Beyond Title IX: Exploring Justice for Survivors/Victims of Campus Sexual Assault

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Dedication

The author wishes to dedicate this research to the survivors/victims who bravely and generously shared their experiences for this research, with the hope that the results might contribute to a change in our institutions, a healing in our society, and a difference in someone else’s life. Thank you for sharing your stories.
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Abstract of Dissertation

Beyond Title IX: Exploring Justice for Survivors/Victims of Campus Sexual Assault

Campus sexual assault is a significant problem in the United States, affecting a large proportion of college students, most of whom are women. Recognizing the widespread nature of campus sexual assault and its negative impacts on students’ education, the Dept. of Education under the Obama Administration took action. In a 2011 directive known as the Dear Colleague Letter, the Office of Civil Rights (OCR) at the Department of Education outlined specific guidance on Title IX, detailing a number of policies colleges and universities that receive federal funding should enact in order to support campus sexual assault survivors/victims and maintain Title IX compliance. If students believe their school has failed to protect them from campus sexual assault, they may bring a complaint to OCR under Title IX and trigger an investigation. In 2017, the Trump Administration rescinded this guidance, though the OCR complaint mechanism remains in place.

Despite several years of enforcement, there is little research on the effectiveness of this complaint mechanism, particularly from the standpoint of those who have accessed it. This study interviews campus sexual assault survivors/victims who have filed complaints through OCR, survivors/victims who chose not to file a complaint, and university administrators. Survivor/victim advocates are also focus grouped. Through these qualitative data, this study seeks to build a theory that explains the characteristics of a relationship between survivors/victims and the Federal Government that provides survivors/victims with justice. What results is the just prevention theory, which argues
that genuine justice for survivors/victims must be pursued through the lens of prevention.
The study concludes with a set of policy recommendations to inform future policymaking
that better addresses campus sexual assault in the United States.
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Chapter 1: Introduction

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. (Title IX of the Education Amendments Act of 1972)

Each year, millions of young people in the United States leave home to pursue higher education. These students eagerly anticipate the transformative growth, both personal and academic, that comes with going away to college. Unfortunately, many of these students will soon have their college experiences, and lives, marked by sexual violence. Campus sexual assault is a significant problem in the United States, affecting a large percentage of college students, most of whom are women (Banyard et al., 2007). Campus sexual assault is a form of violence against women and girls. Violence against women and girls is recognized globally not only as a crime, but as a violation of women’s human rights (The universal declaration of human rights, 1948). In recent years, the specific act of campus sexual assault has also been recognized by the United States Federal Government as a form of education discrimination on the basis of sex. (Assistant Secretary of the Department of Education Office on Civil Rights, 2011). Public awareness campaigns (White House, 2015) and prevention tools (White House, 2017) have been developed in proportion to increasing public and governmental attention to the issue. Yet in spite of this widespread recognition, policy responses to campus sexual assault in the United States are consistently insufficient, lacking comprehensiveness and dissatisfying those seeking justice in the wake of a sexual assault (Peterson, 2016). Researchers, practitioners, and activists across the country remain in search of improved policy tools, both for the prevention of and response to campus sexual assault.
This qualitative study collects data on the experiences of survivors/victims who have sought justice, at the federal and campus levels, in the wake of a campus sexual assault. Campus administrators and survivor/victim advocates are consulted. A review of the literature demonstrates that no theory exists around survivors/victims policy relationship to the Federal Government, and how important it is to understand the nature of this relationship to provide survivors/victims with justice. Grounded theory methodology will be used to examine interview and focus group data on campus and government processes, and build a theory that explains the conditions of a relationship between survivors/victims of campus sexual assault and the Federal Government that provides survivors/victims with justice. Because the Federal Government process for addressing campus sexual assault is tied to regulating campus disciplinary processes, survivors’/victims’ experience of justice pursuing either process will be explored.

Campus sexual assault in the United States

Approximately one in five women in college in the United States will experience unwanted sexual contact before she graduates (Banyard et al., 2007). College men also experience sexual assault during their time on campus, though they experience it at a significantly lower rate (about 8.2%, or one in twelve) (Banyard et al., 2007; Krebs, 2007). These prevalence findings are borne of increased research over the past two decades to capture the scope of campus sexual assault in the United States. Measuring campus sexual assault is methodologically challenging, varying greatly based on how a study defines sexual assault, the sampling strategy of the study, and additional choices that differ among researchers (Fedina, Holmes, & Backes, 2016). Different methodologies across studies have made it difficult to compare and develop consensus on
nationwide prevalence of campus sexual assault, though studies that define and measure specific behaviors tend to mitigate some of these methodological challenges (Fedina et al., 2016). Thus, prevalence findings cited here are drawn from studies that adhere to this methodology. Researchers have described these rates as “epidemic levels” of campus sexual assault (Carey, Durney, Sheppard, & Carey, 2015). Despite this high prevalence, campus sexual assault remains a vastly underreported crime (Krebs, 2007). Only 5% of college students who experience completed rape report the incident to a security official, which is consistent with historical patterns of rape and sexual assault being the most widely underreported violent crimes (B. S. Fisher, Daigle, Cullen, & Turner, 2003). Factors that influence whether or not a victim of sexual violence reports the incident include the age of the victim (older women are more likely to report than younger women), whether or not the assailant was known to the victim (incidents with unknown assailants are more likely to be reported), whether or not alcohol was involved in the crime (incidents where alcohol was present are less likely to be reported), where the assault took place (assaults in an area unfamiliar to the victim are more likely to be reported), and the seriousness of the incident (victims with physical injury are more likely to report) (B. S. Fisher et al., 2003). The unique context of campus sexual assault sits at the intersection of many of these factors that make it less likely for someone to report an incident (i.e. young people, assailants who are known to victims, familiar locations, and the presence of alcohol).

Campus sexual assault can have far-reaching, negative impacts on the lives of those who experience it. In addition to short-term bodily injury and potential pregnancy, those who experience sexual assault are more likely to suffer from long-term mental
health consequences (including depression, thoughts of suicide, disordered eating behavior, and post-traumatic stress disorder) (Fedina et al., 2016). These long-term negative health consequences, experienced as a result of epidemic levels of campus sexual assault in the United States, make addressing this significant public health problem an urgent task for researchers, practitioners, college administrators, and governments.

Advocates have been encouraging the Federal Government to use its power to address this issue for decades. In the 1990s, Congress took a first step by passing the Clery Act, requiring all colleges and universities that receive federal funding to record and annually report all crimes committed on their campus. This includes campus sexual assault. Concurrently, policymakers and advocates were encouraging the government to use Title IX to better protect the rights of those who had been sexually assaulted on campus (McBride & Parry, 2016). Recognizing the widespread nature of campus sexual assault and its negative impacts on students’ education, the Department of Education under the Obama Administration took action. In a 2011 directive that has become known as the Dear Colleague Letter, the Assistant Secretary for Civil Rights at the Department of Education outlined specific guidance on Title IX to her colleagues within the Office of Civil Rights (OCR) (Assistant Secretary for the Department of Education Office of Civil Rights, 2011). Title IX, a section of the Education Amendments Act of 1972, states that no student attending an educational institution that receives federal funding shall be discriminated against on the basis of sex (Title IX Education Amendments of 1972, 1972). The 2011 Dear Colleague Letter specified how Title IX should now be interpreted to improve campus prevention of and response to sexual assault. As Title IX is intended
to prevent discrimination in education on the basis of sex, the release of the 2011 Dear Colleague Letter underscores that if a female student is more likely to be sexually assaulted on campus than her male peers, this constitutes sex discrimination (Assistant Secretary for the Department of Education Office of Civil Rights, 2011). Thus, colleges and universities have a duty to protect women from sexual assault in order to be Title IX compliant.

The letter detailed a number of specific actions colleges and universities that receive federal funding should implement in order to maintain their Title IX compliance. First, schools should use a lower standard of proof (preponderance of the evidence, as opposed to clear and convincing evidence) to adjudicate sexual assault cases. Second, colleges and universities should ensure the swiftness of their adjudication processes by maintaining a 60-day timeframe for the entire investigation process. Third, every college and university must have a clear policy on campus sexual assault and maintain and sufficiently publicize the mechanisms by which students can file a complaint. Fourth, every college or university must have a Title IX coordinator, whose sole responsibility it is to maintain the school’s compliance with Title IX. Finally, colleges and universities have a responsibility to be proactive in preventing campus sexual assault, and the Dear Colleague Letter outlines a few ways in which a campus might fulfill this responsibility (Assistant Secretary for the Department of Education Office of Civil Rights, 2011). The penalty for a school found in violation of Title IX, including in violation of provisions outlined in the Dear Colleague Letter, is the potential for withdrawal of federal funding (a penalty, it is worth noting, which has never been rendered based on Title IX violations related to campus sexual assault) (Edwards, 2015). There are two ways a school might
come under investigation: either through a compliance review (initiated by the OCR), or a complaint by a student against his or her campus. If a complaint is filed, it is to be investigated by the OCR, and will be resolved through one of five possible outcomes: 1) resolution agreement, 2) insufficient evidence, 3) early complaint resolution, 4) administrative closure, or 5) unknown reasons (Title IX: Tracking sexual assault investigations, 2019).

Though the release of the 2011 Dear Colleague Letter did not create the Department of Education’s OCR complaint process, its release spurred an increase of Title IX investigations resulting from campus sexual assault complaints. From April 4, 2011 to January 21, 2019, OCR conducted 502 investigations of colleges on the basis of their alleged mishandling of campus sexual assault cases. At the conclusion of the Obama Administration, 223 colleges and universities had come under Title IX investigation for their mishandling of sexual violence on campus, some of which were under multiple investigations (N. Anderson, 2017). As of this writing in early 2019, 305 investigations remain on-going, and 197 cases have been resolved (Title IX: Tracking sexual assault investigations, 2019). Current data shows that almost 100 schools have been the subject of multiple investigations (Title IX: Tracking sexual assault investigations, 2019). The top five educational institutions with the most Title IX-related OCR complaints are Cornell University (7), Princeton University (6) Stanford University (5), Indiana University at Bloomington (5), and Kansas State University (5) (Title IX: Tracking sexual assault investigations, 2019), which reflects a wide diversity of schools (e.g. geographically, public vs. private).
The average length of an OCR investigation is 2.5 years (Title IX: Tracking sexual assault investigations, 2019), though recent data from the Department of Education under the Trump Administration indicates a quickening of the pace of case resolution. While the OCR seems to be resolving cases more quickly under the Trump Administration, the way these cases are being investigated (or not investigated) and resolved seems to have shifted away from patterns under the Obama Administration. For example, by the end of 2017 in the first year of the Trump Administration, of the 11 cases the administration had resolved, seven were resolved by administrative closure (DeSantis, 2017). These seven cases under the Trump Administration represent 39% of total cases to ever be resolved by administrative closure over a period of eight years. The OCR can choose to administratively close a case if they have information that the case has already been sufficiently resolved, or if the complainant has filed a complaint through a separate judicial mechanism, fails to comply with the investigation process, or withdraws his or her case entirely (DeSantis, 2017). The downside of a case being resolved by administrative closure is that there is more opacity in how the OCR conducted the investigation, and less public documentation of the process (DeSantis, 2017). Comparatively, a case ending in a resolution agreement (by far the most common form of case resolution under the Obama Administration) provides much greater detail of investigation and findings (DeSantis, 2017). Administrative closures under the Obama Administration were rare.

It is important to note that during the course of this study the 2011 Office of Civil Rights guidance outlined in the Dear Colleague Letter was rescinded by the Trump Administration. In November of 2018, during the data analysis phase of this study, the
Department of Education released a draft version of new guidance related to the Office of Civil Rights process for handling Title IX complaints related specifically to campus sexual assault. If implemented as drafted, the new draft guidance for the Office of Civil Rights would make a few key changes to the Obama-era regulations: first, schools would be allowed to use either the clear and convincing standard of evidence or the preponderance of the evidence standard in addressing sexual assault cases. The 2011 Dear Colleague Letter had required the preponderance of the evidence standard, which is a lower standard of evidence. Second, the draft guidance raises the standard for what’s considered sexual harassment, requiring that it be severe and pervasive enough to deny a person access to education. Third, the draft guidance lowers schools’ responsibility in addressing sexual violence. Where 2011 guidance held schools responsible for conduct they knew or “reasonably should have” known about, the new draft guidance requires that a school have “actual knowledge” of sexual violence and that this actual knowledge would be in the form of a survivor/victim reporting formally to the college or university. Finally, the new draft guidance allows a representative for the accused to cross-examine the accuser (Title IX of the Education Amendments Act of 1972: Notice of Proposed Rulemaking, 2018). Because this draft guidance was released after the data collection phase, the researcher was unable to solicit reactions to this guidance in her survivor/victim and campus administrator interviews (though several participants alluded to perceived or anticipated policy changes by the Trump Administration on this issue). At the time of this study’s conclusion, the draft guidance had not yet been formally implemented.
Over the course of this research from 2017 into late 2018, the cultural and political conversation about gender-based violence (in the workplace and beyond) exploded. High-profile film mogul Harvey Weinstein was accused of abusing his power to assault dozens of actresses over the course of his decades-long career (Kantor & Twohey, 2017), unearthing a cascade of accusations against high-profile men (in Hollywood, in business, and on Capitol Hill). This broad cultural reckoning morphed into what’s become known as the #metoo movement, spotlighting the prevalence of gender-based violence (primarily but not exclusively men’s violence against women). In September 2018 after President Trump had nominated a second justice, Judge Brett Kavanaugh, to the Supreme Court, the country watched as Dr. Christine Blasey Ford testified before the Senate Judiciary Committee, detailing her high school experience of sexual assault at the hands of Judge Kavanaugh. In spite of being “terrified,” Dr. Ford described her choice to come forward with the assault as her “civic duty,” as the Senate would be deciding what behavior and character they deemed acceptable for those holding the nation’s most influential positions (Written Testimony of Dr. Christine Blasey Ford, 2018). The disproportionately white and male Senate ultimately confirmed Judge Kavanaugh to the Supreme Court, but questions about what justice means in the wake of sexual assault, and the devastating impact it has on survivors/victims, linger.

In the researcher’s interviews and focus groups, several participants noted the backdrop of the #metoo movement: how it was catalyzing change in the way campus sexual assault is now viewed and addressed. Some campus administrators hypothesized that the movement was responsible for an increase in reporting they were seeing, seemingly observing a campus-wide consciousness-raising of what behaviors are
unacceptable. Others cautioned that the movement might be swinging power too far in the other direction, condemning an alleged perpetrator on the sole basis of being accused. One survivor/victim shared that the #metoo movement had confused his ideas of justice, and that it misled people to believe that the only path to justice was to share your experience publicly. In any event, this research is now presented in a cultural context where people are more aware of the scale of the problem, the organizational power of survivors/victims, and just how many women and men hear stories of violence and are saying “me too”. In a time where federal rulemaking on campus sexual assault is in flux and under threat, evidence rooted in survivor/victim experience is desperately needed to guide future policy.

The release of the 2011 Dear Colleague Letter and the OCR complaint process offered survivors/victims of campus sexual assault a mechanism to access justice at the federal level. However, little research has been conducted to understand whether the OCR complaint process is working adequately for survivors/victims of campus sexual assault, and as intended, to provide federal redress. A single study, published in the Yale Law Review in 2016, interviewed complainants about their experience filing complaints through OCR. This study had recruited interview participants by posting in online survivor/victim forums and through personal connections. This research uncovered severe insufficiencies in the process as reported by complainants. Primarily, investigations typically took far longer than anticipated, rendering complainants delayed in their pursuit of an expedient resolution to their case (Peterson, 2016). OCR has a stated goal of investigating and resolving cases within a period of 180 days (Department of Education, 2018) but with an influx of complaints since the release of the 2011 Dear
Colleague Letter and a heavy caseload as a result, the average duration of cases is 2.5 years (about five times the length of the stated goal) (Title IX: Tracking sexual assault investigations, 2019). Complainants are only provided justice through a resolution agreement at the end of the investigation process, which is meant to thoroughly scrutinize college/university-level systemic failures to protect students from sexual violence, as outlined by Title IX and the Dear Colleague Letter. While OCR is conducting this investigation of potential failures at the systemic level, complainants are facing delays in their access to justice at the personal level, which the authors of the study argue is a way of further subjecting complainants to injustice (Peterson, 2016). Additionally, during the investigation process, complainants reported a lack of communication from OCR. This silence from investigators contributed to a lack of transparency, and an erosion of confidence on the part of complainants that their case would ever be resolved (Peterson, 2016). In sum, the authors argued that a mechanism meant to provide complainants with justice might in fact be deepening their feelings of injustice through subjection to an inhospitable, bureaucratic process. Complainants’ well-being is being abandoned in favor of rooting out systemic failure at the college/university-level (Peterson, 2016). This study is currently the only piece of research that interviews those who have experienced campus sexual assault and filed a complaint through OCR. More research is needed to more fully understand how complainants experience the OCR process, how it addresses (or fails to address) the needs of complainants, and whether Title IX and/or policy mechanisms like it is the appropriate means by which justice is delivered to those who experience sexual violence on campus.

*The goals and significance of this study*
This dearth of information on the OCR complaint process offers an opportunity for important new research. The purpose of this study is to explore the mechanisms for accessing justice in the wake of a campus sexual assault, including the OCR complaint process in the Department of Education, through the lens of those who have accessed them, and those who chose not to access them. The OCR complaint process cannot be well understood without exploring on-campus disciplinary processes, which are often the first stop of survivors/victims before pursuing an OCR complaint. This study examines whether survivors/victims of campus sexual assault believe that on-campus processes and the OCR complaint process provide adequate justice, and investigates how this process might be improved. Overall, this study asks if and how the Federal Government can be used to provide justice for those who have experienced campus sexual assault. The four primary research questions of this study are as follows:

1. **How does the OCR complaint process under Title IX work to resolve campus sexual assault complaints (both before and after the Trump Administration rescinded the 2011 Dear Colleague Letter)?**
   a) Does Title IX do what it is supposed to do within the context of campus sexual assault?
   b) Do people access the OCR complaint system?
   c) What, if any, are the differences in how complaints are handled before and after the rescinding of the Dear Colleague Letter?

2. **How do survivors/describe their experiences with the Title IX complaint process in terms of justice?**
   a) What do complainants expect out of a relationship with the Federal Government
when they are seeking justice in the wake of a campus sexual assault?

b) How do survivors/victims define justice?

3. **How is the university response to campus sexual assault cases perceived and/or experienced differently as compared to the response to other kinds of discrimination cases and/or crimes, both by survivors/victims and campus administrators?**

   a) Why does it appear the process to access justice is less satisfactory for campus sexual assault survivors/victims as compared to other disciplinary processes?

   b) How do college/university administrators describe differences in the response processes between campus sexual assault cases and other kinds of on-campus discrimination cases or crimes?

   c) If relevant, how do survivors/victims perceive response to campus sexual assault cases to be different from other kinds of discrimination cases and/or crimes?

4. **What should the role of the Federal Government be in providing access to justice to those who have experienced campus sexual assault?**

   a) Do survivors/victims support policies that strengthen justice at the federal/state/local government levels, or rather, believe campus systems should be strengthened and standardized?

   b) How can policy be used effectively to address a personal injustice?

This study sought to answer these research questions using qualitative methods: the researcher conducted unstructured interviews with survivors/victims who have filed OCR complaints, and also with survivors/victims who chose not to file OCR complaints but may have accessed another justice mechanism. The researcher also conducted semi-
structured interviews with college/university administrators who work on campus sexual
assault, and focus groups with advocates who assist survivors/victims, sometimes with
filing complaints through the OCR process or during an on-campus disciplinary process.
The data collected from interviews with survivors/victims (both those who chose to file
an OCR complaint, and those who did not), is most useful in answering research
questions 1, 2 and 4. Though these interviews with survivors/victims also help answer
research question 3, interview data collected from college/university administrators (who
see a wide range of discrimination cases and crimes on their own campuses) may best
answer how campus sexual assault is handled differently from other kinds of
discrimination cases and crimes. Focus groups with survivor/victim advocates
contributed to answering all four research questions, given advocates’ close work with
survivors/victims (sometimes helping them file OCR complaints).

    Grounded theory methodology is used to explore the nature of a relationship
between the Federal Government and those who experience campus sexual assault that
provides the latter with justice. With the resulting interview and focus group data, the
researcher developed a theory that explains the necessary policy conditions to provide
justice to campus sexual assault survivors/victims. It is important to note that, because
this is a grounded theory study, the richness of the data led the direction of the resulting
analysis and conclusion. During this process, the research questions were reconceived
based on where the richest data emerged, and some research questions became more
important than others. The methodology of this study and how the research focus evolved
is explained in greater detail in Chapter 3.
This study is significant for myriad reasons. First, campus sexual assault is an urgent problem, affecting a high proportion of college students. Any problem impacting the health and education of American college students at “epidemic levels” (Carey et al., 2015) constitutes a critical focus for research and policy. Campus sexual assault is also a uniquely underreported crime. Though those who experience campus sexual assault typically tell someone (most often a friend) about the incident (B. S. Fisher, Cullen, & Turner, 2000), less than 5% will report the incident to police (B. S. Fisher et al., 2000; B. S. Fisher et al., 2003). As mentioned above, there are many reasons why survivors/victims are unlikely to report campus sexual assault. Thus, confidence in the ability to successfully access justice would have to be high in order to compel a person to report in spite of these oppositional forces. Research that can improve mechanisms for justice and heighten faith in the institutions that administer this justice might consequently increase levels of reporting. This increase in reporting would connect more people who have experienced campus sexual assault with institutions and mechanisms that can provide them with justice.

And what is the significance of justice? The presence of justice has a variety of positive impacts, from the individual level to the global level. Conversely, the absence of justice can be harmful to individuals, communities, societies, and nations. At the individual level, public health researchers have identified access to justice as a social determinant of health, finding direct links between access to civil justice and health outcomes (Nobleman, 2014). There are a few pathways by which researchers make this connection, including justice as a way to access health care that can improve health.
outcomes and the creation of alliances that can be used for social advocacy (Nobleman, 2014).

In addition to individual level impacts, access to justice is a basic human right, and necessary to the full and equitable development of nations. The 2015 United Nations Sustainable Development Goals outline 17 goals with specific targets for member states to achieve by the year 2030 (United Nations, 2017a). The Sustainable Development Goals succeed the Millennium Development Goals, both of which laid out an ambitious agenda for global development. Sustainable Development Goal 16 calls for “the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels” (United Nations, 2017a). This prioritization of access to justice in the global community speaks to its importance in a developed world. Development economists have also commented on the importance of justice to the health of nations. Amartya Sen writes in his foundational book, Development as Freedom, that the economic development of nations is reliant on more than the increase of incomes and commodities. Rather, true development is the result of peoples’ ability to access a set of freedoms. Sen outlines many kinds of freedoms that are essential to development, including freedoms related to human rights and the access of justice. Without any of these freedoms, Sen argues, nations will fail to develop and poverty and inequality will endure (Sen, 1999).

The study of campus sexual assault is also important as the presence of violence against women and girls in any form signifies persistent inequality between men and women. Feminist activists and scholars across disciplines have demonstrated how violence against women and girls, including sexual violence, inhibits the full equality and
participation of women in society. Second wave feminists were instrumental in pulling the problem of rape and other forms of sexual violence out of the shadows of private life and into the daylight of public discourse (McBride & Parry, 2016). This reframing of sexual violence from a personal problem to a societal problem, reflective of a gender imbalance of power, allowed it to be more aggressively addressed by researchers and policymakers. Indeed, scholars have since analyzed the problem of sexual violence through a variety of disciplinary lenses. In her book *The Political Economy of Violence Against Women*, Jacqui True builds a powerful argument connecting political and economic structures that reproduce inequalities between men and women to the presence of violence (True, 2012). This political economy approach, True argues, “makes explicit the linkages between the economic and the social and political” (True, 2012). True gives examples from around the world to make the case that a changing global economy and politics exacerbates existing gender inequalities. One of these examples is the emasculation men face as they lose work in the globalizing economy. True explains how men may use violence against their partners to reaffirm a dominant position of which they feel robbed when they lose work (True, 2012). True asserts that there exists no place in the world where women have fully equal economic and political participation to men, and correspondingly, that violence against women and girls affects people from across economic and political strata worldwide (True, 2012).

Feminist legal scholars offer yet another perspective on how entrenched global gender inequality creates an environment for rape, and how laws have evolved to address this inequality. Despite more widespread fear of violence at the hands of a stranger, feminist legal scholars have pointed out that a leading cause of injury for women in the
United States has always been abuse at the hands of someone she knows (Morrison Torrey, 1995). Rape law has long contended with philosophical questions around consent (who can give it, when, and how), which are questions made more complicated when the perpetrator is known to the victim (Morrison Torrey, 1995), as is often the case in instances of campus sexual assault. Carol Pateman, a feminist political philosopher, argues in her article “Women and Consent” that “consent as ideology cannot be distinguished from habitual acquiescence, assent, silent dissent, submission, or even enforced submission. Unless refusal of consent or withdrawal of consent are real possibilities, we can no longer speak of ‘consent’ in any genuine sense” (Pateman, 1980).

Rape is connected inherently to consent, which scholars like Pateman believe cannot be separated from the “habitual acquiescence” and “submission” that are a function of women’s gender status. Thus, rape is a demonstration of the gendered power imbalance in sexual decision-making. Interestingly, legal solutions to rape have also reflected this gendered imbalance of power in the United States. Rape law has often focused more closely on the actions of the victim (both during and after the rape) than the perpetrator (Morrison Torrey, 1995), putting an implicit burden of proof on the person who was violated (most often female) rather than the person who did the violating (most often male). This reflects a gender imbalance of power that is fundamental to rape, threaded through both causes and solutions.

Sociologists, and specifically criminologists, have also observed relationships between gender inequality and sexual violence. In a study on the relationship between sociopolitical power and rape, criminologist Richard R. Johnson found that in nations with higher rates of women’s participation in politics and society, there are also higher
rates of rape and fewer rapists are punished with arrest (R. R. Johnson, 2014). Johnson argues that this relationship exists as a result of male backlash to women’s political power, exerted through “formal and informal methods of social control (including the act of rape and the neglect of rape cases) to counter the growing threat posed by women” (R. R. Johnson, 2014). Thus, men use sexual violence to maintain the gender inequality that privileges their lives and harms the lives of women. The eradication of sexual violence across contexts (including the campus context) is a necessary condition for full gender equality.

There are patriarchal social structures enforced specifically on campuses that prevent gender equality and promote rape culture. Male-dominated party culture, particularly through the Greek System, reinforces inequitable attitudes and behavior toward women. Men who are in fraternities are more likely to hold traditional views about gender roles, believe strongly in the dominance of men over women, and coerce women sexually (Jozkowski & Wiersma-Mosley, 2017). In campus party culture, men tend to dictate the themes and logistics of parties, often in a way that renders women with little control over the environment (Jozkowski & Wiersma-Mosley, 2017). Further, there remains a persistent overrepresentation of men in positions of power on college campuses despite an increase in female admissions and enrollment (Jozkowski & Wiersma-Mosley, 2017). Male dominance throughout every level on college campuses contributes to the harmful rape culture that perpetuates high rates of campus sexual assault.

This study is also significant given the specific breakdown of justice that seems to be persistent in campus sexual assault cases. The media has captured many high-profile campus sexual assault cases, seemingly mishandled by a range of actors, from the
campus administrators to government and law enforcement officials. An influx of OCR complaints with the release of the 2011 Dear Colleague Letter (Title IX: Tracking sexual assault investigations, 2019) signals an appetite for justice at the federal level, and a perceived lack of justice at previous levels. What makes campus sexual assault cases different than other kinds of discrimination cases, or crimes? First, given the feelings of shame, the persistent feeling that sexual violence is a private problem, and a host of other reasons, people who have experienced sexual violence are less likely to report it than many other types of crime or incidents of discrimination. This makes it challenging to even connect those who have experienced campus sexual assault with a process that might administer justice. However, a student may face challenges in accessing justice even if they choose to report their experience of campus sexual assault to their school. In compliance with Title IX, most colleges and universities maintain internal systems to hear and adjudicate complaints of sexual assault. However, advocates on this issue argue that these processes typically penalize more harshly survivors/victims of campus sexual assault as opposed to those who have perpetrated it. Advocates report that these mechanisms can make survivors/victims feel as if they are on trial, and limited penalties are available to sanction perpetrators, with expulsion from school being a rarity. This often puts survivors/victims in the position of having to live out their time on campus until graduation with their perpetrator (McBride & Parry, 2016). These limitations of campus mechanisms to address sexual assault leave survivors/victims without a feeling that justice has been served. How satisfying or unsatisfying the mechanisms are for addressing campus sexual assault is explored thoroughly in this study through unstructured interviews with survivors/victims.
The prevalence and urgency of the problem of campus sexual assault, the importance of access to justice to the health of individuals and societies, and the need for violence against women and girls to be eradicated in order for men and women to be fully equal all make this study significant. The research process that answers the above research questions will produce findings that improve the policies on campus sexual assault and increase the provision of justice for survivors/victims.

