR, 2018, p. 61479). In order to utilize informal procedures, however, a formal complaint must first be filed (OCR, 2020, p. 8). This enables Title IX Coordinators to review each situation to make sure it is appropriate for informal resolution. Further, no school may require participation in informal resolution, and informal resolution is not possible for allegations of employee misconduct against a student (OCR, 2020, p. 8).

The final rule also allows university to limit individuals designated as mandatory reporters, which enables Ombuds to provide confidentiality to their visitors without being agents of notice (OCR, 2020, p. 2–3). The change provides survivors with additional avenues for thinking through their options and through Ombuds' anonymous reports allows institutions to better understand the scope of the misconduct problem. As a result, the rules changes will both limit the applicability and formality of the official procedures, while simultaneously permitting opportunities for informal processes. Universities now face the challenge of determining how to revise their formal complaint handling procedures to comply with the new rules and how to design and integrate informal resolution mechanisms (Pappas et al., Forthcoming).

Future convergence

Given the rules changes favoring both formality and informality, the rules changes are likely to alter the process of convergence. Ombuds are likely to still experience pressure to formalize their

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practices. If the Ombuds is not designated as a mandatory reporter, survivors may share information without fear of being forced into the formal process. In situations where survivors want to utilize informal mechanisms, however, they must first file a formal complaint. Guidelines will be needed regarding how complaints will be screened and what factors examined to determine the appropriateness of informal options (Pappas, 2019b). Prior to making a formal complaint, survivors may want assurances that they will not be forced into the formal procedures. Ombuds are likely to formalize their practices as they analyze the guidelines and make determinations about whether informal mechanisms are appropriate. Ombuds will also experience pressure to formalize as they often share "hypotheticals" with Title IX Coordinators in order to help a survivor determine whether or not a situation requires more formal intervention. In many instances in this study, Ombuds expressed sharing hypotheticals with Title IX Coordinators who then required identifying information and the use of formal procedures.

When a survivor shares information with an Ombuds who is not a mandatory reporter, it is not "notice" to the institution, but when the Ombuds shares information with a Title IX Coordinator, it puts the Coordinator on notice and obligates action. Many survivors will not want to use informal resolution procedures and also may be unwilling to file formal complaints due to the hearing's formality and the prospect of experiencing cross-examination. The higher clear and convincing evidentiary standard may also discourage survivors from making formal reports, as it will limit the ability to achieve favorable outcomes. Ombuds will formalize their practices if they decide to share information with the Title IX Coordinator against survivors' wishes.

Ombuds thus will experience pressure to formalize their procedures not due to rules requirements, but out of a desire to remedy misconduct. In the above situations, rules favoring increased formality may chill reporting and pressure Ombuds to violate their confidentiality standards in order to try to remedy the misconduct. Ombuds will also experience pressure to formalize due to the lack of requirements for (1) cases that fall outside of the university's required jurisdiction (i.e. misconduct that occurred at off-campus housing) and (2) Case where the behavior fails to meet the more stringent definition of misconduct. Neither situation requires formal procedures, but it is the lack of rules and formal options and a desire to help survivors that may motivate the Ombuds to seek ways of redressing the harm.

Title IX Coordinators are similarly likely to experience convergence pressure to informalize. Many Coordinators will welcome the rules changes and increased formality that will increase the reliability of findings. Further, the workload is likely to decrease as the formality of proceedings (e.g. cross-examination), higher evidentiary standard, more restrictive misconduct definition, and reduced misconduct findings chills survivors from reporting or participating. Title IX Coordinators will still experience pressure to informalize their practices, but in order to remedy misconduct for individuals either avoiding the formal procedures or in situations in which a misconduct finding is unlikely.

