

Patterns in Litigation Involving Campus Sexual Misconduct Adjudication, 1992-2019

• • •

Law and Society Conference 2021
University Responses to Sexual Assault (URSA) Project
Jesse Yeh,
Elizabeth Armstrong, Sandra Levitsky,
Kathryn Hendricks, Angela Perone, Kamaria Porter



Context: Rising Lawsuits and Perception of Unfair Policies

- Since 2011 DCL, critics allege that schools adopt policies that sacrifice the rights of the accused
- Critics point to widespread lawsuits as evidence of bad policies
- Lawsuits also inform the 2020 “new regs” issued by the DeVos DOE

Context: Rising Lawsuits and Perception of Unfair Policies

- Critics allege that policies sacrifice the rights of the accused
- Critics point to widespread lawsuits as evidence of bad policies
- Lawsuits also inform changes under DeVos

Courts ruling on side of students accused of sexual assault. Here's why

David Jesse Detroit Free Press

Published 9:00 a.m. ET Mar. 15, 2019 | Updated 5:27 p.m. ET Mar. 16, 2019

And despite the continued white-hot heat of the #MeToo movement that has brought down celebrities, politicians, business leaders and religious leaders, the male students are finding success in the court system. Since a "Dear Colleague" letter from the Obama administration in 2011 urged universities to take more action on sexual assault complaints, universities have lost more decisions in these

"I still think there's a lot of confusion out there on what needs to be done (by universities)," he said. And there was a need for courts to step in because "universities, on their own, weren't going to get (to fair due process) on their own."

One of the people paying attention to the court rulings is U.S. Education Secretary Betsy DeVos, who has proposed new regulations for how colleges handle sexual assault. Among the regulations — live hearings with cross-examinations.

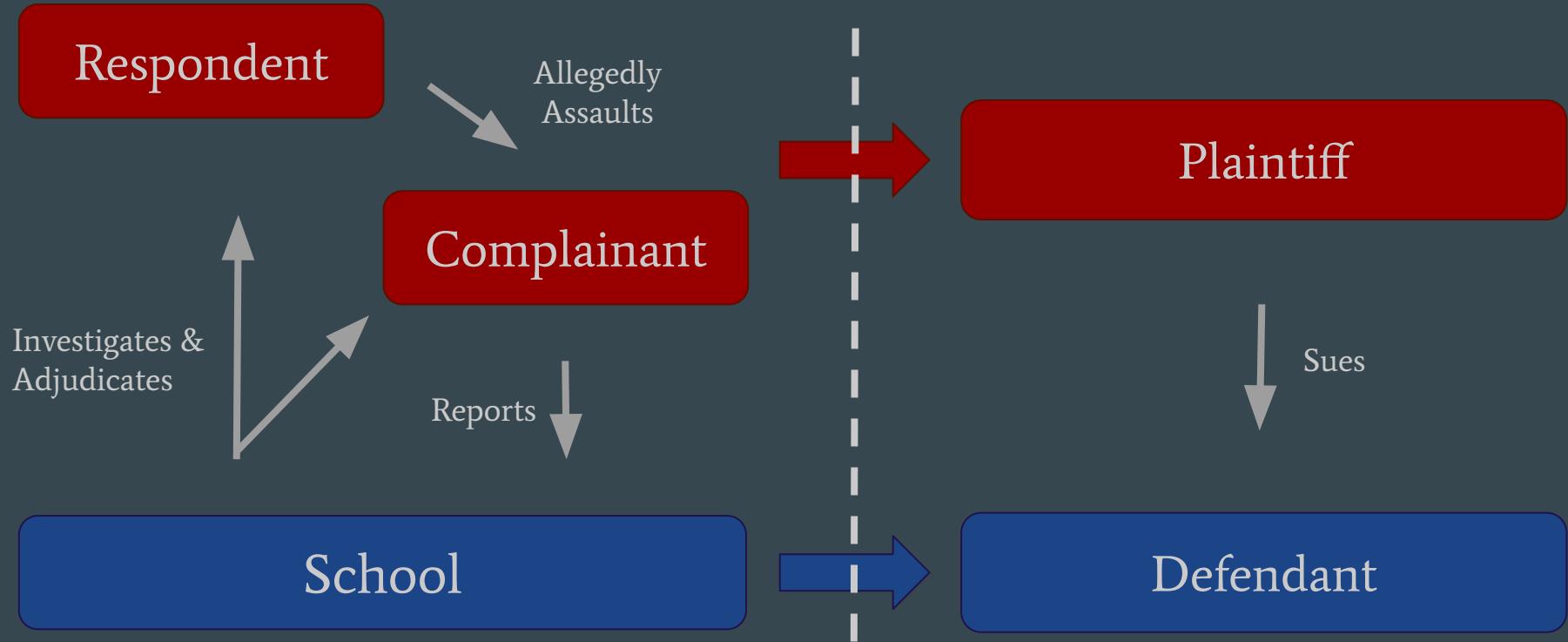
Research Questions

1. Who brought lawsuits against colleges and universities?
2. What violations did they allege?
3. What were the outcomes of the cases?
4. Which schools were being sued?