Definition of terms

Before beginning this study, it is important to have an understanding of the definition of terms used, and how these terms were selected. Perhaps the most central term in this research is “campus sexual assault”. Studies measuring campus sexual assault have defined it in a variety of ways, including completed or attempted rape, completed or attempted sexual coercion, completed or attempted sexual contact with force or the threat of force, and completed unwanted sexual contact without the threat of force (B. S. Fisher et al., 2000). This study will use the term campus sexual assault to refer to any of, or any combination of, these behaviors.

This study will explore the concept of justice for campus sexual assault survivors/victims. Yet how is justice defined? In the 20th century, Philosopher John Rawls pioneered the idea of justice as fairness in his influential work *A Theory of Justice*, and goes on to refer to justice as the “first value of social institutions” that promotes equal human rights for all people in a society, particularly the least advantaged (Rawls, 2005). Justice as a theoretical concept is explored in greater detail in Chapter 2. This study, however, seeks to define justice through the eyes of survivors/victims of campus
sexual assault. The theory of justice developed from these data reflects how these individuals define justice in their own lives and experiences.

An important choice of this study was how to refer to those who have experienced campus sexual assault. A debate persists between the word “victim” and “survivor”. The latter became widely used after reflection that the term “victim” may not capture a full range of experiences, and may not reflect the empowered way a person views herself. Some scholars have argued that people who have experienced sexual violence should be referred to as just that: a “person/man/woman who has experienced violence” (Partners for Prevention, 2013). This removes any limits placed by language on a person’s experience. Guided by the terminology choices of public health scholars Mary Koss and Mary Achilles, this study uses the term “survivor/victim”. Koss and Achilles argue that this term helps “to retain the empowerment conveyed by the word ‘survivor’ and the outrage implied by the word ‘victim’” (M. Koss & Achilles, 2008). It is also a clear and more consistent term for a reader to follow. During interviews, however, space was given for participants to define themselves with the terminology they deemed appropriate.

Conclusion

Campus sexual assault is an urgent problem at colleges and universities across the United States. Activists, researchers, and policymakers have increased their focus on solutions to this problem in recent decades. Though policymakers have made little progress in addressing campus sexual assault at the federal level, one step forward has been the Title IX OCR complaint process in the Department of Education, as promoted by the 2011 Dear Colleague Letter. The Dear Colleague Letter (and the resulting OCR complaint process) was a policy effort in an adversarial political landscape to even the
playing field for people who have experienced a uniquely traumatizing and underreported crime. This process has been in place for several years, and like any enduring policy, researchers should rigorously evaluate it so that it may be improved or changed, and so that better policy can emerge. More broadly, future policymaking in this area should be informed by increased knowledge of what survivors/victims of campus sexual assault are seeking from their government with regard to justice. What does justice mean to them? What should the relationship between survivors/victims of campus sexual assault and the Federal Government look like? What is expected out of this relationship by the survivors/victims? How might this policy relationship be improved?

This study sought to answer these questions through in-depth qualitative research, and using grounded theory methodology to build a theory of justice for survivors/victims of campus sexual assault. The right to be free of discrimination on the basis of sex is recognized by the United States government (Assistant Secretary for the Department of Education Office of Civil Rights, 2011), and the right to access justice is recognized globally as a basic human right (United Nations, 2017a). This research is undertaken with the ultimate goal of building knowledge that further affirms and protects women’s fundamental human rights.

In this study I find that both on-campus disciplinary processes and the OCR complaint process fail to meet the justice needs of survivors/victims. Survivors/victims describe these processes as too lengthy, with little communication from those administering them and low transparency. Though justice was reported as a highly individual concept, justice was broadly defined by survivors/victims as including accountability of and remorse on the part of the perpetrator, freedom for
survivors/victims on campus and in their lives, being believed, and a fair process that isn’t tilted in favor of the perpetrator. Strikingly, survivors/victims consistently viewed justice through the lens of prevention, and voiced the desire to know another person would not suffer in the way they had. The findings of this research will inform the development of future policies that better address the needs of this population.
Chapter 2: Review of the Literature

Recognizing the impersonality of law, the survivor is to some degree relieved of the personal burden of battle. It is the law, not she, that must prevail. By making a public complaint or accusation, the survivor defies the perpetrator’s attempt to silence and isolate her, and she opens the possibility of finding new allies” (Herman, 2015)

This study set out to explore the characteristics of a relationship between survivors/victims of campus sexual assault and the Federal Government that administers justice to survivors/victims. This exploration sits at the intersection of questions at the individual, community, society, and global levels, and in answering these questions relies on scholarship across a variety of distinct academic disciplines. The ecological framework is useful in organizing this scholarship. The ecological framework is a multidimensional conceptualization of phenomena through different levels that interact with one another, and in the case of intimate partner violence these levels include: the individual level, the relationship level, the community level, the society level, and the larger society level (see Figure A) (Heise, 1998). The ecological framework was developed initially to better understand the causes of child neglect and child abuse, and was adapted by women’s health researcher Lori Heise to better understand intimate partner violence (Heise, 1998). To adequately prevent and respond to intimate partner violence, Heise argues, researchers and practitioners must address violence at every level of the ecological framework.
This framework has since been adapted by other scholars researching violence against women and girls, who have argued for a global dimension to be added to Heise’s existing model to reflect a more interconnected and globalized world (see Figure B) (Fulu & Miedema, 2015).
This study draws from literature and concepts that inform each level of the social ecological model (including the global level), and this chapter is organized as such. For the purposes of this study, which focuses on campus sexual assault and not intimate partner violence, the “relationship” level is omitted. A “relationship” in this context would not be constituted similarly in an intimate partner violence context as compared to a campus sexual assault context, and many considerations at the relationship level of this study would overlap strongly with the community level factors. Thus, this study first reviews literature that considers factors affecting campus sexual assault at the individual, community, society, and global levels.

Building a theory to characterize a just relationship between survivors/victims and the government requires bridging the answers to questions at each of these levels (from the individual, all the way through the global context) to inform future policy. Failure to
adequately address the issue of campus sexual assault will have ramifications throughout each of these interconnected levels, underscoring the importance of this research. In campus sexual assault, as has often been true in the struggle for women’s human rights, the “personal is political” (Hanisch, 1970).

**Individual level**

In building a theory of justice for campus sexual assault survivors/victims, it is important to understand individual-level forces that impact this sense of justice. Medical and sociological theory around trauma and resilience are instructive in understanding how survivors/victims heal in the wake of a sexual assault, and what role access to justice plays in this healing.

Medical sociologist Aaron Antonovsky has contributed groundbreaking scholarship on the relationship between stress and health, exploring in his research why some people are better equipped to heal and move on from traumatic experiences than others. His research takes what he calls a salutogenic approach, meaning that he is interested less in the factors that cause disease, and more interested in factors that promote health (Antonovsky, 1979). Antonovsky writes about the relationship between mental health stress and negative physical health outcomes, and tries to understand what better safeguards human beings against stress in order to maintain better health (Antonovsky, 1987). The answer, Antonovsky argues, is not that some people encounter less stress in their lives, as all human beings encounter traumatic and difficult experiences over the course of a lifespan. What, then, is the predictor of someone’s ability to manage that stress effectively and maintain good health? In studying the relative resilience of human beings, Antonovsky pioneered a concept called the “sense of coherence”
Antonovsky defines sense of coherence as “a global orientation that expresses the extent to which one has a pervasive, enduring though dynamic, feeling of confidence that (1) the stimuli deriving from one’s internal and external environments in the course of living are structured, predictable, and explicable; (2) the resources are available to one to meet the demands posed by these stimuli; and (3) these demands are challenges, worthy of investment and engagement” (Antonovsky, 1987). Sense of coherence has three main components, as outlined in this definition: comprehensibility, manageability, and meaningfulness. Comprehensibility refers to a person’s ability to perceive stimuli in their lives as making sense, consistent, predictable, and able to be explained. Even in stressful situations, people who have a high degree of comprehensibility are able to make sense of these events as predictable and explicable (Antonovsky, 1987). The second component of sense of coherence is manageability. Manageability refers to a person’s level of confidence that they have resources at their disposal to confront the challenges they face in life (Antonovsky, 1987). In other words, a person with high manageability has a belief in their own ability to cope with life events. Resources one draws upon to enhance manageability may include the person’s faith, a network of loved ones to lean on for support, trust in governing institutions, and confidence in medical professionals (Antonovsky, 1987). The third and final component of sense of coherence is meaningfulness. Meaningfulness ensures that when a person confronts stressful stimuli, that person views the event as worthy of emotional investment. This does not mean the person enjoys the stressful event, but that they are “determined to seek meaning in it, and will do his or her best to overcome it with dignity” (Antonovsky, 1987). These three components –comprehensibility, manageability, and
meaningfulness – constitute a strong sense of coherence. Repeated life events that reinforce these components (which Antonovsky calls generalized resistance resources) strengthen a person’s ability to cope with stressful events and trauma (Antonovsky, 1987), which for the purposes of this research would include coping with the trauma of campus sexual assault.

In reviewing Antonovsky’s concept of sense of coherence through the lens of policy that addresses the needs of campus sexual assault survivors/victims, one might ask: was the policy interpretation of Title IX as outlined in the 2011 Dear Colleague Letter contributing to survivors/victims’ sense of coherence? What might federal policy look like that enhances rather than degrades a campus sexual assault survivor’s/victim’s comprehensibility, manageability, and meaningfulness in a way that allows them to heal? The Federal Government could not conceivably be held responsible for providing the repeated life events, or generalized resistance resources, that Antonovsky argues build up a person’s sense of coherence over a lifetime. However, this framework may be useful in understanding how the consistent presence and implementation of government law and policy over a lifetime might enhance these three components, and make a survivor/victim better equipped to cope with an assault. More specifically, this framework also raises the question of how reliable access to justice in the wake of a campus sexual assault enhances these three components, and a survivor’s/victim’s sense of coherence.

The scholarship of psychiatrist Judith Herman on trauma is also explanatory in understanding how survivors/victims heal from gender-based violence. Speaking from years of research and experience in a clinical setting, Herman writes that people who experience trauma typically experience recovery in three main stages: the establishment
of safety, remembrance and mourning, and reconnection with ordinary life (Herman, 2015). In the first stage of establishing safety, Herman argues that it is important for the survivor/victim to name the source of the trauma, thereby facing and recognizing the problem. Restoring control to a survivor/victim in the wake of trauma is also essential in the first stage of establishing safety (Herman, 2015). Once a survivor/victim feels safe, they can move on to the second stage of recovery, which is remembrance and mourning. In this stage, survivors/victims are encouraged to tell the story of their trauma in detail. Herman argues that a survivor/victim “reconstructing the story” of their trauma is essential in transforming it from a traumatic memory to a part of the survivor/victim’s larger life story (Herman, 2015). In remembering and recounting their trauma, the survivor/victim is also mourning the loss of the person they were before the trauma took place (Herman, 2015), another key step within the second stage of recovery. The third and final stage of recovery, Herman argues, is reconnection with ordinary life. Now that the survivor/victim is operating from a strong, safe home base, has remembered and spoken out truthfully about her trauma, and has mourned the loss of the person she was before the trauma took place, she can re-enter the world as her new self. Reconnecting with the world is essential in the wake of trauma, as Herman describes: “Helplessness and isolation are the core experiences of psychological trauma. Empowerment and reconnection are the core experiences of recovery” (Herman, 2015). This new engagement in the world may include what Herman calls “finding a survivor mission” (Herman, 2015). This survivor mission is a way for survivors/victims to transcend their trauma by transforming it into a project that benefits others. This survivor mission may include the pursuit of justice, as Herman argues in the passage below:
The survivor mission may also take the form of pursuing justice...She recognizes that the trauma cannot be undone and that her wishes for compensation or revenge can never be truly fulfilled. She also recognizes, however, that holding the perpetrator accountable for his crimes is important not only for her personal well-being but also for the health of the larger society. (Herman, 2015)

Justice, in this case, becomes a key element of a survivor’s/victim’s recovery. Judith Herman’s work on trauma and recovery, particularly for survivors/victims of violence against women, has remained central in contemporary conversations on trauma (Schneider, 2008). Judith Herman offers a framework for trauma recovery that is useful for understanding the importance of access to justice for survivors/victims of campus sexual assault.

Both Antonovsky’s and Herman’s work on trauma provide a strong theoretical framework for pursuing research questions about justice for survivors/victims of campus sexual assault. Interview questions to research participants will seek in part to understand how the OCR complaint process under Title IX, or other justice processes pursued by the survivor/victim, did or did not contribute to a survivor/victim’s sense of coherence (as per Antonovsky) and promote and undergird a survivor’s/victim’s stages of recovery from their trauma (as per Herman). This study begins under the premise that policies that achieve these two individual-level goals are best able to provide survivors/victims with a sense of justice.

Community level

In analyzing the issue of campus sexual assault, the “community” in this case would represent the campus community. A key presence on campus communities across the United States is rape culture. The term rape culture has been in use in feminist circles since the 1970s (Harding, 2015), but has recently gained popular discursive traction,
particularly in reference to the issue of campus sexual assault. Rape culture is deeply embedded in our social world as “a complex of beliefs that encourages male sexual aggression and supports violence against women… In a rape culture women perceive a continuum of threatened violence that ranges from sexual remarks to sexual touching to rape itself. A rape culture condones physical emotional terrorism against women as the norm” (Buchwald, Fletcher, & Roth, 2005). Rape culture works by restricting a woman’s sense of ownership over her own body, and perpetuating the myth that others are entitled to it at their will (Troost, 2008). It is affirmed through the dissemination and repetition of myths about women’s sexuality, bodily autonomy, ability to consent, and culpability in their own assaults (Harding, 2015). These myths have constructed a culture in which men and women experience sexuality differently, both in public and in private spaces. Where women are shamed for consensual and non-consensual sexuality, men are often rewarded (Harding, 2015). Rape culture allows for a world where women are regarded negatively (and sometimes labeled pejoratively, with words like “slut”) for being sexually assaulted, while high profile, celebrity men can be convicted of sexual assault and still be embraced by pop culture, appearing in cameos in popular movies and TV shows. Within rape culture, women are culpable for any sexual violation that befalls them (Gourley, 2016).

Rape culture is a necessary condition of campus sexual assault. If rape culture cultivates an expectation (or at least tacit acceptance) of violence against women, this explains why survivors/victims are so infrequently and unwillingly believed when they come forward about their experiences, and why college campuses’ responses to these crimes range often from apathy to incompetence. The presence of rape culture separates policy responses to campus sexual assault from policy responses to other kinds of
discrimination cases (in education or the workplace), and also from policy responses to other kinds of physical assault cases. Rape culture shapes popular opinion both around the survivors/victims of these crimes (is she telling the truth?) and the perpetrators of these crimes (is this really worth ruining his life over?). It is difficult to imagine a world where policymakers would consistently question whether a victim of an armed robbery is telling the truth, or if the armed robber should really have his/her life ruined to be punished for his/her crime. The disparity in responses to campus sexual assault as compared to other kinds of crime is also manifested in rates of reporting: sexual assault remains a vastly underreported crime as compared to other kinds of violent crime (B. S. Fisher et al., 2003).

Rape culture, and the violence it perpetuates, is being addressed to varying degrees on campuses across the country through prevention programs. Campus-based prevention programs focus heavily on bystander intervention, though other prevention programs that seek to change norms and attitudes (e.g. theater-based programs, healthy masculinity programs that target men only) are also being conducted in the United States (Ellsberg, Ullman, Blackwell, Hill, & Contreras, 2018). Exploration of the possibility of bystander intervention is important given the crucial role that male peer support plays in the perpetuation of men’s violence against women on college campuses (Schwartz & DeKeseredy, 1997). Yet a disproportionate focus on bystander intervention as prevention of campus sexual assault has hindered researchers’ and policymakers’ understanding of what interventions work to actually reduce sexual assault. Bystander interventions are overrepresented in the body of campus sexual assault prevention interventions that have been rigorously evaluated in the United States. These bystander interventions do
demonstrate positive impacts, but the evaluations are typically using bystander behaviors as dependent variables as opposed to sexual assault perpetration or victimization (Ellsberg et. al., 2018). Thus, though bystander interventions are being widely employed on college campuses in the United States and seem to be increasing bystander behaviors, it’s unclear whether this is actually leading to a reduction in campus sexual assault. Further, the disproportionate focus on bystander intervention as prevention of campus sexual assault may be suppressing the widespread development, adoption, and evaluation of other prevention programs that meaningfully work to reduce violence.

Campuses have also established their own disciplinary processes to address sexual assault. These processes vary from campus to campus, but are guided by federal recommendations from the Department of Education (the 2011 Dear Colleague Letter being the primary form of guidance during the Obama-era, but which has since been rescinded). On-campus disciplinary processes have tended to fall into one of three buckets: either a single person investigates all the facts of the case and either makes or recommends a finding (investigative model), or the facts of the case are presented to an on-campus hearing panel, that can be comprised of a mix of on- and/or off-campus participants (disciplinary-hearing model). Some campuses have a mix of these two approaches (hybrid model) (Smith, 2017). There is little evidence to suggest which of these three approaches best protects the rights of survivors/victims, and offers them justice.

A project of this research is to understand how rape culture intersects with the personal experience of trauma that follows a sexual assault, for the purpose of understanding what policy measures might remedy the injustice caused by this
intersection. This research seeks to understand how rape culture shapes both the problem of and solutions to campus sexual assault. Rape culture serves as an impetus for these crimes, but rape culture also impacts the policy responses and their implementation. If rape culture must be targeted to prevent violence from occurring, it must also be targeted and addressed in the solutions that have been developed to administer justice to survivors/victims. The fight against rape culture must be embodied and embedded in policymaking around campus sexual assault.

Social level

At the society-level, a review of the impact of federal policymaking in relation to campus sexual assault is instructive. Though serious and urgent consideration of campus sexual assault specifically at the policy level in the United States is a relatively new phenomenon of the last decade, Title IX and the 2011 Dear Colleague Letter are not the only federal-level policy responses to campus sexual assault. This section summarizes other federal efforts to address the needs of survivors/victims of campus sexual assault, and situates the 2011 Dear Colleague Letter (explained in detail in Chapter 1) and subsequent federal action within this chronology.

Federal action on violence against women and girls that impacts the current policy response to campus sexual assault stretches back decades. As mentioned previously, the Clery Act was passed in 1990, and required colleges and universities to report all crimes taking place on their campuses, including sexual assault (McBride & Parry, 2016). Two years later in 1992, Congress enacted the Campus Sexual Assault Victims’ Bill or Rights (as part of the Higher Education Amendments Act of 1992), which required campuses to outline a foundational set of rights to survivors/victims of sexual assault. It also required
camperes to make information on a survivor/victim’s ability to report their assault (Congress.gov, 1992). This legislation would lay the foundation for actions two decades in the future.

In 1994, the Violence Against Women Act (VAWA) was passed. Its passage is owed to the persistence and pressure of the women’s movement, and in part to the leadership of then-Senator Joe Biden. The bill took a variety of measures that made punishment harsher for perpetrators, and strengthened support for survivors/victims. This included the creation of funding mechanisms that support a national hotline for domestic violence survivors/victims, shelters, the training of law enforcement, legal relief for survivors/victims, and other services (Obama White House, 2017). In 2013, the Violence Against Women Act was reauthorized. This reauthorization took place after the release of the 2011 Dear Colleague Letter (explained in Chapter 1), and under the Obama Administration, which had made campus sexual assault a clear priority (White House, 2014; White House, 2015). The 2013 reauthorization of the Violence Against Women Act included a new focus on campus sexual assault. Specifically, it legislated funding for grants that could be used specifically to combat violence on campus. These grants are administered through the Office on Violence against Women in the Department of Justice, and primarily fund response services to survivors/victims of sexual harassment, sexual assault, stalking, and dating violence on campus (Congress.gov, 2017b).

Since the 2011 Dear Colleague Letter, which was an innovative turning point in the efforts of the Federal Government to provide protections and justice to survivors/victims, and the 2013 reauthorization of VAWA, a few pieces of legislation have been introduced in Congress that address the issue of campus sexual assault directly.
One of these efforts is the Campus Accountability and Safety Act, which was introduced by a bi-partisan group of 37 senators in 2015. The bill requires increased resources for campus sexual assault response, a greater standardization and transparency in university judicial processes, and greater penalty enforcement for non-compliance with Title IX and the Clery Act (Congress.gov, 2017c). Despite wide bi-partisan support, the bill died in committee and was never passed. A more successful legislative effort was the Survivors’ Bill of Rights Act, which was passed unanimously by the House of Representatives and Senate in 2016. This bill implemented greater legal protections for survivors/victims of sexual assault, including specific regulations on the preservation of rape kits through the statute of limitations on the crime, and required notification of the survivor/victim if the kit is to be destroyed, or of the results of any forensic examination of the kit. This legislation sought to lighten the burden on survivors/victims as they navigate the legal system in the wake of an assault (Congress.gov, 2017a). In April 2017, another bi-partisan group of senators introduced the Campus Accountability and Safety Act. The bill, if passed, would be the farthest-reaching legislation on campus sexual assault passed at the federal level. The Campus Accountability and Safety Act requires an annual, national survey of college campuses that assesses campus climate and rates of campus sexual assault, increases services and protections for survivors/victims, requires a minimum level of training on campus sexual assault prevention for students, and increases the coordination of campuses with local law enforcement(Congress.gov, 2017d). The bill has been introduced but not yet been referred to committee. Progress has also been made in the legislative branch in the form of thematic task forces. Also in April 2017, Representative Annie Kuster (NH-07) announced the development of the
Bipartisan Task Force to End Sexual Violence in the House of Representatives. In a press release from her office, Representative Kuster (one of four bi-partisan leaders of the Task Force in the House of Representatives) explained that “this task force will work across party lines to make sure we help those who need help, provide resources to our law enforcement to solve these heinous crimes and educate those who are unaware of how this violence impacts our society” (Kuster, 2017).

Recent actions under the Trump Administration’s Department of Education have put the implications of the 2011 Dear Colleague Letter on unsteady footing. On September 22, 2017, Secretary of Education Betsy DeVos announced that the Department of Education would be rescinding the 2011 Dear Colleague letter, arguing that its guidance had tilted the balance of justice away from the accused (Saul & Taylor, 2017). Though the rescindment of this guidance does not put an end to the OCR complaint process, it would seem to make it less likely that complaints will be investigated thoroughly and ruled in favor of the survivor/victim who has filed a complaint against his/her campus, given the relaxing of campus standards on sexual assault inherent in this rescindment. An additional concern is the potential chilling effect this rescindment of the 2011 Dear Colleague Letter may have on survivors’/victims’ reporting of campus sexual assault, as it is possible this action signifies a lack of belief in survivors/victims’ experiences, or a belief that perpetrators have been too unfairly treated. In 2018, the Department of Education released new proposed OCR guidance for campuses to address campus sexual assault (Title IX of the Education Amendments Act of 1972: Notice of Proposed Rulemaking, 2018). Though this new guidance has not yet been implemented, the guidance would significantly roll back protections for
survivors/victims, and increase the power of accused perpetrators in on-campus disciplinary processes. These recent policy changes speak to a climate in which it’s perhaps more important than ever to have rigorous policy research on the appropriate federal mechanisms to administer justice to survivors/victims of campus sexual assault.

The above evolution of federal policymaking related to campus sexual assault reflects an increased political attention to this issue over time. Broadly considered, the passage of Title IX in 1972 is seen as a radical shift in education policymaking in the United States from one that was gender blind or neutral, to one that is gender conscious and sought to level the educational playing field for women (Rose, 2015). Other scholars have noted that the 2011 Dear Colleague Letter is best positioned as a recent step in a longer-term, historical fight, led by the women’s rights movement, to view the right to be free of sexual violence (including in education) as a civil right in the United States (Tani, 2017). Less is known, however, about the effect Title IX (and the subsequent 2011 Dear Colleague Letter) is having on campus sexual assault and the people who experience it. Only a single study (Peterson, 2016) has been published which seeks to understand the effectiveness of the OCR complaint process (made visible by the 2011 Dear Colleague Letter) from the perspective of survivors/victims that have accessed it. This study yielded preliminary findings that indicated the OCR complaint process is less than satisfactory for survivors/victims, as it is lengthy and relatively cold, as investigators from the OCR fail to communicate with complainants regularly as the process goes on (Peterson, 2016).

Though this is the only piece of research that analyzes the effectiveness of Title IX in addressing campus sexual assault, scholars have noted other impacts Title IX has had in higher education with regard to campus sexual assault. For example, federal
policymaking on this issue has invested increasing power in colleges and universities
to define what constitutes campus sexual assault, and how the institution responds. Due to
the broad definition of campus sexual assault under the 2011 Dear Colleague Letter
guidance, campuses have often used “sexual violence”, “sexual harassment”, and “sexual
misconduct” interchangeably, which has bred confusion about what behaviors actually
constitute a violation under Title IX among both students and administrators (Wies,
2015).

One of the most striking results of the 2011 Dear Colleague Letter, however, has been the movement around campus sexual assault in the United States that has sprung up as a direct result of its release. Advocacy groups have been strengthened and born in the post-2011 era, and have engaged directly with OCR to best respond to the needs of survivors/victims (Tani, 2017). With this increased advocacy spurred by the 2011 Dear Colleague Letter has also come criticism. Scholars note a corresponding increase in concern expressed for due process for those accused of campus sexual assault (Corbin, 2017), and how the broad guidance of the 2011 Dear Colleague Letter might curtail the civil liberties of these individuals by enforcing stricter on-campus policies. Other legal scholars (noting the pushback of some colleges/universities to this more stringent set of sexual assault-related policies) conversely argue for the appropriateness of these stricter policies (Edwards, 2015), citing the fact that (1) stricter policies do not mean that campuses will need to fill a quota of investigations, rather they are evaluating their campuses based on compliance, (2) a preponderance of the evidence standard is, in fact, appropriate as compared to a clear and convincing evidentiary standard, given that fundamental rights are not being foreclosed upon in on-campus sexual assault judicial
proceedings, and (3) that on-campus judicial proceedings around campus sexual assault (as guided by Title IX) are not meant to supplant a potential criminal proceeding, but rather offer a separate mechanism tailored to on-campus justice (Edwards, 2015). Legal scholars have also questioned whether the 2011 Dear Colleague Letter goes far enough: it does not require a uniform process for reporting, investigating, and judicial procedures, which could make whether a survivor/victim is able to fully access justice variable dependent on whether her campus has strong, independent processes (Smith, 2016).

Taken together, this collection of scholarly reflections on the impact of Title IX and the 2011 Dear Colleague Letter, though limited, represent a set of considerations that will be foundational in building new theory around appropriate policy mechanisms for justice for survivors/victims of campus sexual assault.

An understanding of the evolution of policy responses to campus sexual assault and their impacts is necessary before further research is pursued to improve on existing policy efforts. However it is worth noting that policy is only one condition in a set of conditions necessary to impel social change. An equally and perhaps more important, necessary condition is the presence and leadership of the women’s movement. The presence of autonomous social movements has been a critical predictor in global government action on violence against women that has deeply and effectively challenged harmful patriarchal norms (Htun & Weldon, 2012). Though many factors contribute to progressive policy change on violence against women and girls, the presence of an autonomous feminist movement is chief among these factors. This finding is important as we consider the context in which policy change is pursued on campus sexual assault. The content of these policies is critical, but may not be as effective without the participation
and leadership of a strong women’s movement. In the case of campus sexual assault, the presence of movements might be considered to extend to and include student activists on campuses across the country.

