

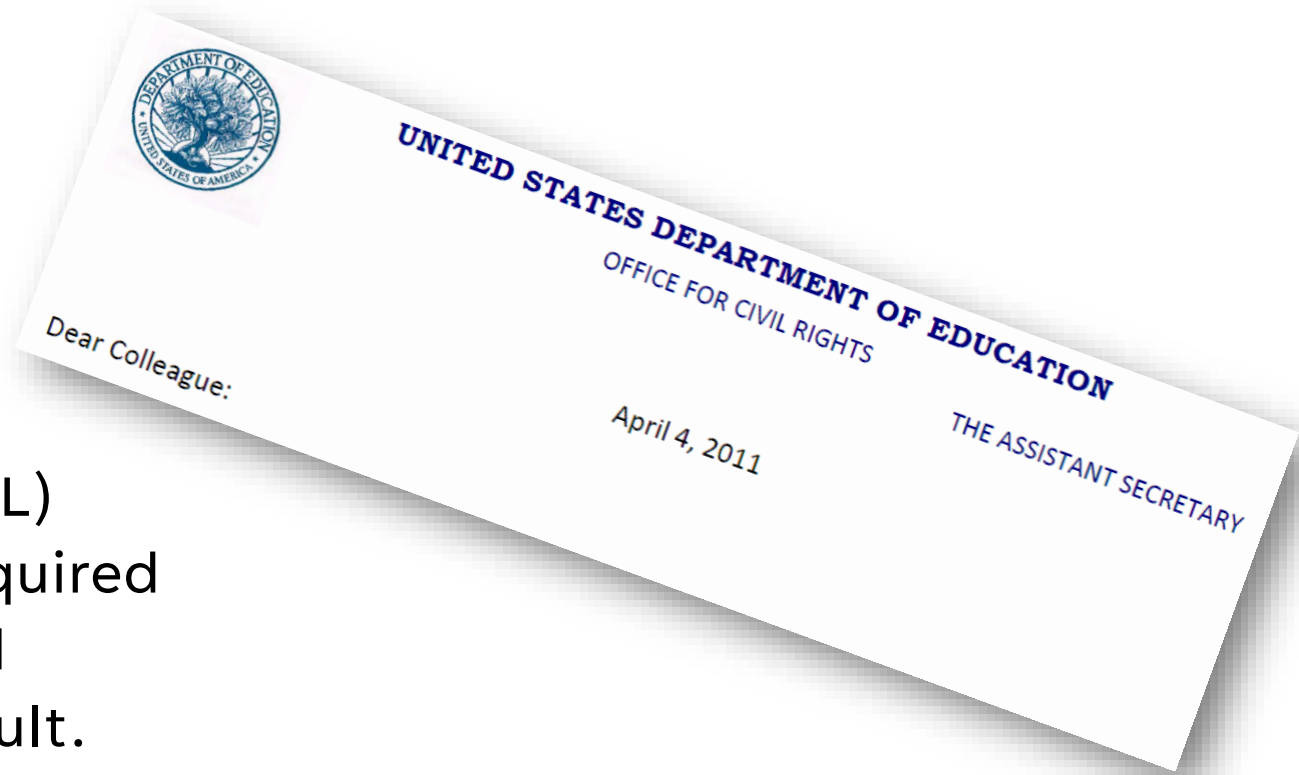


LITIGATION POLITICS: COUNTERMOVEMENT ACTIVITY IN CAMPUS SEXUAL ASSAULT LITIGATION

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BACKGROUND

- 2011 Dear Colleague Letter (DCL) advised schools that Title IX required them to do more to prevent and respond to campus sexual assault.
- DCL sparked a powerful political backlash.



OVERCORRECTION NARRATIVE

Critics of the DCL asserted that schools were now overcorrecting for earlier deficiencies by creating procedures that favored victims and discriminated against accused students.