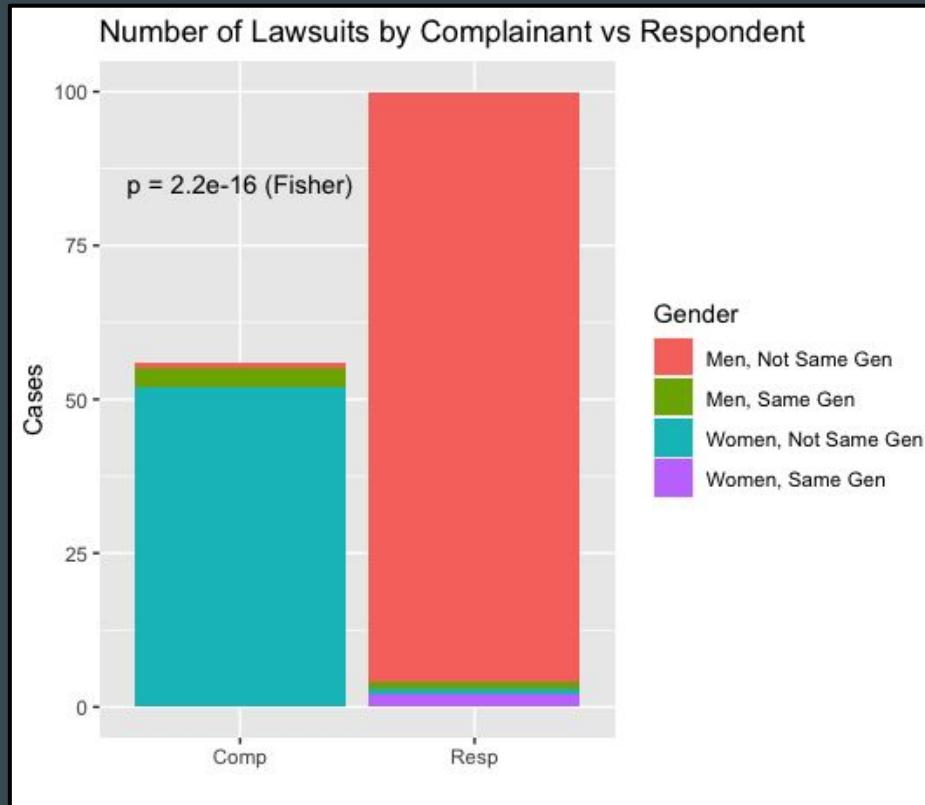
Data

- Representative sample of 381 colleges and universities in the United States (268 random sample; 114 certainty sample)
- BloombergLaw search: any lawsuits with the schools as defendant + keywords + between 1992-2019
- Lawsuits concerning faculty-student sexual misconduct excluded
- 156 lawsuits

