

**FIXING WHAT’S WRONG WITH HOW UNIVERSITIES
ADJUDICATE SEXUAL MISCONDUCT CLAIMS:
HOW PROCEDURAL CHANGE CAN ENCOURAGE
COOPERATION**

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* Visiting Assistant Professor, University of Illinois College of Law. The author wishes to acknowledge the fact that this project would not have been possible without the support of Bobbie Spellman and Dick Reppucci. Special thanks are due as well to John Monahan and Mel Wilson for the significant amount of time and attention they devoted to this project. Thanks to Tom Tyler, Margareth Etienne, Jennifer Robbenholt, Arden Rowell, Suja Thomas, Lesley Wexler, and Tamara Piety for their invaluable thoughts, comments, and suggestions.

INTRODUCTION

In the past few years, the public has been bombarded with news stories and allegations that have raised its consciousness with respect to the problem of sexual assault on university campuses. The most often quoted studies suggest that approximately nineteen percent of young women and six percent of young men will experience sexual violence while attending college.¹ Official responses to reports of sexual offenses have generated outrage and resulted in calls for action. Frustration likely stems from universities' imposition of barriers to reporting sexual assault and a failure to impose adequate consequences for those accused of sexual assault.² Notwithstanding the fact that few cases receive public attention; the problems associated with how colleges and universities handle sexual misconduct cases are pervasive. Notably, the number of colleges and universities being investigated by the United States Department of Education's Office for Civil Rights ("OCR") for violations based upon the handling of sexual assault cases on campus has gone from 55 in May 2014, to 159 in December 2015, to 496 in July 2017.³ Consequently, closer attention has been paid to

1. Christopher H. Krebs et al., *Disclosure of Sexual Assault of Undergraduate Women at Historically Black Colleges and Universities (HBCUs)*, 26 J. INTERPERSONAL VIOLENCE 3640, 3649–53 (2011) [hereinafter Krebs et al., *Disclosure of Sexual Assault at HBCUs*]; CHRISTOPHER H. KREBS ET AL., NAT'L INST. OF JUSTICE, THE CAMPUS SEXUAL ASSAULT (CSA) STUDY, 5–3, 5–5 (Dec. 2007), [hereinafter KREBS ET AL., THE CSA STUDY] [<https://perma.cc/DF9U-F3KA>].

2. See, e.g., Jack Healy, *At Brigham Young, a Cost in Reporting a Rape*, N.Y. TIMES (Apr. 26, 2016), http://www.nytimes.com/2016/04/27/us/rape-victims-brigham-young-university-honor-code-suspensions.html?%7B%5C_%7Dr=1 (last visited Mar. 23, 2018) (reporting that Brigham Young's University's actions caused a national uproar when, in response to a young woman's report of rape by a fellow student, the school suspended the young woman for violating the Honor Code due to her "illegal" drug use and her participation in "consensual sex"); Megan Spicer, *5 Cases That Could Shape Campus Sexual Assault Investigations*, LAW.COM (Jul. 20, 2016), <http://www.law.com/sites/almstaff/2016/07/20/5-cases-that-could-shape-campus-sexual-assault-investigations/?sreturn=20170825174444> (last visited Mar. 23, 2018); Bruce Tomaso, *A Quick, Complete Guide to the Baylor Football Sex-Assault Scandal*, DALLAS NEWS, (Apr. 2016), [<https://perma.cc/4X3H-MFVP>] (describing how Baylor University found itself in the national spotlight for repeatedly ignoring complaints of sexual assault made against football players. Numerous lawsuits have been filed against Baylor and Baylor's president was demoted for, among other things, failing to act on a female student's complaint of sexual assault by a football player who was later sent to prison for twenty years for the assault).

3. Erica L. Green & Sheryl Gay Stolberg, *Campus Rape Policies Get a New Look as the Accused Get DeVos's Ear*, N.Y. TIMES (Jul. 12, 2017),

understanding more about the scope of the problem and directed at reducing the incidents of sexual violence on campus by enacting changes in policy and legislation.

Far-reaching legislation has been introduced at a volume and pace that has not been seen in the nearly thirty years since the enactment of the Clery Act.⁴ Most significantly, in March 2013, President Obama signed The Campus Sexual Violence Elimination (SaVE) Act,⁵ which expanded college reporting requirements, codified guidelines for disciplinary proceedings, and mandated prevention and training programs.⁶

Faced with seemingly insurmountable scrutiny, universities and federal and state governments are scrambling to be seen as being responsive to the problem of sexual misconduct on campus. As a result, the decisions made by authorities may be arbitrary and capricious. For example, the University of Virginia's governing board quickly adopted a *zero-tolerance* policy towards sexual assault in response to *Rolling Stone's* article⁷ on gang rape at a fraternity party.⁸ When this policy was announced, the governing board also acknowledged that the specific meaning of *zero-tolerance* would have to be determined at a later date.⁹ Furthermore, while the article "A Rape on Campus" ultimately shined light on a broken system, policy actions taken quickly and in direct response to this article were premature given that the piece was discredited and later retracted due to *Rolling Stone's* failure to verify significant details of the alleged event.¹⁰

<https://www.nytimes.com/2017/07/12/us/politics/campus-rape-betsy-devos-title-iv-education-trump-candice-jackson.html> (last visited Mar. 23, 2018).

4. Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) (2012). The Clery Act requires colleges and universities to disclose information and imposes requirements for handling sexual violence. For legal and historical background on sex discrimination as it applies to schools, see Tamara Rice Lave, *A Critical Look at How Top Colleges and Universities Are Adjudicating Sexual Assault*, 71 U. MIAMI L. REV., 377, 384–91 (2017).

5. Violence Against Women Reauthorization Act, PUB. L. NO. 113-4, 127 Stat. 54 § 304(a)(5) (2013) (codified as amended at 20 U.S.C. § 1092(f)(8)(B)(iv)).

6. *Title IX Under the Trump Administration: Know Your Rights*, KNOW YOUR IX, [<https://perma.cc/Q2G2-NYLF>]; see also Susan Hanley Duncan, *The Devil Is in the Details: Will the Campus SaVE Act Provide More or Less Protection to Victims of Campus Assaults?*, 40 J.C. & U.L. 443, 452–53 (2014).

7. Sabrina Erdely, *A Rape on Campus*, ROLLING STONE (Nov. 19, 2014) (retracted Apr. 5, 2015), [<https://perma.cc/LJH5-ECDH>].

8. David DeMatteo et al., *Sexual Assault on College Campuses: A 50-State Survey of Criminal Sexual Assault Statutes and Their Relevance to Campus Sexual Assault*, 21 PSYCHOL. PUB. POL'Y & L. 227, 236 (2015).

9. See *id.*

10. Ravi Somaiya, *Rolling Stone Article on Rape at University of Virginia Failed All Basics, Report Says*, N.Y. TIMES (April 5, 2015)

Sources of ideas for policies that may improve the process for handling campus sexual assault are not in short supply. Policy guidance is available from professional organizations including the American Bar Association,¹¹ the American Association of University Professors,¹² and the United States Senate.¹³ Most importantly, the Secretary of Education Betsy DeVos recently announced her intention to produce new guidelines after a thorough review of Obama-era policies.¹⁴

Despite these legal and political efforts, it would seem that many have lost confidence in the ability of universities to manage this epidemic properly. The debate about whether sexual assault on campus should be handled administratively by university officials or exclusively within the criminal justice system is ongoing.¹⁵ However, given that, when compared to the criminal justice system, campus discipline is faster, has a lower evidentiary standard, is often confidential, and can provide much needed remedies to students not afforded by the criminal justice system, it is not likely that by simply eliminating the ability of universities to adjudicate sexual misconduct that this problem will simply go away.

What is needed is a framework to guide decision-making. Notably, there have been no empirical efforts to gauge how changes to campus sexual assault policies will affect students. Likewise, no social-psychological theory has been offered in order to help understand, analyze, and describe how and why processes used to discipline students influences their behavior. Expanding the knowledge base in these areas is vital to our ability to explain why policy changes will lead some schools to succeed where others fail.

<https://www.nytimes.com/2015/04/06/business/media/rolling-stone-retracts-article-on-rape-at-university-of-virginia.html> (last visited Mar. 23, 2018).

11. ABA CRIMINAL JUSTICE SECTION, ABA CRIMINAL JUSTICE SECTION TASK FORCE ON COLLEGE DUE PROCESS RIGHTS AND VICTIM PROTECTIONS: RECOMMENDATIONS FOR COLLEGES AND UNIVERSITIES IN RESOLVING ALLEGATIONS OF CAMPUS SEXUAL MISCONDUCT (2017), [perma.cc/J28P-R3G8].

12. AM. ASS'N OF UNIV. PROFESSORS, CAMPUS SEXUAL ASSAULT: SUGGESTED POLICIES AND PROCEDURES (2012), [https://perma.cc/N3H8-6Z6Z].

13. CLAIRE McCASKILL, U.S. SENATE, SEXUAL VIOLENCE ON CAMPUS: HOW TOO MANY INSTITUTIONS OF HIGHER EDUCATION ARE FAILING TO PROTECT STUDENTS (2014), [https://perma.cc/LV5W-59ZS]. At the request of Senator Claire McCaskill, the United States Senate investigated campus sexual assault and has provided recommendations for best practices, see *id.* at 1–2.

14. Betsy DeVos, Sec'y, U.S. Dep't of Educ., Address at George Mason University (Sept. 7, 2017), [https://perma.cc/TEQ7-QNCS].

15. DeMatteo et al., *supra* note 8, at 227. See also Erica Coray, *Victim Protection or Revictimization: Should College Disciplinary Boards Handle Sexual Assault Claims?*, 36 B.C. J.L. & Soc. JUST. 59, 87–89 (2016).

This Article seeks to provide much needed structure for the debate regarding the adjudication of sexual assault on campus by describing a model based upon procedural justice theory. Specifically, the findings presented in this Article suggest that students' perceptions of the fairness of the disciplinary system are important because their feelings toward the system drive their willingness to participate in it.

This Article: (1) describes the scope of the problem; (2) details how sexual misconduct is adjudicated on campus; (3) explains why procedural justice theory is a useful framework for understanding cooperation; and (4) presents results from a series of experiments investigating the proposition that students would be more likely to report sexual assault and assist authorities when asked, if they trust those authorities because they believe that the process for settling disputes is fair.