For both Ombuds and Title IX Coordinators, the incorporation of informal dispute mechanisms into the formal procedures will also motivate convergence. In the formal justice system, a significant body of legal research suggests that as mediation is incorporated into the formal legal system, it becomes legalized and formalized in various ways (Nolan-Haley, 2012); yet at the same time, formal adjudication processes increasingly engage in informal "problem solving" (Portillo et al., 2013). While the new rules require the person facilitating the informal resolution to be "well trained," frequently mediators act more formally as non-binding arbitrators and use the "Shadow of the Law" as the framework for what constitutes an appropriate resolution (OCR, 2020, p. 8; Mnookin & Kornhauser, 1979). Title IX Coordinators can be expected to increasingly favor informal options due to a formal system both less accessible and less likely to deliver favorable results for survivors. In contrast, Ombuds can be expected to increase the formality of the informal options due to the same lack of accessibility and desire to hold alleged perpetrators accountable.

In theory, delineating formal from informal procedures and strengthening the formal procedures should limit the convergence. In reality, our justice systems naturally tend toward

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convergence. The efforts to gain the flexibility and efficiency of informal processes require a departure from the due process and justice model of the formal system. But at the same time, these shifts toward informality are often checked by a countervailing pressure not to depart too far from the formal system's due process model. For example, questions remain regarding the interaction of the two systems in terms of both the enforceability of informal agreements and the confidentiality of statements made during an informal process. Campus misconduct complaint handling may thus converge as the formal procedures are avoided, but the informal procedures are increasingly formalized.

Future research

This work has several implications for future research. First, some aspects of procedural convergence were beyond the scope of this study. Is it possible to discern specific types of "adherers" or "deviators"? How do Title IX Coordinators' preferences for rules versus relational means of influence impact the convergence (Pappas, 2019a)? To what extent does institutional context or the nature of the dispute shape officials' willingness to depart from their respective models? Additionally, how does training, experience, resources, professional development, and institutional standing impact how Title IX Coordinators react to convergence pressures (Pappas, 2021)? These questions may be examined with a more focused study designed to address them.

Second, with a new Biden Administration, there will be further changes to the rules governing Title IX and a need for further empirical investigation. This study's data, gathered during the initial 2011–2014 years of enhanced guidance, contextualize that time period and may or may not address the current state of affairs. Third, there is evidence that procedural convergence is found in other settings. For example, pressures toward convergence occur when informal Alternative Dispute Resolution (ADR) mechanisms like mediation are combined with more formal ADR processes like arbitration, in a process known as "med-arb" (Pappas, 2015b).

To the extent procedural convergence is found in other settings, a host of possible research questions arise. As legal norms and definitions of compliance become clearer, do organizational forms of non-law complaint handling tend toward greater formality? As the 2020 rules changes suggest, do formal and informal organizational forms of non-law compliance both shade toward formalism? How do non-law alternatives change when used directly, as a complement to, or within formal, legal processes? These questions merit empirical study as systems of justice in the shadow of the formal law are neither entirely formal nor entirely informal: they procedurally converge toward a hybrid of these strains.

REFERENCES

Association for Title IX Administrators. 2013. "ATIXA Campus Title IX Coordinator and Administrator Training and Certification Course Materials." Accessed March 23, 2020. https://www.atixa.org/wordpress/wp-content/uploads/2013/09/Title-IX-Coordinator-Certification-Course-Materials.doc.

Auerbach, Jerold S. 1983. *Justice Without Laws?*. New York: Oxford University Press.

Blau, Peter M., and R.A. Schoenherr. 1971. *Structure of Organizations*. New York: Basic Books.

Blocher, Joseph. 2012. "Order without Judges: Customary Adjudication." *Duke Law Journal* 62: 579–605.

Bush, Robert A.B., and Joseph P. Folger. 1994. *The Promise of Mediation*. San Francisco, CA: Jossey-Bass.

Campbell, Rebecca. 2006. "Rape Survivors' Experiences with the Legal and Medical Systems: Do Rape Victim Advocates Make a Difference?" *Violence Against Women* 12(1): 30–45.