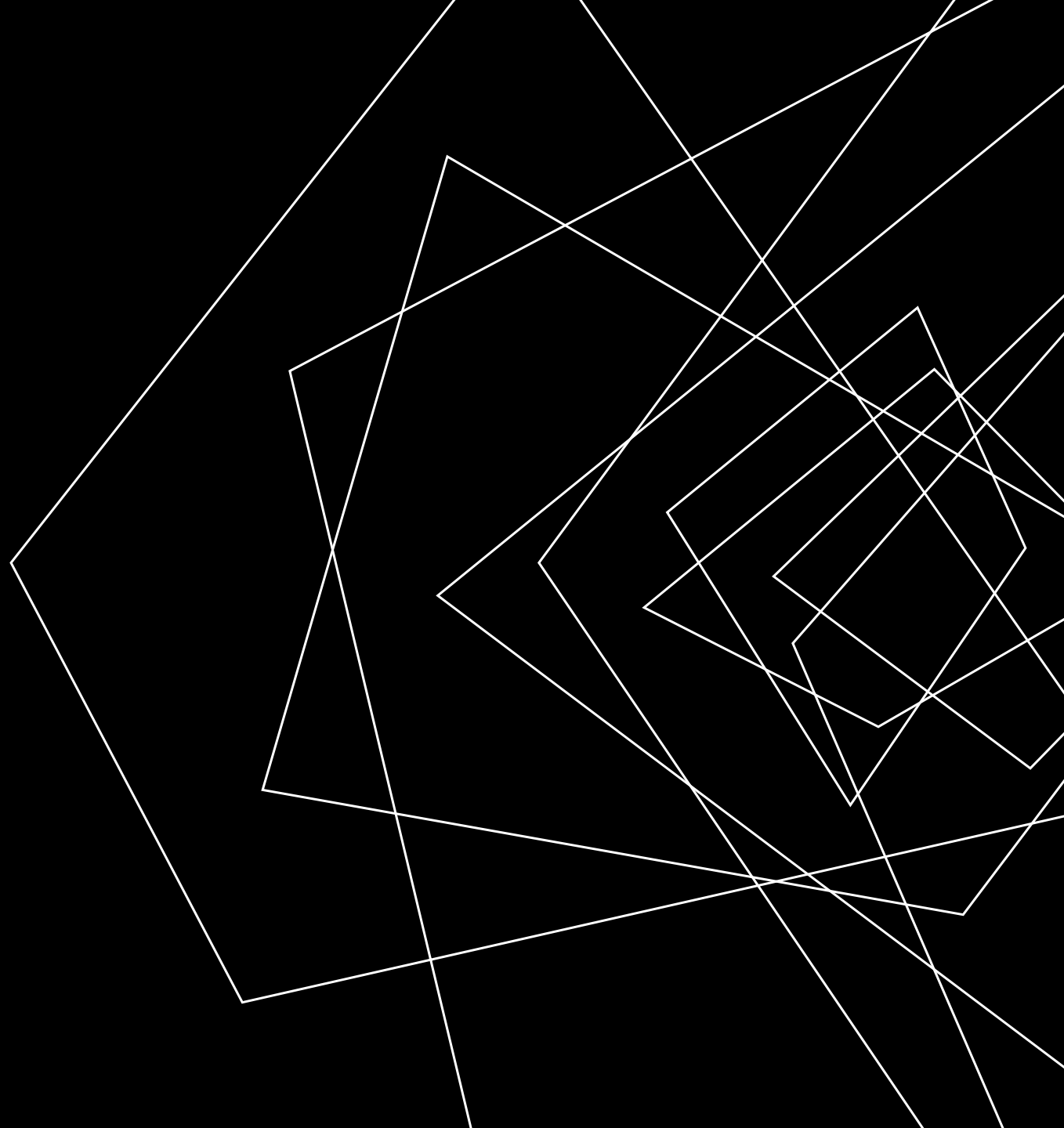