I. UNDERSTANDING THE SCOPE OF THE PROBLEM

The problem of sexual assault on campus is a difficult task for policy-makers to manage. Grasping its magnitude requires an acknowledgment of the confusion about the sort of behavior that constitutes punishable sexual contact, as well as the opaque nature of what it means to consent to sex. Understanding what sort of behavior constitutes impermissible sexual behavior is important because definitional issues likely contribute to negative feelings towards university authorities. If students do not understand *why* certain behavior is wrong, then any sort of punishment imposed by authorities could seem inequitable and arbitrary. Likewise, not knowing whether the incident was serious enough to report and being unclear that the incident was a crime or that harm was intended are among the reasons cited by victims to explain why they did not report their sexual assault.¹⁶

A. *Defining Punishable Sexual Behavior*

As a society, we have no common or universally accepted understanding of what it means to commit sexual assault.¹⁷ Behavior

16. KREBS, THE CSA STUDY, *supra* note 1, at 5–24.

17. Deborah Tuerkheimer, *Rape On and Off Campus*, 65 EMORY L.J. 1, 9–14 (2015) (describing institutional and legal definitions of consent); Ian Urbina, *The Challenge of Defining Rape*, N.Y. TIMES (Oct. 11, 2014), (“But there is still little uniformity on how to define rape, which makes counting rapes, and countering and even discussing the issue, difficult.”) <https://www.nytimes.com/2014/10/12/sunday-review/being-clear-about-rape.html> (last visited Mar. 23, 2018).

that constitutes sexual misconduct in Alabama could be considered sexual battery in Florida, sexual abuse in the District of Columbia, and sexual assault by the federal government.¹⁸ Clarity about the nature of sexual misconduct and consistency in identifying it are important because difficulty in describing or discussing unwanted sexual behavior results in difficulty counting it. That is, uncertainty with respect to how often sexual misconduct occurs exists, in part, because of inconsistent definitions.¹⁹ In fact, simply asking whether citizens have experienced *rape* or *sexual assault* is not likely to result in an accurate measurement of sexual violence victimization because participants often do not equate these terms with their personal experiences.²⁰

The scope of conduct that is impermissible or could be punishable by a college or university is broad and even more confusing. Notably, the OCR has not gone so far as to clearly define the sort of sexual misconduct that should be investigated by colleges pursuant to Title IX,²¹ which prohibits sex discrimination in education.²² Sexual offenses

18. ALA. CODE § 13a-6-65 (1977); D.C. CODE § 22-3006 (2013); FLA. STAT. § 794.011 (2017). The Bureau of Justice Statistics, which collects and distributes federal crime statistics, defines sexual assault as “[a] wide range of victimizations, separate from rape or attempted rape. Includes attacks or attempted attacks generally involving unwanted sexual contact between victim and offender, with or without force. Includes grabbing or fondling and verbal threats.” *Rape and Sexual Assault*, BUREAU JUST. STATS., [https://perma.cc/UB7E-RJ8L].

19. For example, a systematic review of prevalence research conducted by Fedina, Holmes, Backes, and colleagues noted the difficulty in comparing the rates of unwanted sexual behavior across studies because the definitions used were not standardized or consistent. Fedina’s meta-analysis found that studies measuring “completed rape,” defined as forcible vaginal, anal, or oral intercourse, found rates of rape among college women that ranged from 0.5% to 8.4%. Studies measuring unwanted sexual touching by the use of force found that rates of unwanted “sexual contact” ranged from 1.8% to 34% among college women. Far fewer studies examined college males as victims of sexual contact, but among those that did, the rates of victimization ranged from 4.8% to 31%. Furthermore, rates for victimization among college women ranged from 1.8% to 14.2% in studies measuring completed intercourse while intoxicated or while on drugs, described as “incapacitated rape.” Lisa Fedina et al., *Campus Sexual Assault: A Systematic Review of Prevalence Research From 2000 to 2015*, 19 TRAUMA, VIOLENCE, & ABUSE 76, 86 (2018).

20. Koss and colleagues developed the Sexual Experiences Survey in response to the inadequacies in the methods used to measure sexual assault. Mary P. Koss, Christine A. Gidycz & Nadine Wisniewski, *The Scope of Rape: Incidence and Prevalence of Sexual Aggression and Victimization in a National Sample of Higher Education Students*, 55 J. CONSULTING & CLINICAL PSYCHOL. 162 (1987). See also Koss and colleagues’ 2014 study, which lists the behaviorally specific descriptions to which participants are asked to respond. Mary P. Koss et al., *Campus Sexual Misconduct: Restorative Justice Approaches to Enhance Compliance with Title IX Guidance*, 15 TRAUMA, VIOLENCE, & ABUSE 242, 244 (2014).

21. 20 U.S.C. §§ 1681–88 (2006).

are among the crimes institutions of higher education must report pursuant to the Clery Act, which requires universities to collect and submit data on forcible and nonforcible sexual offenses to the Department of Education.²³ Forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling are all incidents for which colleges and universities must collect and submit data pursuant to the Clery Act.²⁴ Importantly, the Clery Act provides designations of sexual conduct that are distinct from, and broader than, those definitions that are codified as state and federal crimes.²⁵

Many universities have adopted an *affirmative consent* standard for sexual behavior.²⁶ Consent is an “agreement” or permission to engage in sexual activity.²⁷ Without consent, one who engages in sex could be subject to various administrative and criminal consequences.²⁸ The affirmative consent standard is a response to the well-known “no means no” slogan in that, with this standard, only “yes means yes.”²⁹ For

22. *Id.* “OCR has so far declined to enter the substantive conversations about how to define sexual assault on college campuses.” Michelle J. Anderson, *Campus Sexual Assault Adjudication and Resistance to Reform*, 125 YALE L.J. 1940, 1978 (2016). *See, e.g.*, Christopher Krebs, *Measuring Sexual Victimization: On What Fronts is the Jury Still Out and Do We Need it to Come In?*, 15 TRAUMA, VIOLENCE, & ABUSE 170 (2014).

23. Corey Rayburn Yung, *Concealing Campus Sexual Assault: An Empirical Examination*, 21 PSYCHOL. PUB. POL’Y & L. 1, 2 (2015).

24. *Id.*

25. *Id.* Notably, “forcible fondling”, which involves touching private body parts of another for the purpose of sexual gratification forcibly or without consent, is not considered to be “rape” in any American jurisdiction. *Id.* Another distinguishing characteristic of the way the Clery Act defines sexual offenses is that incidents must be recorded if the sex was forced or if the sex was nonconsensual. *Id.* On the other hand, in states where force is an element of the crime, lack of consent alone is not sufficient, instead it is an additional factor for the judge or juries to consider. *Id.*

26. “[A]t the same time that OCR was stepping up enforcement of Title IX against sexually hostile environments at colleges and universities, many campuses adopted affirmative consent standards to govern sexual behavior.” Anderson, *supra* note 22, at 1978; *see also*, Tuerkheimer, *supra* note 17, at 9–12.

27. Tuerkheimer, *supra* note 17, at 10–11.

28. DeMatteo et al., *supra* note 8, at 236; Stephen Henrick, *A Hostile Environment for Student Defendants: Title IX and Sexual Assault on College Campuses*, 40 N. KY. L. REV. 49, 90 (2013) (describing the impact of being denied a college degree, the stigma associated with being labeled a sexual predator, and possible university disciplinary sanctions including suspension and expulsion with limited possibilities of being admitted to other programs).

29. Anderson, *supra* note 22, at 1950–51 (explaining the feminist origins of “no means no”); Kevin de Leon & Hannah-Beth Jackson, *Why We Made “Yes Means Yes” California Law*, WASH. POST (Oct. 13, 2015), [<https://perma.cc/Q9U4-7H53>] (notes that because “no means no” had proven ineffective, California enacted legislation to make “yes means yes” the consent standard on college campuses and to take a major step toward preventing sexual violence).

instance, the California legislature adopted legislation that applies to most colleges and universities in the state that defines affirmative consent as “affirmative, conscious, and voluntary agreement to engage in sexual activity.”³⁰ Defining features of affirmative consent standards include: (1) the lack of protest or silence does not constitute consent; and; (2) consent must be ongoing throughout sexual activity and can be revoked at any time.³¹ Accordingly, students without evidence of explicit, voluntary, continuous, and consistent consent to sex could be subject to disciplinary action.

B. Barriers for Reporting Sexual Assault

Findings from the National Crime Victimization Survey show that rape is the least reported form of victimization for male and female victims, with an estimated 60% of occurrences likely going unreported to the police.³² Reporting rates for non-student victims of rape and sexual assault ages eighteen to twenty-four are low, at an estimated 32%.³³ However, at an estimated 20%, reporting rates for student victims are even lower.³⁴ Furthermore, Fisher and colleagues found that just 5% of students reported sexual assaults to campus officials when the victimization took place on campus.³⁵ Moreover, student victims are

30. Cal. Educ. Code § 67386 (West 2014); *see also* Tuerkheimer, *supra* note 17, at 10.

31. Anderson, *supra* note 22, at 1978–79; *see also* Tuerkheimer, *supra* note 17, at 9–10.

32. CALLIE MARIE RENNISON, U.S. DEP’T OF JUSTICE, RAPE AND SEXUAL ASSAULT: REPORTING TO POLICE AND MEDICAL ATTENTION, 1992–2000, at 2 (2002), [<https://perma.cc/E2XT-39BL>] (explaining that 63% of completed rapes, 65% of attempted rapes, 74% of completed and attempted sexual assaults against females were not reported to the police); Bonnie S. Fisher et al., *Reporting Sexual Victimization to The Police and Others: Results from a National-Level Study of College Women*, 30 CRIM. JUST. & BEHAV. 6, 7 (2003) (“Results from the National Crime Victimization Survey (NCVS) have consistently shown that rape and sexual assault have been the most widely underreported violent crimes.”). For additional reporting statistics, *see also*, Kristen M. Budd et al., *Deconstructing Incidents of Campus Sexual Assault: Comparing Male and Female Victimization*, 27 SEXUAL ABUSE: J. RES. & TREATMENT 1 (2017); Marjorie R. Sable et al., *Barriers to Reporting Sexual Assault for Women and Men: Perspectives of College Students*, 55 J. AM. C. HEALTH 157 (2006).

33. SOFI SINOZICH & LYNN LANGTON, U.S. DEP’T OF JUSTICE, RAPE AND SEXUAL ASSAULT VICTIMIZATION AMONG COLLEGE-AGE FEMALES, 1995–2013, at 1, 1 (2014), [<https://perma.cc/EB6N-SFC3>] (citing National Crime Victimization Survey data compiled from 1995–2013).

34. *Id.*

35. Fisher et al., *supra* note 32, at 24.

more likely to report sexual victimization to the police than to university-affiliated officials.³⁶

Because the rates of reporting are so low, much research has been done in order to understand why.³⁷ Most frequently, studies focus on the characteristics of the victim and the characteristics of the incident. For example, males are less likely to report victimization than females.³⁸ Younger victims are less likely to report than older victims.³⁹ Furthermore, known psychological barriers to reporting include shame, guilt, fear of retaliation, and fear of not being believed.⁴⁰ With respect to the characteristics of the crime, the victim's relationship to the offender, the victim's uncertainty of the seriousness of the offense, and the use of alcohol and drugs all have been shown to reduce the reporting of incidents to authorities.⁴¹

Unwillingness to seek assistance is likely justified, given that at many colleges and universities complaints against perpetrators of sexual violence have gone unnoticed. For instance, a recent study of 440 four-year colleges and universities conducted at the request of U.S. Senator Claire McCaskill found that more than 40% have not conducted *even a single investigation* into sexual misconduct in the past five years.⁴² Moreover, for 9% of schools in the national sample, including 21% of

36. Briana M. Moore & Thomas Baker, *An Exploratory Examination of College Students' Likelihood of Reporting Sexual Assault to Police and University Officials: Results of a Self-Report Survey*, J. INTERPERSONAL VIOLENCE at 9 (Feb. 24, 2016) (DOI: 10.1177/10886260516632357) [<https://perma.cc/NM5X-PET8>] (showing results that students were more likely to report sexual assaults to the police than to university officials).