Cantor, David, Bonnie Fisher, Susan Chibnall, Shauna Harps, Reanne Townsend, Gail Thomas, Hyunshik Lee, Vanessa Kranz, Randy Herbison, and Kristin Madden. 2019. *Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct*, Accessed March 23, 2020. Washington, DC: American Association of American Universities. https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/CampusSafety/Revised%20Aggregate%20report%20%20and%20appendices%201-7_(01-16-2020_FINAL).pdf

Center for Public Integrity (CPI). 2010. *Sexual Assault on Campus: A Frustrating Search for Justice*. Accessed November 20, 2020. https://cloudfront-files1.publicintegrity.org/documents/pdfs/Sexual%20Assault%20on%20Campus.pdf

https://doi.org/10.1111/lasr.12560 Published online by Cambridge University Press

Chase, Susan E. 2005. "Narrative Inquiry: Multiple Lenses, Approaches, Choices." In *Handbook of Qualitative Research*, 3rd ed., edited by Norman K. Den-zin and Yvonna S. Lincoln, 651–80. Thousand Oaks, CA: Sage.
Chronicle for Higher Education. n.d. "Campus Sexual Assault Under Investigation." Accessed July 1, 2021. http://projects.chronicle.com/titleix/.
Clandinin, D. Jean, and Michael F. Connelly. 2000. *Narrative Inquiry: Experience and Story in Qualitative Research*. San Francisco, CA: Jossey-Bass.
Coker, Donna. 2016. "Crime Logic, Campus Sexual Assault, and Restorative Justice." *Texas Tech Law Review* 49: 147–210.
Conley, John M., and William M. O'Barr. 1990. *Rules Versus Relationships: The Ethnography of Legal Discourse*. Chicago, IL: University of Chicago Press.
Conley, John M., William M. O'Barr, and E. Allan Lind. 1978. "The Power of Language: Presentation Style in the Courtroom." *Duke Law Journal* 1978(6): 1375–99.
Delgado, Richard, Chris Dunn, Pamela Brown, Helena Lee, and David Hubbert. 1985. "Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution." *Wisconsin Law Review* 1985: 1359–404.
DiMaggio, Paul J., and Walter W. Powell. 1983. "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields." *American Sociological Review* 48(2): 147–60.
Dobbin, Frank, and Erin L. Kelly. 2007. "How to Stop Harassment: Professional Construction of Legal Compliance in Organizations." *American Journal of Sociology* 112(4): 1203–43.
Edelman, Lauren B. 1990. "Legal Environments and Organizational Governance: The Expansion of Due Process in the Work Place." *American Journal of Sociology* 95(6): 1401–40.
Edelman, Lauren B. 1992. "Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law." *American Journal of Sociology* 97(6): 1531–76.
Edelman, Lauren B., Linda H. Kreiger, Scott R. Eliason, Catherine R. Albiston, and Virginia Mellema. 2011. "When Organizations Rule: Judicial Deference to Institutionalized Employment Structures." *American Journal of Sociology* 117(3): 888–954.
Edelman, Lauren B., Gwendolyn Leachman, and Doug McAdam. 2010. "On Law, Organizations, and Social Movements." *Annual Review of Law and Social Science* 6: 653–85.
Edelman, Lauren B., Christopher Uggen, and Howard S. Erlanger. 1999. "The Endogeneity of Legal Regulation: Grievance Procedures as Rational Myth." *American Journal of Sociology*. 105(2): 406–54.
Ellickson, Robert. 1991. *Order without Law: How Neighbors Settle Disputes*. Cambridge, MA: Harvard University Press.
Epp, Charles. 2009. *Making Rights Real*. Chicago, IL: University of Chicago Press.
Fiss, Owen M. 1984. "Against Settlement." *The Yale Law Journal* 93: 1073–90.
Foundation for Individual Rights in Education (FIRE). 2017. Spotlight on Due Process 2017. Accessed November 20, 2020. https://www.thefire.org/due-process-report-2017.
Gadlin, Howard. 2000. "The Ombudsman: What's in a Name?" *Negotiation Journal* 16(1): 37–48.
Gaskell, George. 2000. "Individual and Group Interviewing." In *Qualitative Researching with Text, Image and Sound*, edited by Martin Bauer and George Gaskell, 38–56. London: Sage.
Gould, Jon B., and Scott Barclay. 2012. "Mind the Gap: The Place of Gap Studies in Sociolegal Scholarship." *Annual Review of Law and Social Science* 8: 323–35.
Green, Judith, and Nicki Thorogood. 2004. *Qualitative Methods for Health Research*. London: Sage.
Grillo, Trina. 1991. "The Mediation Alternative: Process Dangers for Women." *Yale Law Journal* 100: 1545–610.
Harris, Samantha, and K.C. Johnson. 2019. "Campus Courts in Court: The Rise in Judicial Involvement in Campus Sexual Misconduct Adjudications." *New York University Journal of Legislation and Public Policy*. 22: 49–127.
Harrison, Tyler R. 2004. "Ombuds Processes and Disputant Reconciliation." *Journal of Applied Communications Research* 32 (4): 318–42.
Harrison, Tyler R., and Marya L. Doerfel. 2006. "Competitive and Cooperative Conflict Communication Climates: The Influence of Ombuds Processes on Trust and Commitment to the Organization." *International Journal of Conflict Management* 17(2): 129–53.
Hensler, Deborah R. 2014. "The Private in Public, the Public in Private: The Blurring Boundary between Public and Private Dispute Resolution." In *Formalisation and Flexibilisation in Dispute Resolution*, edited by Joachim Zekoll, Moritz Balz, and Iwo Aemlung, 45–68. Ipswich, MA: EBSCO.
Holland, Kathryn J., Lilia M. Cortina, and Jennifer J. Freyd. 2018. "Compelled Disclosure of College Sexual Assault." *American Psychologist* 73(3): 256–68.
International Ombuds Association. n.d. "IOA Standards of Practice." Accessed March 23, 2020. https://www.ombudsassociation.org/assets/docs/IOA_Standards_of_Practice_Oct09.pdf
Jones, Susan R., Vasti Torres, and Jan Arminio. 2014. *Negotiating the Complexities of Qualitative Research in Higher Education*, 2nd ed. New York: Routledge.
Karjane, Heather M., Bonnie S. Fisher, and Francis T. Cullen. 2002. *Campus Sexual Assault: How America's Institutions of Higher Education Respond*. Accessed on March 23, 2020. Washington, DC: U.S. Department of Justice. https://www.ncjrs.gov/pdffiles1/nij/grants/196676.pdf
Kostritsky, Juliet P. 2013. "The Law and Economics of Norms." *Texas International Law Journal* 48(3): 465–505.