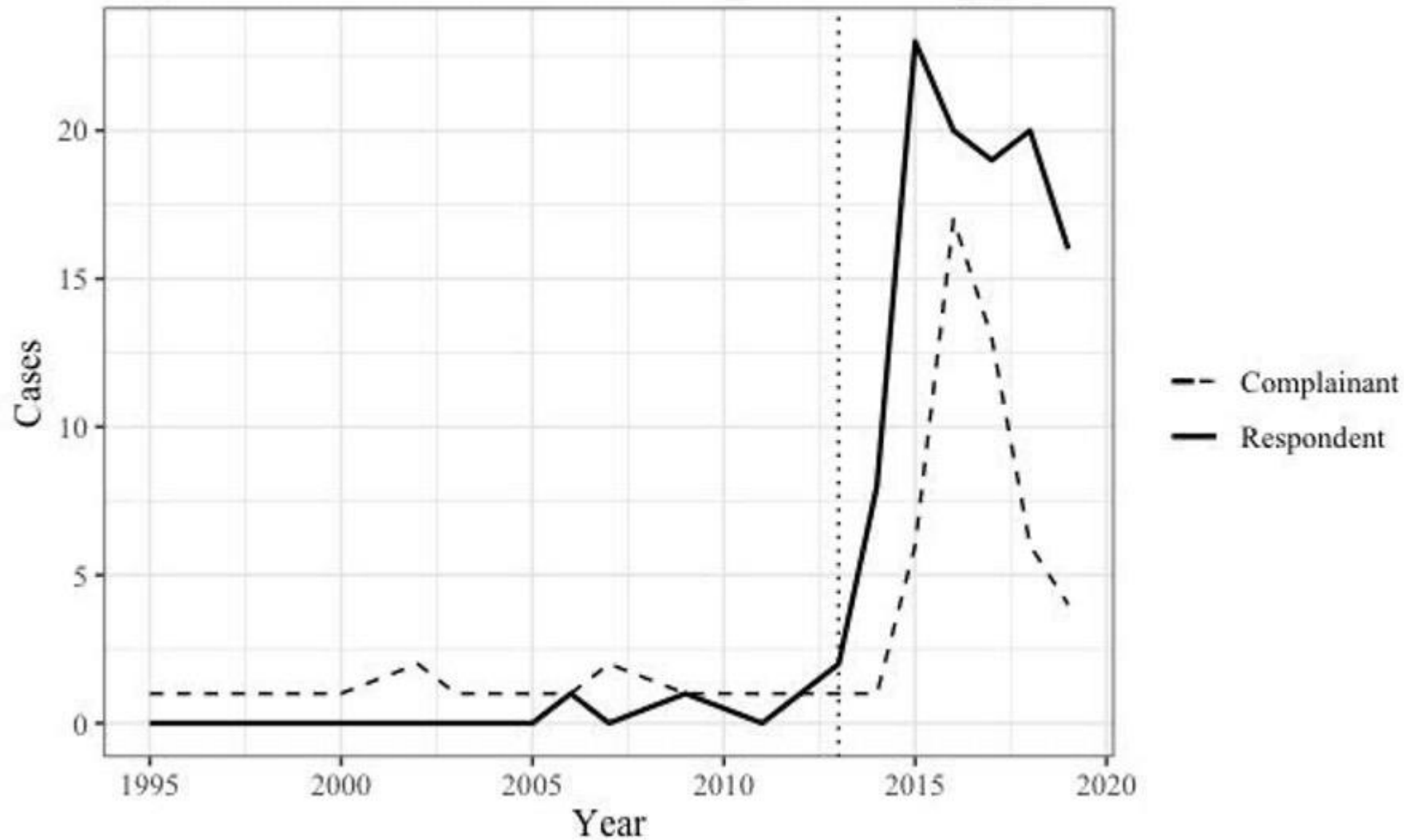