Global level

Given that campus sexual assault is a form of violence against women and girls, and violence against women and girls is a human rights violation, theories of justice and global human rights frameworks are both foundational to new scholarship in this area. Few scholars have been more influential on theories of justice in the 20th century than political philosopher John Rawls. In his notable work *A Theory of Justice*, Rawls outlines a conception of justice as fairness. Building on the work of generations of philosophers before him, Rawls considers the “original position”: the hypothetical situation in which people in a society were deciding on justice systems without knowing their place in those systems. In other words, making the rules without knowing how you yourself would fair under those rules (e.g. without knowing your race, or gender, or economic class) (Rawls, 2005). Though this is a purely imaginary condition, as we cannot rewind our world to a time when we were unaware of our place in society, Rawls argues that what would result from this “original position” is a justice system that favors everyone in a society equally, and maximizes the benefits of those who are least well off. After all, if you didn’t know what position in a society you’d end up holding, you’d want to make sure that even the least privileged have the most benefits possible. Rawls posits that this is the most moral approach to justice, precisely because it is the justice system we’d all choose if we did now know how that justice system would affect us (Rawls, 2005). Because this is the most moral approach to justice, Rawls argues for two principles of justice. First, every
person should have the most extensive set of freedoms possible, to the extent that these freedoms don’t impinge on the freedoms of others. Second, benefits in a society should be distributed with most emphasis on those who are least advantaged and positions of power and decision-making should be equally open to all people in a society (Rawls, 2005). Rawls values justice as having primary importance in a society, calling it the “first value of social institutions” (Rawls, 2005). Rawls’ theory of justice is instructive as we consider what justice means within the context of gender-based violence, and campus sexual assault specifically. Justice as fairness means that the least advantaged in a society are to be allotted the maximum benefits possible. This might inform both the disciplinary and justice processes that address campus sexual assault and hold perpetrators accountable, but this idea of justice might also inform how society deals with campus sexual assault in a more extensive way. What would the societal response to campus sexual assault look like if we were maximizing benefits to those in this situation who are the least advantaged?

Feminist scholars have also explored the meaning of justice, and have over time specifically responded to Rawls’ ideas about justice. Feminist Interpretations of Rawls, an edited volume containing eight articles by several feminist scholars, chronicles the history of these responses to Rawls’ and analyzes his ideas through a feminist lens. While some feminist scholars have acknowledged the usefulness of Rawls’ centering of the original position for feminist scholarship, others have questioned whether his theory of justice sufficiently speaks to the unique justice needs of women. Some scholars, for example, have questioned Rawls’ apparent centering of economic categories, and failure to explore other social categories that might impact a person’s life in a meaningful way.
While there is no article in the volume specifically on violence against women and girls, feminist scholars have wrestled with Rawls’ theory of justice (sometimes building on it, sometimes questioning it) over time (Abbey, 2013).

Global researchers on violence against women and girls have explored what constitutes appropriate justice for survivors/victims of violence. Scholars Andrew Morrison, Mary Ellsberg, and Sarah Bott have identified three key components of access to justice for survivors/victims of gender-based violence. The first component calls for the development and strengthening of policies to protect women and girls from violence, raise awareness around violence, and mobilize communities in defense of women’s human rights (Bott, Ellsberg, & Morrison, 2007). The second component calls for the accessible provision of redress to women and girls who have experienced violence, and strengthening of violence response services (Bott et al., 2007). The third and final component of access to justice is the administering of penalties to perpetrators of violence against women and girls, and ensuring that perpetrators engage in programs to rehabilitate violent behavior (Bott et al., 2007). The strengthening of laws and policies across nations to protect women and girls from violence (largely as a result of stronger international human rights conventions, earlier discussed) has proven an important first step in protecting women and girls from violence. However, the passage of laws and policies are insufficient without proper implementation, adequate coordination across relevant courts and levels of governments, and necessary education and will of government officials to eradicate violence against women and girls (Bott et al., 2007).

Assessing the presence of these three pillars of justice within Title IX is useful in the further study of Title IX as access to justice for survivors/victims of campus sexual
assault. Title IX and the 2011 Dear Colleague Letter appear to address the first two pillars (strengthening of laws and policies, and accessible provision of redress for survivors/victims), but fail to address the third pillar (administering penalties and rehabilitation for perpetrators). Both Title IX and the 2011 Dear Colleague Letter hold the survivor/victim’s campus accountable, but do not directly hold accountable the perpetrator, leaving out a key pillar of access to justice for survivors/victims of campus sexual assault.

Some feminist scholars have also explored what justice means from the perspective of survivors/victims of gender-based violence. A longitudinal study on the justice goals of survivors/victims of domestic violence demonstrated that accountability was a “threshold goal”, necessary for any other goals to be achieved. Survivors/victims of domestic violence had other justice goals (for themselves, the perpetrator and the community), but for these goals to be pursued they needed to be sequenced correctly and with the appropriate level of participation by the survivor/victim (Holder & Daly, 2018). Judith Herman, who has also written about individuals’ path to recovery in the wake of trauma, conducted a study on a small convenience sample of survivors/victims of sexual violence. Herman found that survivors/victims largely did not want to pursue traditional justice goals like deterrence, retribution or rehabilitation of the perpetrator, but rather just wanted their perpetrator incapacitated and unable to inflict further harm (Herman, 2005). Other studies with sexual violence survivors/victims have noted the importance that a survivor/victim feels recognized and have an opportunity to control and use their own voice, but that they might also experience justice as “kaleidoscopic” (McGlynn, Downes, & Westmarland, 2017). Building on previous feminist scholarship on justice, Clare
McGlynn, Julia Downs and Nicole Westmarland describe kaleidoscopic justice for sexual assault survivors/victims as a “continually shifting pattern; justice constantly refracted through new circumstances, experiences and understandings; justice as non-linear, with multiple beginnings and possible endings; and justice as a lived, on-going and ever-evolving experience without certain ending or result” (McGlynn et. al., 2017).

Ultimately, justice for survivors/victims appears to be beyond the scope of conventional justice systems (McGlynn et. al., 2017). Though none of these studies focus specifically on campus sexual violence, they offer insight into the justice goals of survivors/victims of gender-based violence more broadly that may be useful in analysis of this study’s findings.

The use of restorative justice techniques in cases of violence against women is an increasing area of global scholarship and practice. Restorative justice refers to the bringing together of those who have perpetrated harm and those have experienced the harm in communication with one another. Restorative justice can be practiced in a proactive manner, in order to prevent harm, or can occur after the harm has already taken place (Restorative Justice Council, 2012). These practices can include “direct and indirect mediation, family group conferences, healing/sentencing circles and community restorative boards” (Gavrielides & Artinopoulou, 2012), and allow people to reflect on how they interact with the people around them, and build accountability for their own actions (Restorative Justice Council, 2012). A key difference between restorative justice and mediation is that a precondition for restorative justice is that the perpetrator must accept his/her responsibility for the harm, as opposed to remaining neutral (M. P. Koss, Wilgus, & Williamsen, 2014).
The utility of using restorative justice in cases of violence against women is contested. Many feminists and advocates for survivors/victims have believed restorative justice is inappropriate in circumstances of violence against women and girls, particularly intimate partner violence (Gavrielides & Artinopoulou, 2012). Concerns around restorative justice include possible revictimization of survivors/victims, and the possible trivialization of the issue of violence against women and girls in the absence of a more punitive mechanism (M. P. Koss et al., 2014). Some research, however, suggests that the restorative justice process better meets certain needs of survivors/victims of sexual violence (e.g. the need to tell one’s own story, be validated as a survivor/victim, observe her perpetrator expressing remorse) (M. P. Koss et al., 2014). Research also suggests that the public (both survivors/victims and not) thinks favorably of the option of restorative justice for survivors/victims of sexual violence (Marsh & Wager, 2015). Scholars argue that restorative justice in cases of sexual violence must be predicated on extensive support for the survivor/victim to safeguard against negative impacts (Marsh & Wager, 2015). At the same time, having the availability of restorative justice presented to survivors/victims appears to be an important option for survivors/victims (Gavrielides & Artinopoulou, 2012; McGlynn, Downes, & Westmarland, 2017). Restorative justice may offer an outlet for survivors/victims whose needs are not met for whatever reason by the traditional criminal justice system (e.g. those who have not initiated a law enforcement report, or those who have already had a case closed against their wishes) (M. Koss & Achilles, 2008). Scholars have pointed out that the language in the 2011 Dear Colleague Letter opens the door specifically for restorative justice as a form of redress for survivors/victims on college campuses (M. P. Koss et al., 2014). More research is
needed evaluating the effectiveness of restorative justice programs in cases of sexual assault in order to build on initial positive feedback, and make the case for the development of new restorative justice programs (M. Koss & Achilles, 2008). This process is slow-moving, however, as many funds that traditionally support sexual assault research and programming (e.g. VAWA funding, funding earmarked for victims’ services) will not cover the development or evaluation of new restorative justice programming (M. Koss & Achilles, 2008).

Theories of justice are also reflected in the advancement of international human rights documents. International human rights law and frameworks have evolved over time to address gender inequality, and represent global efforts to offer justice to survivors/victims of gender-based violence. In 1948 (following World War II), the Universal Declaration of Human Rights was written by a diverse group of legal scholars from around the world to lay a foundation of human rights principles and a standard of living for all peoples. The articles of the Universal Declaration are wide-ranging and do not focus on gender equality in a specific way, but outline a broad expectation of rights (to dignity, to life, to freedom from torture, and many others) for all people, including women and girls (The universal declaration of human rights, 1948). This argument that every person is endowed with human rights lays a global framework for the idea that if someone is denied their human rights, this is an injustice. Subsequent international human rights documents became progressively more interested in the human rights of women and girls. A significant step forward in the global recognition of women’s human rights was the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly (The convention on
the elimination of all forms of discrimination against women, 1979). CEDAW defined what constituted discrimination against women to a global audience, and outlined the responsibility of nations who were a party to the convention to protect women from such discrimination. These nations are bound to the terms of CEDAW and must report to the United Nations periodically on their progress toward the elimination all forms of discrimination against women (The convention on the elimination of all forms of discrimination against women, 1979). The United States has not, as yet, become a party to CEDAW, despite its widespread adoption by global partners. CEDAW provides a foundation for global understanding of gender-based discrimination, but does not explicitly mention violence against women and girls. Since CEDAW came into effect, through the process of receiving and examining national reports on CEDAW progress, the Committee on the Elimination of Discrimination Against Women has offered suggestions (called “general recommendations”) to nations who are a party to CEDAW to further interpret and explain their obligations under the convention (CEDAW, 1979). One of these suggestions, General Recommendation 19, was made in 1992 and specified nations’ obligations to protect women from gender-based violence, or violence against women and girls. General Recommendation 19 makes very clear that violence against women and girls not only constitutes discrimination against women (as outlined in CEDAW), but is a violation of women’s human rights. In other words, violence against women and girls is an injustice that must be rectified. This General Recommendation details the ways in which being subject to violence hinders women’s ability to exercise their full human rights, and calls on states who are a party to the convention to protect women from violence perpetrated by any person in either their private or public lives:
“the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise” (CEDAW, 1979). CEDAW and General Recommendation 19 lay a strong foundation for women’s human rights standards globally, with the goal of acquiring both de jure and de facto equality between men and women. Though scholars argue of the transformational potential of CEDAW for women’s human rights, it has faced barriers to realizing its full transformative potential (including religious and traditional cultural norms, neoliberal economic policies, and other factors) (Raday, 2012). To overcome these barriers, international human rights frameworks like CEDAW must be paired with social, political, and economic actions (Raday, 2012).

International human rights conventions also provide examples of mechanisms for redress and justice when a woman has experienced violence. The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, also known as the Convention of Belém do Pará, is a key example. Initiated and drafted by the Inter-American Commission of Women (the first inter-governmental agency tasked within the Organization of American States to protect the human rights of women), adopted by most countries in the Americas in 1994 and entered into force in 1995, the Convention of Belém do Pará describes a robust definition of what constitutes gender-based violence (“any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere”) (Organization of American States, 1994), and is careful to connect these forms of violence to underlying power imbalance that has existed between men and women (Organization of American States, 1994). The convention also outlines actions
states must take to protect women from such violence and provide them with redress. If the state fails to protect women from violence, the Convention of Belém do Pará also provides women a mechanism for justice through the Inter-American Commission on Human Rights (Organization of American States, 1994). A survivor/victim may bring a lawsuit against her own country to access justice in the wake of violence if she believes her country was in violation of the standards to protect citizens from violence against women and girls outlined in the Convention of Belém do Pará. This convention has been a global vanguard of access to justice for survivors/victims of violence against women and girls. This convention is particularly relevant to the current research: though on a smaller, national scale and applying to a more narrow set of complaints of violence against women and girls, Title IX is also a mechanism for survivors/victims to access justice.

An important turning point in the global movement for women’s human rights was the 1995 Fourth World Conference on Women in Beijing, China. Representatives from governments and civil society from around the world gathered to deliberate and finalize a Platform for Action that built on the previous advancements for women’s human rights and gender equality. The Beijing Declaration and Platform for Action charted a pathway forward, and outlined strategic objectives for progress in twelve key areas, including violence against women and girls. One hundred and eighty nine countries adopted the Platform for Action, and have been using it as a framework for the advancement of women and girls globally (World conferences on women, 2017). Since Beijing, the international community has recognized that the achievement of gender equality worldwide is an essential precondition for the realization of global development.
The Millennium Development Goals (a set of eight goals adopted by the United Nations in 2000, to be achieved over a 15 year period), included a goal on gender equality, and despite global progress over this period toward women’s education and labor and political participation (United Nations, 2015) this goal did not include a target or indicator on violence against women and girls by which gender equality could be measured (United Nations, 2017b). The Sustainable Development Goals, which succeeded the Millennium Development Goals in 2015, maintained a goal specifically on gender equality, and expanded this goal to include a target on violence against women and girls by which to measure global progress on gender equality (United Nations, 2017a). Campus sexual assault is a form of violence against women and girls, and thus is pertinent to Sustainable Development Goal 5 on gender equality. Unlike the Millennium Development Goals, which specifically applied to poor and developing countries, the Sustainable Development Goals apply to all nations, including the United States. The Sustainable Development Goals are more numerous and robust than the preceding goals and are the international standard by which the United States must adhere, making the need to comprehensively address campus sexual assault an urgent development priority to fulfill the United States’ global commitments.

International human rights frameworks are one way that justice is globally defined for survivors/victims of gender-based violence (of which campus sexual assault is a type). Taken together, these documents strengthen the idea that access to justice is a human right. Access to justice is critical at all levels of the ecological framework. At the global level, we know access to justice is necessary for the full development of nations (Sen, 1999; United Nations, 2017a). These documents have sought to address this
societal level concern for access to justice for survivors/victims of violence against women and girls. The evolution and development of these international human rights conventions, platforms for action, and goals have resulted in a current global environment that recognizes gender equality as essential to development, understands that the advancement of women’s human rights as necessary to gender equality, and argues that the pervasive, global problem of violence against women and girls inhibits women’s realization of their full human rights.

A gap in current literature on campus sexual assault

The above literature outlines individual-, community-, society-, and global-level considerations related to campus sexual assault. Existing literature well covers various aspects of this problem, but still leaves an important gap that necessitates the current study. As a policy and research focus on this topic has increased in recent decades, scholars have produced a significant body of literature related to campus sexual assault. This literature includes scholarship on how colleges/universities have interpreted their responsibility in campus sexual assault prevention and response (Gonzales, Schofield, & Schmitt, 2005; Sabina, Verdiglione, & Zadnik, 2017; Wies, 2015); scholarship on what programs are effective in promoting attitudes/behaviors that prevent campus sexual assault (Banyard, 2007; Borsky, McDonnell, Turner, & Rimal, 2016; Coker et al., 2015), and scholarship from a legal perspective on whether the 2011 Dear Colleague Letter adheres to legal standards, including whether it sufficiently protects alleged perpetrators (M. Anderson, 2016; Edwards, 2015; Silbaugh, 2015; Tani, 2017). In addition, to the extent that there has been research specifically on survivors/victims, existing literature tends to focus on prevalence of campus sexual assault (Banyard et al., 2007; Fedina et
al., 2016); risk factors for campus sexual assault victimization (B. Fisher, Cullen, Turner, & National Institute of Justice, (U S ), 2000); and how survivors/victims might protect themselves from a sexual assault (Daigle, Fisher, & Stewart, 2009). Feminist literature on justice for survivors/victims of sexual violence (Herman, 2005; McGlynn, Downes & Westmarland, 2017) has failed to focus narrowly and in-depth on campus sexual assault, and the specific needs of survivors/victims that experienced violence on campus.

In all, the literature summarized in this chapter represents an important contribution to the evidence base on campus sexual assault. However, missing from the existing literature is an exploration of whether and how justice is administered to survivors/victims of campus sexual assault at the federal or campus levels, from the perspective of survivors/victims. The literature that is focused on campus sexual violence too infrequently focuses on justice, or doesn’t focus on justice from a survivor’s/victim’s perspective. The literature on justice for survivors/victims of gender-based violence doesn’t explore the nuances of an assault that occurs in a campus context. More broadly, scholars have tended to ignore what justice means to a survivor/victim of campus sexual assault. The goal of this study is to fill this important gap.
Chapter 3: Methodology and Data

This research study set out to better understand survivors’/victims’ experience of the Department of Education’s Office of Civil Rights (OCR) complaint process under Title IX. Better understanding of how survivors/victims experience this federal justice mechanism is needed to theorize how best to administer justice to survivors/victims and improve future policymaking. Despite an increase in the use of this system since the release of the guidance under the 2011 Dear Colleague Letter, only one study (Peterson, 2016) has endeavored to understand this process from a survivor’s/victim’s perspective, by interviewing survivors/victims who have accessed the OCR complaint process. More qualitative data from survivors/victims and other key stakeholders is needed to better understand how this and other justice processes works, whether the OCR process provides survivors/victims with justice, and how justice processes might be improved. This chapter will outline the methodology by which this data is collected and analyzed.

Research Design

This research is a qualitative study that seeks to answer four central research questions about justice for campus sexual assault survivors/victims in the United States. As mentioned earlier in Chapter 1, these central research questions are outlined as follows:

1) **How does the OCR complaint process under Title IX work to resolve campus sexual assault complaints (both before and after the Trump Administration rescinding the 2011 Dear Colleague Letter)?**

   a) Does Title IX do what it is supposed to do within the context of campus sexual assault?
b) Do people access the OCR complaint system?

c) What, if any, are the differences in how complaints are handled before and after the rescinding of the Dear Colleague Letter?

2) **How do survivors/describe their experiences with the Title IX complaint process in terms of justice?**

   a) What do complainants expect out of a relationship with the Federal Government when they are seeking justice in the wake of a campus sexual assault?

   b) How do survivors/victims define justice?

3) **How is the university response to campus sexual assault cases perceived and/or experienced differently as compared to the response to other kinds of discrimination cases and/or crimes, both by survivors/victims and campus administrators?**

   a) Why does it appear the process to access justice is less satisfactory for campus sexual assault survivors/victims as compared to other disciplinary processes?

   b) How do college/university administrators describe differences in the response processes between campus sexual assault cases and other kinds of on-campus discrimination cases or crimes?

   c) If relevant, how do survivors/victims perceive response to campus sexual assault cases to be different from other kinds of discrimination cases and/or crimes?

4) **What should the role of the Federal Government be in providing access to justice to those who have experienced campus sexual assault?**

   a) Do survivors/victims support policies that strengthen justice at the federal/state/local government levels, or rather, believe campus systems should be
strengthened and standardized?

b) How can policy be used effectively to address a personal injustice?

Because this is a grounded theory study, the study focus evolved as new data emerged from research participants. These four research questions were developed and pursued, but the researcher more deeply pursued the areas that emerged most strongly from qualitative data collection. In this process, some research questions were more meaningful to research participants than others, and thus came out more strongly in the data. Ultimately, the question of how survivors/victims define justice (within Research Question 2) became the richest area of the data, and ended up becoming the most important contribution of this study. This question of how survivors/victims define justice also informs other research questions, including (importantly) Research Question 4. Survivors’/victims’ definition of justice will inform future policymaking to better address the justice needs of survivors/victims. Conversely, Research Question 3 seemed less meaningful to research participants, and thus was a less rich area for data collection. Participants had little to say about how campus sexual assault cases differ from other kinds of on-campus discrimination cases, and pursuant to grounded theory methodology this was not an area that emerged as significant in the findings, analysis, or conclusion.

To answer the initial research questions, the researcher conducted interviews with survivors/victims who have accessed the OCR complaint system under Title IX. Also interviewed were survivors/victims who chose not to access the OCR complaint system, but potentially pursued another kind of justice process. Unstructured interviews (as opposed to semi-structured interviews) were used with survivors/victims to ensure that the data produced is most authentically grounded in the survivor/victim experience. The
goal of unstructured interviews as a method in this instance is to have the survivor/victim speak as broadly about their experience in their own words as possible, and then to follow up if necessary with probing questions. Though the researcher developed in advance a set of key domains for data collection, and some probing questions within each of these domains, each interview with a survivor/victim was opened by eliciting a narrative of each survivor’s/victim’s story, and probing as necessary into areas not covered in the survivor’s/victim’s opening narrative. The interview guide for unstructured interviews with survivors/victims is included in Appendix A. This interview guide was pre-tested in advance of interviews with survivors/victims to ensure any problems with interview length or wording of questions was captured in advance of field work (Ellsberg & Heise, 2005).

The researcher also conducted semi-structured interviews with college/university administrators who manage cases of sexual assault on their campuses, and representatives from advocacy groups that assist survivors/victims in navigating the OCR complaint process and other justice processes. The interview guide for semi-structured interviews with college/university administrators is included in Appendix B, and was pre-tested in advance of interviews with survivors/victims to ensure any problems with interview length or wording of questions were captured in advance of field work (Ellsberg et al., 2005). These interviews, in combination with unstructured interviews with survivors/victims, formed a comprehensive picture of the experience of the OCR complaint process, and how justice is administered to campus sexual assault survivors/victims at the federal level. These interviews were recorded (pending
participant consent) transcribed, and analyzed using coding software (the code list used in this analysis can be found in Appendix D).

Finally, the researcher conducted two focus groups with survivor/victim advocates. Focus groups allow participants to react to and interact with one another around a certain topic, in this case the experience of advocating for campus sexual assault survivors/victims (Ellsberg et al., 2005). As mentioned previously, through previous work on campus sexual assault the researcher has developed contacts within survivor/victim advocacy networks. These advocates have worked closely with survivors/victims, sometimes as they are pursuing various forms of complaint or criminal justice processes (including the OCR complaint process). Advocates have keen insight into the survivor/victim experience, particularly as it relates to complaint processes. The researcher did the recruiting, conducted the focus groups, and took some notes, though she also tape-recorded the focus group discussions to be transcribed, coded and analyzed (pending focus groups participant consent) (Ellsberg et al., 2005). A guide for focus groups with survivor/victim advocates is included in Appendix C.

*Interview and Focus Group Participants*

Study participants included survivors/victims who have submitted a complaint through the OCR complaint process under Title IX in the Department of Education, survivors/victims who elected not to file a complaint through the OCR process but may have pursued another kind of justice process, college/university administrators who manage sexual assault cases on their campus, and advocates who assist survivors/victims in filing complaints through the OCR process. The focus of this study is primarily on the first two groups of individuals, as survivors/victims will have the most in-depth and
personal experience with the OCR complaint and other justice processes, necessary for answering this study’s research questions. Interviews and focus groups with the other three groups of individuals are meant to paint a more comprehensive picture of justice processes available to survivors/victims, and also the survivor/victim experience of accessing justice (or not accessing justice).

Though not the primary focus of this research, college and university administrators were interviewed, and members of advocacy organizations who work on campus sexual assault were focus grouped. These conversations underpinned and informed the data collected from interviews with survivors/victims. Administrators who are familiar with on-campus judicial processes for campus sexual assault have insights into how the presence (or lack) of justice in the wake of an assault impacts a survivor/victim. They also were able to comment on the insufficiencies of a campus judicial system, and other factors that may contribute to a survivor/victim choosing to file an OCR complaint. These administrators included staff members of a campus Title IX office, a student judicial department, and other related staff.

Advocates who work on campus sexual assault issues offered similar insights. These advocates often work closely with survivors/victims as they are making the decision to file an OCR complaint, or are preparing the necessary paperwork. Interviewing advocates will further complement the rich qualitative data from semi-structured interviews with survivors/victims.

*Participant Recruitment and Ensuring a Diversity of Voices*

As mentioned in Chapter 1, only 502 complaints have been made nationally through the OCR complaint system in the Department of Education. This presented a
relatively small population from which to select interview participants. Additionally, survivors/victims who make complaints are anonymous unless they elect to publicize their story. Sampling this population thus presented some challenges. Due to previous and on-going work in this field, however, the researcher was plugged into a few networks of which these survivors/victims who have made OCR complaints are a part. The researcher is connected to the campus sexual assault advocacy community on her own and neighboring campuses, and maintains professional contacts in advocacy organizations that assist survivors/victims in making OCR complaints. Through these networks, the researcher connected with some interview participants who have made OCR complaints, and several other survivors/victims who had not. The researcher snowball sampled once she interviewed survivors/victims within these networks, anticipating that survivors/victims who have filed OCR complaints might be familiar with others who had also done so. This recruitment method of course precluded a randomized sample, but randomization and representativeness are not goals of this qualitative study. Given the dearth and anonymity of this unique population, this combination of purposive and snowball sampling is the strategy through which the most interview participants were yielded. Survivors/victims of campus sexual assault were included in this study regardless of whether or not they chose to file an OCR complaint, though effort was made to ensure this sample included survivors/victims who had chosen to file an OCR complaint. Those excluded from the survivor/victim interview process were those who had not personally experienced campus sexual assault. Confidentiality was maintained, with interview data being collected and maintained only by the
researcher on a password-protected laptop. Survivors/victims are not named or personally identified in any way in data analysis or the final document reporting findings.

It is worth noting that (as evidenced by the small number of people who have done it) survivors/victims who elect to file OCR complaints may be different in some ways from other survivors/victims who choose not to file a complaint. It is possible they are more comfortable sharing their story, or have chosen to take on a role in campus sexual assault advocacy. The choice to interview both survivors/victims who have chosen to file OCR complaints and survivors/victims who have elected not to file OCR complaints illuminates some of these differences. Survivors/victims who have chosen not to file OCR complaints were selected for interviews in a manner similar to those who have filed complaints: first through purposive sampling within survivor/victim advocacy networks, then through snowball sampling. The networks the researcher mined for interviews included both survivors/victims who have filed OCR complaints, and those who have not.

Campus administrators and survivor/victim advocacy networks were selected through a purposive sample. As mentioned, through previous work on campus sexual assault in a university setting, the researcher has a variety of contacts across schools who work on this issue and can speak to both campus disciplinary processes and potentially the OCR complaint process. Campus administrators were included in this research study if they currently work or have worked in a campus setting, and if they have specifically worked on either Title IX or campus sexual assault issues. Campus administrators that have no experience in Title IX or campus sexual assault were excluded from this study.
The researcher also maintains contacts within survivor/victim advocacy networks who accompany survivors/victims through a variety of complaint processes, including the OCR complaint process. These advocates were included in this research study if they are working or have worked in an organization that serves survivors/victims of campus sexual assault. Advocates or other contacts that have had no direct experience advocating for survivors/victims of campus sexual assault were excluded from this study.

A key goal of this study is to better understand what justice means to survivors/victims of campus sexual assault, for the purpose of understanding how federal policy can be shaped to administer this justice. This requires understanding the experiences of survivors/victims that represent a diversity of backgrounds. This study employed both purposive and snowball sampling for survivor/victim interviews, mostly due to the unique nature of the key population of interest (how few they are, that they are anonymous unless they have chosen to be outspoken on this issue, etc.). A potential challenge of this sampling strategy is ensuring that a diversity of survivor/victim experiences is represented in the data. For example: how do survivors/victims of color experience the OCR complaint process? Or survivors/victims who are undocumented or otherwise have a tenuous immigration status? How does race, ethnicity, sexual orientation, ability, immigration status, or any other identity-related factor impact a survivor’s/victim’s pursuit of a disciplinary or OCR complaint process? This research study took concerted measures to ensure as diverse a survivor/victim sample as possible. The researcher leveraged contacts to recruit participants within the university consortium of which her employer is a part. This consortium reflects a wide diversity of schools, including HBCUs and other minority-serving institutions, a school for the hearing-
impaired, community colleges, schools that serve large immigrant and refugee populations, and others. By focusing on recruitment across these schools, a greater diversity of study participants was yielded. Snowball sampling was used to elicit greater diversity, as once contacts were made in different student communities, snowball sampling might have helped to ensure more voices from diverse communities were reflected in this study.