https://doi.org/10.1111/lasr.12560 Published online by Cambridge University Press

Levin-Finley, Samantha, and John S. Carter. 2010. "Then and now: Interviews with expert U.S. organizational ombudsmen." *Conflict Resolution Quarterly* 28(2): 111–139.

Madigan, Lee, and Nancy C. Gamble. 1991. *The Second Rape*. New York: Lexington.

March, James G., and Johan P. Olson. 1989. *Rediscovering Institutions: The Organizational Basis of Politics*. New York: The Free Press.

March, James G., and Johan P. Olson. 1995. *Democratic Governance*. New York: The Free Press.

Maynard-Moody, Steven, and Michael Musheno. 2003. *Cops, Teachers, Counselors: Stories from the Front Lines of Public Service*. Ann Arbor, MI: University of Michigan Press.

McAdams, Richard H. 1997. "The Origin, Development, and Regulation of Norms." *Michigan Law Review* 96: 338–443.

McGlynn, Clare, Nicole Westmarland, and Nikki Godden. 2012. "I Just Wanted Him to Hear Me': Sexual Violence and the Possibilities of Restorative Justice." *Journal of Law and Society* 39(2): 213–40.

Menkel-Meadow, Carrie. 1984. "Toward Another View of Legal Negotiation: The Structure of Problem Solving." *UCLA Law Review* 31: 754–842.

Menkel-Meadow, Carrie. 1995. "Whose Dispute Is It Anyway?: A Philosophical and Democratic Defense of Settlement (in Some Cases)." *Georgetown Law Journal* 83: 2663–96.

Meyer, John, and Brian Rowan. 1977. "Institutionalized Organizations: Formal Structure as Myth and Ceremony." *American Journal of Sociology* 83(2): 340–63.