37. See, e.g., *id.* at 11 (examining the willingness to report sexual victimization among college women); KREBS ET AL., THE CSA STUDY, *supra* note 1, § 5 (comprehensive national survey of campus sexual assault describing prevalence rates and characteristics associated with reporting); Budd et al., *supra* note 32, at 7 (exploring the characteristics of campus sexual assault incidents that come to the attention of the police, with an emphasis on the differences between incidents involving male versus female victims); Krebs et al., *Disclosure of Sexual Assault at HBCUs*, *supra* note 1, at 3644–60 (describing prevalence rates and characteristics associated with reporting at HBCUs).

38. Sable et al., *supra* note 32, at 158–159.

39. Fisher et al., *supra* note 32, at 30.

40. KREBS ET AL., THE CSA STUDY, *supra* note 1, at 5–24. Findings showed that significantly fewer incidents of sexual assault were reported when the victim did not think that it was serious enough to report, did not think the police would think it was serious enough, had fear of being treated poorly, and did not think anything could be done to the assailant. Sable et al., *supra* note 32, at 158–159 (explaining important barriers to reporting included shame, guilt, and embarrassment, fear of retaliation, and fear about not being believed).

41. KREBS ET AL., THE CSA STUDY, *supra* note 1, at 5–24; Sable et al., *supra* note 32, at 159.

42. DeMatteo et al., *supra* note 8, at 229; McCaskill, *supra* note 13, at 1, 8.

private schools, the number of sexual offenses reported to the Department of Education is higher than the number of investigations reported.⁴³ This is an indication that proper steps may not be taken to address sexual violence, even when university authorities are aware of the problem. Accordingly, reluctance to report sexual misconduct to university authorities may reflect a justifiable lack of confidence in the system.

C. Adjudicating Sexual Assault on Campus

In a university setting, sexual assault typically is considered to be a violation of the student code of conduct.⁴⁴ Codes of conduct are essentially agreements between the institution and its students regarding the behavior that is expected of students while they are affiliated with the university. Ideally, these documents also describe the policies and procedures associated with violations of universities policies. Campus disciplinary procedures differ greatly across institutions, and policies may even vary within a particular institution depending on the type of behavior alleged. For example, at a number of universities, academic infractions are treated with less severity than other kinds of serious behavior.⁴⁵

In general, victims of sexual assault file complaints alleging violations of the student code of conduct with an institution's Title IX coordinator or the office of student affairs.⁴⁶ Ideally, the accused student then receives notice of the complaint and is given an opportunity to respond. In some cases, the university investigates the allegations by interviewing the parties and any witnesses involved.⁴⁷

Universities may hold hearings during which panels consisting of students, faculty, and/or staff evaluate credibility based upon the

43. McCaskill, *supra* note 13, at 8–9.

44. HEATHER M. KARJANE ET AL., EDUC. DEV. CTR., INC., *CAMPUS SEXUAL ASSAULT: HOW AMERICA'S INSTITUTIONS OF HIGHER EDUCATION RESPOND* 130 (2002).

45. Nancy Chi Cantalupo, *Burying Our Heads in the Sand: Lack of Knowledge, Knowledge Avoidance, and the Persistent Problem of Campus Peer Sexual Violence*, 15 LOY. U. CHI. L.J. 205, 235 (2011); Henrick, *supra* note 28, at 81–82 (describing disparate treatment of accused athletes); Tara N. Richards, *An Updated Review of Institutions of Higher Education's Responses to Sexual Assault: Results from a Nationally Representative Sample*, J. INTERPERSONAL VIOLENCE at 19, 24 (July 10, 2016) (DOI: 10.1177/0886260516658757).

46. Anderson, *supra* note 22, at 1973; KARJANE ET AL., *supra* note 44, at 132; Matthew R. Triplett, *Sexual Assault on College Campuses: Seeking the Appropriate Balance Between Due Process and Victim Protection*, 62 DUKE L.J. 487, 492 (2012); Richards, *supra* note 45, at 11–12.

47. Henrick, *supra* note 28, at 77.

evidence presented.⁴⁸ Additionally, as a result of the SaVE Act, institutions of higher education are required to train officials adjudicating disciplinary proceedings annually on issues related to dating violence, domestic violence, and sexual assault.⁴⁹ Moreover, most schools follow the recommendation of the Department of Education by using the preponderance of the evidence standard, which is the standard of proof used in most civil litigation cases.⁵⁰ If it is determined that it is more likely than not that the accused student violated the code, then that student will be held responsible, and the university will issue some sort of punishment. Common penalties include expulsion, suspension, and mandated no-contact between the victim and the responsibility student.⁵¹

1. RIGHTS AFFORDED STUDENTS INVOLVED IN UNIVERSITY DISCIPLINE

Arguably due process is the embodiment of how we as a country think about what is fair and reasonable with respect to the manner in which decisions that have the potential to have an effect on substantive rights should be made. Due process is a critical concept associated with the American legal system because it describes individuals' protection against the deprivation of "life, liberty, or property" by government entities.⁵² That is, citizens involved in criminal cases have the right to be represented by attorney, the right to remain silent in the investigation and in hearings, and the right to confront the witnesses against them, among other things.⁵³

Students involved in discipline at the university level are not entitled to any of the aforementioned protections that are required in criminal cases.⁵⁴ In fact, courts have found that students at institutions

48. See generally Triplett, *supra* note 46, at 492.

49. Rachel Marshall, *Will it Really SaVE You? Analyzing the Campus Sexual Violence Elimination Act*, 6 LEGIS. & POL'Y BRIEF 271, 282–83 (2014); see also Violence Against Women Reauthorization Act, PUB. L. NO. 113-4, 127 Stat. 54 § 304(a)(5) (2013) (codified as amended at 20 U.S.C. § 1092(f)(8)(B)(iv)).

50. Anderson, *supra* note 22, at 1973–74; Triplett, *supra* note 46, at 18.

51. KARJANE ET AL., *supra* note 42, at 120–21; Richards, *supra* note 45, at 19; Henrick, *supra* note 28, at 90.

52. U.S. CONST. amend. V; U.S. CONST. amend. XVI, § 1; Anderson, *supra* note 22, at 1974.

53. Niki Kuckes, *Civil Due Process, Criminal Due Process*, 25 YALE L. & POLICY REV. 1, 18–19 (2006); Triplett *supra* note 46, at 489–98.

54. For instance, most colleges do not offer students an opportunity to be represented by an attorney, do not guarantee a right to an unbiased tribunal, and do not protect the right to confront witnesses against them in the same way one might expect

of higher education have, when compared with the criminal system, comparably limited procedural due process rights.⁵⁵ Violations of university codes of conduct may constitute criminal behavior; however, when this behavior is reported to the university, it is handled in a way that is more analogous to a civil action.

In the 1961 landmark case *Dixon v. Alabama State Board of Education*,⁵⁶ the Supreme Court stated with respect to due process that public school disciplinary systems should, among other things: (1) provide notice that contains a statement of the specific charges; (2) hear both parties in detail; (3) provide the accused with the names of witnesses against him; and (4) provide an oral or written report on the facts to which the witnesses testify.⁵⁷ Pursuant to the SaVE Act, now schools must also provide both the accused and the accuser with the opportunity to be accompanied by an advisor of their choice and the same opportunity as others to present witnesses.⁵⁸ Moreover, when addressing conduct violations, institutions must follow their own stated policies, state contract law, state and federal constitutional law, federal education laws, and the oversight and guidance of federal government agencies.

Despite legal mandates, some colleges and universities fail to meet even the most basic expectations under the law. For example, Title IX has been interpreted to require institutions to address sexual violence in a prompt and equitable manner by providing “adequate, reliable, impartial, and prompt” investigation of complaints “and include the opportunity for both [the complainant and alleged perpetrators] to present witnesses and other evidence.”⁵⁹ However, a 2002 study found that just 70% of schools reported having a *judicial system* or *grievance procedures*.⁶⁰ Similarly, less than half of four-year public schools and less than one-fourth of four-year private schools reported using an *information gathering or investigative process*.⁶¹ Likewise, fewer than 40% of schools that have disciplinary procedures guarantee due process

in connection with a criminal hearing. See Anderson, *supra* note 22, at 1989; Triplett *supra* note 46, at 497–98.

55. Donald D. Gehring, *The Objectives of Student Discipline and the Process That's Due: Are They Compatible?*, 38 HIGHER EDUC. & STUDENT AFF. FAC. PUB. 466, 471–72 (2001); Triplett *supra* note 46, at 498.

56. 294 F.2d 150 (1961).

57. *Dixon*, 294 F.2d at 158–159; Gehring, *supra* note 55, at 472.

58. Richards, *supra* note 45, at 5.

59. U.S. DEPT. EDUC. OFFICE FOR CIVIL RIGHTS, QUESTIONS AND ANSWERS ON TITLE IX AND SEXUAL VIOLENCE 25 (2014), [<https://perma.cc/FLV4-6BZT>].

60. KARJANE ET AL., *supra* note 44, at xii.

61. *Id.*

for the accused.⁶² For instance, nearly 40% of schools with disciplinary processes fail to notify the accused of the existence and the nature of a complaint against him or her.⁶³

The backlash that resulted from the Obama administration's response to campus sexual assault has not been insignificant. Recently, the Trump administration's leader for the Department of Education's Office of Civil Rights, Candice E. Jackson, made clear that she believes that Title IX investigations have gone awry in that the rights of accused students are too often ignored.⁶⁴ Similarly, numerous open letters have been posted by legal scholars urging the OCR to revise its guidance regarding campus sexual assault.⁶⁵ In particular, scholars argue that by requiring schools to lower the culpability threshold to the preponderance of the evidence standard, disallowing direct cross examination, limiting the role of legal counsel, and adopting broad and vague definitions of sexual harassment, the OCR has helped to create a disciplinary system that severely and unfairly disadvantages accused students.⁶⁶

2. FACTORS INFLUENCING THE ADOPTION OF FAIR POLICIES

Institutions of higher education are justifiably confused with respect to the scope of what is required in order to create fair and reasonable disciplinary systems. Schools lack clarity with respect to how best to define punishable conduct. Furthermore, while there are increasingly more campus disciplinary cases decided by the judiciary, courts make determinations on a case-by-case basis, which can make it difficult for college and university administrators to determine whether rulings are generalizable to their particular set of circumstances. These determinations may be even more difficult for private colleges and universities because of the lack of guidance from the courts regarding when due process is applicable given that they are often considered to be non-state actors and the fact that contract law, which governs their adjudicatory procedures, varies widely both across and within states.