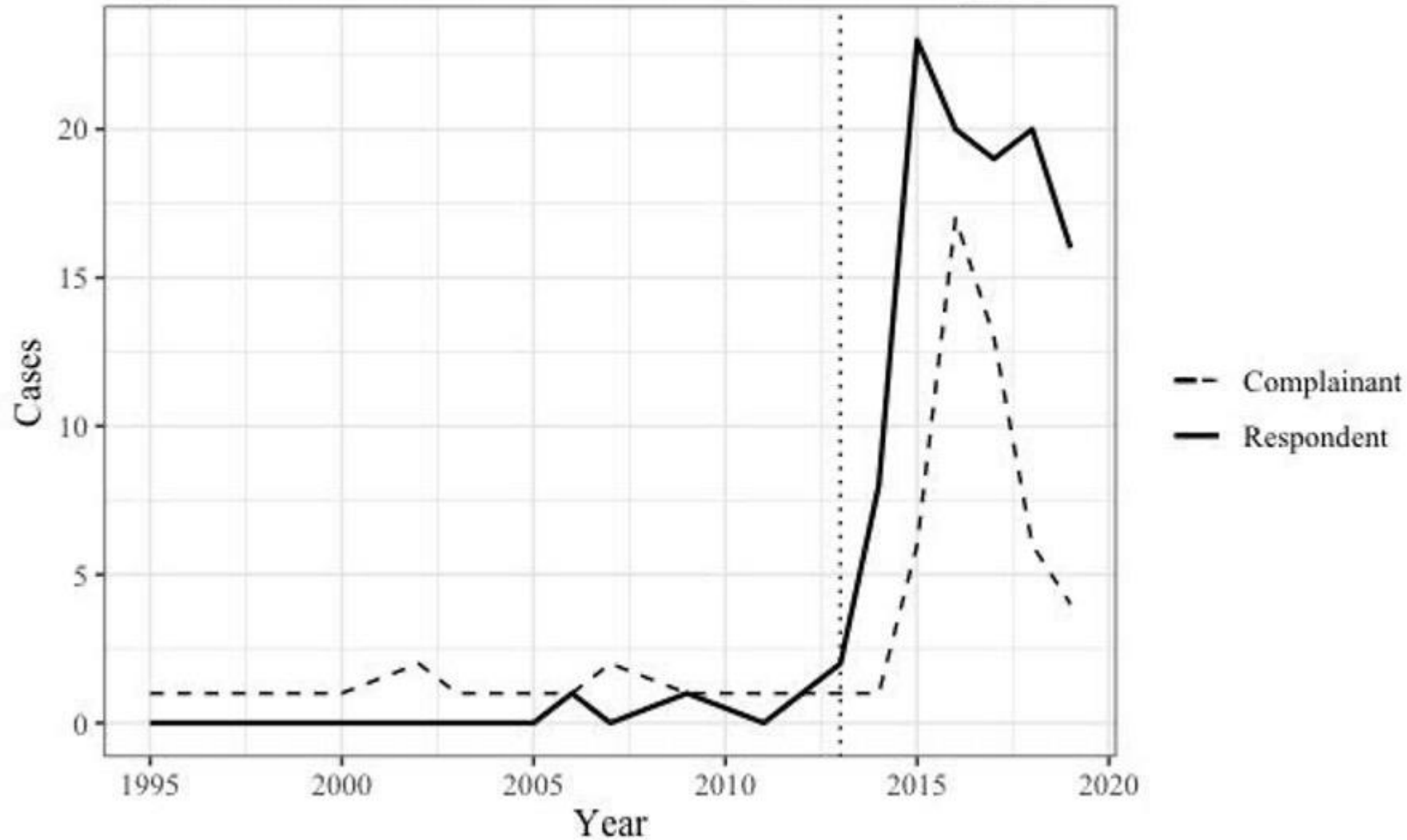