Study sample

This study’s methodology outlines a sampling strategy for both survivors/victims and campus administrators that involved purposive and snowball sampling. This strategy was pursued, and over the course of purposively sampling a survivor/victim network with which the researcher was acquainted, this network offered to post the interview request on their social media page that maintains tens of thousands of followers, many of whom are likely survivors/victims. Due to the nature of this specific network, it is also likely this population of followers has an increased awareness of and/or connection to the OCR complaint process as compared to the larger population of survivors/victims. After submitting an amendment to the recruitment protocol that was ultimately approved by the IRB, the researcher gratefully agreed to this network’s offer to post on their social media page. This post generated considerable interest, and each person who responded to the recruitment post was contacted with an interview request. Not everyone who demonstrated interest in the study ultimately agreed to be interviewed, but this change in recruitment strategy was very useful for this study in two ways: first, it ensured that the study met its interview goals of 15-20 survivor/victim interviews and 10-15 campus administrator interviews. Second it increased researcher confidence that, in combination
with other purposive and snowball sampling efforts, this study had exhausted its reasonable capacity to recruit participants from the finite number of survivors/victims who have chosen to file an OCR complaint (only 502 total at time of this writing). This study had sought to recruit both survivors/victims that had chosen to file these complaints and survivors/victims that had not chosen to file these complaints, and it was important that the perspective of both of these groups be included in this research.

**Characteristics of interview and focus group participants**

Overall, 30 interviews with survivors/victims and campus administrators were conducted. Of these 30 interviews, 19 were conducted with survivors/victims, and 11 with campus administrators. The 19 survivor/victim interviews represent a diversity of experiences, with participants attending campuses of various sizes, regions, settings, and characteristics. Eight of the 19 survivors/victims were attending private colleges at the time of their assault, with the remaining 11 attending public colleges. Survivors/victims reported experiences from an array of campus settings, with five survivors/victims having attended a rural campus, six a suburban campus, and eight an urban campus. These campuses were spread regionally through the United States, as characterized in Figure C:

**Figure C:**

![Campus Regions of Survivor/Victim Participants](image)
These campuses also represent a range of sizes, with eight small colleges, three mid-sized colleges, and seven large colleges (one participant was not comfortable sharing the name of their school, and though that participant shared other campus characteristics, they did not share its size). Nearly all of the survivor/victim participants identified as female, with one identifying as male. Survivors/victims were not asked about their sexual orientation, but two participants self-identified as members of the LGBTQ+ community during the course of the interview. Survivors/victims weren’t asked about revictimization, but six of the 19 survivors/victims interviewed reported having been victimized more than once in their lifetime. Three survivors/victims identified as members of Greek life on their campus, and one identified as a member of ROTC on their campus. One of the 19 total survivor/victim participants self-identified as having a disability, though this was not asked as part of the interview questionnaire. One survivor/victim interviewed had experienced campus sexual assault while they were studying abroad. Three of the 19 survivors/victim participants had filed an OCR complaint, one had begun initial preparations to file an OCR complaint and ended up not ultimately filing, and one had participated as part of an OCR investigation on their campus that was unrelated to their own assault. Of the 19 survivors/victims interviewed, 14 had pursued a disciplinary process on their campus on the basis of Title IX, and four had pursued a criminal or civil process through the legal system (some had chosen to pursue both processes). Four of the 19 survivors/victims interviewed never formally reported their experience of sexual assault.

In addition to the 19 survivor/victim participants, 11 campus administrators were interviewed. These 11 campus administrators reflect work across a diversity of campuses,
including four public colleges, five private colleges, and two community colleges. These campuses speak to experiences in a range of settings, with six urban campuses, four suburban campuses, and one rural campus, nearly all of which are on the East Coast, save for one in the Midwest and one in the South (no campus administrators from colleges in the West were interviewed for this study). Figure D below illustrates the nearly even distribution of campus sizes constituted by the campus administrator participants:

Figure D:

Three of the 11 campus administrators interviewed are working in minority-serving institutions, one of these three at a Historically Black College or University (HBCU). Two of the 11 administrators are working on campuses that are women-only schools.

Two small focus groups with survivor/victim advocates were also conducted for this study. Focus groups were conducted in Washington DC, and survivor/victim advocates were all employed in the Washington Metropolitan area. Some of these survivor/victim advocates were what has become known as victims’ rights attorneys: attorneys who specialize in representing survivors/victims in various justice processes. The first focus group had six participants, and the second had three participants. These
participants represent survivor/victim advocacy in a range of settings: some were working as advocates on campuses, some were working as nurse advocates in a medical setting as Sexual Assault Nurse Examiners (SANE), and others were working in the legal system, either as survivor/victim advocates or victims’ rights attorneys. All interview and focus group questionnaires can be found in Appendices A, B, and C. The code list used to code transcriptions of all interviews and focus groups can be found in Appendix D.

Setting

The setting of this study was entirely in the United States. Though violence against women and girls, and by extension campus sexual assault, is a global problem, campus sexual assault as a research and programmatic focus has sprung up primarily in the United States. As a result, there is more policy at the federal level (e.g. Title IX, the 2011 Dear Colleague Letter) that specifically targets campus sexual assault to analyze in the United States than in other contexts. In the future, however, a cross-national research comparison on how campus sexual assault is addressed at the federal level would be important to glean shared, global lessons on this issue for better policy.

Interviews were conducted in person as much as cost and time permitted. This methodological decision was made given the sensitive nature of the interview material, and the painful experiences that may be recounted by survivors/victims. Empathy and trust are more easily conveyed in a more personal, face-to-face context. When the researcher was unable to interview study participants in person, or the study participant indicated a preference not to be interviewed in person, the researcher opted for Skype interviews (which allowed the researcher to still be face-to-face with interview participants, if not in the same room), and if Skype was unavailable, a phone interview
was conducted with the study participant. Of paramount importance, however, was the safety and comfort of the study participant. Some participants seemed to feel more comfortable with the anonymity of a phone call. So, each study participant was given the option of how they wanted their interview to be conducted (in-person, Skype, or by phone), and the researcher selected the medium if the study participant did not have a strong preference. This allowed for the greatest safety and comfort of study participants, which not only meets the ethical expectations of this research study, but likely yielded the most comprehensive and rich interview data possible.

Focus groups were conducted in-person, in the Washington DC area (in private meeting space on the George Washington University campus).

*Grounded Theory*

This study used grounded theory methodology to analyze data and potentially build a theory of justice for campus sexual assault survivors/victims. This theory seeks to explain the characteristics of a relationship between survivors/victims of campus sexual assault and the Federal Government that administers survivors/victims with justice. Grounded theory methodology is employed when new theory is needed to explain a phenomenon. John W. Creswell, Professor of Educational Psychology who has written extensively on qualitative methods, writes that grounded theory is best used when no theory currently exists to explain a process (Creswell & Creswell, 2007). In this case, no theory currently exists to explain the nature of a relationship between survivors/victims of campus sexual assault and the Federal Government that provides survivors/victims with justice. Creswell adds that when gathering qualitative data in a grounded theory study, “participants in the study would all have experienced the process, and the development of
the theory might help explain practice or provide a framework for further research” (Creswell & Creswell, 2007). In this study, the majority of participants interviewed were in some way familiar with the process (the OCR complaint process), with some interview participants being survivors/victims who had actually filed an OCR complaint themselves. Survivors/victims are the focus of this grounded theory study, and other interview participants (college/university administrators who handle Title IX cases, and survivor/victim advocates) complemented the interview data from this primary set of participants.

The process of grounded theory begins by identifying that grounded theory is, in fact, the appropriate method to address an inquiry. Once it has been established that new theory is needed to explain a phenomenon, the research then identifies a way to gather data that explains the core phenomenon in question, the causal conditions of that phenomenon, strategies employed to address the phenomenon, and consequences of the phenomenon (Creswell & Creswell, 2007). The data that addresses these questions in this study are drawn from semi-structured interviews (though this is not the only way to cultivate data for a grounded theory research project). Constant comparative analysis was used as each new interview was conducted, meaning that as categories emerge from each interview, the next interview was often altered to be responsive to emerging categories that were uncovered. Interviews were conducted to the point of saturation; in other words, until the point at which an additional interview will not yield any new information to answer questions about the core phenomenon (Creswell & Creswell, 2007). Because interviews with survivors/victims and administrators were conducted to the point of saturation, it was challenging to firmly establish in advance the number of interviews that
would be conducted to reach this point. The researcher’s goal was to interview 15-20 survivors/victims, with some mix between survivors/victims that filed OCR complaints and survivors/victims that had not filed OCR complaints. The researcher also aimed to interview 10-15 campus administrators. Both of these goals were met, with 19 survivors/victims interviewed and 11 campus administrators interviewed. Qualitative data was collected from survivor/victim advocates in focus groups. To collect this focus group data, the researcher planned to conduct 2-3 focus groups, pending the aforementioned point of saturation. Each of these focus groups sought to include no more than 10 respondents, as this focus group size ensures that each participant has an opportunity to speak (Ellsberg et al., 2005). Ultimately, two focus groups were conducted (the first including six participants, the second including three).

Data Analysis

Once the unstructured and semi-structured interviews were conducted, they were then analyzed. This qualitative interview data was analyzed using the coding software OpenCode. Interviews were transcribed, and the transcripts uploaded into OpenCode so the text could be appropriately coded. More information on codes is available in Appendix D, but both a priori and emergent codes were employed. A priori codes are codes that have been developed in advance of data collection, and emergent codes are codes that develop as a result of data collection (Creswell & Creswell, 2007). Certainly, there are discrete themes (access to justice, reasons for filing an OCR complaint, challenges faced in the OCR complaint process, etc.) that compelled this research and were captured in a priori codes prior to conducting interviews. However, as this is a grounded theory research project, codes were responsive to each interview and also
emerged from the data. This left space for the development of emergent codes during the process of constant comparative analysis, and the final result was a codebook that combines both a priori and emergent codes (Appendix D).

Some a priori codes proved more relevant than others. The “justice definition” a priori code was extremely relevant and frequently employed in the coding process. This code struck at the heart of this study: what does justice mean to survivors/victims? This code allowed the researcher to, in combination with other codes, clearly understand what justice meant to each participant. Conversely, the “media” a priori code proved less relevant than originally anticipated by the researcher. Participants sometimes mentioned interactions they’d had with the media, but these mentions were not frequent and the interactions did not seem to be particularly germane to questions of justice. More relevant became the emergent code “society”, which was used when participants mentioned the broader cultural conversation and beliefs around campus sexual assault, and how these concepts impact survivor/victim experience. The emergent “society” code more accurately addressed broader cultural and political conditions that impact this issue than the a priori “media” code. These are just a few examples of codes that guided the data analysis process, and which emerged during the process.

Once the qualitative interview data had been coded using this combination of codes, the coded data was analyzed to develop themes, and key findings were developed from these themes. These findings were used to inform a new theory that explains a relationship between the Federal Government and survivors/victims of campus sexual assault that provides the latter with justice. After findings were developed, and recommendations were written based on these findings, the researcher made an effort to
discuss these findings and recommendations with an OCR representative. The researcher hoped to hear reflections on these ideas from someone who administers the OCR process. Unfortunately, OCR representatives were unwilling to discuss findings and recommendations with the researcher.

As previously mentioned, efforts were made to cast as wide a net as possible in the interview process in the hopes of hearing a diversity of survivor/victim experiences. If relevant to the resulting participant sample, interviews were analyzed with special attention to the ways in which survivor/victim experiences differ based on aspects of identity (e.g. race, ethnicity, nationality, immigration status, religious affiliation). For example, central to unstructured interviews with survivors/victims were questions about how they understand justice, and whether or not they feel justice was served in their case. Analysis that is attentive to a diversity of survivor/victim experiences might consider how privilege (racial, economic, or otherwise) might intersect with a survivor’s/victim’s expectations of justice.

Challenges and Opportunities

As in all research, there are limitations to this study, and it is important as researchers to acknowledge possible limitations in any research project. However, perceptions of rigor in research design, and correspondingly, research limitations, have changed over time. These perceptions and standards are particularly important as they relate to non-experimental research projects, as is the case in this study, and in naturalistic inquiry, which is also the case in this study. Naturalistic inquiry, also known as constructivist inquiry, is an approach to research that has emerged in response to positivism. Positivism, or empiricism, approaches scientific research under the
assumption that there is an objective truth to be uncovered through scientific inquiry. Conversely, naturalistic (or constructivist) inquiry views truth as relative, and reality as a construction (Crotty, 1998). In other words, the truth is in the eye of the beholder.

Scholars Yvonna S. Lincoln and Egon G. Guba have written extensively about naturalist inquiry, and about standards of rigor in research in both the conventional/positivist and the naturalistic research paradigms (Y. S. Lincoln & Guba, 1986). Lincoln and Guba outline 14 characteristics of naturalist inquiry, which include but are not limited to: the idea that findings cannot be separated from the context in which they are cultivated; purposive sampling as opposed to random or representative sampling, which is more likely to take into account the context and shaping of reality; and the presence of a human researcher as the research instrument, making meaning data as he/she encounters it (Y. Lincoln & Guba, 2006). The current study is within the tradition of naturalist inquiry.

The emergence of the naturalistic research paradigm has demanded new conceptions of rigor, as those designed for positivist research may fail to capture the importance or goals of naturalistic inquiry. Whereas rigor in the conventional sense has been measured primarily by standards of truth, Lincoln and Guba argue that rigor in the naturalistic sense is measured more precisely by trustworthiness and authenticity (Y. S. Lincoln & Guba, 1986). Lincoln and Guba offer naturalist counterparts to the traditional, positivist standards of rigor (internal validity, external validity, reliability, and objectivity):

“credibility as an analog to internal validity, transferability as an analog to external validity, dependability as an analog to reliability, and confirmability as an analog to objectivity” (Y. S. Lincoln & Guba, 1986). These four criteria all fall within a larger category that Lincoln and Guba label “trustworthiness”. Thus, trustworthiness in turn
becomes the standard of rigor for naturalist inquiry. Lincoln and Guba outline a number of techniques that strengthen credibility, transferability, dependability and confirmability. These techniques include peer debriefing (relaying working hypotheses to third party peers as a sounding board in order to further hone ideas), member checking (soliciting reactions from respondents about what the researcher has constructed out of the collected data, and what other respondents have constructed), and thick description (describing the context of the data in in-depth detail so that a reader may judge how relevant the findings of a study are in relation to other research questions) (Y. S. Lincoln & Guba, 1986). These techniques were employed in this study in order to strengthen the trustworthiness of the research. The rest of this section will detail elements of this study that may be perceived as limitations to those from a positivist perspective, but that may be more precisely labeled “challenges and opportunities”, in particular opportunities to increase trustworthiness in the research study.

One of these challenges/opportunities is researcher subjectivity. The primary researcher has been studying sociology and issues of gender power imbalance for almost a decade. She has also been employed for several years at a research and policy institute that focuses on violence against women and girls globally. This abundance of focus on gender equality, specifically through the lens of social structures that inhibit women’s progress, may subject this study to researcher bias in a number of ways. First among these would be the choice to view campus sexual assault as an urgent social problem, and specifically justice for survivors/victims, worthy of further research that could lead to its eradication. This limits the universe of ways one might frame the issue of campus sexual assault, but is also an opportunity to elevate the voices of survivors/victims in academic
research. Second would be to choose to study this problem primarily through the lens of those who have experienced it, rather than through the lens of those who have perpetrated it (or been accused of perpetrating it). The researcher did not interview any perpetrators for this study, and thus their perspective on the OCR complaint process or appropriate justice measures is not captured in the findings. Because the research questions of this study ask primarily about the nature of justice survivors/victims are seeking in the wake of a sexual assault, interviewing perpetrators was outside the scope of this study and the researcher did not think interviewing perpetrators would help answer the central research questions. Nonetheless, this limits the range of perspectives represented in the analysis. It is important to note that the researcher has also been an advocate for survivors/victims of campus sexual assault, which she recognizes as a strength of this study rather than a limitation. The researcher’s advocacy on this issue and experience talking to survivors/victims built trust and rapport with participants that may not have been possible with a researcher lacking this experience.

The findings of this study are not meant to be representative of all survivors/victims of campus sexual assault, and widely representative results would be the province of another research study. The primary sources of data for this study are interviews with people who have filed Title IX complaints through the Department of Education’s OCR or on their campus. As mentioned earlier, only 502 complaints have been lodged since the release of the Dear Colleague letter in 2011. This represents only a small fraction of total campus sexual assaults, meaning that very few survivors/victims of campus sexual assault choose to file complaints through OCR. This modest population may not yield widely representative results, and there may in fact be unique
characteristics of people who choose to file an OCR complaint as compared to survivors/victims who choose not to file a complaint. For example, it is possible that OCR complainants have a more activist orientation than those who choose not to file a complaint, or feel more emotionally prepared to endure a lengthy bureaucratic process in the pursuit of justice, or perhaps are simply most angry with their college or university for failing to protect them from campus sexual assault. Whatever the specific characteristics, a study that is more representative of the total population of people that have experienced campus sexual assault would have to recalibrate the proportion of interviews with those who chose not to file OCR complaints, which was not the methodology or goal of this study.

This purposive sample (Y. Lincoln & Guba, 2006) of a smaller population of participants allows for a richer, more in-depth exploration of specific kinds of experiences, as compared to more superficial analysis of a larger population. This is an inherent strength of this research study. As mentioned, this purposive sample may have specific characteristics that set them apart from other campus sexual assault survivors/victims. Acknowledgment of these characteristics, however, will strengthen the findings of this research, as they may be relevant to the theory that emerges from the data. This study is focused specifically on survivors/victims’ interactions with their Federal Government in the wake of a campus sexual assault, and thus interviewed many fewer survivors/victims who did not have an interaction with their government on which to reflect. Further, all interview data collected and analyzed in this study is drawn from interviews with subjects who volunteered to discuss their experiences, both of campus sexual assault and with the OCR complaint process. There may also be unique
characteristics of people who volunteer to share these experiences with a stranger versus those who would not choose to share their experiences.

Grounded theory methodology, which is used in this study to theorize justice for survivors/victims of campus sexual assault, also presents specific challenges and opportunities. For example, the researcher must interview participants to the point of saturation, so that the new theory can be sufficiently fleshed out by the existing data (Creswell & Creswell, 2007). It is sometimes challenging to determine this point of saturation. This question of saturation was negotiated during data collection, and was most deeply informed by whether or not there was enough data to develop a theory that addresses the research questions. The flexibility of choosing to collect data to the point of saturation offers an opportunity for the researcher to determine when she possesses sufficient data to build new theory, which is an opportunity of grounded theory research methodology.

Having acknowledged some of the challenges and opportunities associated with this study, ultimately this research will build knowledge in an important area where little knowledge exists. The OCR complaint process has been active for many years, and only one study has interviewed those who have accessed this mechanism (Peterson, 2016). This study did not ask interviewees broader questions about what they expect from their Federal Government when seeking justice in the wake of a campus sexual assault. Only with greater knowledge of how survivors/victims experienced the OCR complaint process, placed within the context of a broader understanding of what justice looks like to these survivors/victims, can policies be better formed to address the needs of those who have experienced campus sexual assault. That is the project of this study, and it requires a
focus on interviewing a specific population of survivors/victims, some who have accessed the OCR complaint mechanism, despite the above challenges.

*Ethical Considerations*

This study, in building a new theory of justice for survivors/victims of campus sexual assault, involves interviewing survivors/victims about the experience and aftermath of traumatizing, painful experiences for the purpose of research. Ethical considerations are of paramount importance in all research, particularly research concerning human subjects, and particularly when engaging human subjects on issues of personal experience. In preparation for this research, careful ethical consideration was made about how to interview survivors/victims of sexual violence. Ethical standards exist across disciplines and fields, including a small body of literature on ethics related to research on violence against women and girls. Less has been written on ethical considerations specific to research on campus sexual assault, as it is a relatively new and growing body of research. However, a recent article (Rosoff, 2017) addresses ethics on campus sexual assault research specifically. This article reviews and synthesizes literature on the ethical considerations of campus sexual assault surveys, trauma-related research, and violence against women. This section summarizes the most relevant ethical considerations from both the existing literature on violence against women research and the more recent article on the ethics of campus sexual assault research.

Based on the experiences of researchers studying intimate partner violence across nations, the World Health Organization developed a set of ethical principles for researching violence against women and girls (Ellsberg & Heise, 2002). These ethical principles consider established ethical standards in the field of epidemiology, and tailor
them to the experience of researching survivors/victims of violence against women and girls. These new principles include the minimization of harm (also known as non-maleficence), the maximization of benefits (also known as beneficence) and respect for people (Ellsberg & Heise, 2002).

Ensuring the minimization of harm includes many layers of ethical safeguards when conducting research with survivors/victims. First, the researcher must ensure the safety of the study participant. Survivors/victims of violence against women and girls may face violence or harassment from their partners or community for participating in research related to the violence they face (Ellsberg & Heise, 2002). The researcher must anticipate this potential danger, and take measures to keep the participant safe (potentially by keeping their participation a secret, making arrangements to conduct the interview in a private space away from the participant’s community, and other measures). A participant’s privacy and confidentiality must also be respected to further minimize the risk of harm to a research participant (Ellsberg & Heise, 2002). For survivors/victims of campus sexual assault, considering privacy means ensuring the research participant is not interviewed in a residence hall or other common area on campus, so as not to attract the attention of peers, or others who may know them (Rosoff, 2017). This study mostly interviewed survivors/victims who had already graduated from their undergraduate institution, but nonetheless, privacy was considered and ensured on a contextual, participant-by-participant basis. All participants interviewed or participating in focus groups for this study were communicated with discretely, and if meeting in person, met with in a private location away from others who may recognize them (to the greatest extent possible). Minimizing harm also includes minimizing the distress of the research
participant (Ellsberg & Heise, 2002). Most research participants who are being asked about their experiences of trauma do not experience distress (Legerski & Bunnell, 2010), however it is important as a researcher to be aware of the possibility. This research study interviewed participants about their experiences of trauma, which can invoke an emotional response. An emotional response, however, is different than re-traumatization (Rosoff, 2017), and often when given a moment to calm one’s self, a research participant will choose to continue in sharing their experiences. In fact, extensive researcher experience suggests that survivors/victims appreciate the opportunity to tell their stories if they are met with sympathy and without judgment (Ellsberg & Heise, 2002). The informed consent in this study (covered in more detail later in this chapter) included notifying the participant that they may stop the interview at any time if they begin to feel distressed to the point of not wishing to continue (Ellsberg & Heise, 2002). The researcher continually checked in with study participants throughout the interview process (and focus group processes, as relevant) to ensure participants knew they are free to stop the process at any time. The researcher should also collect and make the participant aware of any relevant referrals for care (Ellsberg & Heise, 2002). For college students, this may involve referring them to relevant on-campus resources (which are often free to students) (Rosoff, 2017), and in this study included any counseling and/or trauma-related resources that are accessible to and may be of use to the participant. Finally, the researcher should also minimize harm to themselves and their team (if applicable). Interviewing survivors/victims about their experiences of sexual violence may prove distressing to the researchers performing the fieldwork. Regular opportunities to debrief after interviews (and outside counseling, if necessary) is important in reducing
potential distress to the researcher and also continued collection of reliable data (Ellsberg & Heise, 2002). This research study had only a single researcher and no additional research team with which to debrief, however the researcher relied primarily on her dissertation committee (which contains significant experience in interviewing survivors/victims of violence against women and girls) to debrief following interviews. It is important to understand how collection and analysis of sensitive data might impact the researcher, and engage in self-care activities as necessary to mitigate potential negative impacts. Researchers who collect sensitive information from study participants may experience negative personal impacts, including feelings of isolation, and conflicted understanding of one’s own role (B. Johnson & Clarke, 2003). These and other feelings may stem from a researcher’s propensity to identify with the sensitive experiences shared in this kind of data collection (B. Johnson & Clarke, 2003). Interviewing survivors/victims about their experiences will likely involve collecting sensitive information, and so the researcher took the following measures to ensure self-care during the course of this study:

- Kept a personal journal of her experiences during the data collection and analysis project
- Relied on her dissertation committee, many of whom are familiar with conducting research with sensitive information, to talk through challenging emotions or concerns about the project
- Maintained her daily running schedule, which enhanced feelings of self-efficacy through the positive effects of exercise and adherence to a routine
The maximization of benefits (or beneficence) is another core ethical principle in conducting research on violence against women and girls. A research study must seek to maximize the benefits not only to the research participant (in this case, a single survivor/victim of campus sexual assault), but also to the larger population of which that participant is a part (in this case, survivors/victims of campus sexual assault seeking justice across the country) (Ellsberg & Heise, 2002). One way to maximize the benefits of a research study is to ensure its scientific soundness, which in the case of a study on violence against women and girls includes creating a methodology that maximizes disclosure. Evidence from research on violence against women and girls demonstrates that this disclosure is profoundly affected by how questions in an interview protocol and/or questionnaire are worded, how well the researcher(s) is trained, and how the research methodology is implemented (Ellsberg & Heise, 2002). This involves creating a questionnaire and/or interview protocol that is worded in a way that is likely to capture the data necessary for a robust study, and also making sure the researcher is administering the questionnaire and/or interview protocol in a way that is sensitive and conducive to safe and comfortable disclosure. The World Health Organization ethical principles on researching violence against women and girls also note that an interview on this topic may best serve the research participant by ending on “a note that emphasizes a woman’s strengths, to try to minimize distress, especially as she might have revealed information that makes her feel vulnerable” (Ellsberg & Heise, 2002). In addition, the maximization of benefits of a research study includes any social advocacy that may be possible as a result of the findings. The findings of any research study should first and foremost be shared with the participants, and potentially the larger community of which
the participants are a part (Ellsberg & Heise, 2002). In this case, the final research study with findings will be shared with the research participants for their review and comment prior to its dissemination to a wider audience. This is to ensure that the research produced feels authentic to study participants’ experiences, and that together the participants and researcher have produced knowledge that is grounded in survivor/victim experience. Survivor/victim comments will be considered and integrated, and the study will then be shared with the larger campus sexual assault survivor/victim advocacy community for their review, and to strategize how this research may be used to enhance their advocacy efforts to strengthen access to justice for survivors/victims. The researcher (after consultation with both research participants and the advocacy community) plans to share research findings widely in both national and international fora related to policymaking, access to justice, sexual assault, campus administration and student life, and other related topics for maximum potential of social impact. However, one of the first venues in which this study will be formally presented is during the researcher’s dissertation defense. All study participants will be invited to attend the dissertation defense.

A third ethical principle relevant to this research study which focuses on survivors/victims of campus sexual assault is respect for people. A researcher must maintain a high degree of respect for the research participants. One component of this respect is the development and administration of an informed consent. An informed consent procedure is essential to establishing the emotional safety and making the participant comprehensively aware of the study in which they are participating. Though researchers on violence against women and girls have discussed what level of detail about the nature of the interview or survey questions is most beneficial to a participant in
the informed consent (Ellsberg & Heise, 2002), this study employed an informed consent that was comprehensive and detailed in its explanation of the research focus and nature of the interview questions. Research on ethics specific to campus sexual assault suggests that college students typically believe in the importance of research on this topic, and an informed consent can bolster their participation and decrease the possibility of distress (Rosoff, 2017). An informed consent was used in this study to fully explain the research, warn the participant of any possible harm, notify the participant of any potential benefits, give the participant a comprehensive understanding of the level of confidentiality that will be kept of their answers, and give them an opportunity to ask any questions they may have. The informed consent also included language about consent to the interview, characterizing consent as a process. Participants were able to withdraw their consent to continue participating in the interview at any time (Rosoff, 2017).

Conclusion

This research study used unstructured interview methods to ask survivors/victims of campus sexual assault about their experiences filing an OCR complaint under Title IX in the Department of Justice. Survivors/victims of campus sexual assault who chose not to file an OCR complaint and campus administrators were also interviewed. Survivor/victim advocates were focus grouped. This study found that survivors/victims were broadly dissatisfied with both campus disciplinary processes and the OCR complaint process. Survivors/victims characterized justice as an individualized idea, but that it includes accountability for and remorse on the part the perpetrator, freedom on campus and in the lives of the survivors/victims, a fair process that does not favor the
perpetrator over the survivor/victim, being believed, and a system that works to prevent sexual violence.