62. *Id.*; HEATHER M. KARJANE ET AL., U.S. DEP'T JUSTICE, *SEXUAL ASSAULT ON CAMPUS: WHAT COLLEGES AND UNIVERSITIES ARE DOING ABOUT IT* 10 (2005), [<https://perma.cc/7CD7-4SX3>].

63. KARJANE ET AL., *supra* note 44, at xii.

64. Doug Lederman, 'A New Day at OCR,' *INSIDE HIGHER ED.* (June 28, 2017), [<https://perma.cc/J2AP-WEKV>].

65. Anderson, *supra* note 22, at 1944, 1984–85; Jake New, *Due Process and Sex Assaults*, *INSIDE HIGHER ED.* (May 17, 2016), [<https://perma.cc/2SNK-F45E>].

66. New, *supra* note 65.

Competing interests influence an institution's ability to implement fair and reasonable policies to address sexual misconduct.⁶⁷ There are far more consequences for a college or university that fails to punish a student that is responsible for sexual assault than if the school punishes a student unfairly. For instance, victims of sexual assault, pointing to "nonexistent, inadequate, irresponsible, or offensive investigations,"⁶⁸ have been more successful in suing colleges and universities for violating their rights under Title IX than accused students who have done the same by arguing breach of contract or violations of due process.⁶⁹ Lax treatment of alleged perpetrators increases the risk that the school will be subjected to a number of potentially avoidable consequences, which includes the creation of an unsafe and hostile environment.⁷⁰ Financially, the school is at increased risk of losing federal funds and of losing donor support in response to negative media attention.⁷¹ This is not to say that the most effective means to address campus sexual assault involves an exclusive focus on the victim. Schools are equally responsible for providing an education free from discrimination for those who are accused of sexual misconduct, unless and until it can be shown that these students have forfeited their rights by their actions.

Creating an equitable and fair system is in everyone's best interest. For the accused student, a fair system may include the right to be represented by an attorney, the right to have their case decided by an unbiased tribunal, and the right to confront the witnesses against them.⁷² Accusers may be most invested in a justice system that moves quickly, informally, and protects their anonymity by allowing them to avoid confrontation with the accused.⁷³ Ultimately, schools must balance the need for accurate outcomes with the cost of achieving those outcomes.

67. Kelly Alison Behre, *Ensuring Choice and Voice for Campus Sexual Assault Victims: A Call for Victims' Attorneys*, 65 *DRAKE L. REV.* 293, 332–33 (2017) (noting that within any sexual assault investigation, there are three different parties with distinct interests: the college, the suspect, and the victim); Emily D. Safko, *Are Campus Sexual Assault Tribunals Fair?: The Need for Judicial Review and Additional Due Process Protections in Light of New Case Law*, 84 *FORDHAM L. REV.* 2289, 2302–05 (2016).

68. Behre, *supra* note 67, at 336.

69. *Id.* at 323–24; Safko, *supra* note 67, at 2316–17.

70. Safko, *supra* note 67, at 2305.

71. *Id.*

72. *Id.* at 2304.

73. *Id.*

II. PROCEDURAL JUSTICE AS A FRAMEWORK FOR DECISION-MAKING

OCR has long interpreted Title IX as requiring colleges and universities to respond equitably to reports of sexual misconduct.⁷⁴ According to Secretary Betsy DeVos, the current system for handling sexual assault has failed to ensure fairness for victims and for those accused of sexual assault.⁷⁵ Notably, less than half (49.2%) of students participating in the Campus Climate Survey responded that it was very or extremely likely that a fair investigation would occur if sexual misconduct was reported to university officials.⁷⁶ Likewise, just 44.6% of students thought that it was likely that a report to campus authorities would lead to punishment for the offender.⁷⁷ It is imperative that universities develop a framework for decision-making that can balance a number of competing interests within the context of sexual misconduct.

A. *Why Student Cooperation Matters*

Efforts to reduce sexual violence on campus will not be successful without the ongoing support and cooperation of students.⁷⁸ In this context, cooperation involves reporting suspicious and dangerous activities to the authorities and working with the authorities when asked.⁷⁹ When reports are not made to authorities, resources are less likely to be directed to where they are most needed. Furthermore, if college students do not assist the authorities, sexual assaults will go unreported and it is less likely that offenders will be apprehended or deterred.⁸⁰

74. Anderson, *supra* note 22, at 1973.

75. Susan Svrluga & Nick Anderson, *DeVos Decries 'Failed System' On Campus Sexual Assault, Vows to Replace It*, WASH. POST (Sep. 7, 2017), [<https://perma.cc/7GNT-MRTJ>].

76. DAVID CANTOR ET AL., THE ASS'N OF AM. UNIVS., REPORT ON THE AAU CAMPUS CLIMATE SURVEY ON SEXUAL ASSAULT AND SEXUAL MISCONDUCT 39 (2015), [<https://perma.cc/XW89-HPJX>].

77. *Id.*

78. Kristina Murphy, *Public Satisfaction with Police: The Importance of Procedural Justice and Police Performance in Police-Citizen Encounters*, 42 AUSTL. & N.Z. J. CRIMINOLOGY 159 (2009) (noting that effective policing requires the ongoing support and voluntary cooperation of the public).

79. TOM R. TYLER, JURY PSYCHOLOGY: SOCIAL ASPECTS OF TRIAL PROCESSES 37 (Joel D. Lieberman & Daniel A. Krauss eds., 2009).

80. Stacey J. Bosick et al., *Reporting Violence to the Police: Predictors Through the Life Course*, 40 J. CRIM. JUST. 441, 441 (2012).

Underreporting suggests that there is a crack in the relationship between the public and the authorities.⁸¹ Considerable evidence suggests that behavior towards authorities is shaped by whether citizens perceive the authority to be legitimate.⁸² Without trust and confidence in the authorities, citizens do not voluntarily contact or assist the authorities with investigations. For example, in a 2003 study examining citizen behavior toward the police, Jason Sunshine and Tom Tyler found legitimacy to be the strongest predictor of compliance with the law, cooperation, and empowerment of the police, even after accounting for perceptions of police effectiveness and the fair distribution of services across people and communities.⁸³

Likewise, the pursuit of justice and trust in university officials' abilities were cited by Briana Moore and Thomas Baker as the strongest indicators of willingness to cooperate. The perception is that students report sexual assault only "if they believe that campus judicial procedures will hold perpetrators accountable by providing adequate sanctions."⁸⁴ Procedural justice theory suggests that by creating a disciplinary system that is perceived to be fair by students, schools would increase the likelihood that students would be willing to participate in the efforts to reduce sexual violence on campus by reporting crimes and cooperating with authorities when asked.⁸⁵

B. What is Procedural Justice Theory?

Procedural justice theory is used to explain why people are willing to cooperate with authorities and respect authorities' decisions. As proposed by Tom Tyler, procedural justice connects perceptions of fairness with cooperation and respect through legitimacy or trust in an

81. *Id.*

82. See, e.g., Mike Hough et al., *Procedural Justice, Trust, and Institutional Legitimacy*, 4 *POLICING* 203, 207 (2010) ("[P]olice legitimacy is a powerful predictor of compliance, even holding constant personal morality."); Jonathan Jackson et al., *Why Do People Comply with the Law? Legitimacy and the Influence of Legal Institutions*, 52 *BRIT. J. CRIMINOLOGY* 1051, 1062 (2012); Jaehee Park, *Fuzzy Relationships: Procedural Justice and Citizen Cooperation in Developed and Developing Countries*, 40 *VA. POL'Y REV.* 33, 38 (2013); Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 *L. & SOC'Y REV.* 513, 513–14 (2003); Tom R. Tyler & Steven L. Blader, *The Group Engagement Model: Procedural Justice, Social Identity, and Cooperative Behavior*, 7 *PERSONALITY & SOC. PSYCHOL. REV.* 349, 353 (2003).

83. Sunshine & Tyler, *supra* note 82, at 534.

84. Moore & Baker, *supra* note 36, at 10.

85. Angela F. Amar et al., *Administrators' Perceptions of College Campus Protocols, Response, and Student Prevention Efforts for Sexual Assault*, 29 *VIOLENCE & VICTIMS* 579, 580 (2014).

institution's authority.⁸⁶ According to the procedural justice perspective, citizens accept and cooperate with authorities when they trust those authorities because they perceive their process for setting disputes as fair.⁸⁷ Procedural justice refers to the fairness with which authorities make decisions and the theory emphasizes the perceived fairness of the process for making decisions.

Procedural justice judgments are a reflection of citizens' evaluations of the process by which authorities make decisions.⁸⁸ When evaluating the fairness of procedures, people tend to consider "those aspects of procedures that affect the way in which decisions are made and those that determine the type of treatment that they experience as individuals."⁸⁹

According to Steven Blader and Tom Tyler,⁹⁰ the focus on procedural characteristics is related to the value of this information with respect to the ability to evaluate outcomes.⁹¹ Specifically, an appraisal of the quality of decision-making provides information that can be used to determine whether the outcome was justified.⁹² For example, John Thibaut and Laurens Walker⁹³ found that people were accepting of less favorable outcomes so long as the process that lead to those outcomes was fair.⁹⁴ In an effort to explain these findings, Thibaut and Walker argued that individuals assess fairness by examining the amount of control that they are given over the process.⁹⁵ In particular, it was suggested that individuals are more likely to view the decision-making

86. Sunshine & Tyler, *supra* note 82, at 534–35; Tom R. Tyler, *Social Justice: Outcome and Procedure*, 35 INT'L J. PSYCHOL. 117, 119–20 (2000).

87. Tom R. Tyler, *Procedural Justice*, in JURY PSYCHOLOGY: SOCIAL ASPECTS OF TRIAL PROCESSES 25, 37 (Joel D. Lieberman & Daniel A. Krauss eds., 2009); Steven L. Blader & Tom R. Tyler, *A Four-Component Model of Procedural Justice: Defining the Meaning of "Fair" Process*, 29 PERSONALITY & SOC. PSYCHOL. BULL. 747, 748 (2003); Lyn Hinds & Kristina Murphy, *Public Satisfaction With Police: Using Procedural Justice to Improve Police Legitimacy*, 40 AUSTRAL. & N.Z. J. CRIMINOLOGY 27, 28 (2007); Tyler, *supra* note 86, at 119.

88. Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities*, 6 OHIO ST. J. CRIM. L. 231, 239 (2008).

89. Blader & Tyler, *supra* note 87, at 755.

90. Blader & Tyler, *supra* note 87.

91. *Id.* at 748.

92. *Id.*

93. See generally JOHN THIBAUT & LAURENS WALKER, *PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS* (1975).

94. Rebecca Hollander-Blumoff, *The Psychology of Procedural Justice in the Federal Courts*, 63 HASTINGS L.J. 127, 136–37 (2011); Tyler, *supra* note 86, at 119.