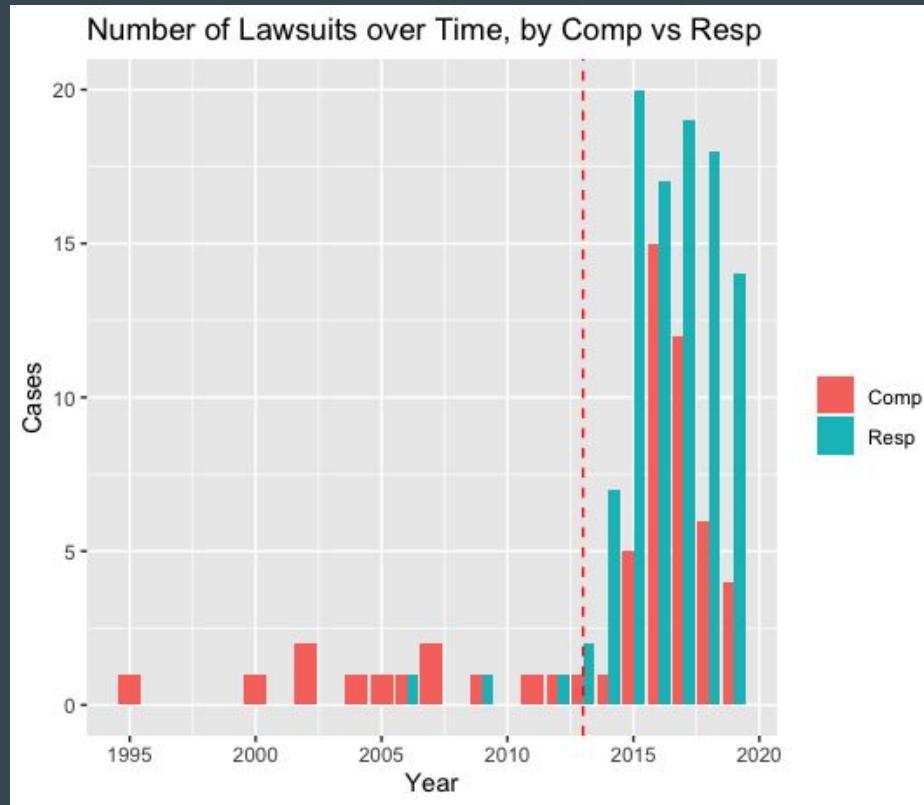
Terminologies of the Parties



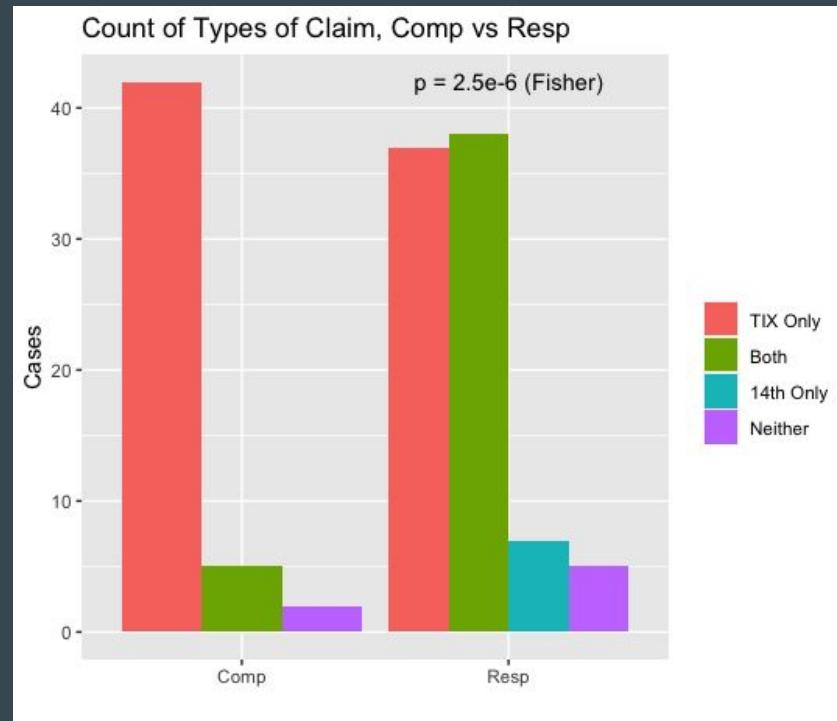
Question 1: Who is suing the school?



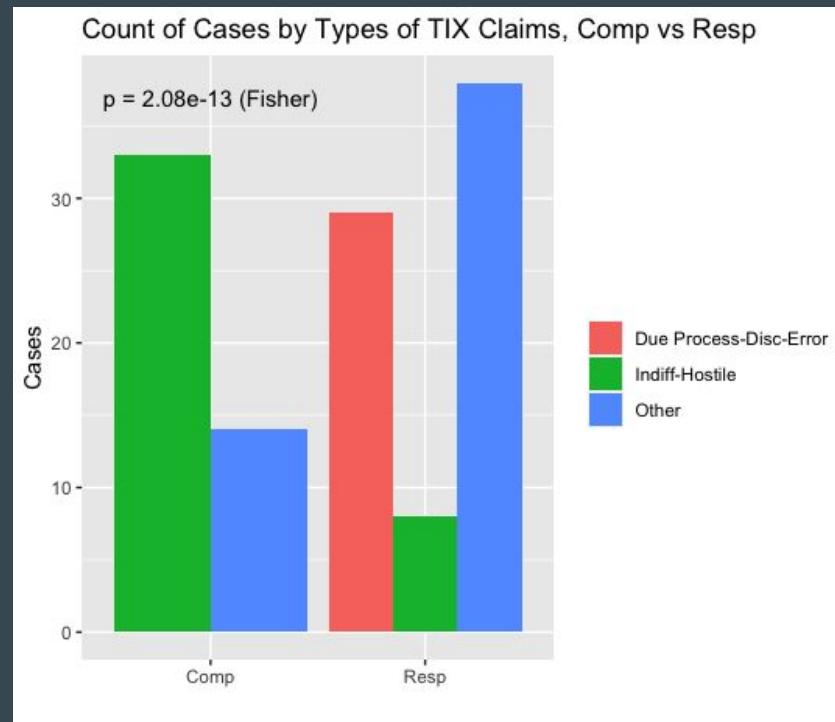
Question 1: Who is suing the school?