Mnookin, Robert H., and Lewis Kornhauser. 1979. "Bargaining in the Shadow of the Law: The Case of Divorce." *Yale Law Journal* 88: 950–97.

Nolan-Haley, Jacqueline M. 2012. "Mediation: The 'New Arbitration.'" *Harvard Negotiation Law Review* 17: 61–96.

Nolan-Haley, Jacqueline M. 2018. "Does ADR's 'Access to Justice' Come at the Expense of Meaningful Consent?" *Ohio State Journal on Dispute Resolution* 33(3): 373–96.

Office for Civil Rights (OCR). 2001. *January. Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*. Accessed November 20, 2020. Washington, DC: U.S. Department of Education. https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf

Office for Civil Rights (OCR). 2011. *April 4 Dear Colleague Letter (DCL)*. Accessed March 23, 2020. Washington, DC: U.S. Department of Education. http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf

Office for Civil Rights (OCR). 2014. *April 29 Questions and Answers on Title IX and Sexual Violence (Q&A)*. Accessed March 23, 2020. Washington, DC: U.S. Department of Education. http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf

Office for Civil Rights (OCR). 2016a. *Oct. 12 Wesley College Letter*. Accessed November 20, 2020. Washington, DC: U.S. Department of Education. https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03152329-a.pdf

Office for Civil Rights (OCR). 2016b. *Oct. 31 CUNY- Hunter College Letter*. Accessed November 20, 2020. Washington, DC: U.S. Department of Education. https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02132052-a.pdf

Office for Civil Rights (OCR). 2017a. *September 22 Dear Colleague Letter (DCL)*. Accessed March 23, 2020. Washington, DC: U.S. Department of Education. https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

Office for Civil Rights (OCR). 2017b. *September Q&A on Campus Sexual Misconduct*. Accessed March 23, 2020. Washington, DC: U.S. Department of Education. https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term

Office for Civil Rights (OCR). 2018. *Notice of Proposed Rulemaking (NPRM)*. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 83 Fed. Reg. 61462 (proposed Nov. 29, 2018), to be codified at 34 C.F.R. § 106 (2020). Accessed March 23, 2020. Washington, DC: U.S. Department of Education. https://www2.ed.gov/about/offices/list/ocr/docs/title-ix-nprm.pdf

Office for Civil Rights (OCR). 2020. *Summary of Major Provisions of the Department of Education's Title IX Final Rule*. Accessed November 28, 2020. Washington, DC: U.S. Department of Education. https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf

Office of Justice Programs (OJP). 2014. *Rape and Sexual Assault Victimization Among College Age Females, 1995-2013*. Accessed November 20, 2020. Washington, DC: U.S. Department of Justice. https://www.bjs.gov/content/pub/pdf/rsavcaf9513.pdf

Orcutt, Madison, Patricia M. Petrowski, David R. Karp, and Jordan Draper. 2020. "Restorative Justice Approaches to the Informal Resolution of Student Sexual Misconduct." *Journal of College and University Law* 45(2): 1–76.

Pappas, Brian A. 2015a. "Ombuds and Title IX Coordinators: Procedural Convergence of University Dispute Resolution Mechanisms for Handling Sexual Misconduct." Doctoral Dissertation, Public Administration, University of Kansas.

Pappas, Brian A. 2015b. "Med-Arb and the Legalization of Alternative Dispute Resolution." *Harvard Negotiation Law Review* 20: 157–203.

Pappas, Brian A. 2016. "Out from the Shadows: Title IX, University Ombuds, and the Reporting of Campus Sexual Misconduct." *Denver Law Review* 94(1): 71–144.