95. Hollander-Blumoff & Tyler, *supra* note 89, at 10

process as fair, if they perceive that they had a voice and an opportunity to be heard.⁹⁶

Relatedly, Gerald Leventhal highlighted six objective criteria used to evaluate procedural fairness.⁹⁷ Fair procedures are *consistent* across persons and time.⁹⁸ Decisions should be made with *accurate* information.⁹⁹ The process should be *representative* of the values of all of the important stakeholders.¹⁰⁰ Decision-makers should be *unbiased*. Processes should be *ethical*. And, decision-making processes should be *correctible* in the event of mistakes.¹⁰¹

Likewise, procedural justice judgments can be understood in terms of how the procedures impact the relationships between individuals and authorities. According to E. Allan Lind and Tom R. Tyler,¹⁰² procedural information helps people evaluate their social environment.¹⁰³ People focus on the relational aspect of process because it is, in a sense, a form of communication between individuals and authorities about status.¹⁰⁴

Policies and procedures provide information about the status of the group, the individual's position or status within the group, and whether the group is one with which the individual should identify.¹⁰⁵ These identity judgments then shape an individual's attitudes, values and behavior towards the group. In particular, individuals who identify with the group are more likely to respond positively to unbiased, dignified and respectful treatment by authorities.¹⁰⁶ For example, students who identify with their university are more likely to report higher academic

96. Blader & Tyler, *supra* note 87, at 748.

97. Victor D. Quintanilla, *Human-Centered Civil Justice Design*, 121 PENN STATE L. REV. 745, 768 (2017) (citing Gerald S. Leventhal, *What Should Be Done with Equity Theory? New Approaches to the Study of Fairness in Social Relationships*, in SOCIAL EXCHANGE: ADVANCES IN THEORY AND RESEARCH 27 (Kenneth J. Gergen et al. eds., 1980)). *See also* Blader & Tyler *supra* note 87, at 748.

98. Quintanilla, *supra* note 97, at 768.

99. *Id.*

100. *Id.*

101. *Id.*

102. *See generally* E. ALLAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* (Melvin J. Lerner ed., 1988).

103. *Id.* at 231; Blader & Tyler, *supra* note 87, at 748.

104. Blader & Tyler, *supra* note 87, at 748.

105. *Id.*

106. David De Cremer & Steven L. Blader, *Why Do People Care About Procedural Fairness? The Importance of Belongingness in Responding and Attending to Procedures*, 36 EUR. J. SOC. PSYCHOL. 211, 213–14 (2006).

engagement in response to respect treatment by authorities.¹⁰⁷ Likewise, fair treatment implies that individuals are valued and respected members of the group and people who feel valued are more likely to behave in ways that benefit the group.¹⁰⁸

Evaluations of the process by which decisions are made have been shown to have considerable impact on the ways in which people think about and behave in response to encounters with legal authorities.¹⁰⁹ For example, more positive procedural justice judgments have been associated with positive improvements in mental health,¹¹⁰ increased willingness to cooperate with authorities,¹¹¹ and reduced rates of recidivism among juvenile and adult offenders.¹¹²

C. *Why Procedural Justice Theory?*

In the simplest of terms, a dispute-resolution or decision-making system cannot be effective if no one uses it. Accordingly, one way of assessing the effectiveness of campus disciplinary systems is to measure the extent to which students are willing to report incidents of sexual misconduct to college and university-affiliated officials. Procedural justice theory provides insight into that which may be most important with respect to shaping policies and procedures that will improve trust and encourage student cooperation in the efforts to reduce sexual violence on campus.

In sum, features of the decision-making system can have a significant impact on victims' willingness to come forward.¹¹³ Colleges and universities must enact policies and procedures that both comply with the law and contribute to an environment where students are encouraged to act because they trust that university officials will make

107. Heather J. Smith et al., *Everyday Interactions with University Authorities: Authority Treatment Quality, Outcome Favorability and First-Year Students' University Adjustment*, 12 GROUP PROCESSES & INTERGROUP REL. 209, 220 (2009).

108. Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation, and Engagement*, 20 PSYCHOL. PUB. POL'Y & LAW 78, 82 (2014).

109. LIND & TYLER, *supra* note 102, at 209.

110. Jenna Calton & Lauren B. Cattaneo, *The Effects of Procedural and Distributive Justice on Intimate Partner Violence Victims' Mental Health and Likelihood of Future Help-Seeking*, 84 AM. J. ORTHOPSYCHIATRY 329, 339 (2014).

111. David De Cremer & Tom R. Tyler, *The Effects of Trust in Authority and Procedural Fairness on Cooperation*, 92 J. APPLIED PSYCHOL. 639, 646 (2007).

112. See Thomas Baker et al., *Shared Race/Ethnicity, Court Procedural Justice, and Self-Regulating Beliefs: A Study of Female Offenders*, 49 L. & SOC'Y REV. 433 (2015); See also Erika K. Penner et al., *Procedural Justice Versus Risk Factors for Offending: Predicting Recidivism in Youth*, 38 L. & HUMAN BEHAVIOR 225 (2014).

113. See generally Fisher et al., *supra* note 32.

good decisions. The range of potential policy options is vast. Evidence-based guidance is needed to inform the decision-making process. By using procedural justice theory, this research contributes to a new foundation upon which methods of education and training can be built in order to improve relationships between universities and their students.

III. EXPERIMENTAL TESTS OF THE APPLICATION OF PROCEDURAL JUSTICE THEORY TO CAMPUS SEXUAL ASSAULT

The experiments described here investigate the proposition that students will be more likely to report sexual assault and assist authorities when asked, if they trust those authorities because they believe that the process for setting disputes is fair. The first study examined whether students perceive current disciplinary policies and procedures to be fair. The second study asked whether students' perceptions of the fairness of the policies influenced their willingness to cooperate with authorities in sexual misconduct cases.

A. Pilot Study: How Do Students Perceive the Disciplinary Policies That Affect Them?

No published study has directly asked students how they felt about policies and procedures that govern sexual misconduct hearings. Accordingly, this first experiment sought to determine the extent to which students believe that the processes used by colleges and universities to adjudicate sexual misconduct cases are just and appropriate. Relevance and practicality were the bases for choosing the policies and procedures presented to the participants. The goal was to balance reality with experimental constraints. Policies tested included those that are currently in use by colleges and universities and those that schools must decide whether to implement. For example, students were asked to report on whether hearings to decide responsibility for sexual misconduct cases should be open or closed because approximately 6% of institutions of higher education, including 13% of the nation's largest public universities, hold hearings that are open to the public.¹¹⁴

The promise of due process as described by the Fifth and Fourteenth Amendments is inextricably tied to the administration of justice. Accordingly, the selection of policies and procedures for examination also involved choosing those that were most related to

114. KARJANE ET AL., *supra* note 44, at 115; McCaskill, *supra* note 13, at 95.

constitutional protections. The items examined reflect the range of options from which schools have to choose. For example, participants were asked to report separately on whether it is fair for students to be allowed to have an attorney, a non-attorney advisor, or to be required to be their own advocates in sexual misconduct cases.

In this first study, it was also deemed important to determine whether opinions about the fairness of the process differed depending upon students' roles and corresponding perspectives in the disciplinary process. As illustrated by the recent backlash against Obama-era policies, rhetoric on the subject of how colleges and universities handle sexual misconduct tends to be forceful and unbalanced. Talk of reform has a propensity to address the needs of the alleged victim or the obligations towards alleged perpetrators, but not both.¹¹⁵ Underlying the theory of procedural justice is the idea that it is important to consider the views of those most affected by it. In this instance, the accusers and those accused of sexual misconduct are among those with the greatest interest in how the disciplinary system works.

Method. Study 1 focused on measuring the extent to which students perceive the policies and procedures used by colleges and universities to adjudicate sexual misconduct claims as fair. Using a between-subjects experimental design, this study also examined whether perceptions of fairness differed by perspective.

Participants. Two-hundred and twenty students (93 young women, 127 young men) enrolled at a university in the Mid-Atlantic region in the United States completed the study in exchange for course credit. Participants ranged in age from 17 to 22 or older, with 40% reporting being aged 18. The majority of participants, 60%, identified as White; 9% identified as Black; 5% as Latino; 18% as Asian; 1% as Native-American; and 6% identified as multi-ethnic.

Materials and Procedure. Participants were directed to complete the study online. After providing consent, all participants read a prompt that described how a hypothetical university would handle allegations of misconduct. In particular, the prompt described the roles university officials play in the decision-making process. Participants were told that university officials investigate, listen to evidence, decide whether university policy has been violated, and if so, determine the proper punishment. Additionally, it was explained that punishment ranged in severity from mandatory counseling to expulsion.

Participants were asked to imagine themselves to be an accused student, a student accusing another student of sexual misconduct, or a student member of a committee charged with examining the

115. Svrluga & Anderson, *supra* note 75.

hypothetical university's sexual misconduct policies.¹¹⁶ The language of the prompt invited participants in the *accused* and *accuser* conditions to imagine themselves to be students involved in a sexual misconduct case. Participants were not specifically asked to describe the nature of the sexual misconduct they imagined. Instead, students in the *accused* and *accuser* conditions were asked to list three things they would do if they found themselves in the imagined situation.

Additionally, the *accused* and the *accusers* rated the severity of the conduct they imagined.¹¹⁷ In the *committee* condition, participants were asked to imagine that they had been chosen to serve on a university committee. Participants were told that the committee had a significant amount of power and that it was likely that any changes they recommended would be adopted. Committee condition members then listed three things they believed to be important in balancing the rights of the *accused* with the rights of the *accuser*.

Table 1

Perceived policy fairness

Disciplinary Policy	Mean (SD)
<i>Policies Deemed Unfair</i>	
Having hearings open to the public	2.52 (2.38)
Requiring parties to be their own advocates	3.12 (2.93)
Allowing parties to appear at hearings via telephone	3.64 (2.59)
Allowing voluntary participation in university investigations	4.14 (2.63)
<i>Policies Deemed Fair</i>	
Requiring participation in university investigations	5.88 (2.60)
Allowing parties to be represented by attorneys	7.32 (2.39)
Requiring parties to appear at hearings in-person	7.54 (2.22)
Having hearings closed to all but the parties involved	7.72 (2.09)

116. See generally Mark H. Davis, *Measuring Individual Differences in Empathy: Evidence for a Multidimensional Approach*, 44 J. PERSONALITY & SOC. PSYCHOL. 113 (1983); Mark H. Davis, *A Multidimensional Approach to Individual Differences*, in JSAS CATALOG OF SELECTED DOCUMENTS IN PSYCHOLOGY 85 (1983) (Rape and sexual assault are gendered crimes in that society generally thinks of women as victims and men as perpetrators. However, gender is not a sufficient proxy for determining whether views regarding fairness differ among those most directly impacted by sexual misconduct because students of any gender have the capacity to be a victim or a perpetrator. Instead, this study adapted technique developed by Davis and designed to invoke empathy for a particular role in the disciplinary process.).