Grounded theory methodology was used to develop a theory of the nature of a relationship between survivors/victims of campus sexual assault and the Federal Government that provides survivors/victims with justice. This theory was developed from the interview and focus group data. In performing this research, the researcher adhered closely to ethical principles for researching violence against women and girls, and adapted these specifically to a campus sexual assault context.
Chapter 4: Findings

I won my case. But I don’t feel like I won anything. And I knew that either way, they were going to say there wasn’t enough there and they didn’t find him responsible for raping me, or they were going to find that he did. And I couldn’t tell which one scared me more.
(Female survivor/victim from a small, rural, private school in the Midwest)

This chapter will summarize the findings of 19 interviews with survivors/victims of campus sexual assault, 11 interviews with campus administrators who work on sexual assault, and two focus groups with survivor/victim advocates. First presented is how survivors/victims define justice. Then the researcher shares how this pursuit of justice is experienced by survivors/victims: through on-campus disciplinary processes (including the use of no-contact orders) and the OCR complaint process, the impact of structural inequalities on the experience of justice, and how justice is connected to mental health and healing.

How survivors/victims define justice

When asked about what justice means for survivors/victims of campus sexual assault, participants frequently qualified their answer by saying something like “it of course means something different for everybody”. In responses on this question from survivors/victims, administrators, and advocates alike, there emerged a desire to refrain from defining other peoples’ experiences and prescribing the path that would give another person justice. It turned out that yes, there was some variation among survivors/victims about what justice meant to them, but answers nonetheless still coalesced around a few key themes. Overall, it became clear that justice was rarely achieved through a singular mechanism. Rather, justice for survivors/victims often meant a combination of elements. As one survivor/victim pointed out: “Justice is not achieved
in narrow ways…the mistake that I believed was that you go through the university process and that’s justice, you report to the police and that’s justice. Any other form of justice is not justice.” This finding underscored the need for more, rather than fewer, justice options to be available to survivors/victims. The following forms of justice recurred in interviews with participants across stakeholder groups.

Accountability and remorse on the part of the perpetrator were common ways that participants described survivor/victim justice. Many survivors/victims wanted to see the perpetrator experience some form of accountability, to feel remorse for their actions, and/or acknowledge that their behavior was wrong. This accountability, however, did not always come in the form of harsh sanction. Several participants across all groups pointed out that survivors/victims are not always looking for their perpetrator to be expelled or put in jail, particularly if the perpetrator is someone with whom they are acquainted. Sometimes this accountability might take the form of an apology to the survivor/victim, or agreeing not to participate in on-campus activities where the survivor/victim may have to interact with them. Overall, survivors/victims wanted accountability measures to reflect and balance out the harm they had experienced. Survivors/victims acknowledged how much the assault had negatively impacted their own lives, and they wanted the perpetrator to acknowledge that, and sometimes they wanted the perpetrator to equitably experience some negative impact in their lives too:

I definitely feel like if the guy had been expelled, I would have felt a lot better. Because then it would have been like what he did mattered. It mattered enough that we don’t want someone like that on our campus making you feel unsafe. (Female survivor/victim from an urban campus in the Midwest)
If a perpetrator takes accountability, it is possible the survivor/victim may also be free to shift some of the blame off them and on to the perpetrator. As one administrator shared:

> What they want is to have that person held accountable in some way. And maybe that’s as simple as a really good apology. Just having that would make a person feel ‘oh good, well then I don’t have to blame myself any longer, that person over there has taken responsibility.’

(Campus administrator working on a large, suburban community college on the East Coast)

Survivors/victims generally want to feel that the person responsible for harming them has understood the harm, and hopefully felt remorse about it. Some survivors/victims also wanted perpetrators to experience an equal amount of harm themselves.

Participants also used the language of freedom to define justice. This freedom included freedom on the part of the survivor/victim to continue pursuing his/her education, freedom from fear and intimidation, and freedom to feel safe on campus. Most participants across groups talked about survivors/victims not wanting to run into their perpetrator, and an effective justice process would ensure a survivor’s/victim’s ability to move around campus without that risk. Survivors/victims wanted to feel free to move around their campus without fear. These kinds of run-ins, which might include seeing a perpetrator in class, can harm a survivor’s/victim’s pursuit of their education. An education, several participants pointed out, is the reason students are on campus in the first place. This conception of justice maps closely to the intended purpose of Title IX, which seeks to eliminate sex-related discrimination in education.

Administrators, advocates, and survivors/victims talked about the importance of access to a justice process that is fair, and supports survivors/victims the whole way through. A process that was “fair” seemed to have a slightly different meaning for administrators, who tended to view fairness more through the lens of sameness of
treatment for both the complainant and the respondent. Survivors/victims talked about a fair process in a way that indicated they experienced most campus disciplinary processes as tilted in favor of the perpetrator. Survivors/victims who noted an absence of a fair campus disciplinary process described this as an absence of justice. Participants across groups noted the importance of supporting survivors/victims throughout any kind of justice process, most notably through the provision of advocates and academic, housing, and protection support.

Being believed was another key element of justice for survivors/victims. If a survivor/victim was met with people that believed their story, they were more likely to experience justice. As one survivor/victim said: “There is no higher form of justice than validation. That’s why saying ‘I believe you’ is the most powerful thing I think to a survivor.” Conversely, participants pointed out how difficult it is for survivors/victims to feel like justice has been served if they are being met with disbelief and invalidation.

Administrators, having sometimes noted challenges in affirming belief in survivors/victims while maintaining neutrality in an investigation, nonetheless confirmed that survivors/victims want first and foremost to be believed. One administrator said:

A lot of students put their eggs all in the criminal justice system, and by that I mean their justice eggs…It makes perfect sense. This is what we’ve taught people to think of as justice: conviction or a finding of responsible. But the truth is…even in cases in which the student has gotten the outcome they wanted through the Title IX process, their sense of justice or their sense of resolution or peace has been totally wrecked by the response of their mother. Or the response of their best friend, who initially said ‘yeah I’ll support you’ and then ended up being a witness for the responding party.

(Campus administrator working at a small, urban, public school in the Midwest)

This highlights the importance of educating not just those who administer justice processes, but the broader public about how to meet a survivor’s/victim’s experience by
believing them. Anyone could have a person in their life share with them an experience of sexual assault and their response to that survivor’s /victim’s disclosure may make or break that person’s experience of justice.

One of the most striking themes that emerged when asking participants about justice was the notion that justice may not be possible in the wake of campus sexual assault. Several survivors/victims, having described justice processes as unsatisfactory, referred to the possibility that no measure was sufficient to ensure survivors/victims justice. These survivors/victims expressed this opinion in a variety of ways when asked what justice meant to them:

“I think once it happens it happens and there’s not justice for anybody.”

“I don’t know that I could ever get what I needed”

“I’m never going to get that part of me back that he took when he took me without asking. I’m never going to feel ok about that no matter what happens to him because quite honestly he’s irrelevant. I have to live with what he did…with what happened to my body and I don’t think there’s a way to get that back.”

“Yeah I’m never going to get justice…that ship has sailed.”

“I think when you start an investigation, you have to let that notion that you will get justice-I think you just have to let it go…the system is designed in that no one truly, actually gets it. And I think that was missing, just overall.”

A survivor/victim advocate who has worked in campus settings for several years underscored this point:

I have an unpopular opinion…but I am not totally sure that you can get justice for this because I think that you lose a piece of yourself that I’m not sure is possible to get back. I think that you can absolutely grow around it and I think you can keep going, and I think you can live a perfectly happy and successful and wonderful life after having experienced something like this. But I do not think you can get that piece of yourself back that you lost in what you experienced and no disciplinary process is going to bring that back. Nothing’s going to bring that back.”

(Survivor/victim advocate working on a campus)
The 19 survivors/victims interviewed had a variety of answers when asked what justice means to them, and whether they felt they received it. Yet few of these participants seemed to have a clear-cut idea of what justice meant to them, or felt at all as if what they received was sufficient. If survivors/victims are questioning whether or not justice is possible in the wake of an assault, how does this inform justice processes at the campus and federal levels? Is justice for campus sexual assault survivors/victims only possible if the behavior is prevented?

The most significant, persistent justice-related finding of this research was how strongly justice is linked to the prevention of campus sexual assault. Overwhelmingly, when asked about justice, survivors/victims described wanting to prevent this from happening to someone else:

Justice to me is that he will never do that to another girl.
(Female survivor/victim from a mid-sized, suburban public school in the South)

The vast majority of survivors/victims interviewed raised the concern that their perpetrator would hurt another person, often citing this as their reason for coming forward. Survivors/victims did not want others to have to experience the harm that they’d experienced themselves, and this fear appeared paramount in many of their stories (sometimes eclipsing hopes of justice and/or healing for themselves):

My biggest hope was that he doesn’t repeat this and do something to someone else in the future so they don’t have to go through what I went through.
(Female survivor/victim from a mid-sized, suburban public school on the East Coast)

The survivor/victim desire to prevent others from experiencing campus sexual assault was noted also campus administrators and survivor/victim advocates. Prevention also
came up frequently when participants were asked toward the end of an interview or focus group what their recommendations were for policymakers. Prevention education was the most frequent, high-ranking recommendation of participants across groups. The best way to address campus sexual assault, including offering justice for survivors/victims, was to prevent it by educating everybody about it, starting from a young age. Comprehensive education on healthy relationships, consent, gender inequity, violence and related topics were recommended by most participants as a way honor the experiences of survivors/victims, and effectively address this issue through policy. If this education was starting only when students arrived on a college campus, however, this was insufficient:

If the first time you’ve had a conversation about consent is when you’re 18 years old and at orientation at (your college), it’s too late.
(Campus administrator at a mid-sized, urban, private school on the East Coast)

Participants recommended that prevention education start in age-appropriate ways much earlier (as one survivor/victim advocate exclaimed: “in pre-school!”). This focus on prevention across interviews and focus groups signaled a deeper concern among participants: societal attitudes about power, gender, and violence needed to shift meaningfully in order for justice to ever be attainable for survivors/victims. Participants noted the challenge in mandating nationwide education on this issue, but argued nonetheless that no policy hoping to achieve justice for campus sexual assault survivors/victims would succeed without promoting prevention in a comprehensive way.

In summary, when asked to define justice, survivors/victims noted how though it differs for each person, key elements of justice include: accountability of and remorse on the part of the perpetrator, freedom for survivors/victims on campus and in their lives, being believed, and a fair process that isn’t tilted in favor of the perpetrator. Several
participants questioned whether justice is possible in the wake of a campus sexual assault. However, the most striking and prevalent description of justice by survivors/victims was through the lens of prevention: justice means this doesn’t have to happen to another person. For some survivors/victims, their definition of justice prompted them to pursue a justice process.

**Deciding to take action**

It’s that feeling of please, please, please let this mean something. Please let this not just be this totally random shitty thing that happened to me. Let this mean something, even if it’s not something for me, even if it’s something for someone else on my campus, for one of my friends. (Survivor/victim advocate working on a college campus)

In the wake of campus sexual assault, some survivors/victims decide to report the experience, and sometimes this report is in pursuit of a justice process. This section outlines what participants shared about why survivors/victims decide to take action and report their sexual assault. Both barriers to action and impetuses for action are presented here.

Survivors/victims reported several barriers to pursuing a justice process in the wake of a campus sexual assault. These barriers included fear of negative social consequences within, and in some cases retaliation from, their friend group or other relevant social communities (e.g. Greek life, athletic team, ROTC). In several cases survivors/victims had negative perceptions of campus disciplinary processes—that they take a long time, that they are retraumatizing, that they are often ultimately unsatisfying in spite of being arduous—which had formed either as a result of hearing about other survivors’/victims’ experiences on their campus or witnessing a peer go through a campus disciplinary process. Another barrier to taking action reported by several
survivors/victims was the time it took for them to fully understand their experience. A majority of survivors/victims interviewed referenced a period of time after the assault where they were still processing what had happened to them: they may have been confused about the incident, coming to the realization of what had happened, did not want to believe they had been sexually assaulted, or were not yet ascribing the language of violence (e.g. “sexual assault”, “rape”) to their own experience. One survivor/victim said of this period: “I was an open wound. Like I could not—I was just really, really, really upset and not understanding…” This period of realization frequently prevented survivors/victims from taking immediate action to pursue justice:

“I’ve never felt more worthless in my entire life. I felt so out of control…there was no way that it ever would’ve occurred to me then or now that I deserved anything, let alone something that sounds as lofty and important as justice.”

-Female survivor/victim from a small, rural, private school in the Midwest

Survivors/victims identified a variety of catalysts that guided them to the realization that they had been sexually assaulted. Virtually every survivor/victim who identified this lag time in realization mentioned an external person, most often a friend or roommate, that clarified the experience as sexual assault, or at least that the experience was in some way “not ok”. For some survivors/victims, the behavior of the perpetrator in the wake of the incident helped them come to identify the experience as sexual assault (these reported perpetrator behaviors included defensiveness, anger, threats, denial). Some survivors/victims cited hearing about someone else’s experience that they were calling sexual assault, identifying that person’s experience as similar to their own, and coming to the realization of their own sexual assault in this way. This period might be understood through the lens of Judith Herman’s phases of trauma and recovery, wherein the first stage, it is important for survivors/victims to name and recognize the source of the
trauma, which allows them to regain control and safety and move forward in their recovery (Herman, 2015). Regardless of how survivors/victims came to understand their experiences as sexual assault, it is clear this reported period of realization often complicated, and in some cases delayed or stymied, their pursuit of a justice process. One campus administrator noted this important period of time in the wake of an assault, and how they interact with survivors/victims who are having this experience:

I think by being very committed to giving survivors space and not insisting that they decide in that moment 24 hours after the biggest trauma of their life, I think it’s made a big difference in survivors’ circling back around and saying...now that I’m processing information in a less traumatic brain, I think I do want to pursue it. 

(Campus administrator at a small, urban, private school in the Midwest)

With space and time in the wake of a sexual assault, survivors/victims may be better prepared to pursue a justice process.

Survivors/victims who took some kind of justice action in the wake of their sexual assault identified several impetuses for this action. Some survivors/victims reported harassment from the perpetrator or the perpetrator’s friends in the wake of a sexual assault, and cited their reason for reporting as safety from further harassment or harm. In a few cases, survivors/victims either perceived or were told they needed to report in order to ascertain damages for the harm that had been done to them. For example, one survivor/victim was a part of a class action lawsuit against their school where many students had been abused by the same person, and if she did not report, there was a risk the lawsuit would not be successful and/or the survivor/victim would not obtain compensation from the school. A few survivors/victims reported concerns around timeliness—that if they chose not to report then, it may have precluded them from taking
action in the future if they so chose. Some survivors/victims reported a desire to have the perpetrator face accountability for their actions, or at least through a formal process understand that what they did was wrong. Several survivors/victims decided to report once they had heard the perpetrator had assaulted another person, reflecting a common interview theme of survivor/victim concern about trying to prevent sexual assault from happening to anyone else. Survivors/victims also shared that they reported with the hope that it would validate their experience, to themselves or others. In short, that by reporting their experience they would then be believed:

If I get justice, if I get those letters that say he’s responsible, then they’ll believe me… And so I think throughout the process I—it’s hard for me to admit—but I did that process mostly to prove first to myself that I was assaulted, but maybe sometimes more so to the people around me that I was assaulted. I think I was trying to get people to believe me.

(Male survivor/victim from a large, urban, public school in the South)

The survivor/victim desire to be believed was a theme throughout all interviews and focus groups: when survivors/victims are first telling a friend, when they are considering reporting, when they think about what justice means to them.

Participants independently noted a phenomenon where survivors/victims experience external pressure to report, or not report. All stakeholder groups identified parents and friends as key sources of external pressure to report their sexual assault for the purpose of getting justice, and in fewer cases, to not report their sexual assault. The presence of external pressure to take a given action sometimes impacted the satisfaction a survivor/victim felt with the justice outcome. One campus administrator lamented experiences with survivors/victims who are deciding whether or not pursue a campus disciplinary process:
There can be a lot of external expectation that I think they’re trying to balance with what they do internally want…I’m being driven by an external expectation and so I didn’t necessarily go into this with a clear idea of what could happen, what would happen, what I wanted to happen…So now we’ve gotten to the end of a thing that I wasn’t totally driving to begin with.”
(Campus administrator working at a mid-sized, urban, private school in the Midwest)

Participants noted some well-meaning loved ones in a survivor’s/victim’s life who may think they are recommending the right thing to that person by encouraging they go through with a justice process, not realizing the emotional toll it will take on the survivor/victim. Survivor/victim advocates working in a medical setting described the harmful intrusion of concerned parents, pressuring their child, the survivor/victim, to get a rape kit or other medical treatment. A survivor/victim advocate working in the criminal justice system described pressure of survivors/victims by police to get protection orders. While sometimes external pressure gave survivors/victims the final, positive validation they needed to take action, external pressure was more often described by survivors/victims, administrators, and advocates as complicating a survivor’s/victim’s feelings about the justice process. Often these complicated feelings cause the survivor/victim further distress.

In summary, when survivors/victims are deciding to take action, there are various barriers to reporting and impetuses for reporting. Participants noted fear of retaliation (from the perpetrator or others in their social circle) and delay in a survivor/victim realizing what had happened to them as key barriers to taking action. Conversely, harassment from the perpetrator (or friends of the perpetrator), survivor/victim concerns for their own safety, concerns around registering a complaint in a timely fashion to ensure it is taken seriously, survivor/victim desire to validate their own experience, and
external pressure from friends and family were all raised as common impetuses for taking action.

*How survivors/victims experience campus disciplinary processes*

A common way that survivors/victims pursue justice is through the disciplinary processes offered by their campus. In this section, the researcher presents how survivors/victims experience on-campus disciplinary processes once they choose to pursue one. This includes a discussion of the unique challenges and opportunities of pursuing justice through an on-campus disciplinary process, the strengths and weaknesses of different on-campus approaches, and the importance of survivor/victim advocates.

Though a primary focus of this research is how the Federal Government can better ensure justice for survivors/victims of campus sexual assault, you cannot research the federal OCR complaint process without also understanding the experiences of survivors/victims who pursue the campus disciplinary process. Since the OCR complaint process is for survivors/victims who feel their campus failed to address their needs, the vast majority of these OCR complaints involve survivors/victims who first pursued a campus disciplinary process. Indeed, this research is also more broadly concerned with what justice means for survivors/victims of campus sexual assault, and much of this understanding of justice is present across both the campus disciplinary process and the OCR complaint process.

Of the 19 total survivors/victims interviewed for this research, 14 pursued campus disciplinary processes. Interviews with survivors/victims, campus administrators, and focus groups with survivor/victim advocates painted a largely critical picture of campus disciplinary processes, though there were key elements of these processes that were
identified as positive. Campus administrators had more positive reflections on campus
disciplinary processes than survivors/victims and survivor/victim advocates.
Administrators felt that the preponderance of the evidence standard set forth in the 2011
Dear Colleague Letter was an appropriate standard of evidence, as compared to the “clear
and convincing” standard that had existed before. One administrator highlighted their
support of this standard, and shared that most of their cases do not lack as much clarity as
is widely believed:

Preponderance holds both or all parties…at the same value. If it’s clear and
convincing, if it’s beyond a reasonable doubt, that says the word of the respondent
has more value than the word of the complainant…If the only information we
have is the complainant’s word versus the respondent’s word, they seem equally
credible…that’s truly 50/50. Most of our cases don’t land there.
(Campus administrator at a mid-sized, urban, private school on the East Coast)

In general, campus administrators felt that their policies had become more comprehensive
over the last several years since the 2011 Dear Colleague Letter, in spite of the recent
change in administration and the appointment of Betsy DeVos as Secretary of Education.
These policy changes had contributed to better outcomes and ultimately offered more
resources and support for survivors/victims. Definitions within policies had become more
specific. These policies often included the building of and reliance on strong referral
networks, allowing survivors/victims to seamlessly access both campus resources and
other resources in the community, state, or country. Survivor/victim advocates and
campus administrators especially remarked on efforts to improve and broaden these
networks, and how this has led to better outcomes for the survivors/victims they serve.
Strong referral networks that connect campus survivors/victims to outside resources were
particularly important in instances where the perpetrator was not a student on the same
campus. This poses a challenge to campuses, as they can only hold their own students
responsible through their disciplinary processes. So referral networks allowed a survivor/victim to take action and seek resources even in situations where there perpetrator was not a fellow student. Some campus administrators remarked on the need for better coordination and referrals even within campuses, particularly in larger schools. Accommodating a survivor’s/victim’s needs should feel seamless, especially within one’s own school.

Participants also commented on the two primary models of campus disciplinary models: the investigative model and the disciplinary hearing model. Broadly, an investigative model relies on a single investigator to gather the facts of the case (including taking all statements) and recommend a finding of responsible or not responsible. A disciplinary hearing model involves some presentation of the facts of the case to a board at a hearing (the board may be comprised of any combination of campus community members, including potentially student peers). The board then recommends a decision of responsible or not responsible. Campus administrators, survivors/victims, and survivor/victim advocates alike recommended the investigative model over the disciplinary hearing model. In either model, the recommendation is then approved or overturned by a higher campus authority, and this authority varied from campus to campus. It was important that this authority be viewed as impartial, and not biased in favor of either party or institutional interest. The disciplinary hearing model, participants argued, opened up several opportunities for negative impact on the survivor/victim. First, the disciplinary hearing model might force the survivor/victim to have further contact with the alleged perpetrator that may be retraumatizing (including even hearing the voice of that person). Some campuses allow for cross examination of either or both parties at
their hearings, somewhat mirroring a courtroom trial, which can be harmful to a survivor/victim to whom it is important to feel validated and believed. Sometimes the hearing board was comprised of people the survivor/victim deemed to be biased in favor of the alleged perpetrator (e.g. the perpetrator’s friends or fraternity brothers). Hearings can also drag on for hours or days at a time, which can be physically and emotionally exhausting for a survivor/victim. The investigative model, if executed with care and expertise, can mitigate some of the potentially harmful survivor/victim impacts of the hearing model. It allows for more separation between the survivor/victim and his/her perpetrator; it can be conducted with more care and accommodation of the survivor/victim, and allows for more privacy of both parties and a less public investigation and deliberation of the case’s facts.

Campus administrators and survivors/victims both identified the presence of a compassionate, well-trained investigator taking the statements of both complainants (survivors/victims) and respondents (alleged perpetrators) as paramount to effective campus disciplinary processes. Participants shared that a good investigator is able to listen with an empathetic and non-judgmental ear during an in-person interview, and is able to nimbly follow whatever path an investigation takes. This behavior on the part of an investigator does not have to come at the expense of a thorough investigation:

I have to ask hard… pressing questions of both parties… And I do so… by explaining to them ‘Hey, listen, I’m about to ask the question about your level of intoxication, and I just want to say, no amount of alcohol means that you deserve to be sexually assaulted, I’m just trying to get a sense of what your state of mind was.’ Again it’s not rocket science, you have to be informed and an expert in how to ask questions… and take care of people.
(Campus administrator at a small, urban, private school in the Midwest)
Survivors/victims working with investigators who did not seem to be compassionate or well trained described this as a deeply negative aspect of their justice pursuit through the on-campus process. While participating in an investigation, survivors/victims had better experiences if they were able to take breaks when they needed and were interviewed in a safe and comfortable space. Survivors/victims interviewed noted positively when the investigator they were working with was able to follow leads and take on the bulk of the investigatory work. This freed up survivors/victims to put less effort into collecting information for their own investigation, which could be a heavy burden on undergraduate students who are already strapped for time. Sometimes, administrators shared, even if the outcome is not in a survivor’s/victim’s favor, the survivor/victim may still be satisfied with the way they were treated and respected by the campus investigators. Having a survivor/victim advocate available who can accompany the survivor/victim through whatever process they are pursuing emerged as an important support for the survivor/victim. Several survivors/victims interviewed identified a survivor/victim advocate who supported them during their justice process, and shared how valuable this support was to them. Though this advocate could be a friend or family member, more often this was a staff member of either the college or a non-profit organization who is trained in how to support survivors/victims of sexual assault. These advocates are also familiar with the various pathways to justice for survivors/victims, and can help them navigate these pathways. Advocates not only served as emotional support to survivors/victims (a role made sometimes more critical if the survivor/victim could not rely on friends or family), but also provided important guidance on complicated justice or disciplinary processes with which the survivor/victim may not have been familiar. Some
administrators commented on an advocate’s ability to potentially keep a survivor/victim engaged in a justice process.

Participants remarked on the unique opportunity campuses have to support survivors/victims and hold perpetrators accountable. Campuses, unlike the criminal justice system for example, can offer swift, targeted academic and housing support to a survivor/victim. A campus administrator may be able to ensure a survivor/victim does not have to attend a class with their perpetrator, or live next to them in the dorms. On a campus, administrators can also work with a survivor’s/victim’s professor to explain why that person may be performing poorly in class, and figure out ways to accommodate them and ensure their academic success during the extenuating circumstance. This unique power of campus disciplinary processes was noted by administrators:

The criminal justice system can’t change your class schedule for you, the criminal justice system can’t change your dorm room assignment, the criminal justice system can’t suspend or expel someone or remove someone from your work environment.

(Campus administrator at a mid-sized, urban, private school on the East Coast)

A survivor/victim advocate that works on a campus underscored the importance of these interim support measures: “It allows more intermediate changes… which honestly, their mental and physical health and safety is their primary concern, and less this idea of justice and protecting society and these bigger responsibilities. They just want to graduate”.

The unique position of campuses, however, offers both positive opportunities and potential harm. Several participants commented on the importance of the campus disciplinary process, as compared to a criminal justice process, because frequently survivors/victims are not seeking to hold their perpetrator criminally responsible. A
campus disciplinary process offers a survivor/victim the opportunity to hold their perpetrator accountable (a person with whom they likely to be some level of acquainted) without the possibility of putting them in jail or having other criminal consequences.

Some administrators who were working at minority-serving institutions highlighted the importance of this option for their students, many of whom are from communities that may distrust the criminal justice system due to historical marginalization and violence.

from that system:

For the majority of my work I have worked with women of color, and there are quite a few factors as to why women of color don’t want to involve law enforcement. The first and most obvious one being the prison industrial complex and the way that it has disproportionately impacted people of color and especially black people…Women of color not wanting to be seen as responsible for sending more men of color to prison knowing what it has done to their communities. There’s a distrust between communities of color and law enforcement. So you already have that but then to add onto it the issues of law enforcement and sexual violence in general which victims have overwhelmingly reported feeling retraumatized and revictimized…So if you take just the general pitfalls of law enforcement when it comes to sexual violence and combine that then with law enforcement and racialized criminalization and combine all of those things together you get kind of a melting pot of reasons for why women of color do not want to involve law enforcement.

(Campus administrator working at a small, urban, private school in the South)

However this opportunity presented by the campus disciplinary process is also a limit.

Many survivors/victims interviewed who had pursued a campus disciplinary process, and some administrators and advocates, lamented the fact that the worst possible sanction for a perpetrator found responsible in a campus disciplinary process is to be expelled from that school. This does not necessarily preclude the responsible perpetrator from enrolling at another school and continuing their education. To survivors/victims who had suffered the trauma of the assault, and endured a challenging process to hold their perpetrator accountable, this maximum sanction frequently did not feel satisfying. Worse,
survivors/victims frequently went through a campus disciplinary process and even if their perpetrator was found responsible, this maximum sanction was not levied. Instead, even less satisfying punishments (like a short-term suspension, or certain curtailments of a perpetrator’s ability to participate in campus activities) were often invoked instead. Survivors/victims remarked frequently on how unfair it seemed that a perpetrator, even one that had been found responsible through a campus disciplinary process, was able to keep their status in certain communities on campus, be it an on-campus job, or membership in a Greek organization, or a spot on an athletic team. One survivor/victim interviewed had experienced sexual assault from a high profile athlete on her school’s football team. The survivor/victim went through the campus disciplinary process, and the football player was found responsible. This survivor/victim took issue with the school’s willingness to allow him to continue playing:

If the NCAA is going to hold its athletes to an academic standard, they should also be held to a moral standard…he’s still on the football team. And he shouldn’t have that privilege…it bothers me so much that he’s allowed to have that…it’s not a right that you have on campus to be an athlete, it’s something that you have to work hard for…The school has found that he is guilty of these things. He should not be allowed to represent the school. Like wear the school’s name across his chest, but they also wanted to suspend him because he sexually assaulted someone? That doesn’t work.
(Female survivor/victim from a small, urban, private school on the East Coast)

A campus disciplinary process has the unique opportunity to hold campus perpetrators accountable without requiring that survivors/victims engage with the criminal justice system.