Question 2: What are they suing the schools for?



Question 2: What are they suing the schools for?



Question 2: What are they suing the schools for?

Complainant: Deliberate Indifference - Hostile Environment

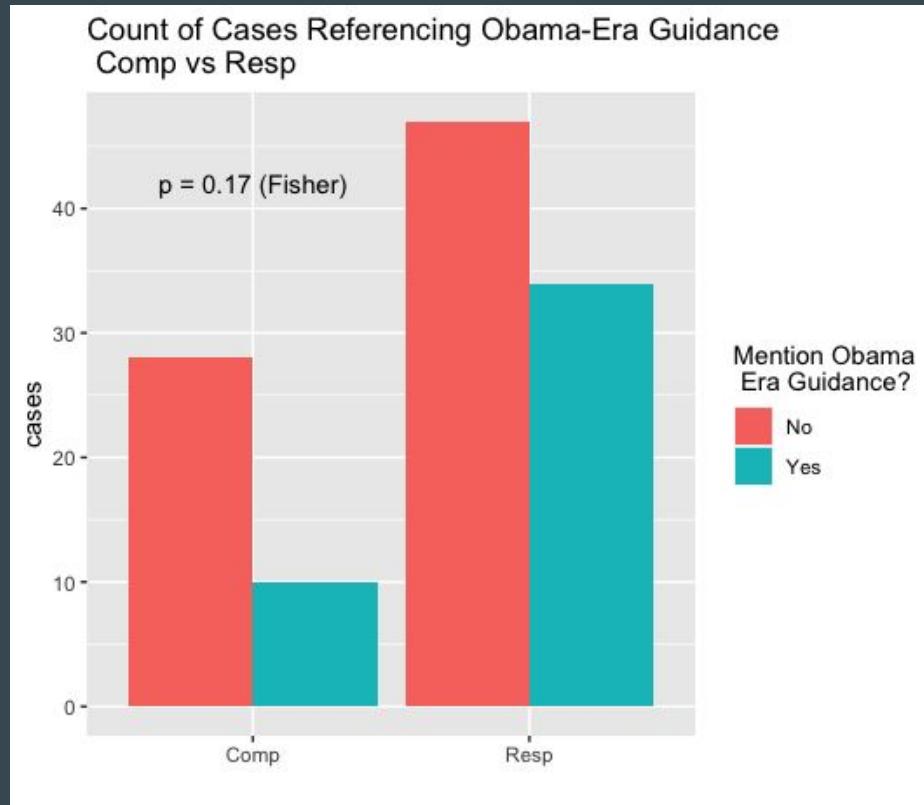
"Plaintiff was subjected to discrimination because of UNM's deliberate indifference to known acts of...sexual violence.... As a result of UNM's deliberate indifference, a hostile educational environment developed for Plaintiff, she was forced to leave campus, and she lost her educational opportunities." - *Spencer v. UNM* (2015)

Question 2: What are they suing the schools for?