117. Responses ranged from 1 (not at all severe) to 7 (extremely severe).

All participants were shown a list of policies and procedures and were then asked to evaluate the fairness of each, taking into consideration their assigned role. Fairness referred to the participants' perceptions of whether the process was just and appropriate given the circumstances. Twenty-three items assessed fairness. For each item, participants reported on whether they personally believed that the policy or procedure was fair. Responses ranged from 0 (Not at all Fair) to 10 (Extremely Fair).

Results and Discussion. This first study effectively demonstrates that students have strong opinions regarding the policies and procedures used to adjudicate sexual misconduct claims. Table 1 presents the extent to which students perceived the described policies to be fair.¹¹⁸

In consideration of the possibility that some students could be thinking of relatively minor conduct while others were thinking of sexual misconduct that was more severe, students in the *accused* and *accuser* conditions were asked to rate the severity of the conduct they imagined. Analyses showed that severity did not vary significantly by gender or by perspective.¹¹⁹

Accused students, students accusing others of sexual misconduct, and those students evaluating sexual misconduct policies as part of a committee had significantly different opinions of fairness when reflecting on a number of the policies and procedures. Of note are the results with respect to bias and direct communication. Table 2 presents these results.

Table 2

Selected Results: Fairness by Perspective

	Condition		
	<u>Accused</u>	<u>Accuser</u>	<u>Committee</u>
Familiarity Prohibited	7.57(2.57) ^a	7.64(2.38) ^a	2.03(2.43) ^b
Familiarity Permitted	2.51(2.63) ^a	2.75(2.47) ^a	8.14(2.24) ^b
Direct Communication	6.00(2.78) ^a	5.07(2.65) ^b	4.65(2.74) ^b

118. Results representing the most extreme ratings are presented here.

119. A 2 x 2 ANOVA was used to determine the main and interaction effects of perspective and gender on severity, which was measured on a scale of 1 to 7. The power to detect effects was low at 52% for perspective, 34% for gender, and 42% for the interaction. The main effect of gender and the perspective by gender interaction were not statistically significant, $F(1, 144) = 2.50, p = .116$ and $F(1, 144) = 3.04, p = .083$, respectively. The main effect of perspective was significant, $F(1,144) = 5.36, p = .022$. However, given the low amount of power, the hypotheses cannot be rejected with an acceptable level of certainty.

When asked whether it is fair to prevent members who know the parties from serving on the hearing committee, participants in the Committee condition reported levels that were statistically significantly lower than those in both the Accused and Accuser conditions.¹²⁰ Students in the Committee condition considered this policy to be unfair, $M = 2.03$, and students in the Accused and Accuser conditions considered the same policy to be very fair, $M = 7.57$ and $M = 7.64$, respectively.

Conversely, when asked whether it is fair to allow members who know the parties to serve on the hearing committee, results revealed that participants in the Committee condition reported that it was very fair to allow hearing committee members who are familiar with the parties to make decisions, $M = 8.14$, and those in the Accused and Accuser conditions reported that to do so would be extremely unfair, $M = 2.51$ and $M = 2.75$, respectively.¹²¹ Additionally, those in the Accused condition were of the opinion that allowing the parties to address each other directly during the hearing was fair, $M = 6.00$, while those in the Committee and Accuser conditions were less convinced, $M = 4.65$ and $M = 5.07$, respectively.¹²²

Importantly, these data suggest that policies and procedures used to adjudicate sexual misconduct cases vary with respect to fairness in a way may be informative for university decision-makers. At the extremes, students very clearly favor some policies over others. Moreover, the results suggest that students' preferences may differ from policy-makers. All of the prompts used in this study are based upon real policies and procedures used by colleges and universities to adjudicate sexual misconduct. Accordingly, students' expressions of discontentment with certain policies may be indicative of their dissatisfaction with the current state of the university disciplinary system.

B. Study 2: Does Fairness Influence Willingness to Cooperate by Improving Trust and Legitimacy?

The pilot study confirmed that students have strong opinions about the disciplinary policies and procedures that govern how colleges and

120. A one-way ANOVA was used to measure the effects of perspective on prohibiting familiarity, $F(2, 215) = 122.07$, $p < .001$, $\eta_p^2 = .532$, $SE = .23$, with $>99\%$ power.

121. A one-way ANOVA measured the effects of perspective on allowing familiarity, $F(2,216) = 122.13$, $p < .001$, $\eta_p^2 = .532$, $SE = .23$, with $>99\%$ power.

122. $F(2, 217) = 4.733$, $p = .010$, $\eta_p^2 = .04$, $SE = .26$, with $>79\%$ power.

universities adjudicate sexual misconduct claims. Study 2 was designed to test a theory that could help explain why these opinions matter. Specifically, this study sought to connect support for process related protections that emphasize fairness with the motivation to cooperate voluntarily with authorities. Additionally, this study examined whether perceived fairness influenced willingness to cooperate by fostering greater trust and feelings of legitimacy toward authorities.

Using a between-subjects experimental design, Study 2 focused on the variability of willingness to cooperate with university authorities. The concept of willingness to cooperate refers to the amenability to report dangerous and suspicious activities and assist campus investigators when asked. Explanations based upon procedural justice theory would predict that students would be more willing to help the university to identify potential victims and perpetrators by providing them with information if the decision-making process were perceived to be fair than if it were not.

Judgments regarding procedural justice refer to perceptions of the quality of decision-making. There were three predictions: (1) that participants would have a positive opinion of the process used for making decisions when presented with fair policies and procedures, specifically, positive procedural justice judgments would reflect the expectation that decision-makers would treat participants with respect and that the decisions would be made without bias; (2) that legitimacy (defined as trust and confidence in the university's ability to make decisions) would improve as judgments regarding procedural justice improved; and (3) that participant would be more willing to cooperate in sexual misconduct cases when asked if they trusted university authorities.

1. METHOD

Participants. Participants were 904 adults recruited from Amazon's Mechanical Turk ("MTurk"), which connects "requesters" with "workers" willing to complete tasks for a small sum.¹²³ In order to participate in the study, participants had to be college or university students, currently enrolled, or very recently graduated from an institution of higher education. Workers were eliminated from the study if they did not meet these criteria.¹²⁴ Participants completed the study in

123. Gabriele Paolacci & Jesse Chandler, *Inside the Turk: Understanding Mechanical Turk as a Participant Pool*, 23 CURRENT DIRECTIONS PSYCHOL. SCI. 184 (2014).

124. Approximately 23% of the recruited workers were eliminated because they reported that they did not attend a college or university ($N = 24$) or they attended

exchange for compensation in the amount of \$0.75. Five-hundred ninety-seven participants were included in the final sample.¹²⁵ Just over half of the sample (52.5%) identified as female.

Materials and Procedure. The materials were designed to be as realistic as possible given the controlled environment. The policies and procedures described were entirely based upon those used by colleges and universities to handle disciplinary cases. After providing consent, participants were asked to read a scenario describing how a hypothetical university might handle a case involving sexual misconduct. The prompt described the roles university officials play as part of the decision-making process. Participants were told that after sexual misconduct is reported to the university, *investigators* collect evidence and interview the parties and any potential witnesses. Additionally, the prompt explained that the *University Conduct Board* holds a hearing and then makes a decision regarding whether the accused student was responsible. Most universities use the preponderance of the evidence standard.¹²⁶ Accordingly, participants were told that the University Conduct Board decides whether it was more likely than not that the accused student violated University policy. Possible punishments described in the prompt included mandatory counseling and expulsion, which places a permanent mark on the student's transcript and removes the student from the University permanently.

Participants were randomly assigned to one of three conditions representing perspective, an accuser of sexual misconduct, an accused student, or a student committee member. The experimental manipulation of perspective was the same as that used in the pilot study with one exception. Participants in the *accused* and *accuser* conditions were asked to briefly describe the conduct that could result in the contact with university authorities described in the scenario. Participants then rated the conduct described according to severity.

A pivotal element of this study involved measuring participants' responses after being exposed to procedures considered to be either fair or unfair. Participants were randomly assigned to one of two conditions. In the *Fair* condition, participants were shown seven

college online ($N = 176$). Of those who met the study criteria, approximately 14% ($N = 100$) did not complete the survey.

125. Participants ranged in age from 18 to 45, with a mean age of 25.34 ($SD = 5.63$). Moreover, while a majority of the participants reported pursuing Bachelor's degrees (59.8%), nearly 20% reported seeking a Master's degree, 12% reported seeking an Associate's degree, and 8% were students in doctoral or professional degree programs.

126. See Anderson, *supra* note 22, at 1972–74, 1984–89.

policies and procedures the University Conduct Board would follow when making its decision. Items were taken from those policies and procedures deemed most fair in the pilot study. Opposing policies were shown to participants in the *Not Fair* condition. For instance, in the *Fair* condition, participants were told that university policy allowed parties to be represented by an attorney. On the other hand, those in the *Not Fair* condition were told that students were required to be their own advocates. Participants then described how they expected to be treated, how they might feel towards this hypothetical university, and how they might behave towards a university that adopted the same policies and procedures.

Measures. Willingness to cooperate, the primary dependent variable, was measured by asking participants to report on the extent to which they would be willing to report suspicious behavior and assist officials when asked. Participants noted their agreement with the statements presented on a scale of 0 (Strongly Disagree) to 10 (Strongly Agree). The five items measuring willingness to cooperate were combined to form a mean score, $\alpha = .91$.¹²⁷

Procedural justice judgments (i.e., perceptions of the quality of decision-making and how participants expected to be treated as part of the disciplinary process) were assessed by participants' responses about their expectations regarding how university officials would treat them and the opposing party. Responses ranged from 0 (Not at all Likely) to 10 (Extremely Likely). Eleven items measured procedural justice. Items were combined to create a mean score, $\alpha = .93$.¹²⁸

Legitimacy refers to trust and confidence in the university's ability to make decisions. Participants were asked to describe how they might think or feel about a university that has adopted the policies and procedures described in the prompt. Responses ranged on a scale of 0 (Strongly Disagree) to 10 (Strongly Agree). Seven items assessing legitimacy were combined to create a mean score $\alpha = .93$.

127. See generally Lorraine Mazerolle et al., *Procedural Justice and Police Legitimacy: A Systematic Review of the Research Evidence*, 9 J. EXPERIMENTAL CRIMINOLOGY 245 (2013); Sharon B. Murphy et al., *Police Reporting Practices for Sexual Assault Cases in Which "The Victim Does Not Wish to Pursue Charges,"* 29 J. INTERPERSONAL VIOLENCE 144 (2014).