The criminal justice system was not a focus of this research, but was frequently raised in interviews and focus groups, as some advocates and administrators had worked or were currently working with that system, and some survivors/victims interviewed had
also pursued some form of criminal or civil recourse. Participant comments on the
criminal justice system noted it’s relatively less trauma-informed and survivor-centered
approach, and its comparative length and arduousness. Thus, the campus disciplinary
process seemed to emerge from participants as an important alternative for
survivors/victims who chose not to pursue justice through the criminal justice system.
However, the campus disciplinary processes seem to lack the clear-cut and well-enforced
sanctions that accompany a finding of guilty in the criminal justice system.

Campus administrators, who had worked on other kinds of discrimination cases,
or in a criminal setting, commented on how campus sexual assault is unique to other
kinds of offenses. Administrators explained that in other kinds of discrimination cases,
you are often dealing with a hierarchical power relationship (maybe discrimination is
demonstrated by a faculty member or a work supervisor). By contrast, campus sexual
assault is typically experienced in a peer-to-peer way. These dynamics impact how
campus sexual assault is dealt with on-campus, and potentially explain why the methods
for dealing with it feel less urgent and/or satisfactory. As one administrator noted,
institutions may feel “less responsible for the behavior of random students than you do
for the behavior of faculty members for whom you hired, or supervisors that you’ve
trained.” This perceived lack of ownership of the issue by campuses may be preventing a
more comprehensive and powerful response to sexual assault.

Survivors/victims interviewed who pursued a campus disciplinary process had
several other critiques of that experience. In nearly every interview with a survivor/victim
who went through a campus disciplinary process, the survivor/victim commented on the
length of the process and transparency throughout the process. Campus administrators
and survivor/victim advocates who had supported survivors/victims in this process echoed these observations. Survivors/victims commented on how the process typically took far too long from the time they reported it to the time of a decision, and that deadlines and expectations of timeframe were frequently not met. Some survivors/victims ran into personal difficulty based on their campuses inability to keep their investigation within the guideline of 60 days spelled out in the 2011 Dear Colleague Letter. One survivor/victim had bought a flight to be with their partner when they received the decision, as the survivor/victim did not want to be alone when they heard the news. The process stretched so much longer than expected that the planned trip came and went and the survivor/victim ultimately ended up alone when they heard that their perpetrator had been found responsible. The administration had been citing technical difficulties as reason for the delay, and the survivor/victim said, “I wish they had just said they needed more time.” Another survivor/victim was not able to tell their family that they had pursued a campus justice process, as the family had threatened to stop paying for the survivor’s/victim’s education if they reported it. The survivor/victim had thus pursued the process without telling their parents, and needed to maintain that confidentiality. The survivor/victim had entered the process with the understanding that it would be wrapped up by the end of the school year. However the campus disciplinary process took so long that it spanned into the summertime, when the survivor/victim was meant to be home in another state with their family. This meant the survivor/victim had to find ways to continue participating in the investigation secretly, including making clandestine trips over the summertime from their family home.
Campus administrators acknowledged that the campus disciplinary process taking too long is a frequent critique they receive from survivors/victims. However, administrators cited the many reasons an investigation might take longer than expected. There may be several witnesses to interview, or a new piece of information might emerge that needs further investigation or questioning of each party. One administrator summed up their challenges balancing the length of an investigation with its thoroughness:

There are twists and turns, different things come up, reports can take an inordinate amount of time…Right now its summer, and I’ve got a situation wherein somebody is in a very remote type job. They’re intermittently available over the telephone, they can only meet with me at certain times, and they have a night job. You know what I mean? So this person is a witness and they’re interviewed, it took me two to three weeks just to get the person to commit to a time. (Campus administrator on a large, suburban, public campus on the East Coast)

Balancing the length of the disciplinary processes with the due diligence required to conduct a thorough investigation seemed to highlight the need for increased staff and financial capacity for campus investigations. One survivor/victim advocate noted the reality of these challenges, but underscored that a survivor/victim should not be punished for inefficiencies in the campus system:

You could just go to the doctor’s office, and I’ll wait 35 minutes before my appointment, and again 15 minutes in the actual room. So there’s always going to be that, and it’s just really emphasized more when you’re a survivor and you’re dealing with it. They aren’t, and shouldn’t have, the time and energy to have to deal with all the flaws in the system even if they’re just technical flaws. (Survivor/victim advocate working on a campus)

The length of the investigation ties into other critiques of the campus disciplinary process that emerged from this research, which included the level of transparency by campus administrators during an investigation. This transparency was frequently framed by survivors/victims through the level of communication they had with the administrators.
handling their case. Often, survivors/victims reported not feeling like there was sufficient communication of progress and information from the administration, contributing to a decreased trust in the system and a feeling that they were not sure what was going on in this case that was very personal to them. If they were not hearing from the administrators working on their case, survivors/victims could not be sure if it was being taken seriously and investigated thoroughly, or if it was being pushed to the bottom of an administrator’s to-do list. Conversely, when survivors/victims did feel there was a sufficient effort made by administrators to communicate updates on their case, they noted and appreciated this effort. Setting and meeting expectations around communication between administrators and the survivor/victim contributed to greater perceived transparency on the part of the survivor/victim, and increased trust that the case was being appropriately handled. In the wake of an assault where a survivor/victim is working to regain their sense of control of their bodies and their lives, it is increasingly important for administrators to avoid contributing to feelings of confusion and lack of control by keeping them in the dark. A survivor/victim advocate neatly summed up the increased importance of communication and transparency during a campus disciplinary process: “One delayed email can feel like the whole system is totally flipped against you, you know?”

During a campus disciplinary process, participants described the negative impact the experience often has on a survivor’s/victim’s education, the reason survivors/victims are on campus in the first place. A majority of the survivors/victims interviewed lamented the harm done to their academic lives as a result either of the sexual assault or the process they pursued in the wake of the sexual assault. One campus administrator outlined the responsibility schools have to the survivor’s/victim’s education:
It’s justice to feel that they have not had to stop what they came for, and that was an education. I mean the way I’ve always felt is we...have to do whatever we can do to keep the student a student—that’s legal. And sometimes that means washing their clothes, sometimes that means buying them sheets, sometimes that means going for a walk, when other people aren’t going to do that.
(Campus administrator working on a large, suburban community college on the East Coast)

Several survivor/victim advocates talked about the joy they felt when survivors/victims they worked with successfully graduated, as they all too often had seen survivors/victims unable to complete their academic program as a result of the stress of the assault and/or resulting justice process. Effective justice policies should remove enough burdens off a survivor/victim so that they can successfully continue to pursue their education.

Participants made clear that a key element of justice was ensuring the survivor/victim did not have to sacrifice their standing as a student because of what happened to them.

Participants reported mixed feelings about responsible employees on campus. A responsible employee is an employee who, if they hear about an incident of campus sexual assault, must notify the Title IX office. Though not explicitly asked about responsible employees, participants frequently had encountered them or had opinions about whether or not campus employees should be required to report a survivor’s/victim’s experience if that person confides in them. Administrators tended to look upon responsible employees favorably, noting that their ability to do their job well, to connect survivors/victims to the support they need, is contingent upon making connections with those survivors/victims. Some administrators underscored that making contact with a survivor/victim does not require that person to pursue a campus disciplinary process. Survivors/victims need not even respond to the contact made by the Title IX office. But the presence of responsible employees, administrators argued,
increased the likelihood that survivors/victims could get connected to helpful support. Survivors/victims and advocates had a more nuanced view of responsible employees. Some advocates noted that responsible employees are sometimes not well-educated on campus policies, or the rights of survivors/victims, sometimes erroneously remarking that a survivor/victim is required to make a report when they are not. Survivors/victims in general tended to be more wary of responsible employees. Survivors/victims did not like the idea of being out of control of who had knowledge of their experience, or worse, what was done about it. Overall, it seems necessary for campuses to take responsibility for training all their responsible employees well, and to ensure that employees can respond to survivors/victims in a trauma-informed way. Additionally, whether a campus relies heavily on responsible employees or not, participants highlighted the need for their also to be the option of confidential resources for a survivor/victim to approach and talk through their experience.

Victim blaming was an unfortunate experience reported by several survivors/victims who pursued justice on campus. Some campus administrators also noted the potential for victim blaming from members of the community during a campus disciplinary process. This victim blaming sometimes took the form of seemingly inane or unrelated questions of the survivor/victim during the investigation period in an effort to make the survivor/victim seem culpable in his/her own assault. In some cases this included irrelevant personal questions about the survivor’s/victim’s mental health history. One notable example of victim blaming was a campus investigator asking a survivor/victim, who had been assaulted during a hurricane, why the survivor/victim had taken their rain boots off when they entered the fraternity house where the
survivor/victim was ultimately assaulted. The survivor/victim understood this line of questioning to be building the case that they had somehow consented to sex by taking off footwear when the survivor/victim arrived at the house. Survivors/victims reported victim blaming from friends, family, administrators, and the RA to whom they reported the assault. Participants noted how harmful victim blaming is both to a survivor’s/victim’s healing and their feeling that they received justice.

Campus social communities were recurrently highlighted in discussions with all three participants groups: Greek life and athletics, in particular. Four of the 19 survivors/victims interviewed had been assaulted by a member of Greek life and/or at a Greek life event. In these instances, survivors/victims were especially concerned with the potentially negative social impact, or retaliation, that could result from coming forward given the tightknit social nature of the Greek community. Five of the 19 survivors/victims interviewed had experienced campus sexual assault at the hands of a student athlete, or another member of the athletic community. In these cases, particularly when the school had a primary institutional focus on its athletic program, survivors/victims noted a feeling that it was especially difficult to pursue a fair disciplinary process against their perpetrator. Some survivors/victims reported a sense that the school or larger community was more inclined to protect or side with the athlete, given how important the athletic program was to the reputation of that institution. Administrators highlighted the importance of not stereotyping Greek and athletic communities, and even argued that these groups were more educated about this issue than their larger campus population. Survivor/victim advocates on the other hand urged campuses not to turn a blind eye to communities where these incidents are recurring: that Greek organizations and athletic
teams that display an entrenched culture of sexual assault should face sanctions or removal from campus:

If you’re in a fraternity and you have like three people found responsible for sexual assault within two years, that fraternity should be disbarred…if its theatre club or whatever it is…there are these examples where there’s this proven culture of assault and…the school knows that there are five rapists coming from this fraternity, and they’re being found responsible which is a high bar… and you’re still not doing anything? Feels negligent to me.

(Survivor/victim advocate currently working on a survivor/victim hotline)

In spite of Greek life and athletics coming up repeatedly during interviews and focus groups, there were also many survivor/victim experiences recounted that had nothing to do with these groups. One survivor/victim, for example, had been assaulted by a fellow member of her student theatre group. Overall, these findings underscore a need for careful consideration in policymaking of how certain social ties impact the experience of a survivor/victim seeking justice.

Both survivors/victims and campus administrators independently raised the role of impartiality in the campus disciplinary process, and the important, delicate balance between the rights of the survivor/victim and the rights of the accused. When campus administrators described disciplinary processes (and their role in them) as impartial, they were usually equating impartiality with justice and fairness. In the eyes of most administrators interviewed, impartiality was the hallmark of a fair campus disciplinary process. One administrator noted that though survivors/victims want desperately and primarily to be believed, the administrator is unable to tell survivors/victims they believe them because of the administrator’s role in the on-campus disciplinary process. If the administrator told survivors/victims they believed them, this would signify partiality.

Another administrator did not feel comfortable calling the disciplinary process “survivor-
centered”, as this could also imply bias. Survivors/victims sometimes acknowledged in
interviews the need for impartiality in the process, but also expressed some confusion
about who in the process was there to support only them. As one survivor/victim
advocate said: “neutrality means ‘I have to also keep the perpetrator’s best interest at
heart’, and that feels threatening”.

The perceived importance of impartiality in campus disciplinary processes
illuminates a gap in survivor/victim support during these processes: someone needs to be
telling survivors/victims they are believed. If campus administrators feel they cannot
carry out this responsibility, schools need to find another stakeholder who can fulfill this
duty for survivors/victims. As one survivor/victim advocate shared: “A survivor advocate
makes a huge difference. So many people being like ‘I’m neutral, I’m neutral, I’m
neutral’, and it’s so important to have someone who’s not neutral, who’s supportive.” It’s
important to also note that, because the campus disciplinary process is different from the
criminal justice system, due process is not actually spelled out as a right of the accused in
a campus disciplinary process. The “innocent until proven guilty” axiom of the criminal
justice system, essential in light of the possibility of criminal sanction, is not actually a
guarantee of the campus disciplinary process. One campus administrator pointed out in
an interview that federal guidance requires a fair process, not due process in on-campus
proceedings. The administrator went on to highlight how overused the term “due
process” is in discourse surrounding campus disciplinary systems. This clarification
highlights the potential need to reframe this discourse with different language. If the
worst possible sanction that can result from a campus disciplinary process is expulsion
from that institution, is a criminal understanding of “due process” the lens through which administrators should be approaching these processes?

In seeking justice, participants frequently mentioned survivors'/victims’ pursuit of no-contact orders between themselves and their perpetrators. No-contact orders were described by participants as important measures for securing survivor/victim safety. Nearly every survivor/victim interviewed expressed feelings of fear or intimidation in the wake of campus sexual assault and during a campus disciplinary process, with some of this fear tied to real or anticipated retaliation. This retaliation could come in the form of perpetrator behavior, behavior of the perpetrator’s friends or social circles (like fraternity brothers, athletic teammates or an athletic coach), the perpetrator’s parents, and even retaliation from the school. One survivor/victim who was in ROTC feared being prevented from being commissioned into the army if they came forward about the fellow ROTC member that assaulted them. After survivors/victims reported the assault and began to pursue a campus disciplinary process, this tended to be when their fears around retaliation and safety increased. This fear frequently led to survivors/victims pursuing some kind of protection order to ensure their safety and minimize contact with the perpetrator. No-contact orders were frequently pursued by survivors/victims who chose to report a sexual assault to their campus, and were identified by all participants as an important and frequently invoked campus supportive measure. These kinds of orders had different names on different campuses, and have a different name and scope in the criminal and civil systems (often a “civil protection order” or “restraining order”). Some survivors/victims reported to their campus or the criminal justice system solely for the
purpose of obtaining a no-contact or protective order, and identified safety and the desire to have zero contact of any kind with their perpetrator of primary importance.

No-contact orders, while perceived as an important step in ensuring survivor/victim safety, also offered some challenges for survivors/victims. No-contact orders are only enforceable if both the survivor/victim and perpetrator are students on the same campus. Thus, survivors/victims who wanted a campus no-contact order against their perpetrator who was not a student on the same campus were not able to invoke this protection without pursuing a protection order through the criminal justice system (a process one survivor/victim described as retraumatizing and possibly worse than the experience of sexual assault). Additionally, because campus no-contact orders assign mutual responsibility to both the survivor/victim and perpetrator for avoiding contact, this sometimes opened the door for abuse of the survivor/victim. For example, one survivor/victim shared the experience of obtaining a no-contact order against their perpetrator, and having the perpetrator begin to purposefully show up first to on-campus locations (e.g. the dining hall, a certain floor of the library, parties) so that the survivor/victim would be forced to avoid that location. This limited the freedom the survivor/victim felt to move around on their own college campus, and experience campus life. The importance of survivor/victim “freedom” was raised both by administrators and survivors/victims. Survivors/victims frequently talked about their desire to move about their campus freely, and live their college experience fully, and having this freedom curtailed by the presence and/or actions of the perpetrator and/or the perpetrator’s friends. Several survivors/victims reported fear of leaving their dorm rooms in the wake of their sexual assault. Survivors/victims, campus administrators, and survivor/victim advocates
also shared experiences where the survivor/victim reported the perpetrator as having violated the no-contact order, and either the campus chose not to properly enforce it, or campus bureaucracy precluded swift and proper enforcement (for example, the Title IX office issues the no-contact order, but the conduct office enforces it). These problems with no-contact orders carry over into other justice processes. When asked what would help survivors/victims get closer to justice, a survivor/victim advocate working in the criminal justice system shared first and foremost that she wished civil protection orders worked more effectively in preventing contact between the two parties, and that police would better enforce them. Other survivor/victim advocates in the focus group commented on how much confusion there is between no-contact mechanisms across the different systems (campus, criminal, civil). Several advocates mentioned that survivor/victim confusion about the capabilities of these three different systems to prevent contact between a survivor/victim and a perpetrator had a negative impact on a survivor’s/victim’s pursuit of justice.

One of the themes that emerged surprisingly from survivors/victims who were interviewed about their campus disciplinary processes was their intimation that the process was actually on par with or worse than the experience of campus sexual assault. Several survivors/victims shared that pursuing a campus disciplinary process had made the negative impacts of the sexual assault worse, or had introduced new negative effects into their lives. Participants across all three stakeholder groups highlighted retraumatization as one frequent effect of the campus disciplinary process on survivors/victims. This retraumatization could be a result of interactions with poorly-trained or un-empathetic administrators, victim-blaming, or enduring a process that robs a
person of control when they desperately need to feel they are regaining it. One survivor/victim advocate said that the feelings associated with a disciplinary process often “mimic” a sexual assault, intensifying the negative impact on the survivor/victim. Some survivors/victims interviewed indicated that if a friend or peer experienced sexual assault on campus, they would not recommend they go through a disciplinary process based on their own experience. One campus administrator had ruefully noted this phenomenon in their own work:

In my 20 years doing this work, I think the thing that has stood out most to me that is the most painful element for people who have experienced sexual assault in school settings…is we tell children and young people ‘if something bad happens to you, tell your family, tell the police’. That’s your support and your help. Well in this world of (gender-based violence) and particularly acquaintance sexual assault, students reach out to…the people we have told them their entire lives are going to be there for them. Then all of those systems turn on them, and blame them, and stigmatize them…More students have said to me ‘you know what my sexual assault was terrible, but this is so much worse.’

(Campus administrator working at a small, urban, private school in the Midwest)

Better training and education for all stakeholders that might be responding to a survivor/victim in the wake of campus sexual assault was recommended by several participants as a way to reduce this retraumatization and increase positive outcomes for survivors/victims who choose to report their experience.

In summary, participants described a more negative than positive survivor/victim experience of campus disciplinary processes. Campus policies and processes have improved since the 2011 Dear Colleague Letter, with strengthened referral networks and greater understanding of the importance of well-trained investigators. Participants acknowledged the unique opportunities campus disciplinary processes to address justice in ways the criminal justice system does not. However, campus disciplinary processes are
too long and frequently lack transparency, decreasing survivor/victim trust in campus systems. The process can be confusing to survivors/victims, particularly as they navigate which processes (e.g. no-contact orders) they most want to pursue. This makes the presence of survivor/victim advocates essential. Survivors/victims frequently experience victim blaming during arduous campus disciplinary processes that too often have a negative effect on the survivor’s/victim’s education. This negative impact of the disciplinary process on survivors/victims is so great, some describe the disciplinary process as worse than the survivor’s/victim’s experience of sexual assault.

*How survivors/victims experience the OCR complaint process*

This section summarizes how participants described the survivor/victim experience of the OCR complaint process. The findings outline both what prevents a survivor/victim from, or encourages a survivor/victim to, pursue a complaint through OCR. Participants also discussed the strengths and weaknesses of the OCR complaint process. Perceived changes in the OCR under the Trump Administration are also explored.

This study sought to understand the relationship survivors/victims are seeking with the Federal Government when they pursue justice in the wake of campus sexual assault. To this end, survivors/victims, campus administrators, and survivor/victim advocates were asked what justice broadly means for survivors/victims, and also specifically what it means when survivors/victims pursue justice at the federal level, through the OCR complaint process. Of the 19 survivors/victims interviewed, three had filed an OCR complaint, one had begun preparations to file and ultimately decided not to, and one had participated in an OCR investigation on their campus. This makes five of 19
survivors/victims interviewed who had first-hand knowledge of the complaint process, though all survivors/victims were asked about it and many others were familiar with it and shared their perceptions of OCR. As mentioned, significant effort was made to recruit survivors/victims that had filed an OCR complaint for this research, in spite of the challenge of only 502 complaints having been filed with OCR nationally in this post-2011 era of enforcement. Given that current national estimates of campus sexual assault prevalence are one in five college women and one in twelve college men (Banyard et. al., 2007), it would seem that a relatively low percentage of survivors/victims of campus sexual assault ultimately end up accessing the OCR complaint system. Survivors/victims who chose not to file an OCR complaint reported an eagerness to put the event behind them and not potentially retraumatize themselves through an additional justice process, particularly given the negative experiences many survivors/victims had endured in a campus disciplinary process. Several survivors/victims interviewed had not known about the OCR complaint process, or found out about it so late in their college experience that it seemed too late to file, or they were concerned filing a complaint would interfere with their education or graduation. Some survivors/victims expressed a misunderstanding of who was eligible to file an OCR complaint. One survivor/victim in particular noted that, because they were not pushed out or had not dropped out of school, the survivor/victim did not think they would be eligible to file a complaint. Given the seemingly large-scale survivor/victim dissatisfaction with campus disciplinary processes, and the relatively small number of survivors/victims who go on to file an OCR complaint, it would seem that more education about what OCR is for and who is eligible to file a complaint may be needed in order for access to this complaint mechanism to be increased.
All three survivors/victims interviewed who had filed an OCR complaint sought justice through a campus disciplinary process first, and were dissatisfied with the campus response. Campus administrators also indicated that, in the sexual assault complaints they had seen ultimately be filed through OCR, survivor/victim dissatisfaction with the campus disciplinary process was a primary impetus for filing. This dissatisfaction could include a finding that was not in favor of the survivor/victim, a survivor/victim feeling that they had not been taken seriously by the campus administration, the length and difficulty of an on-campus process, and a failure of the campus administration to follow their own stated policies in a disciplinary process. Both survivors/victims and campus administrators identified an impulse on the part of the survivor/victim to file through OCR in order to reform a campus disciplinary system they perceived to be broken in some way, so that future survivors/victims would have a better experience with that campus system. All three survivors/victims who filed OCR complaints expressed the hope that through their OCR complaint, their campus would improve their disciplinary process and make the process easier and less traumatizing for survivors/victims in the future.

Both administrators and survivors/victims identified elements of the OCR complaint process that seemed to be working well. First, participants acknowledged the importance of having a body external to a school come in and review campus policies from an outside perspective. In addition, the barrier to entry to filing an OCR complaint is relatively low: the form is available online and does not have rigid requirements. It seems most anyone can easily file an OCR complaint. Some survivors/victims who chose to file or considered filing commented on the cathartic nature of writing out the complaint.
(this sentiment was also reported by survivors/victims who wrote out statements for a campus disciplinary process). The act of writing out one’s experience on paper, in detail, seemed to be edifying and positive for survivors/victims. The ease of filing the OCR application, however, was identified by some as a hindrance: because there is little guidance online about what should go into a complaint, survivors/victims are left relatively in the dark, guessing at what information should be included in their complaint to increase its chances of being investigated. This is where victim’s rights attorneys provided a key support to survivors/victims: often attorneys had experience filing OCR complaints and could successfully guide a survivor/victim in the filing of such a complaint.

A primary reflection on the OCR process from campus administrators, survivors/victims, and survivor/victim advocates alike was that the OCR process takes way too long. None of the three survivors/victims interviewed who had filed OCR complaints had yet seen their cases resolved (one survivor/victim had their case opened with OCR 12 months ago, one had their case opened 15 months ago, and one had their case opened 31 months ago. The latter survivor/victim is the only one of the three to have filed their OCR complaint during the Obama Administration). Survivor/victim advocates shared stories of survivors/victims they had worked with who waited years (in some cases 4-5 years) for a resolution to be reached in their case. The Chronicle of Higher Education lists the average time of an OCR investigation (from filing to resolution) to be 2.5 years (Title IX: tracking sexual assault investigations, 2019). Campus administrators in particular noted that this length of investigations seemed to be tied to a lack of OCR
capacity, but most participants acknowledged that it was inappropriate to make survivors/victims wait years to hear back from the OCR after making a complaint.

Participants reported mixed observations regarding communication and transparency during the OCR investigation process. One survivor/victim had filed an OCR complaint, heard shortly after that it an investigation was being opened, and has not heard anything further for two years. This lack of communication was distressing to the survivor/victim, who was not sure how much their campus knew about the investigation, and feared retaliation from the school. Another survivor/victim that filed an OCR complaint commented on the interactions they’d had with the investigator at OCR, saying that on their calls the lawyer would ask several question, but the lawyer rarely had additional time to answer any of the survivor’s/victim’s questions. In spite of this low level of communication, two of the three survivors/victims interviewed who had filed an OCR complaint called the OCR investigator “kind”, and were pleased with the way they’d been treated by the OCR staff when they had been able to connect with them.

Administrators experience a much different side of OCR complaints than survivors/victims. When an OCR complaint is filed by a survivor/victim and opened, campus administrators are the people who must provide campus data in order to comply with the investigation. Administrators lamented the difficulty of accessing information from the OCR while an investigation is taking place. The cumulative effect of this perception across stakeholder groups was that OCR has low transparency in their investigations. Participants were not sure what was taking so long, or what OCR investigators were working on or towards.
Participants were asked about any perceived changes in the OCR process under the Trump Administration. The 2011 Dear Colleague Letter had been rescinded during the course of this research, and draft new guidance released (though not yet implemented). The change in administration, for some, was already having a real impact. The Trump Administration had rolled back Obama-era protections under Title IX for LGBTQ+ people, which had outlined gender identity and sexual orientation as protected classes. One survivor/victim interviewed who filed an OCR complaint identifies as a gay man, and had been attending a large, suburban, public school in the South. While he was trying to seek justice on his campus, his roommate learned of his sexual orientation and began harassing the survivor/victim on the basis of his sexual orientation in a way that felt threatening and unsafe. Because sexual orientation is no longer a protected class under Title IX, the survivor’s/victim’s school refused to accommodate a change in housing assignment, forcing him to remain in a living situation that felt unsafe. Administrators and some survivors/victims noted that under the Trump Administration, OCR complaints were beginning to be resolved more quickly. This was not, however, noted as a positive change. Rather than increasing the capacity of OCR to thoroughly investigate more complaints at increased speed, participants shared a perception that OCR complaints were being resolved more quickly now because the OCR under Secretary DeVos was choosing not to investigate a greater number of complaints, and thus “resolving” them by not investigating. A survivor/victim advocate with a contact inside the OCR under the new administration shared that this contact described the mood at OCR as “utter dismay”, and that OCR staff had been encouraged to “shut down” OCR complaints related to campus sexual assault. There was an acute sense across participants
that the new administration was increasingly focused on the rights of the accused, potentially at the expense of the rights and wellbeing of survivors/victims. One survivor/victim who had filed an OCR complaint that remains unresolved, voiced her diminished trust in the current administration: “I definitely totally lost faith after Trump came into office…he’s a predator himself. So I didn’t really think he would support victims on campuses.”

Several administrators noted that, even after the rescinding of the 2011 Dear Colleague Letter and the potential for a looser new set of guidance, their campuses were unlikely to reverse the changes they had made to better support survivors/victims. These administrators also did not anticipate many schools reversing progress for survivors/victims made as a result of the 2011 Dear Colleague Letter simply because the new administration no longer required a higher standard. One administrator voiced concerns that new guidance might require mandatory coordination between campuses and law enforcement, a change she viewed as ultimately negative for survivors/victims who often have no desire to interact with the criminal justice system. A small minority of participants had positive reflections on OCR changes under the Trump Administration. One survivor/victim noted that the new guidance would require more transparency of case documents to both parties, which she felt was progress toward greater transparency in these cases. One administrator working at a minority-serving institution felt that the 2011 Dear Colleague Letter had gone too far, prioritizing the rights of the survivor/victim over the accused. This administrator was concerned with what that meant for men who were accused, who may face other challenges and marginalization as a result of institutional racism and classism, and felt that changes to OCR under Secretary DeVos
were an important step in recalibrating the scales to protect the rights of the accused.