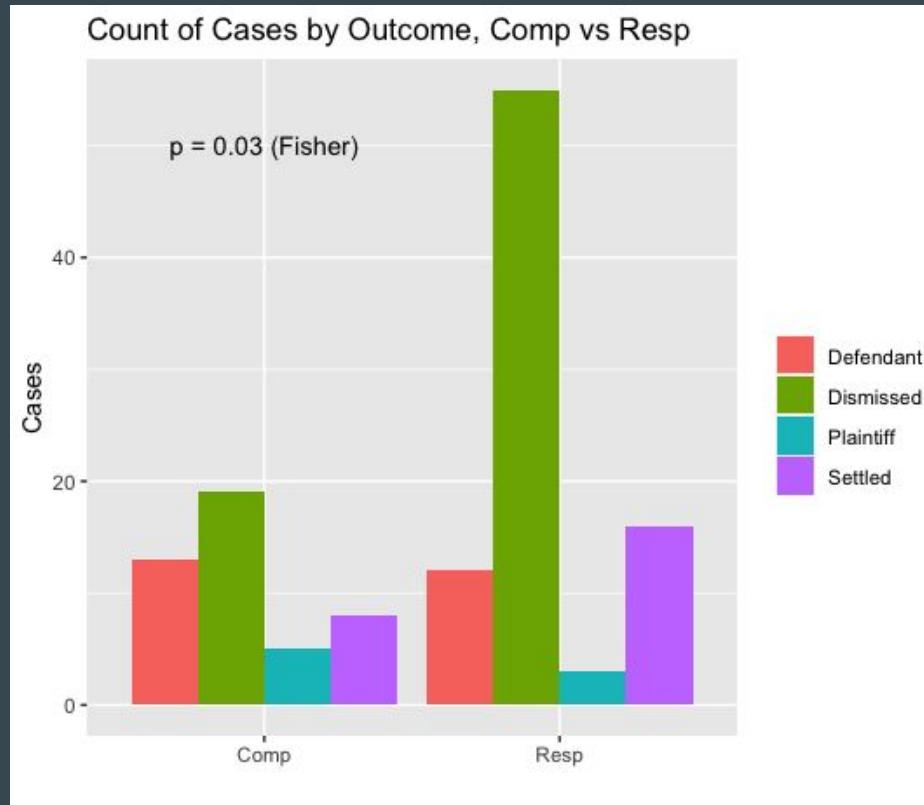
Respondent: Due Process - Bias/Discrimination - Erroneous Outcome

"DoE has identified...school's procedures [must] satisfy the 'prompt and equitable' requirements...[and] must also 'accord due process to both parties'.... Due to his sex...Mr. Austin, an accused male student, was so fundamentally denied due process as to be virtually assured a finding of guilt...There was an erroneous outcome from a flawed proceeding, in violation of TIX."

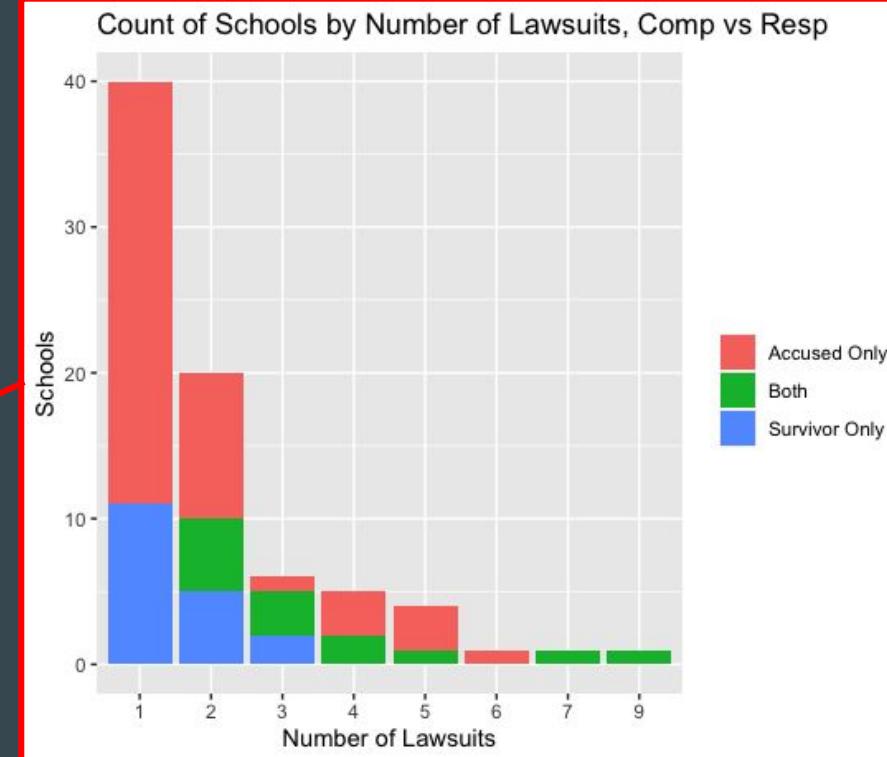
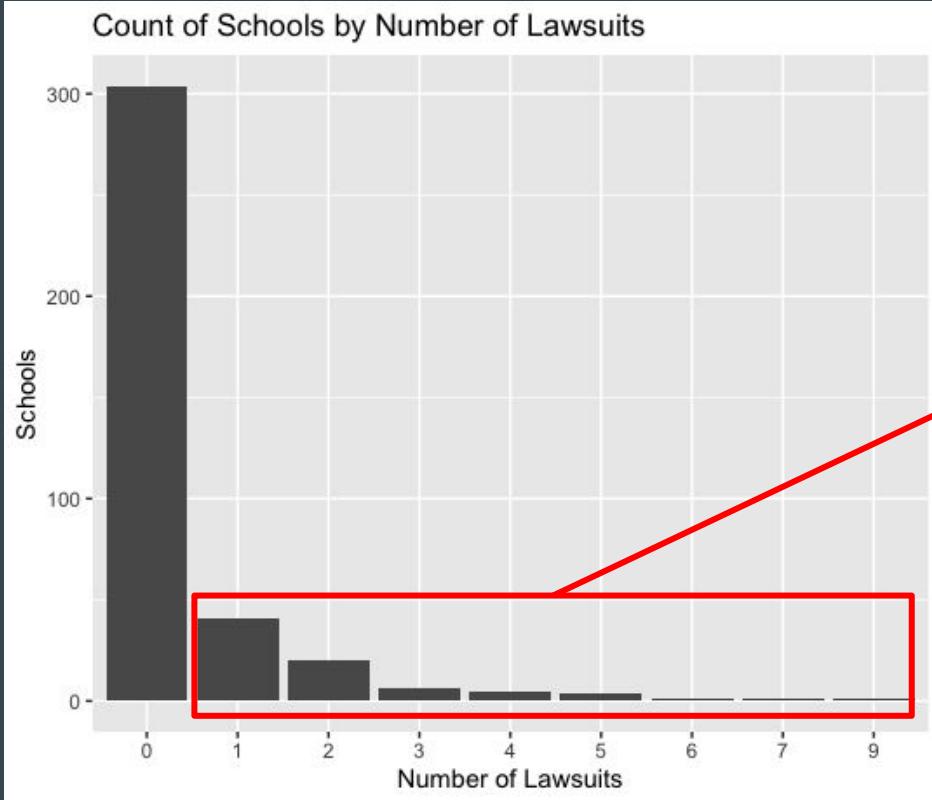
Question 2: What are they suing the school for?