128. See generally Steven L. Blader, *What Determines People's Fairness Judgments? Identification and Outcomes Influence Procedural Justice Evaluations Under Uncertainty*, 43 J. EXPERIMENTAL SOC. PSYCHOL. 986 (2007); Kevin Buckler et al., *Citizen Assessment of Local Criminal Courts: Does Fairness Matter?*, 35 J. CRIM. JUST. 524 (2007) (noting the items in this measure were adapted from those used by Blader, Sunshine and Tyler, and Buckler, Cullen, and Unnever); Sunshine & Tyler, *supra* note 82.

2. RESULTS

Primary Dependent Variable: Effects of Fairness on Willingness to Cooperate. A 2 x 3 between-participants analysis of variance (ANOVA) examined the main and interaction effects of *Fairness* (Fair, Not Fair) and *Perspective* (Accused, Accuser, Committee) on willingness to cooperate with authorities. Figure 1 makes it clear that participants were significantly more willing to cooperate with university authorities in sexual misconduct cases when presented with fair policies and procedures as opposed to when the participants were presented with policies that were unfair.¹²⁹ Notably, there was a main effect of gender such that young women, $M = 7.75$, were more willing to assist university authorities than young men, $M = 7.17$.¹³⁰

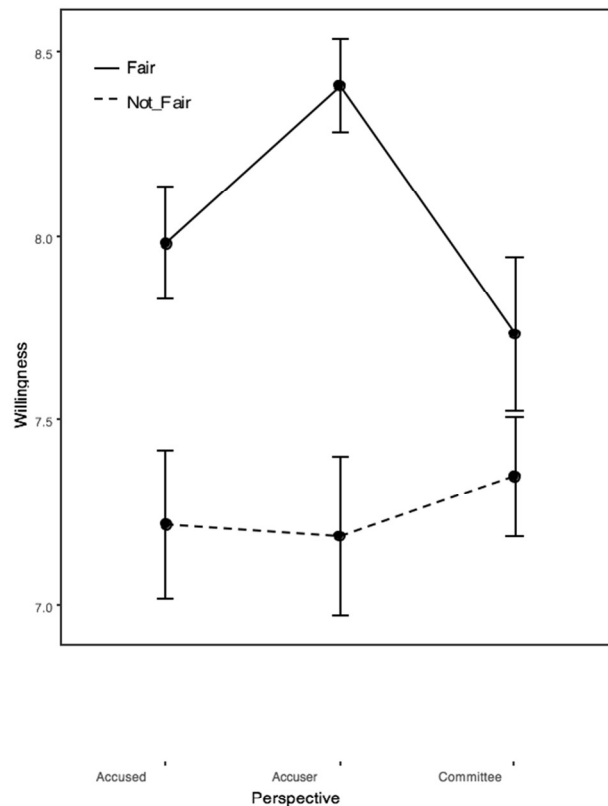


Figure 1. Means for willingness to cooperate

129. $F(1, 587) = 30.60, p < .001, \eta_p^2 = .048, SE = .09, 95\% \text{ CI } [.31, .66]$.

130. $F(1, 587) = 11.86, p < .001, \eta_p^2 = .017, SE = .18, 95\% \text{ CI } [-.95, -.26]$.

Status as an accused student, a student accusing another of sexual misconduct, or a more neutral student member of committee charged with evaluating the university's procedures did not have a direct effect on the participants willingness to cooperate with authorities, $F_s < 2.70$, $p_s > .070$. Moreover, the effect of perspective on willingness to cooperate did not vary within levels of fairness.¹³¹

Procedural Justice Judgments and Legitimacy. In order to explore the mechanisms through which fairness influences willingness to cooperate, procedural justice judgments and legitimacy were tested as possible mediators. It was expected that the results would show that experiencing a fair process would have a positive impact on participants' judgments about the quality of treatment and the quality of decision-making. Moreover, the expectation was that this positive view of procedural justice would have a positive impact on students' confidence in, and trust for, university decision-makers. Greater trust and confidence was then expected to help explain why students would be more willing to assist university officials when asked.

A serial multiple mediation model (Figure 2) was constructed in order to test the relationships among these variables. A distinguishing feature of a serial multiple mediation model is that one mediator has an effect on another.¹³² In this instance, the hypotheses suggested that procedural justice judgments would have a positive effect on legitimacy. These hypotheses were tested using structural equation modeling (SEM) with R package lavaan.¹³³ Additionally, these analyses

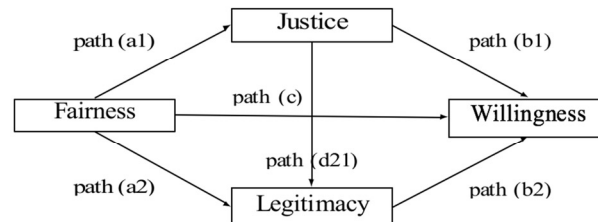


Figure 2. Serial multiple mediation model

131. One possible exception is the differences in willingness to cooperate between the accuser and committee conditions within the level of fairness. In the full model, the interaction between fairness and perspective was not significant. However, when the effect of perspective on willingness was explored exclusively within the fairness condition, post-hoc tests suggest a significant main effect of perspective. The power for this effect is slightly less than ideal at 75%, thus this effect should be replicated before inferences should be drawn.

132. ANDREW F. HAYES, INTRODUCTION TO MEDIATION, MODERATION, AND CONDITIONAL PROCESS ANALYSIS: A REGRESSION-BASED APPROACH, 143-44 (2013).

133. See generally Yves Rosseel, lavaan: An R Package for Structural Equation Modeling, 48 J. STAT. SOFTWARE 1 (2012).

followed the bootstrapping procedures described by Hayes.¹³⁴

To be consistent with the hypotheses, the following statistically significant associations needed to be present: (1) fairness and procedural justice judgments (path a1); (2) fairness and legitimacy (path a2); (3) procedural justice judgments and willingness to cooperate (path b1); and (4) legitimacy and willingness to cooperate (path b2). Additionally, it was expected that procedural justice judgments would be positively associated with legitimacy (path d21). Furthermore, if the path between fairness and willingness (path c) was fully mediated, then it would be expected to find that fairness had no statistically significant effect on willingness to cooperate independent of the proposed mediators.¹³⁵

Effects were computed from unstandardized regression weights with 10,000 bootstrap resamples. As expected, mediation analyses revealed that procedural justice judgments and legitimacy fully mediate the relationship between fairness and willingness to cooperate. Similarly consistent with the hypotheses, procedural justice judgments were positively related to legitimacy, $B = .923$, $SE = .03$, BC 95 % CI [.869, .980]. Additionally, when the indirect pathways through procedural justice and legitimacy were included in the model, the direct effect of fairness on willingness to cooperate was not significant, $B = -.002$, $SE = .17$, BC 95 % CI [-.33, .32]. In addition, there was a significant indirect effect of procedural justice judgments, $B = -.504$, $SE = .14$, BC 95 % CI [-.80, -.26]. Likewise, the indirect effect of legitimacy was significant, $B = -.131$, $SE = .05$, BC 95 % CI [-.24, -.05]. In sum, these results show that, on average, participants presented with unfair policies were significantly less willing to cooperate with authorities in sexual misconduct cases than those presented with fair policies ($M = 7.00$, $M = 7.94$, respectively). Mediation analyses indicate that nearly all of this difference (total indirect effect, $B = -.938$, $SE = .12$, BC 95 % CI [-1.84, -.72]) was explained by the effect of fairness on procedural justice, which in turn influenced legitimacy.

In light of the significant effect of gender on willingness to cooperate, gender differences with respect to the theorized model were also examined. Results revealed that for young men, the results were

134. See, e.g., HAYES, *supra* note 132; Gordon W. Cheung & Rebecca S. Lau, *Testing Mediation and Suppression Effects of Latent Variables: Bootstrapping with Structural Equation Models*, 11 ORGANIZATIONAL RES. METHODS 296 (2008); Andrew F. Hayes, *Beyond Baron and Kenny: Statistical Mediation Analysis in the New Millennium*, 76 COMM. MONOGRAPHS 408 (2009); Andrew F. Hayes & Kristopher J. Preacher, *Statistical Mediation Analysis With a Multicategorical Independent Variable*, 67 BRIT. J. MATHEMATICAL & STAT. PSYCHOL. 451 (2014).

135. HAYES, *supra* note 134; Hayes, *supra* note 134, at 414.

not consistent with our hypotheses. Legitimacy was not associated with willingness to cooperate, $p = .085$. However, when a model featuring procedural justice judgments as the sole mediator was tested, results showed that procedural justice fully mediated the relationship between fairness and willingness to cooperate with university officials.¹³⁶

Discussion. The goal of this research was to examine methods that might improve students' willingness to cooperate with university officials in their efforts to reduce sexual violence on campus. Results indicate that students would be more likely to report sexual crimes and participate in investigations into sexual misconduct if they believe that the system for handling disputes is fair. Furthermore, the outcomes suggest that willingness to cooperate with university authorities may be explained by students' responses to fair treatment and the extent to which they have confidence in and trust for authorities under certain circumstances.

Results demonstrating that the manipulation of fairness has an effect on procedural justice judgments are consistent with studies suggesting that whether citizens perceive authorities to be just depends upon how they were treated by those authorities and upon the quality of the authorities' decision-making processes.¹³⁷ The findings of this study also support other studies that indicate that greater procedural justice judgments are associated with greater cooperation and respect for decision-making.¹³⁸

Unexpectedly, there were circumstances in which legitimacy was not significantly associated with cooperation. Specifically, the relationship between legitimacy and willingness to cooperate was weaker for young men as compared with young women. For young men, legitimacy was not statistically significantly associated with willingness to cooperate. Likewise, legitimacy did not have a significant indirect effect on the relationship between fairness and cooperation. These results could be an indication that young men are less likely to trust university officials or do not intend to respect their decisions.

136. Indirect effect, $B = -.762$, $SE = .17$, BC 95 % CI [-1.35, -0.29].

137. Blader, *supra* note 128, at 987; Kristina Murphy et al., *Nurturing Regulatory Compliance: Is procedural Justice Effective when People Question the Legitimacy of the Law?*, 3 REG. AND GOVERNANCE 1, 18–19 (2009); Hiroyuki Sasaki & Yoichiro Hayashi, *Justice Orientation as a Moderator of the Framing Effect on Procedural Justice Perception*, 154 J. SOC. PSYCHOL. 251, 255 (2014); Smith et al., *supra* note 107, at 209.

138. Kristina Murphy & Tom R. Tyler, *Procedural Justice and Compliance Behaviour: The Mediating Role of Emotions*, 38 EUR. J. SOC. PSYCHOL. 652, 660 (2008); Park, *supra* note 82, at 35.