Overall, participants seemed to question the effectiveness of the OCR complaint process: it is slow-moving, not particularly transparent, and now in the Trump Administration, seemingly in the hands of those more concerned with protecting accused perpetrators than survivors/victims. In 30 interviews and two focus groups with various stakeholders, there were no success stories shared of experiences of/with survivors/victims who had filed through OCR and had their complaint resolved in a way that felt like justice.

*The impact of structural inequality on the pursuit of justice*

This section presents findings on how structural inequalities impact survivors’/victims’ experience of justice. Experiences of survivors/victims across racial identities, LGBTQ+ survivors/victims, and survivors/victims with disabilities are explored. The impact of economic inequality on survivors’/victims’ experience of justice is also discussed.

Interviews and focus groups with stakeholders underscored the importance of an intersectional analysis of justice processes to address campus sexual assault. Structural inequalities throughout institutions impact the experience of survivors/victims pursuing justice across varying identities. Administrators noted that though they know transgender people experience violence at a higher rate than the larger population, little is understood about their experiences and how they might better access justice. Both administrators and advocates commented on how campus sexual assault is typically understood to refer to a male perpetrator and a female survivor/victim, but that the voices of survivors/victims who suffered an assault from a same-sex perpetrator needed to be amplified. One
survivor/victim advocate working in the criminal justice system commented on how quickly cases of same-sex sexual assault are thrown out of court, particularly if the survivor/victim is male. A few survivors/victims who identified as belonging to the LGBTQ+ community talked about how their identity negatively impacted their pursuit of justice. One female survivor/victim who identified herself in the interview as gay shared her experience of being characterized as “loose” and a “slut” by her male perpetrator during the campus disciplinary process. Her sexual orientation had been used to attack her credibility. A male survivor/victim who identified as gay shared the difficulty he felt being taken seriously throughout his campus disciplinary process (he ultimately chose to file an OCR complaint based on what he felt was a mishandling of his case by his school). The survivor/victim felt that many who heard about his case held the perception that gay men were more “promiscuous”, and thus his experience did not amount to an assault. This view was unfortunately shared by some of his family: “Two gay men in a room together with alcohol I’ve been told always leads to sex. I was told that by my mother, and that it wasn’t rape.” The discrimination this survivor/victim faced on the basis of his sexual identity motivated him to speak out publicly about his case, and to seek justice both on campus and to through OCR. He hopes his experience and activism will make the future path to justice for LGBTQ+ survivors/victims easier:

What I felt comfortable in is being that voice for campus sexual assault survivors…for being a gay man from the South who talks about how he was raped, when that is such a taboo issue where I live…I know it’s a symbol of strength, my voice isn’t for those people who think it’s weak, my voice will be for the people who are in the same situations as me who feel weak themselves and get some sort of strength knowing that there is someone out there who looks like them who is like them talking.

(Male survivor/victim from a large, urban, public school in the South)
Racial identity is also a key consideration in the development of campus sexual assault policies. Policymakers must understand how race intersects with justice processes in order to make policy that decreases discrimination on the basis of sex, rather than further deepening racial inequality. First, race can complicate a survivor’s/victim’s willingness to report a sexual assault. Longstanding, historical distrust between communities of color and law enforcement have made it difficult for survivors/victims of color to trust justice actors of any kind to responsibly and safely handle their complaints. Administrators, particularly those working at minority-serving institutions, shared the nuances of doing this work with students of color. Survivors/victims of color, one administrator said, may hesitate to report perpetrators of color for fear of contributing to the prison industrial complex and the disproportionate imprisonment of men of color, in particular Black men. One administrator shared how historically, women of color who report relationship violence to law enforcement have frequently ended up suffering violence again, this time at the hands of law enforcement. A survivor/victim advocate who works in the criminal justice system talked about the vulnerability of women of color who move through the criminal justice system having experienced a form of relationship violence. The advocate had seen these women be pressured into getting protection orders, and generally have less agency in their own justice path, having come from “communities who have been told by systems what to do their whole lives”. Both advocates and administrators raised the specific sanction of transcript notations as potentially problematic for marginalized racial groups. A transcript notation is a message on a perpetrator’s transcript that indicates that that person has been found responsible for sexual violence at their previous institution. This justice measure is meant to mitigate the
potential for perpetrators to serially perpetrate sexual violence even if they are expelled from school for that violence. However some advocates and one administrator questioned the impact of a transcript notation on the rights of the perpetrator, in particular for perpetrators of color. For a community that already faces institutional racism in higher education, might transcript notations deepen existing marginalization? A transcript notation, on its face, only applies to perpetrators who have been found responsible. But given the institutional racism that might be acting to disproportionately find people of color responsible for campus sexual assault, its possible transcript notations would exacerbate institutional racism that works to hinder the full, free access of people of color to education. Advocates also discussed the importance of allowing space for perpetrators to heal, acknowledging that perpetrators have sometimes been survivors/victims themselves. Ending the cycle of violence would require a comprehensive reckoning, across race and gender. As one advocate said: “With racial justice or gender justice, it needs to be a societal healing.”

One survivor/victim interviewed identified as having a disability, and living in a group home with others who identify as disabled. This survivor/victim did not indicate that her disability had an impact on her pursuit of justice (which she had done through a campus disciplinary process, and then an OCR complaint). One administrator commented on the challenges of accommodating survivors/victims who may have a pre-existing mental health condition that impacts their understanding of their own experience, and what is able to be done to address that experience. This administrator, working in a school’s Title IX office, underscored the importance of coordinating closely with the on-campus Disability Services office to best serve the needs of these survivors/victims.
Participants also commented on economic inequities within the campus disciplinary system, the OCR complaint process, and the criminal justice system. The relative economic means of a survivor/victim may determine whether or not they are able to retain a lawyer to counsel them through a justice process, including processes on campus. Some survivors/victims highlighted situations where they were unable to hire a lawyer to serve as their advocate during an on-campus hearing, but the alleged perpetrator had been able to obtain legal representation. This created a significant imbalance of power during the process, including intimidation of the survivor/victim. Both survivor/victim advocates and survivors/victims commented on how helpful having a lawyer can be, and how not having one when the perpetrator does can be both demoralizing and frightening. One survivor/victim advocate (serving in a pro bono capacity) recounted the “horrifying” experience of advocating for a survivor/victim who was going up against a perpetrator represented by popular singer Chris Brown’s lawyer. Another survivor/victim advocate shared the experience of advocating for a survivor/victim who was told by the accused’s lawyer “We have the resources to keep fighting this until you either die or give up.” A survivor/victim who had gone to court to re-up an order of protection against her perpetrator was told by a courthouse staff member that if the survivor/victim came back again the perpetrator would likely return with an attorney, and both could question her. The survivor/victim decided then to not continue pursuing the order: “I don’t need an order of protection that badly”. Lawyers representing perpetrators were able to deftly navigate each justice process to the benefit of their client, the accused, where survivors/victims who were not able to afford an attorney were denied this advantage. Having an attorney also meant that an accused
perpetrator was able to focus on other parts of their life (pursuing their education, for example) as opposed to taking time and energy to build their own defense. A survivor/victim without representation had to spend more of his/her time collecting evidence, finding witnesses, and engaging in other activities that would support their case. One survivor/victim described the burden of collecting this information independently:

It was kind of exhausting because it was like I have class, and it’s almost like another class, because collecting witnesses, going to therapy—it’s a lot of work…I felt like the responsibility of justice was entirely on my back. (Female survivor/victim who attended a small, rural, private school in the Midwest)

Participants also noted the rise of victims’ rights attorneys, contributing to a relatively new field of law that specializes in representing survivors/victims in justice processes (on campus, with the Federal Government, or otherwise). These attorneys not only represent survivors/victims in a court room if they are pursuing a criminal justice process, but can “represent” survivors/victims in an advisor capacity during campus disciplinary processes, or assist a survivor/victim in writing and filing an OCR complaint. Campus administrators ascribed the increase of lawyers with this specialization to the 2011 Dear Colleague Letter and the new era of enforcement of Title IX to address campus sexual assault. Some non-profit organizations offer the services of these attorneys pro bono to survivors/victims, and some of these attorneys were present in focus groups for this research. Advocates noted that a victims’ rights attorney can be especially helpful when the perpetrator has also retained legal representation, as a victims’ rights attorney can help combat actions of defense attorneys that may be especially hurtful to the survivor/victim (e.g. efforts by defense attorneys to attack the survivor’s/victim’s
credibility, an action that may be especially harmful to a survivor/victim who already is struggling to feel believed). Survivor/victim advocates described these nefarious tactics:

There’s a code of ethics but defense attorneys are very, very skilled at towing that line, and if you cross it you get a quick reprimand by a judge, but the jury still hears the fact, and they’re like ‘oh, but what was she wearing? And did she have sex with this guy before? And was it fine then? Why was this time different?’ So they’re skilled at getting anything just in the heads of the people who make the decisions.
(Survivor/victim advocate working in a pro bono victims’ rights legal office)

The rise of victims’ rights attorneys, particularly those that can offer services pro bono, has helped to recalibrate the balance of power in all manner of justice processes.

Economic inequality also played a role in survivor/victim healing. Participants talked about the cost of pursuing counseling, and how expensive it is to effectively address mental health in the wake of an assault. One campus administrator talked about how compensation for survivors/victims should be included in the way we think about justice. In pursuing justice, the administrator said, survivors/victims:

…would’ve asked for compensation, they would’ve had their perpetrator pay for their therapy. That would’ve been justice for them, because whether we like to admit or not, trauma is expensive…they still have to pay for their own therapy, their own hospital bills. They might have to pay for the fact that maybe they dropped out of school because of what happened to them. They have to pay for their academic bills. And they have to pay to get back into school. We don’t like to talk about stuff like that because it sounds like, how do you tie in money with healing? But healing costs money.
(Campus administrator at a small, urban, private school in the South)

Participants acknowledged the importance of having free counseling available to survivors/victims, be it on campus or through an off-campus referral. The expectation that survivors/victims should pay for their own mental health care in the wake of a sexual assault spoke to a broader sense of injustice in how these cases are handled. One
survivor/victim summed this up: “Survivors don’t get any kind of funding for counseling so you really pay out of pocket. And I think that’s really ridiculous because how can you pay for all the harm that you did not put yourself into or that is not your responsibility?”

Another survivor/victim highlighted the difficult decision to turn down counseling due to its high cost: “I’d rather be broken emotionally, but not broke”.

Some campus administrators also commented on how campus budgets impact the ability of administrators to address the needs of survivors/victims. Administrators acknowledged that the 2011 Dear Colleague Letter was an unfunded mandate to improve campus climates and disciplinary processes to better address the needs of survivors/victims. This means that campuses with smaller budgets have a more difficult time adequately following this guidance, and ultimately survivors/victims on campus suffer. One survivor/victim advocate working on a campus commented on how an insufficient budget can hamstring campus efforts to support survivors/victims, even when well-intentioned changes are being made:

We have spent a lot of time, money, and energy remaking (our campus) policies, I think for the better. I think they’re great, and have a lot of input from a lot of people on campus who really get this issue and care about it a lot. We’re not given the staff to enforce it, we’re not given the staff to implement it in the way that we want to. And that’s so heartbreaking, I can’t even tell you. Because that means that it could probably fail, when it doesn’t have to at all. With two to three extra bodies, it would make a world of difference to so many people.(Survivor/victim advocate working on a college campus)

In conversations with survivors/victims, campus administrators, and survivor/victim advocates alike, it was striking how consistently financial considerations and economic inequality came up when talking about justice for survivors/victims. In constructing
policies that are meant to give survivors/victims justice, participants indicated that economic justice must be considered.

In summary, structural inequalities impact how survivors/victims experience justice. These experiences can vary based on how institutions treat people of different races, socioeconomic classes, sexual orientation, and ability. Far less is understood about sexual assault in the LGBTQ+ community as it has not been an equal area of focus in research or programming, making it difficult to sufficiently address this population’s needs. Institutions like the criminal justice system have historically marginalized and committed violence against communities of color, contributing to a lack of trust that negatively impacts survivors’/victims’ of color experience pursuing justice. Addressing the unique needs of survivors/victims with disabilities requires increased coordination between a school’s Title IX office and the office of Disability Support Services, reflecting a higher education system that tends not to be sufficiently inclusive of people with differing abilities. Economic inequality is rife throughout all justice processes in the wake of campus sexual assault: survivors/victims or perpetrators who can afford lawyers tend to fair better in justice processes, and survivors/victims who can afford services like counseling have more options to pursue healing.

Mental health and healing

When asked about justice in the wake of campus sexual assault, participants frequently raised the topics of mental health and healing. This section summarizes participants’ reflections on how survivors/victims feel in the wake of campus sexual assault, what support they need, and how mental health and healing are connected to justice.
Addressing the mental health needs of survivors/victims in the wake of campus sexual assault came up in discussions with nearly every participant. Survivors/victims, administrators, and survivor/victim advocates all identified prevalent feelings of shame. This shame was often tied closely to guilt for survivors/victims, who frequently expressed having blamed themselves for being sexual assaulted. This feeling was especially present when survivors/victims reported having consented to an intimate or romantic relationship prior to their assault. As a result of this shame and guilt, advocates and administrators underscored the importance of ensuring survivors/victims understand that having been sexually assaulted is not their fault. Some advocates also identified this shame as an obstacle to reporting. Participants also reported feelings of survivor/victim helplessness, particularly while pursuing a justice process. Survivors/victims frequently felt like pursuing justice was “like fighting against a whole ocean”, and that they were out of control of justice processes that were ostensibly designed to address their needs.

Several survivors/victims reported suffering Post-Traumatic Stress Disorder (PTSD) in the wake of either their sexual assault or the justice process they pursued (one survivor/victim left school to attend an in-patient PTSD treatment facility for seven months). Three of 19 survivors/victims interviewed referenced suicidal ideation or attempts, and one administrator discussed concern that survivors/victims with whom she worked might attempt suicide.

Access to counseling for survivors/victims emerged as the single most important factor that contributed to healing in the wake of an assault. Counseling helped reduce survivors’/victims’ feelings of fear, shame, and guilt around their experiences. Some survivors/victims credited counseling with their ability to speak openly about their sexual
assault. Participants reported campuses frequently having an agreement that survivors/victims can access a certain amount of free counseling, maybe six or eight sessions. However participants also acknowledged that this was rarely enough to address the long-term mental health needs of survivors/victims, and campuses should shift their budget priorities to make counseling free and available to survivors/victims in an ongoing way. Participants connected access to mental health counseling to the idea of justice. One campus administrator indicated explicitly that without counseling, a survivor/victim was unlikely to experience justice through a campus disciplinary process alone:

Certainly, obviously, I think there’s value in this work or I wouldn’t do it, and I don’t want our students to be sitting next to someone who violated them…we want to make our campus environment safer. But it doesn’t fix what internally happens when you experience that type of violation, right? So unless someone is committed to working on that too, I don’t think our process is that often going to provide closure—maybe that’s the word. It may provide a certain level of satisfaction, and a certain level of help…but I don’t think it fixes the whole problem hardly ever.
(Campus administrator working on a mid-sized, urban, private school on the East Coast)

Some survivors/victims also identified the importance of perpetrators receiving counseling, in the hopes that that person would not again commit assault. Counseling, and further education on this issue for perpetrators, may help them better understand the harm they caused. As one survivor/victim said: “The perpetrator may honestly not have known that what they were doing is wrong. And people don’t want to admit that.”

In addition to counseling, some survivors/victims identified writing about their experiences as contributing to their healing. Sometimes this writing was as part of a complaint for a justice process, sometimes it was at the urging of a counselor, and sometimes it was personal writing in a journal. The experience of talking (including with
other survivors/victims) or writing about their experience of sexual assault emerged as crucial in most survivors’/victims’ healing journeys.

Campus administrators, survivor/victim advocates, and survivors/victims all generally seemed to identify sexual assault as a trauma, and understand how trauma impacts the behavior of a survivor/victim (including during an investigation and/or justice process). This acknowledgement that sexual assault is a traumatic event led participants to push for justice processes that are trauma-informed, in other words, for processes that take into account the effects of trauma on a survivor/victim. Participants, including campus administrators, acknowledged that behaviors like making inconsistent statements, delays in reporting, gaps in memory, and a sharp decline in academic performance all can stem from an experience of trauma. One campus administrator mentioned that they could observe signs of trauma when survivors/victims are sitting in their office, and in the administrator’s experience “it’s harder to fake than people think it is”.

Survivors/victims spoke of certain aspects of their experience through the lens of trauma, and one survivor/victim described how a trauma treatment program helped them address the effects of that trauma:

The investigation was focused on I didn’t fight back…I was taught through that investigation that everything that was happening was my fault, (and) I was unlearning that. The trauma wasn’t my fault, it wasn’t my fault I was raped, that I responded in a certain way…It was just releasing a lot of blame.

(Female survivor/victim from a small, rural, private school in the Midwest)

Two survivors/victims interviewed had undergone Eye Movement Desensitization and Reprocessing (EMDR) therapy as a way to reprocess their traumatic experience, and
credited the therapy as useful. The language of trauma, and trauma-informed processes, seemed to have permeated the understanding of most research participants.

In summary, participants consistently raised the importance of addressing the mental health of survivors/victims. For survivors/victims who are feeling shame, guilt, and helplessness in the wake of a sexual assault, access to counseling is so important that it was included in participants’ ideas of justice. Participants were also comfortable using the language of trauma to describe campus sexual assault, and frequently noted how trauma can impact how a survivor/victim experiences or pursues justice.

Conclusion

Findings from interviews with survivors/victims and campus administrators, and focus groups with survivor/victim advocates, help answer several key questions of this study. These data speak to survivors’/victims’ definition of justice, how, when, and why survivors/victims decide whether or not to take action, how survivors/victims experience both campus disciplinary processes and the OCR complaint process, how structural inequalities impact the pursuit of justice, and the survivor/victim experience of mental health and healing. An analysis of these findings in the next chapter offers a theory of justice for survivors/victims of campus sexual assault, and several recommendations for policymakers.
Chapter 5: Analysis and Recommendations

The primary purpose of this research was to understand what justice means to campus sexual assault survivors/victims so that future policy can help them achieve it. In exploring this question, this project investigated how survivors/victims experience various justice processes, including the only existing federal justice mechanism for survivors/victims (the OCR complaint process). A dearth of research on the OCR complaint process and the prevalence of the issue made this a fertile area for research. During the course of this project, the cultural conversation on this topic evolved: sexual assault gained more widespread national attention and was taken more seriously as survivors/victims bravely shared their negative experiences with high-profile men. This groundswell contributed to a renewed and unprecedented national urgency on the issue. As a spotlight shines on sexual violence in this unique historical moment, it is perhaps more important than ever to put rigorous evidence, in survivors’/victims’ own words, in the hands of policymakers.

This research employed a grounded theory methodology. The goal of this methodology was to collect qualitative data and analyze it to build theory. This theory would hopefully inform future policymaking on justice for campus sexual assault survivors/victims. In this final section, I first describe the theory constructed by this data: the just prevention theory of campus sexual assault. This new theory conceives of justice for campus sexual assault survivors/victims through the lens of prevention. As highlighted in Chapter 2, any theory that comprehensively addresses the justice needs of
survivors/victims must operate at every level of the ecological framework (Heise, 1998). For the purposes of this study, these levels are individual, community, society, and global. These levels of the ecological framework organize the following description of the just prevention theory. This chapter concludes with a set of policy recommendations for decision-makers at the federal and campus levels.

*Justice as prevention*

True justice for survivors/victims of campus sexual assault must include meaningful efforts to prevent future harm to other survivors/victims. This research demonstrated that, while there were measures (like counseling) that could be taken to mitigate the harmful impact of sexual assault on survivors/victims, the experience of justice was much more elusive. Several research participants questioned whether justice was even possible for campus sexual assault survivors/victims. The vast majority of research participants emphasized the primary importance to survivors/victims of preventing other people from experiencing sexual assault. This was so important for some survivors/victims, that it was the sole impetus for reporting their experience.

The *just prevention theory* explains genuine justice for survivors/victims as primarily achieved through meaningful efforts to prevent campus sexual assault. This theory is built on the experiences of survivors/victims who consistently report an insufficiency of more traditional forms of punitive justice. Even survivors/victims who have seen the harshest penalties leveled against their perpetrator tended not to report this experience as the fulfillment of justice. Justice, to survivors/victims, was far more often aligned conceptually with prevention of future harm.
This is not at all to say that survivors/victims are uninterested in their own healing, and they deserve every institutional protection and support that furthers their healing journey. This theory is not meant to communicate that sexual assault response is somehow of lesser importance, and resources for survivors/victims (counseling in particular) should be as expansive as possible (this is reflected in greater detail in the policy recommendations). However, this theory reconceives justice for campus sexual assault survivors/victims in a fundamental way: while justice may include any number of other response measures depending on the preferences of the survivor/victim, it must include prevention. This theoretical focus on prevention is rooted firmly in participant data: the voices and experiences of survivors/victims point to justice as inextricably linked to violence prevention efforts. While participants described an array of other measures that may resemble justice for a given survivor/victim (e.g. a perpetrator writing a letter about the harm he/she caused, suspension or expulsion of a perpetrator from campus, removal of a perpetrator from a campus social community), prevention was by far articulated by participants most consistently as a defining element of justice. Policies informed by the just prevention theory seek to obtain justice for survivors/victims by embedding comprehensive prevention strategies across institutions.

As the researcher developed the just prevention theory, she also considered how a focus on prevention might mitigate potentially harmful stereotypes about survivor/victim behavior. Though this was not a prevalent theme in interviews, some campus administrators speculated about a perceived connection between the harm caused to a survivor/victim and the kind of justice measures that survivor/victim would go on to pursue. One campus administrator speculated that those survivors/victims who had
experienced penetrative sexual assault tended not to pursue more punitive forms of justice (e.g. suspension or expulsion), and that survivors/victims who had experienced a sexual assault that was not penetrative tended, in their estimation, paradoxically to pursue more punitive forms of justice. The researcher did not encounter any literature to support this participant’s perception, and wondered how this notion might be formed by, or promote, certain harmful stereotypes about survivors/victims. If those administering justice on campus for survivors/victims of campus sexual assault believe the justice pursued is somehow linked to the relative severity of the survivors’/victims’ experience, how might this belief be harmfully impacting their interactions with survivors/victims? Could survivors/victims who choose more punitive forms of justice be regarded by administrators as having somehow suffered less than other survivors/victims? If so, this would undoubtedly have negative impacts on survivors/victims who want primarily to be believed by those around them in the wake of a sexual assault. A focus on justice as prevention avoids validating notions about who deserves what kind of justice and why, and argues that all survivors/victims deserve the just action of widespread prevention efforts from all institutions that meaningfully impact their lives.

The following sections describe how the just prevention theory operates at different levels of the ecological framework.

*Just prevention theory at the global level*

Understanding justice at the global level of the ecological framework involves examining philosophical literature and theory on justice, and also synthesizing international human rights documents that impact justice for survivors/victims. How are the findings of this study reflected in widely accepted theories of justice, including those
in the feminist academic tradition? How are these findings in line with current international human rights frameworks, and how might they be better embedded in future human rights law?

John Rawls’ influential theory of justice as fairness speaks directly to the experiences of survivors/victims in this study, and also to the just prevention theory. Rawls argued that all people should have the most liberty possible, to the extent that one person’s liberty doesn’t infringe on anyone else’s. Further, Rawls posited that a society should distribute its benefits most heavily to the least advantaged. This configuration, in Rawls’ view, offers fairness in a society. And fairness is justice. The just prevention theory would maximize the liberty of all people: all people would be less at risk of sexual assault victimization, and all people would have a better chance of experiencing their full humanity by reducing propensity for violence. To prevent campus sexual assault means to sincerely address the gender inequality (e.g. harmful gender attitudes and beliefs) that promotes violence against women and girls. If gender inequality is meaningfully addressed, it liberates people of all genders to live in the full expression of their humanity, unhindered by harmful gender norms. Surely, Rawls would understand this action as maximizing the liberty of all people without impinging on the liberties of any. Further, prevention efforts maximize societal benefits to the least advantaged (in this case, survivors/victims or potential survivors/victims of campus sexual assault). Effective prevention efforts have the greatest impact on those that might suffer the violence. In these ways, the just prevention theory continues in the Rawlsian tradition of justice as fairness.
The just prevention theory also speaks to a feminist conception of “kaleidoscopic justice” for sexual violence survivors/victims (McGlynn, et. al., 2017). In a justice landscape that is ever shifting when refracted through new circumstances and events, prevention is an on-going and important way to address justice for survivors/victims. Prevention is the one approach to justice that will directly address survivors/victims needs at all phases in a justice pursuit, regardless of how their experience is currently refracted through the “kaleidoscope”. Though a survivor/victim may hope for accountability, retribution, rehabilitation and other goals at different phases of their justice pursuit, prevention is likely to be a persistent goal of survivors/victims in a way that other goals may not be.

As noted in Chapter 2, restorative justice is one model of justice gaining popularity in the area of gender-based violence. Restorative justice offers the opportunity for a survivor/victim to seek resolution and healing with the perpetrator without pursuing punishment for that perpetrator. Indeed several participants promoted the idea that restorative justice measures should be available to survivors/victims of campus sexual assault. Restorative justice seemed especially important as an option for communities of color, where survivors/victims may be hesitant to pursue justice through authorities that have historically marginalized them. This study supports the idea that restorative justice should be available as one of several options for a survivor/victim of campus sexual assault who is pursuing justice. A perennial problem with policymaking is that policies tend to impact a diverse array of beneficiaries, with different needs. It is the rare policy that impacts all beneficiaries equally, and addresses everyone’s needs appropriately. The question of restorative justice for campus sexual assault is no different. For some
participants in this study, restorative justice measures (like having a perpetrator write a letter about his/her actions and why they were wrong, or a mediated conversation with a perpetrator wherein that perpetrator takes responsibility for their actions) would have been their preferred path to justice. Other participants in this study derided these measures as far too lenient, arguing that something like writing a letter hardly seemed like an adequate response to the harm caused by a sexual assault. Some survivors/victims were affronted to even hear that these kinds of measures had been prescribed on other campuses. Campus sexual assault policy has the difficult task of addressing the needs of survivors/victims that have diverse ideas about what justice means to them. For this reason, this study does not recommend restorative justice as the only, or even the preferred, justice mechanism for campus sexual assault. Instead, this study emphasizes prevention as a necessary condition of justice, because it was prevention that was more consistently connected to justice by participants than restorative justice techniques, and prevention does not have the potential unintended consequences of restorative justice. Restorative justice measures should, however, be available to survivors/victims for whom they may be beneficial, as restorative justice can address things this study found survivors/victims are seeking in the wake of campus sexual assault (e.g. accountability, remorse on the part of the perpetrator, an apology).

International human rights frameworks have begun to outline the responsibilities of nation states in relation to justice for survivors/victims of gender-based violence. This would include campus sexual assault. Documents like CEDAW General Recommendation 19 and the Convention of Belém do Pará underscore nations’ responsibility to protect women and girls from violence. Prevention efforts are a crucial
element of any meaningful effort to protect people from violence. Thus, the just prevention theory furthers the spirit and recommendations of existing international human rights documents, and calls on the international community to deepen nations’ requirements around gender-based violence prevention. Global expectations around violence prevention as a human right would strengthen any national or campus effort to prevent sexual assault.

The global level of the ecological model includes a conception of justice as fairness, and is guided by international human rights documents. The just prevention theory speaks to both of these forces by expanding the liberty of all people at the expense of no one, maximizing societal benefits to the least advantaged, and calling on the international community to commit to protecting every person from gender-based violence through prevention.