Question 3: What are the outcomes of the lawsuits?



Question 4: Which schools are being sued?



Question 4: Which schools are getting sued?

Predictors	
Sexual Misconduct Policies (Reference Group: Pure Inquisitorial)	Adversarial Hearing
	Hybrid
	Incomplete
	Dual
Socioeconomic Status	Endowment
	Median Parental Income
Type of School (Reference Group: Public Schools)	Private
	HBCU
	Ivy League
	Religious
	Women
Prestige	Admission Rate
	Flagship

Question 4: Which schools are being sued?

For a school to be sued by
complainants:

- Private (-, 0.04)
- Flagship (+, 0.01)

For a school to be sued by
respondents:

- Private (-, 0.01)
- Flagship (-, 0.02)
- Incomplete policies (+, 0.04)
- Endowment (+, 0.003)
- Median parental income (+, 0.004)

Question 4: Which schools are being sued?

For a school to have ever been sued:

- Endowment (+, 0.02)
- Median Parental Income (+, 0.004)
- Private (-, 0.004)

For a school to be sued multiple times:

- Endowment (+, 0.01)
- Private (-, 0.04)

Summary of Findings

1. Litigation against schools picked up in 2013. After 2013, (men) respondent plaintiffs outpaced (women) complainant plaintiffs.
2. Most lawsuits cited Title IX among legal claims, although how it was used differed by complainants and respondents.
3. Schools overwhelmingly prevailed. Respondent lawsuits are dismissed at a higher rate.
4. School socioeconomic status better predicts lawsuits than school policy.

Discussion

Both complainant and respondent lawsuits rose after 2013 and utilizes TIX. Schools also overwhelmingly prevailed in both.

Yet, in comparison to complainant lawsuits, respondent lawsuits:

- more often alleges bias and references the Obama-era guidances.
- are more frequently dismissed.
- are directed at well-resource schools and schools with wealthier students.

Thank You!

For more information, find us at

<https://sites.lsa.umich.edu/ursa/>

(Search University Responses to Sexual Assault on Campus)



The screenshot shows the homepage of the University Responses to Sexual Assault on Campus (URSA) website. At the top left is a blue silhouette of a bear with yellow stars connected by lines forming a constellation pattern. To the right of the bear, the text "University Responses to Sexual Assault on Campus" is displayed in a dark blue font. Below the header is a navigation bar with links: HOME, ABOUT THE PROJECT ▾, RESEARCHERS, PUBLICATIONS, PRESENTATIONS, NEWS AND UPDATES, and RESOURCES & AFFILIATIONS. The main content area contains a paragraph about the project's focus on university responses to sexual misconduct, media coverage, and stakeholder interviews. A search bar with a magnifying glass icon is located on the right side of this section. Below the main content, there are two sidebar sections: "UPCOMING EVENTS" listing a "5/27 – 5/30: Law & Society Association Annual meeting", and "RECENT POSTS" which is currently empty. At the bottom of the page is a decorative footer image showing a row of trees with sunlight filtering through their leaves.