Pappas, Brian A. 2019a. "Rules Versus Relationships and Campus Sexual Misconduct." *International Journal of Organization Theory and Behavior* 22(3): 226–41.

https://doi.org/10.1111/lasr.12560 Published online by Cambridge University Press

Pappas, Brian A. 2019b. “Sexual Misconduct on Campus: Setting a Course for Handling Cases Properly—And Changing the Culture.” *Dispute Resolution Magazine* 25(2): 21–4.
Pappas, Brian A. 2021. “Competition and collaboration: Title IX Coordinators and the barriers to achieving educational equity.” *International Journal of Discrimination and the Law* 21(2): 94–116.
Pappas, Brian A., Jennifer Reynolds, and Art Hinshaw. Forthcoming. “Designing Informal Mechanisms for Claims of Campus Sexual Misconduct.” *Ohio State Journal on Dispute Resolution*.
Polkinghorne, Donald E. 1995. “Narrative Configuration in Qualitative Analysis.” *International Journal of Qualitative Studies in Education*. 8: 5–23.
Portillo, Shannon, Daniel Rudes, Jill Vigilione, and Matthew Nelson. 2013. “Front-Stage Stars and Backstage Producers: The Role of Judges in Problem-Solving Courts.” *Victims and Offenders* 8(1): 1–22.
Pound, Roscoe. 1910. “Law in Books and Law in Action.” *American Law Review* 44: 12–5.
Resnik, Judith. 1986. “Failing Faith: Adjudicatory Procedure in Decline.” *University of Chicago Law Review* 53: 494–560.
Robinson, Paul H. 2013. “Natural law & Lawlessness: Modern Lessons from Pirates, Lepers, Eskimos, and Survivors.” *University of Illinois Law Review* 2013: 433–506.
Scott, W. Richard, and John W. Meyer. 1983. “The Organization of Societal Sectors.” In *Organizational Environments: Ritual and Rationality*, edited by John W. Meyer and W. Richard Scott, 129–53. Beverly Hills, CA: Sage.
Selznick, Philip. 1969. *Law, Society, and Industrial Justice*. New York: Russell Sage Foundation.
Shapiro, Debra, and Deborah Kolb. 1994. “Reducing the ‘Litigious Mentality’ by Increasing Employees’ Desire to Communicate Grievances.” In *The Legalistic Organization*, edited by Sim Sitkin and Robert J. Bies, 304–26. Newbury Park, CA: Sage.
Shapiro, Martin. 1986. *Courts: A Comparative and Political Analysis*. Chicago: University of Chicago Press.
Stake, Robert E. 2006. *Multiple Case Study Analysis*. New York, NY: Guilford Press.
Van Brunt, Brian. 2015. “A Summary and Analysis of the 2015 ATIXA Member Survey.” *Journal of Campus Title IX Compliance and Best Practices* 1(1): 34–59.
Van Soye, Scott C. 2007. “Illusory Ethics: Legal Barriers to an Ombudsman’s Compliance with Accepted Ethical Standards.” *Pepperdine Dispute Resolution Law Journal* 8: 117–46.
Weber, Max. 1978. *Economy and Society*, 4th ed. Berkeley, CA: University of California Press.
Weiner, Merle H. 2017. “A Principled and Legal Approach to Title IX Reporting.” *Tennessee Law Review* 85(1): 71–188.
Wiersma-Mosley, Jacquelyn D., and James DiLoreto. 2018. “The Role of Title IX Coordinators on College and University Campuses.” *Behavioral Sciences* 8(38): 1–14.
Woll, Peter. 1961. “Administrative Justice: Formal Prescription and Informal Adjudication.” *The Western Political Quarterly* 14(3): 647–62.
Woolford, Andrew, and R.S. Ratner. 2010. “Disrupting the Informal-Formal Justice Complex: On the Transformative Potential of Civil Mediation, Restorative Justice and Reparations Politics.” *Contemporary Justice Review* 13(1): 5–17.

STATUTES CITED

Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681; 2006 & Supp. V. 2011.

AUTHOR BIOGRAPHY

Brian Pappas, Ph.D., J.D., is Associate Provost and Assistant Professor of Political Science at Eastern Michigan University. Brian’s research examines formal and informal dispute systems through law, communications, dispute resolution, and public administration lenses. Brian’s writings appear in the *International Journal of Organization Theory and Behavior*, the *Journal of Legal Education*, and the *Harvard Negotiation Law Review*. Brian has trained thousands of mediators and serves as an officer of the American Bar Association’s Section of Dispute Resolution.

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