Perhaps the issue is that, for young men, legitimacy has an effect on the strength of the relationship between fairness and cooperation, rather than accounting for it. For example, in a study examining the effect of procedural fairness on trust and cooperation with authorities, David De Cremer and Tom Tyler found that the influence of fairness on cooperation depends upon the level of trust.¹³⁹ Specifically, fair procedures were much less influential when implemented by an authority that cannot be trusted as compared with the enactment of fair policies by a trustworthy authority.¹⁴⁰

Accordingly, it may be that legitimacy did not have the anticipated effect on cooperation because male students perceive that there is something inherently untrustworthy about university decision-making authorities. Likewise, the weak effect of legitimacy may reflect the opinion that universities are not equipped to handle sexual misconduct cases. The attitude that university decision-makers are not legitimate authorities in this context is possible given the ongoing debate about whether universities should handle sexual misconduct cases at all.¹⁴¹

On the other hand, the legitimacy of the policies themselves, as opposed to the individuals implementing them, could be the deciding factor. For instance, Kristina Murphy and colleagues found that overall compliance is lower when people question the legitimacy of the law.¹⁴² Future research should determine if the influence of legitimacy on cooperation differs depending on whether it refers to the legitimacy of the authority or the legitimacy of the procedures. Additionally, studies should assess whether trust is important because of its direct effect on cooperation, or because of the effect that it has on the relationship between cooperation and other important influences.

Inferences that can be drawn from these results are limited by concerns related to statistical power. In particular, based upon the results of this study it cannot be said with certainty that legitimacy has no effect because the model includes only young men. Because the gender effect is small, the study should be replicated before operating based on the conclusion that men are different than women in the given circumstances. In spite of the aforementioned limitations, the results of this study are a promising step in the right direction with respect to the viability of procedural justice theory as a model for university decision-making.

139. De Cremer & Tyler, *supra* note 111, at 646.

140. *Id.*

141. DeMatteo et al., *supra* note 8, at 229.

142. Murphy et al., *supra*, note 137.

IV. SUMMARY OF MAIN FINDINGS & CONCLUSIONS

This research represents the first steps toward developing a decision-making framework for universities as they attempt to balance victims' rights with the rights of the accused in sexual misconduct cases. Universities have failed to meet even the most basic standards, which has resulted in increased government oversight and public scrutiny. Current guidelines promulgated by government agencies may be effective, but they suffer from a lack of empirical validation. Indeed, empirical research regarding decision-making in the context of campus discipline is scarce. This project was the first to experiment with college students to experimentally examine the relationship between perceived fairness and willingness to assist university officials as they attempt to reduce the incidence of sexual violence on campus.

A. Which Policies and Procedures Do College Students Perceive to be Fair?

This work began by asking students to report on the fairness of real-world policies and procedures. All 220 participants read a prompt that described how a hypothetical university would handle allegations of sexual misconduct. They were then randomly assigned to one of three groups. Participants were asked to imagine that they were: (1) a student accused of sexual misconduct; (2) a student accusing another student of sexual misconduct; or (3) a student member of a committee charged with analyzing and reviewing the hypothetical university's sexual misconduct policies. Finally, participants were shown a list of policies and procedures and then they were asked to report on the fairness and importance of these processes under the given circumstances.

As expected, perceptions of fairness did differ significantly depending on the nature of the policy. The opportunity to have an attorney, requiring in-person participation, and requiring participation in the investigation were among those policies deemed to be most fair. Those policies considered to be most unfair included requiring students to be their own advocates, allowing the conduct hearing to be open to the public, and allowing parties to appear at the hearing via telephone. Furthermore, bias and direct communication varied according to perspective.

B. Can Procedural Justice Theory be Applied as a Framework to Assist University Decision-Making?

The results of Study 2 provide insight that could be helpful to colleges and universities as they make decisions about how to adapt

their policies and procedures in order to meet current disciplinary guidelines and standards. The purpose of Study 2 was to determine whether procedural justice theory, as explained by Tyler, could be used to understand the relationships between policies and procedures used to address sexual misconduct and students' willingness to report crime and participate in efforts to reduce sexual violence on campus.¹⁴³ Building upon the results of Study 1, Study 2 first sought to determine whether Fairness (Fair, Not Fair) and Perspective (Accused, Accuser, and Committee) influenced willingness to cooperate with university authorities. Then, Study 2 examined whether judgments about the process and impressions of university legitimacy could explain the relationship between fairness and cooperation.

Study 2's findings support the notion that procedural justice theory can be applied to understand the influence of process on cooperation in the context of the adjudication of sexual misconduct by university authorities. Results showed that while fairness had a significant impact on cooperation, perspective did not. Additionally, Study 2 found that the influence of a fair process on impressions of the procedures could explain why students were willing to assist university officials. Specifically, when presented with a fair process, participants were more likely to report anticipating that university officials would be fair, accurate, consistent, and unbiased in their decision-making. Consequently, the procedural justice judgments of those in the fair condition were associated with greater willingness to cooperate with officials, as compared with those participants in the not fair condition.

Moreover, procedural justice judgments contributed to a sense that university authority was legitimate; however, the strength of the effect of legitimacy on willingness to cooperate was weaker than expected. Importantly, for young men, legitimacy was not significantly associated with cooperation and did not account any part of the relationship between fairness and willingness to cooperate. Studies cited in support of procedural justice theory suggest that it is legitimacy that shapes cooperation with authorities.¹⁴⁴

As Anthony Bottoms and Justice Tankebe explain, citizens' acceptance that the governing entity has a moral right to exercise authority and that the decisions made by this entity are right and ought

143. Tom R. Tyler, *What is Procedural Justice? Criteria Used by Citizens to Assess the Fairness of Legal Procedures*, 22 L. & SOC'Y REV. 103, 128 (1988).

144. Anthony Bottoms & Justice Tankebe, *Beyond Procedural Justice: A Dialogic Approach to Legitimacy in Criminal Justice*, 102 J. CRIM. L. & CRIMINOLOGY 119, 125 (2012); Hough et al., *supra* note 82, at 205; Justice Tankebe, *Viewing Things Differently: The Dimensions of Public Perceptions of Police Legitimacy*, 51 CRIMINOLOGY 103, 104 (2013); Tyler & Fagan, *supra* note 88, at 234.

to be followed are what lead citizens to be willing to cooperate with such an authority.¹⁴⁵ The results of Study 2 may be an indication that it is this relationship between acceptance of authority and subsequent attitudes and behavior that is tenuous for young men. However, even if at this point in time legitimacy has less of an effect on willingness to cooperate, that fact does not preclude the possibility that legitimacy could be built up over time.

Legitimacy is valuable because it can be created and maintained by implementing policies citizens perceive to be fair.¹⁴⁶ For example, using randomized traffic stops by police, experimentally examined the influence of procedural justice (i.e., perceptions of the fairness of procedures) on police legitimacy and the extent to which these views affected satisfaction and the willingness to cooperate with police.¹⁴⁷ Results demonstrated that in the experimental condition, which asked officers to engage with citizens in a procedurally just manner, perceptions of police legitimacy were higher and citizens reported better attitudes toward the police.¹⁴⁸ This indicates that people care about fair treatment and when fair treatment exists, it is associated with greater satisfaction with the authority, trust, and legitimacy.¹⁴⁹ Accordingly, developing and implementing a fair process matters because perceptions of fair procedures affect perceptions of legitimacy, which in turn can serve as a basis for cooperation.

C. Limitations

One limitation of the study may be that the perspective manipulation may not adequately represent the perspective of someone with actual experience with accusations of sexual misconduct. Participants in all three studies were subjected to variations of the same manipulation. However, only participants in Studies 2 and 3 assigned to the accused and accuser conditions were asked to describe the conduct in the scenario that they imagined.

145. Bottoms & Tankebe, *supra* note 144, at 124.

146. Hinds & Murphy, *supra* note 87, at 28; Hough et al., *supra* note 82, at 205; TYLER, *supra* note 79, at 32–33.

147. Lorraine Mazerolle et al., *Shaping Citizen Perceptions of Police Legitimacy: A Randomized Field Trial of Procedural Justice*, 51 *CRIMINOLOGY* 33, 35 (2013).

148. *Id.* at 55.

149. Ben Bradford, *Voice, Neutrality and Respect: Use of Victim Support Services, Procedural Fairness and Confidence in the Criminal Justice System*, 11 *CRIMINOLOGY & CRIM. JUST.* 345, 346 (2011); Hough et al., *supra* note 82, at 205.

The manipulation was intended to induce empathy, so that participants, given a position that they may not have previously considered, might provide opinions. Data regarding imagined sexual misconduct was collected from nearly 900 participants. Preliminary analyses indicated that participants were adequately induced to put themselves in the position of another person. Nevertheless, given the serious nature of this scenario, it may be that people would behave very differently if they found themselves in this sort of situation in real life.

D. Implications & Future Directions

This research can significantly contribute to the ways in which we understand and address the adjudication of sexual misconduct on campus. Notably, by being the first series of studies to apply procedural justice theory to how universities handle sexual misconduct claims, this work supports a new foundation upon which methods of education and training can be built in order to improve relationships between universities and students. Likewise, by using an experimental design, the current project adds to the existing literature and sheds light on the current state of policy in this area. Because causal inferences can be drawn from the results the experiments can be replicated or adapted by universities in order to fit their needs.

Future work should delve further into the extent to which students perceive policies and procedures used to adjudicate sexual misconduct cases to be fair. Significantly, the results of this research suggest that administrators' judgments about what is fair are insufficient substitutes for students' opinions. Consequently, decisions regarding changes to university disciplinary systems must include student input. This isn't to say that schools must cater to student whims. However, research, including this project, shows that changing decision-making policies could change behavior.¹⁵⁰ Accordingly, if the goal is to encourage student cooperation in efforts to reduce sexual violence on campus, then one way to go about doing that is to consider students' perceptions of the disciplinary policies.

In addition, future studies should further explore the views and opinions of the various stakeholders involved in the decision-making system. Studies suggest that people care about the fairness of procedures because of what it says about their status in the group.¹⁵¹ In

150. Hough et al., *supra* note 82, at 205; Tracey L. Meares, *The Law and Social Science of Stop and Frisk*, 10 ANN. REV. L. & SOC. SCI. 335, 347 (2014).

151. Steven L. Blader & Tom R. Tyler, *What Constitutes Fairness in Work Settings? A Four-Component Model of Procedural Justice*, 13 HUM. RESOURCE MGMT. REV. 107, 111 (2003); De Cremer & Tyler, *supra* note 111, at 640.

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a sense, the ways in which authorities treat citizens communicates information about respect and value within the group.¹⁵² Thus, it may be that the key to understanding how to balance victims' rights with the rights of the accused lies in understanding more about stakeholders' status in the group and the extent to which this status affects their perceptions of the process.

Importantly, this work shows that fairness matters. Fair processes increase the likelihood that students will voluntarily report dangerous and suspicious activity and cooperate with university authorities when asked. Furthermore, results of this research suggest that fair procedures have a positive impact on cooperation even when the outcome of the decision-making process is unfavorable. Additionally, these studies suggest that perceived fairness generates trust and confidence in an authority's ability to make decisions. It is this sort of legitimacy that procedural justice theory argues is the critical factor necessary for creating better relationships between citizens and authorities.

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152. Tyler & Jackson, *supra* note 108, at 82.