This project investigates university responses to student sexual misconduct in a rapidly changing legal environment through the analysis of campus sexual misconduct policies, litigation against universities, media coverage, and interviews with key stakeholders.

Find out more about our work [here](#).

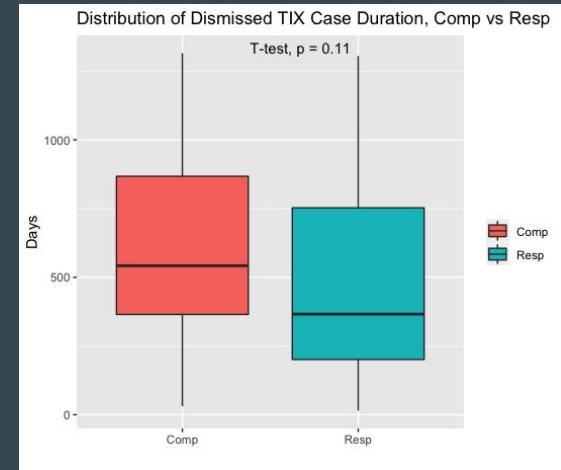
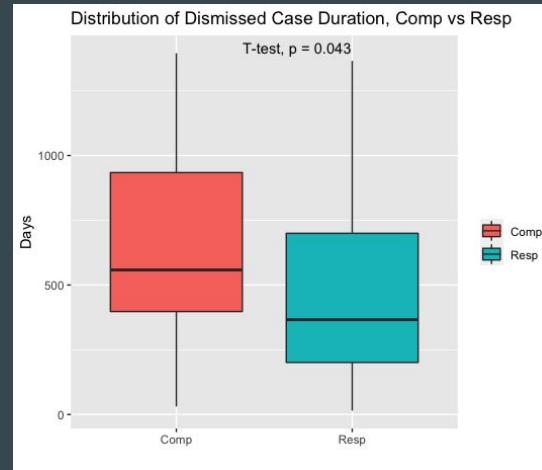
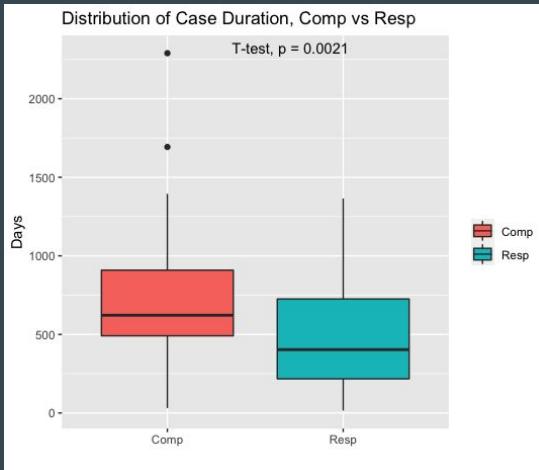
5/27 – 5/30: Law & Society Association Annual meeting

RECENT POSTS

Data

- At least two trained undergraduate students read through the initial filing and the chronological log of all filings to code for:
 - Characteristics of the plaintiff and the sexual misconduct incident
 - Legal claims
 - Outcome of the case
- The students met weekly to check their codes and any disagreement were reconciled by a graduate student supervisor

Finding 3: What are the outcomes of the lawsuits?



Predictors		Ever Sued?	Multiple Lawsuits	Comp Lawsuits	Resp Lawsuits
Sexual Misconduct Policies (Reference Group: Pure Inquisitorial)	Adversarial Hearing				
	Hybrid	+ (0.95)	- (0.22)	- (0.06)	+ (0.58)
	Incomplete	+ (0.053)	+	+	+ (0.04)*
	Dual				
Socioeconomic Status	Endowment	+ (0.02)*	+	+	+ (0.003)**
	Median Parental Income	+ (0.004)**	+	+	+ (0.004)**
Type of School (Reference Group: Public Schools)	Private	- (0.004)**	- (0.04)*	- (0.04)*	- (0.012)*
	HBCU	+	+	+	+
	Ivy League	+	+	+	+
	Religious				
	Women				
Prestige	Admission Rate				
	Flagship	- (0.34)	+	+	- (0.015)*

Appendix: Regression Coefficients (Ever Sued?)