Figure 1. Number of Lawsuits by Plaintiff Type, 1992 - 2019



Both
Complainant
and Respondent
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Figure 1. Number of Lawsuits by Plaintiff Type, 1992 - 2019



“Since 2011, more than 150 lawsuits have been filed against colleges and universities involving claims of due process violations”

—*Washington Post* (2017)



Question: Where did these lawsuit counts come from, and why did they appear to support only one side in campus sexual assault debate?

EMPIRICAL ARGUMENT



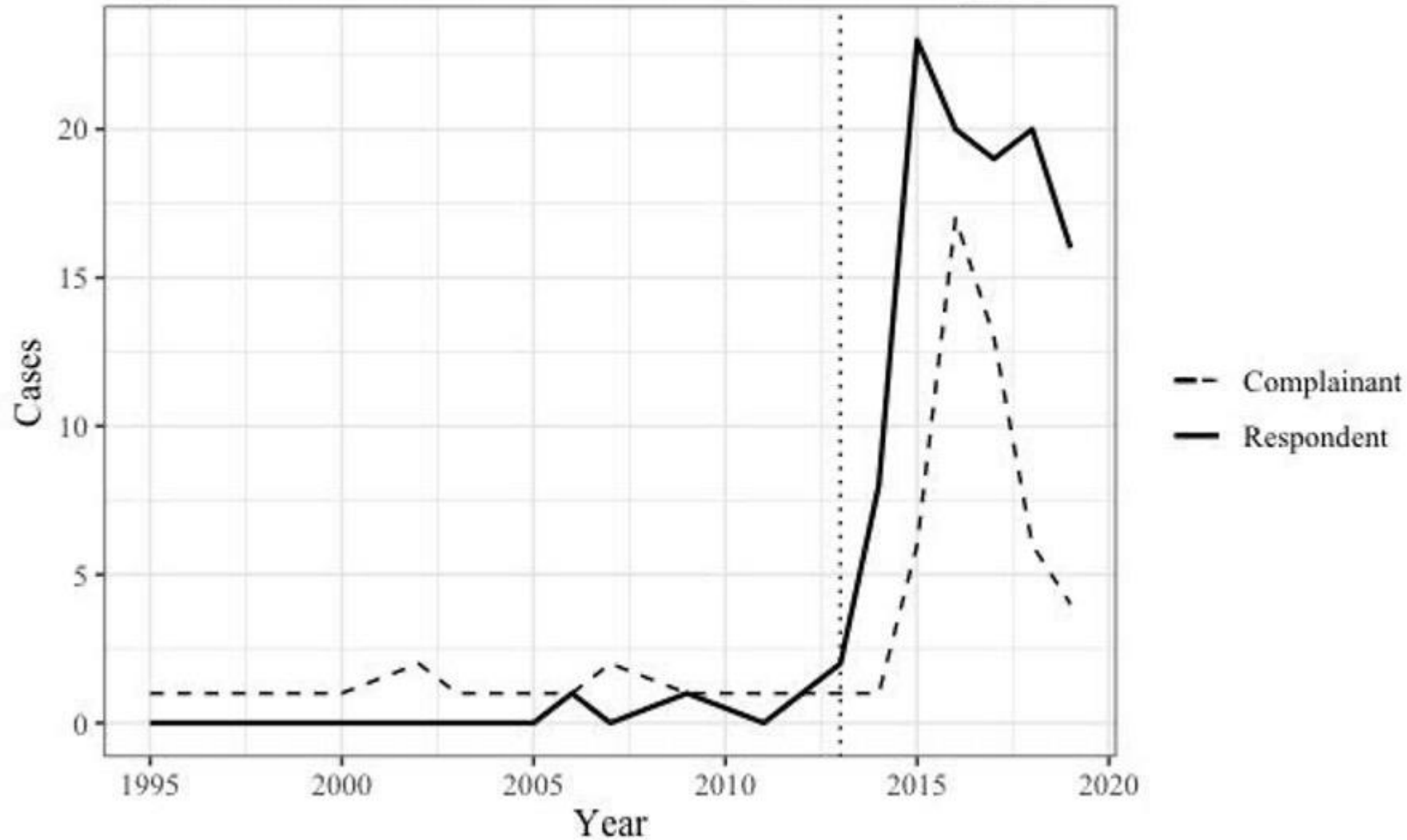
- Quantification and storytelling about litigation was part of a countermovement strategy to frame the debate about campus sexual assault in ways that favor students accused of sexual misconduct.



THEORETICAL ARGUMENT

Socio-legal scholars should extend our understanding of legal mobilization as a social movement tactic by considering how individual, private lawsuits can be used by movement actors seeking to construct a political narrative.

Figure 1. Number of Lawsuits by Plaintiff Type, 1992 - 2019



Both Complainant and Respondent lawsuits increased after 2011, but **only respondent lawsuits were narrativized in the media.**

LAW AND SOCIAL MOVEMENTS SCHOLARSHIP

- Scholarship on law and social movements has focused primarily on the deployment of law by **organized actors** (e.g., advocacy organizations, labor unions).
- Our case focuses on a less visible source of political storytelling: the role of private practice attorneys (and their lawsuits) in constructing the overcorrection narrative.



METHODS

LAWSUITS

Cases involving student sexual misconduct filed against a sample of 381 schools from 1992-2019.

INTERVIEWS

Due process lawyers and advocates

MEDIA

Media coverage of lawsuits in our sample

WEBSITES

Attorney and advocacy organization websites

THREE ROLES FOR PRIVATE LAWSUITS IN CONSTRUCTING THE OVERCORRECTION NARRATIVE:

1. Legal complaints as narrative texts in media
2. “Repeat Player” lawyers as expert speakers in media
3. Quantification and Storytelling about lawsuits

LEGAL COMPLAINTS AS NARRATIVE TEXTS FOR MEDIA

Some complaints argued that the DCL **directly pressured** the defendant school into adopting practices that harmed the plaintiff.

Doe v. Purdue Univ. (2017)

Defendants “were pressured by the Obama Administration’s DOE into following the Title IX ... process mandated by the [DCL] regardless of what otherwise would be due process consideration.”

LEGAL COMPLAINTS AS NARRATIVE TEXTS FOR MEDIA

Other complaints argued that the defendant school felt compelled to demonstrate Title IX compliance to the public, activists, and DOE by finding plaintiff responsible for sexual misconduct.

Doe v. Denison Univ. (2016)

“Denison’s investigation and/or discipline of John Doe was taken in order to demonstrate to DOE/OCR, President Obama’s Administration, and/or the general public that Denison is aggressively disciplining male students accused of sexual misconduct.”

LEGAL COMPLAINTS AS NARRATIVE TEXTS FOR MEDIA

Political references to DCL
“overreach” were intended for
the general public *and were
picked up by journalists
covering lawsuits.*



“REPEAT PLAYER” LAWYERS AS EXPERT SPEAKERS IN MEDIA

“Miltenberg, who has represented more than 100 accused male students at colleges and universities...” (Hussein 2017b)

“Hamill has represented about two dozen male respondents in the past few years (Kutner 2015).

Journalists referenced the **number** of lawsuits or male clients represented.

(Lawyers provided that information themselves.)

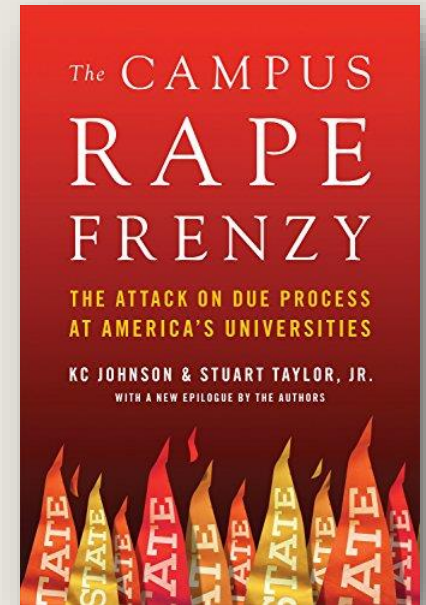
“REPEAT PLAYER” LAWYERS AS EXPERT SPEAKERS IN MEDIA

References to the **number** of cases brought by repeat player attorneys:

1. helped to evoke a sense of crisis
2. gave lawyers standing in media to opine on overcorrection narrative.

QUANTIFICATION AND STORYTELLING ABOUT LITIGATION

- Lawyers were embedded in a field of political advocacy organizations.
- These political groups systematically tracked, counted, and narrated litigation trend as evidence of overcorrection.



Title IX for All

Informing | Connecting | Empowering

**The
New York
Times**

“[A] growing movement of men’s rights activists said the guidance went too far because it did not give those accused a chance to defend themselves through basic rights like cross-examination. More than 600 federal and state lawsuits have been filed by students accused of sexual misconduct since April 2011, when the Obama administration instituted its new policies, according to a database compiled by KC Johnson ... (Anemona 2021).”

OVERCORRECTION NARRATIVE FINDS ITS MARK

In 2017, Secretary of Education Betsy DeVos rescinded the 2011 DCL. In 2020, the Department of Education issued new regulations that provided stronger protections for accused students.



CONCLUSIONS



- Individual lawsuits can be aggregated and narrated by movement actors to frame a social problem.
- The roots of a litigation narrative are both **invisible** and seemingly **apolitical**, but they can have powerful political effects.

THANK YOU