Coefficients:

	Estimate	Std. Error	z value	Pr(> z)	
(Intercept)	-3.090e+00	8.260e-01	-3.741	0.000184	***
factor(descriptive)2	2.399e-01	6.300e-01	0.381	0.703399	
factor(descriptive)3	2.951e-02	4.381e-01	0.067	0.946296	
factor(descriptive)4	1.382e+00	7.138e-01	1.937	0.052769	.
factor(descriptive)5	1.828e+01	2.797e+03	0.007	0.994785	
endow02	5.262e-10	2.309e-10	2.278	0.022702	*
chetty_par_median	1.436e-05	4.974e-06	2.887	0.003891	**
type	-1.163e+00	4.072e-01	-2.858	0.004270	**
hbcu	9.941e-01	7.618e-01	1.305	0.191909	
ivy	1.564e+01	1.136e+03	0.014	0.989019	
toprelig	-6.298e-01	1.101e+00	-0.572	0.567152	
women	-7.411e-01	1.099e+00	-0.674	0.500245	
admit	3.365e-01	4.698e-01	0.716	0.473876	
flag	-5.413e-01	5.645e-01	-0.959	0.337671	

Appendix: Regression Coefficients (Multiple Sued?)

	Estimate	Std. Error	z value	Pr(> z)	
(Intercept)	-3.777e+00	1.321e+00	-2.860	0.00423	**
factor(descriptive)2	1.562e-01	9.113e-01	0.171	0.86387	
factor(descriptive)3	-7.823e-01	6.362e-01	-1.230	0.21884	
factor(descriptive)4	8.278e-01	9.686e-01	0.855	0.39278	
factor(descriptive)5	2.021e+01	4.612e+03	0.004	0.99650	
endow02	5.711e-10	2.205e-10	2.590	0.00958	**
chetty_par_median	1.296e-05	8.618e-06	1.503	0.13272	
type	-1.621e+00	7.757e-01	-2.089	0.03668	*
hbcu	1.225e+00	1.273e+00	0.962	0.33591	
ivy	1.849e+01	1.820e+03	0.010	0.99189	
toprelig	1.315e+00	1.237e+00	1.063	0.28776	
women	-1.497e+01	1.811e+03	-0.008	0.99341	
admit	2.414e-01	7.450e-01	0.324	0.74588	
flag	2.326e-01	7.121e-01	0.327	0.74395	

Appendix: Regression Coefficients (Complainants Sued?)

	Estimate	Std. Error	z value	Pr(> z)	
(Intercept)	-3.258e+00	1.236e+00	-2.636	0.00839	**
factor(descriptive)2	-2.836e-01	8.847e-01	-0.321	0.74853	
factor(descriptive)3	-1.036e+00	5.482e-01	-1.889	0.05888	.
factor(descriptive)4	4.332e-01	9.600e-01	0.451	0.65184	
factor(descriptive)5	-1.672e+01	4.612e+03	-0.004	0.99711	
endow02	1.306e-11	9.198e-11	0.142	0.88709	
chetty_par_median	8.831e-06	9.348e-06	0.945	0.34481	
type	-1.510e+00	7.507e-01	-2.012	0.04423	*
hbcu	1.839e+00	1.038e+00	1.772	0.07635	.
ivy	2.758e+00	1.595e+00	1.729	0.08384	.
toprelig	1.418e+00	1.240e+00	1.143	0.25293	
women	-1.489e+01	1.742e+03	-0.009	0.99318	
admit	3.490e-01	6.710e-01	0.520	0.60297	
flag	1.676e+00	6.497e-01	2.579	0.00991	**

Appendix: Regression Coefficients (Respondent Sued?)

Coefficients:

	Estimate	Std. Error	z value	Pr(> z)	
(Intercept)	-4.555e+00	1.130e+00	-4.031	5.54e-05	***
factor(descriptive)2	2.703e-01	8.005e-01	0.338	0.73558	
factor(descriptive)3	3.093e-01	5.599e-01	0.552	0.58073	
factor(descriptive)4	1.664e+00	8.190e-01	2.031	0.04223	*
factor(descriptive)5	1.851e+01	2.797e+03	0.007	0.99472	
endow02	9.127e-10	3.087e-10	2.957	0.00311	**
chetty_par_median	1.741e-05	5.984e-06	2.909	0.00363	**
type	-1.194e+00	4.770e-01	-2.503	0.01231	*
hbcu	3.393e-01	1.150e+00	0.295	0.76801	
ivy	1.455e+01	1.008e+03	0.014	0.98849	
toprelig	-4.090e-01	1.120e+00	-0.365	0.71503	
women	-3.357e-01	1.110e+00	-0.302	0.76232	
admit	9.745e-01	6.436e-01	1.514	0.13000	
flag	-2.055e+00	8.451e-01	-2.432	0.01502	*