*Just prevention theory at the societal level*

Justice for campus sexual assault survivors/victims at the societal level of the ecological framework is reflected in institutional policy on campus sexual assault: most notably federal policy. Chapter 2 detailed a history of federal efforts to address campus sexual assault, most notably through Title IX (complaints under which are managed by the Department of Education, Office of Civil Rights). The just prevention theory offers clear guidelines and expectations of institutions like the Federal Government to address campus sexual assault through prevention. Institutions have a duty to prevent campus sexual assault in order to fully be offering survivors/victims justice (which Rawls called the “first virtue of social institutions” (Rawls, 2005)).
Institutions can address the stated justice needs of survivors/victims by implementing widespread prevention efforts. Accountability and remorse were raised by research participants as key elements of survivor/victim justice. Prevention efforts demonstrate institutional accountability for the ingrained culture and phenomenon of campus sexual assault. But this accountability does not simply, loftily remain at the institutional level. Institutions working to meaningfully prevent sexual violence are demanding accountability of every individual in that institution. Only when every person in an institution understands that it is his/her responsibility to end sexual violence is true accountability achieved. Prevention allows institutions to admit responsibility for campus sexual assault by working to uproot it. In this way, prevention is an institutional, societal expression of remorse for perpetuating a phenomenon that has harmed so many.

The just prevention theory does not get any institution (be it a campus, the criminal justice system, or the Federal Government) off the hook for directly responding to the needs of campus sexual assault survivors/victims. These institutions have an important responsibility to address their needs, given the role these institutions have played in perpetuating a culture that keeps campus sexual assault so prevalent. This theory does not mean to advocate for a unilateral shift away from response and toward prevention. Several measures can and should be taken at multiple levels to directly address and heal the harm done to survivors/victims. These measures are detailed more thoroughly in the policy recommendations that follow. Rather, this theory is meant to shape future policy strategy on campus sexual assault in a way that might meaningfully bring survivors/victims justice.
Institutions play a crucial role at the societal level of the ecological framework. Per the just prevention theory, if institutions like the Federal Government are leading campus sexual assault prevention efforts, they are demonstrating accountability and remorse to survivors/victims, who have shared how important these two concepts are to their pursuit of justice.

*Just prevention theory at the community level*

Justice at the community level of the ecological framework includes addressing rape culture on campuses and examining campus-wide sexual assault policies. Prevention is perhaps the greatest enemy of rape culture. Rape culture relies on a gendered imbalance of power to promote male sexual aggression and condone violence against women and girls as the norm (Buchwald, Fletcher, & Roth, 2005). As mentioned, meaningful prevention efforts address the root causes of campus sexual assault: harmful gender norms and attitudes, including rape culture. If a community is focused primarily on preventing campus sexual assault, it is by definition dismantling the harmful norms and attitudes that promote rape culture. In this way, the just prevention theory critically focuses justice efforts at the community level of the ecological framework.

A focus on prevention strengthens campus policies on sexual assault. The just prevention theory addresses concerns around balancing the rights of the survivor/victim and the accused during a justice process. Administrators interviewed for this research expressed a tension between believing survivors/victims and conducting fair disciplinary processes on campus. If a survivor/victim is believed, can an alleged perpetrator possibly be treated fairly in the pursuit of justice? Justice through prevention centers the
survivor/victim without sacrificing the rights of the accused. The just prevention theory recognizes that violence-free communities benefit all members of that community, survivors/victims, perpetrators, and would-be survivors/victims and perpetrators.

Prevention offers campuses, the most relevant institutions of the community level, a way to materially promote justice for sexual assault survivors/victims by dismantling rape culture and promoting campus justice policies that are genuinely fair to all parties.

*Just prevention theory at the individual level*

The individual level of the ecological framework, the just prevention theory promotes the management of stress and the healing of trauma resulting from campus sexual assault. An increased focus on prevention may contribute to a bolstered “sense of coherence”, identified by Aaron Antonovsky as a primary way that people build resilience that helps them heal from trauma (Antonovsky, 1979). A strong sense of coherence is comprised of comprehensibility, manageability, and meaningfulness. A focus on prevention strengthens each of these components by illuminating the link between cause and effect: if people are not educated on the root causes of campus sexual assault, campus sexual assault will continue to take place. Explaining the importance of prevention and how it works makes campus sexual assault more comprehensible and manageable. The choice to focus on prevention contributes to meaningfulness. Arguably, an increased focus across institutions on prevention as linked to justice for campus sexual assault survivors/victims may bolster a societal sense of coherence around campus sexual assault. This broader sense of coherence, hopefully, will contribute to broader societal resilience.
In writing about trauma, Judith Herman outlined the three stages of recovery as the establishment of safety, remembrance and mourning, and reconnection with ordinary life (Herman, 2015). The final stage of recovery, Herman argues, may include the pursuit of a “survivor mission”, wherein the survivor/victim transforms his/her trauma into a project that will benefit others (Herman, 2015). In this study, as survivors/victims shared their hope that increased prevention efforts would make others less likely to experience the trauma they had, prevention came to resemble a survivor mission. It became clear that transforming survivor/victim trauma into significant efforts to prevent future harm (to those survivors/victims and others) was an essential part of survivor/victim recovery. In this way, the just prevention theory reflects trauma recovery of survivors/victims at the individual level.

Prevention also promotes the individual freedom that so many research participants identified as central to survivors’/victims’ experience of justice. Survivors/victims expressed a desire to be free from fear and intimidation on their campus in the wake of a sexual assault, and a freedom to continue the education they had enrolled in college to pursue. Institutions that are preventing campus sexual assault are inherently bolstering survivor/victim freedom to achieve these goals. Prevention efforts make campus communities safer, and bolster the freedom of survivors/victims to pursue their chosen paths without worrying about harm to themselves or others.

Finally, survivors/victims want to be believed. Whether a person feels believed impacts all stages of a survivor’s/victim’s healing and justice experience. A pursuit of prevention by any entity affirms survivors’/victims’ experiences by acting on their stories. Prevention efforts are predicated on the idea that what survivors/victims are
saying is true, and important, and cannot be allowed to continue. In sum, working to prevent future campus sexual assault as a response to the experiences of survivors/victims is perhaps the most honest, committed expression of “I believe you”.

Policy recommendations

The following recommendations and sub-recommendations are geared toward policymakers at the federal and campus levels, but may be instructive for policymakers in other institutions as well. These are written as one set of recommendations, because campus policymakers have the power to follow these recommendations through their campus policymaking, and federal policymakers have the power to follow these recommendations by incorporating them into new OCR guidance (and potentially in other policy initiatives).

1. **Comprehensive prevention education from the earliest possible age should be meaningfully embedded across every institution in a person’s life.** This includes age-appropriate lessons on healthy relationships, appropriate use of power, gender inequality, consent and other lessons related to the prevention of sexual assault from birth. This prevention education should be adapted to the times, leveraging new technologies and media to best communicate with new generations. This prevention education should include a focus on clarifying what constitutes sexual assault, not only so that survivors/victims can better understand their own experience, but so that those to whom a survivor/victim discloses can better assist them as they are coming to realize they’ve been assaulted and are deciding whether to take action. If those around a survivor/victim are more
educated on campus sexual assault, they will be able to serve as a more effective support system for the survivor/victim.

a. The Federal Government should pass legislation outlining national education standards for this prevention material, for each grade starting in kindergarten. This educational material should be developed in close consultation with survivors/victims who are willing to participate, and survivor/victim advocacy groups. These curricula should be rooted in prevention programs that have demonstrated evidence of effectiveness in reducing violence perpetration and victimization.

2. **Counseling must be available to survivors/victims for free and in an on-going way.** Mental health concerns are a prevalent, enduring impact of campus sexual assault on a survivor/victim. As one survivor/victim said: “They’re scars that you never forget, and it impacts the rest of your life and all of the relationships that you have. And it really makes you look at the world differently.” For this reason, campuses must offer counseling to all survivors/victims of campus sexual assault as a requirement of receiving federal funding. This counseling must be available for as long as the survivor/victim needs, which may be the rest of that person’s life. This counseling must also be at little or no cost, so as not to unfairly disadvantage survivors/victims who cannot afford mental healthcare.

a. The Federal Government should pass legislation requiring that insurance companies cover mental healthcare.

b. The Federal Government should recommend through OCR guidance that campuses prioritize the capacity of their counselors to address the needs of
campus survivors/victims and allows the campus to offer free or no-cost counseling.

c. The Federal Government should offer grants to campuses to develop sustainable counseling programs at little or no cost to survivors/victims.

d. Campuses may rely on referral networks to offer on-going counseling for survivors/victims, but the Federal Government should require campuses to periodically demonstrate how they ensure survivors/victims have access to this counseling.

3. **Campus disciplinary processes should be accessible, timely, transparent, and follow an investigative model as opposed to the disciplinary hearing model.**

   Survivors/victims benefit from having more as opposed to fewer avenues for justice. Thus, campus disciplinary processes should continue to exist as an option for survivors/victims, and should be widely communicated as an option to increase accessibility. These campus disciplinary processes should include a form of restorative justice as one of several options for survivors/victims. Accessibility of the disciplinary process should also be increased by repealing any policies that inhibit survivor/victim access to justice. These harmful policies may include strict punitive measures around underage drinking that might prevent a survivor/victim from reporting. In addition to being accessible, disciplinary processes must also be timely. Disciplinary processes that dragged on for long periods of time were detrimental to survivors/victims in a variety of ways. If a campus is unable to meet the capacity demands of its caseload, it should reallocate budget to address this need. Administrators who manage the campus disciplinary process should
also set expectations about timelines and how frequently they will communicate case developments with survivors/victims, and strictly adhere to these expectations. Administrators should be advised that more communication and transparency in a disciplinary process leads to better survivor/victim experiences with the process.

a. The Federal Government should include the investigative model in new OCR guidance.

4. **Campus disciplinary processes should ensure the full support and protection of any survivor/victim who decides to pursue one.** This first and foremost means requiring that campuses make survivor/victim advocates available for any survivor/victim that needs one. These advocates should be trauma-informed and well-trained to address the unique needs of survivor/victims. Campuses are also responsible for training every other member of their community that may come into contact with a survivor/victim to be trauma-informed and fully aware of campus policies and resources. This importantly includes any mandatory reporters, but also campus police, health workers, administrators, RAs, and other student leaders. In addition, other support measures should be made readily available to survivors/victims as necessary. This includes no-contact orders (which should be enforced seriously by the school, and which should be accessible independent of a survivor/victim making a formal report), academic support, housing support, and other safety protections as needed. Survivors/victims should have the least amount of additional burden possible when pursuing a campus disciplinary process, as they are students first and must
be free to pursue their education. The Federal Government has an opportunity to streamline and standardize processes that are in desperate need of standardization at a higher level, by issuing new guidance to campuses through the Department of Education.

a. The Federal Government should release new OCR guidance, or pass new legislation, that outlines these standards as minimum requirements for campus disciplinary processes.

b. The Federal Government should fund a program that employs an external group of survivor/victim advocates that can support campus survivors/victims as necessary. This would ensure that survivor/victim advocates aren’t affected by any bias that might result from being employed by the school.

5. **Strong referral networks should exist between campuses, community resources, national organizations and the Federal Government.**

Survivors/victims should have seamless access to any support they may need in the wake of a sexual assault, and this may include resources that are unavailable on their campus. Each member of the referral network should be well-educated on the other resources in the network, allowing survivors/victims to effectively tap into this network through any touch point. Essential parts of any referral network include both confidential resources and pro bono legal advocacy for survivors/victims.

6. **Pro bono legal advocacy should be available to any survivor/victim who needs it while pursuing a justice process, and this includes specific access to a**
well-trained victims’ rights attorney. No survivor/victim should experience the inequality of entering a justice process without legal representation, particularly if the accused is able to afford this representation. Personal finances should not dictate a survivor’s/victim’s ability to retain legal advocacy, and preventing survivor/victim access to a free legal advocate deepens the harmful effects of existing economic inequality.

a. The Federal Government should offer increased grant support to victims’ rights legal firms, and explore other ways to incentivize lawyers to enter this field and build their capacity.

b. Universities that have a law school should build programs and classes around victims’ rights law, and promote these programs to law students. This may include the campus offering a discount, or the Federal Government offering loan forgiveness, to students who study this area of law.

7. The Federal Government should offer guidance to campuses on how to address the needs of survivors/victims who have been assaulted by someone who is not a member of their campus. Survivors/victims who have experienced a sexual assault at the hands of someone who was not a fellow student are often unable to hold their perpetrator accountable through a campus disciplinary process. This is a major loophole of current campus sexual assault policy at both the campus and Federal levels. Since these survivors/victims still need support and protection, the Federal Government should offer creative solutions to support these survivors/victims. This might mean creating networks of campuses in a
region, and managing the campus disciplinary process at the network level. This would allow no-contact orders to be issued across campuses, and ensure a survivor’s/victim’s safety from a perpetrator that doesn’t attend their school, but may nonetheless still be a threat.

8. **Time-limited requirements for pursuing justice should be minimized.** Survivors/victims experiencing trauma may delay taking action in the wake of a campus sexual assault. This is now understood as a common impact of trauma. Survivors/victims should be supported in coming forward and taking action whenever they decide to do so, if they decide to do so. This means repealing any time limits on how long rape kits are held before they’re destroyed (a specific recommendation of several participants), revisiting statutes of limitations, and finding ways to maintain other forms of evidence (like security footage) for longer periods of time.

9. **Stakeholders, including survivors/victims, should be included in every policy decision related to campus sexual assault.** Too often, policies at the campus or federal level are developed and implemented without sufficiently consulting those who will be most affected by those policies. This research yielded several examples of policies that would have benefited from further stakeholder engagement. Both campuses and the Federal Government should ensure stakeholder feedback on any policy decision related to campus sexual assault. This importantly includes stakeholders from a variety of racial backgrounds. Justice-related policies must acknowledge the unique history and distrust between the criminal justice system and communities of color. This history may impact
how communities of color access justice and communities of color should be included in every policy decision.

a. The Federal Government should reinstate a special committee on campus sexual assault, comprised of campus administrators, survivors/victims, and survivor/victim advocates. This committee should advise both the executive and legislative branches.

b. The Federal Government should recommend in new OCR guidance that campuses maintain a comparable steering group on their campus that advises on campus sexual assault policy decisions.

10. The Federal Government should reinstate federal guidance that protected gender identity and sexual orientation under Title IX. This Obama-era protection allowed LGBTQ+ persons to seek justice in unprecedented ways for discrimination and violence faced on campus. Rescinded under the Trump Administration, these protections should be immediately reinstated to prevent further harm against this already marginalized population.

11. More research must be conducted in several areas to further understanding of how policies can better address the needs of survivors/victims. This research project focused narrowly on how campus sexual assault survivors/victims experience justice, but its findings raised several other important areas for inquiry that were outside the scope of this study. The Federal Government should fund these areas for research, recognizing the resulting evidence as a public good. These further areas for inquiry include:
a. Research on the experiences of LGBTQ+ campus sexual assault survivors/victims, particular the experiences of transgender people. This research can be used to create policies that might increase rates of reporting in this population and better address their needs.

b. Research on what it costs the United States in healthcare and other costs to not start prevention education earlier on in children’s lives. This evidence can be used to build an economic case to policymakers that the education system must be reformulated to comprehensively address this material.

c. Adaptation and piloting of global violence prevention programs to address campus sexual assault. Scholars and practitioners working on gender-based violence prevention globally are seeing successes in some violence prevention programs that include reductions in violence. There may be an opportunity to adapt these programs to a US, college setting for the purpose of campus sexual assault prevention.

d. Further evaluation of the effectiveness of existing prevention programs in reducing sexual assault perpetration and victimization, beyond bystander intervention programs. Too few evaluations of different kinds of sexual assault prevention approaches exist in the United States, limiting the possibilities for campus prevention programming.

e. Research on survivor/victim experience of restorative justice in the United States. Though restorative justice is no longer a new concept, it is only recently being considered and adapted to the campus context. More
information is needed to understand the impact this form of justice has on survivors/victims, and how it can be better adapted to suit their needs.

Chapter 6: Conclusion

Campus sexual assault is an urgent problem at colleges across the United States. Students experience sexual violence on campus at epidemic levels, with about one in five women and one in five men experiencing sexual assault during their four years on campus (Banyard et al., 2007). The scope of the problem has prompted increasing policy and research attention over the last decade, but these efforts have too infrequently been grounded in and informed by the lived experiences of survivors/victims. As policy efforts at the Federal and campus levels have evolved to address the needs of survivors/victims, there is little research on survivors’/victims’ definition of justice to guide these efforts. The result is policymaking on campus sexual assault that fails to offer survivors/victims justice, and worse, opens up the possibility for further trauma.

Goals and importance of this study

The primary goal of this study was to understand how survivors/victims of campus sexual assault define justice to inform future policymaking. The purpose of this study is to explore the mechanisms for accessing justice in the wake of a campus sexual assault through the lens of those who have accessed them, and those who chose not to access them. This dearth of information on the singular Federal mechanism for survivor/victim justice, the Office of Civil Rights (OCR) complaint process at the
Department of Education, offers an opportunity for important new research. The OCR complaint process cannot be well understood without exploring on-campus disciplinary processes, which are often the first stop of survivors/victims before pursuing an OCR complaint. This study examines whether survivors/victims of campus sexual assault believe that on-campus processes and the OCR complaint process provide adequate justice, and investigates how these processes might be improved. Overall, this study asks what justice means to survivors/victims, and if/how the Federal Government can be used to provide justice for those who have experienced campus sexual assault.

This study is conducted during a critical moment in American history. Campus sexual assault has been an entrenched problem in the United States, but at no time since the full sexual integration of higher education has there ever been more of a cultural focus on this issue. The #metoo movement, raising awareness about women’s experience of sexual harassment and abuse, exploded during the data collection phase of this study. Though the current administration seems to possess little political will to address the justice needs of survivors/victims, the time is ripe to develop more evidence on what justice means to survivors/victims of campus sexual assault so that when a policy window opens, policymakers will be taking action in a way that is informed by the experience of survivors/victims.

Methodology

This study employed qualitative methods to answer questions about how survivors/victims of campus sexual assault define justice and experience justice processes. The researcher conducted unstructured interviews, semi-structured interviews, and focus groups to collect relevant data (interview and focus group guides can be found...
in Appendices A, B, and C). Participants were recruited through purposive and snowball sampling techniques. All qualitative data were transcribed and coded using OpenCode software. In spite of a comprehensive list of a priori codes, several emergent codes were added to the code list (found in Appendix D) during the data collection and analysis process. Focus groups were conducted in person in Washington, DC, and interview participants were given a choice about how they preferred to be interviewed (by phone, by Skype, or in-person if possible).

Given the gap in theory around justice for survivors/victims of campus sexual assault, grounded theory methodology was used to develop a new theory that explains the conditions of a relationship between survivors/victims of campus sexual assault and the Federal Government that provides survivors/victims with justice. Because the Federal Government process for addressing campus sexual assault is tied to regulating campus disciplinary processes, survivors/victims experience of justice pursuing either process was explored.

Data

Nineteen unstructured interviews were conducted with survivors/victims of campus sexual assault. Three of these survivors/victims had personally filed an OCR complaint, but several others had participated in investigations or been otherwise personally familiar with the process. Most survivors/victims interviewed had pursued some kind of justice process, often an on-campus disciplinary process. The pool of survivors/victims interviewed represented a diversity of personal backgrounds and campus experiences. Eleven semi-structured interviews were conducted with campus administrators who work on campus sexual assault on their campuses. These
administrators were working in an array of settings: their campuses were spread across regions in the United States, varied in size and setting, and served a diversity of student bodies (including three administrators who were working at minority-serving institutions). Finally, two small focus groups (of six and three participants respectively) were conducted in Washington, DC with survivor/victim advocates. These advocates were also working in a variety of settings, including campuses, health systems, and non-profit legal organizations.

*Findings*

The findings of this study paint a clear picture of what justice means to survivors/victims of campus sexual assault, and highlight the strengths and many weaknesses of current justice processes. Participants highlighted that justice means something different to every survivor/victim, and we must avoid systems that promote a one-size-fits-all approach to justice and healing. Several participants questioned whether justice is even possible in the wake of a campus sexual assault. However, there were several recurring themes that nonetheless emerged as participants described what justice means to survivors/victims. The most striking and prevalent description of justice by survivors/victims was through the lens of prevention: to survivors/victims of campus sexual assault, justice means this doesn’t have to happen to another person. These themes also included accountability of and remorse on the part of the perpetrator, freedom for survivors/victims on campus and in their lives, being believed, and a fair process that isn’t tilted in favor of the perpetrator.

Participants described the various barriers to and impetuses for survivor/victim pursuit of a justice process in the wake of campus sexual assault. Barriers to reporting
included fear of retaliation (from the perpetrator or others in their social circle) and delay in a survivor/victim realizing what had happened to them, while harassment from the perpetrator (or friends of the perpetrator), survivor/victim concerns for their own safety, concerns around registering a complaint in a timely fashion to ensure it is taken seriously, survivor/victim desire to validate their own experience, and external pressure from friends and family were all raised as common impetuses for taking action.

Once survivors/victims decided to report their sexual assault and pursue a justice process, their experiences with both campus disciplinary processes and the OCR complaint process were unfortunately more negative than positive. Participants described both processes as taking far too long and lacking transparency in a way that promoted survivor/victim distrust in the system. Campus policies and processes have improved since the 2011 Dear Colleague Letter, with strengthened referral networks and greater understanding of the importance of well-trained investigators. Participants acknowledged the unique opportunities campus disciplinary processes to address justice in ways the criminal justice system does not. However campus processes can be confusing to survivors/victims, particularly as they navigate which processes (e.g. no-contact orders) they most want to pursue. This makes the presence of survivor/victim advocates essential. Survivors/victims frequently experience victim blaming during arduous campus disciplinary processes that too often have a negative effect on the survivor’s/victim’s education. This negative impact of the disciplinary process on survivors/victims is so great, some describe the disciplinary process as worse than the survivor’s/victim’s experience of sexual assault. The OCR complaint process appears not to be as widely accessed by survivors/victims as possible, given the high prevalence of campus sexual
assault (one in five college women), the widespread dissatisfaction with the campus processes as demonstrated in this study, and the relatively low number of total OCR complaints (502 at time of writing).

Participants noted how structural inequalities impact a survivor’s/victim’s experience pursuing justice across processes. The structural inequality and discrimination based on race, sexual orientation, disability status, and economic class that is baked into American institutions had an impact on survivors/victims. Administrators working at minority-serving institutions noted the historic distrust between communities of color and the criminal justice system, and shared that this has an impact on whether and how survivors/victims of color report. Administrators discussed the option of restorative justice for survivors/victims who, for any number of reasons, may not want to pursue a formal justice process. The experiences of LGBTQ+ survivors/victims are under-researched, little understood, and insufficiently addressed in current policy. Economic inequality too often played a role in justice processes in terms of who can afford a lawyer to accompany them through a process, and which survivors/victims can afford to heal through counseling and other support.

Trauma and mental health were consistent themes across interviews and focus groups. Participants across groups framed campus sexual assault in the language of trauma, acknowledging the impact traumatic experiences can have on a person’s behavior and experience. This raised the clear need for trauma-informed actors at every stage of any justice process. Given the mental health impact of campus sexual assault on survivors/victims (nearly every survivor/victim interviewed described negative mental health consequences of their assault, and three shared having suicidal ideation or
(attempts), access to counseling for survivors/victims is of paramount importance in the wake of sexual assault.

*Just Prevention Theory*

Given how participants had described how survivors/victims define justice, it became clear that true justice for survivors/victims of campus sexual assault must include meaningful efforts to prevent future harm to other survivors/victims. Few survivors/victims believed they had actually gotten justice, and several questioned whether justice was even possible. The vast majority of research participants emphasized the primary importance to survivors/victims of preventing other people from experiencing sexual assault. This was so important for some survivors/victims, that it was the sole impetus for reporting their experience.

Through grounded theory methodology, these findings were transformed into the just prevention theory, which explains genuine justice for survivors/victims as primarily achieved through meaningful efforts to prevent campus sexual assault. This theory is built on the experiences of survivors/victims who consistently report an insufficiency of more traditional forms of punitive justice. Even survivors/victims who have seen the harshest penalties leveled against their perpetrator tended not to report this experience as the fulfillment of justice. Justice, to survivors/victims, was far more often aligned conceptually with prevention of future harm.

The just prevention theory works at all levels of the ecological framework: global, societal, community, and individual. At the global level, the pursuit of prevention speaks to philosophical conceptions of justice as fairness. The pursuit of prevention assigns the most benefits to the most marginalized in a society. This idea also builds on current (and
strengthens future) international human rights documents that address justice for survivors/victims. At the societal level, the just prevention theory highlights the responsibility of institutions to embed prevention into their policies. The theory is not at all meant to marginalize the obligations institutions have to respond to campus sexual assault survivors/victims. Resources and support for survivors/victims, most of all counseling, should be maintained and increased. The just prevention theory is meant to add prevention to the way institutions conceive of justice for survivors/victims. At the community level, prevention directly targets the rape culture that promotes campus sexual assault, addressing the problem at its root causes. Finally, at the individual level, prevention of campus sexual assault contributes to a survivor’s/victim’s sense of coherence, and the pursuit of prevention lowers the likelihood of sexual assault happening to another person and may contribute to a survivor’s/victim’s healing by strengthening their survivor mission.

The just prevention theory is meant to guide future policy by tightly linking prevention to any justice efforts for survivors/victims of campus sexual assault.

**Recommendations**

Several important recommendations emerge from this study for policymakers across levels working on campus sexual assault. First and foremost, policymakers should promote comprehensive, age-appropriate prevention education from the earliest possible ages. This prevention education should be systematized through school systems and other institutions that shape citizens’ lives. Current justice processes should be made more timely and transparent, and campuses should employ an investigative model in their disciplinary processes. Several recommendations would strengthen resources for
survivors/victims: access to counseling should be made universally available to survivors/victims in an on-going way at little or no cost. Pro-bono legal support and/or survivor/victim advocates should be made available to all survivors/victims who need their services. Policymakers must also address the loophole that leaves survivors/victims who have been assaulted by a perpetrator of another campus without a clear mechanism for justice. Given the unique impacts of trauma on survivors/victims, any time-limited requirements on reporting or justice processes should be minimized to allow for delays. Recent federal policy changes that removed protections for LGBTQ+ students should be reinstated. This study also highlights the need for more research in related areas, including the experiences of LGBTQ+ survivors/victims, and the piloting and evaluation of a more diverse set of prevention approaches,

Finally, any future policymaking must engage the voices and experiences of key stakeholders, most importantly survivors/victims. This study sadly highlights how much survivor/victim experience diverges from the intended outcomes of current policy. This problem will continue if survivors/victims, and those that work closely with them, are not meaningfully engaged in every policy discussion. The researcher hopes this study will encourage more research and policy that is centered in, and guided by, survivor/victim experience.


*Qualitative Health Research, 13*(3), 421-434.


Title IX Education Amendments of 1972, (1972).


The universal declaration of human rights, (1948).


3

Appendix A: Interview Guide for Unstructured Interviews with Survivors/Victims

Let’s start by you telling me a little about yourself.

Probing questions, if necessary:

- Where did you grow up?
- Where do you live now?
- Where did you go to college? Why did you choose that school?
- Tell me a bit about your family.

Can you tell me about your experience which led to your filing an OCR complaint, and what happened once you filed an OCR complaint?

(or, if survivor/victim did not file an OCR complaint)

Can you tell me about your experience with sexual assault on campus, and what happened after that experience?

Follow-up with probing questions (to the extent the participant is comfortable) to ensure the story has a complete beginning, middle, and end. These probing questions may include:

- Then what happened?
- Can you be more specific about the steps you took to file an OCR complaint?
- When exactly did you file your OCR complaint (before or after the rescinding of the Dear Colleague Letter in 2017)?
- Did you report the assault to anyone on your campus, if so, to whom?
- Did you tell anyone else (e.g. a friend, family member, peer, professor) about the assault? If so, why? If not, why not?
- Do you think your experience is unique? Why or why not?
- Is there anything you would say to others who have experienced sexual assault?
- Do you feel any aspect of your identity (e.g. gender, race, sexual orientation, ethnicity, immigration status, economic status) had any impact on any aspect of your experience (including the assault and the response to the assault)?
- Had you ever experienced anything like this before coming to college, or since?
- How has your life changed since the assault? Since you filed an OCR complaint (if relevant)?
- Is there anything else?

Domains of interest

The below domains are areas in which relevant data may help answer this study’s research questions. Rich data in any or all of these domains may emerge in the survivor’s/victim’s initial recounting of her story. If this is not the case, consider asking some of the probing questions below across domains to elicit relevant data. If a domain runs dry, or does not feel relevant to the survivor’s/victim’s experience, move on.

Understanding/expectations of justice

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• What does justice mean to you?
• Do you feel you received justice? Why or why not?
• If you do not feel you received justice, what elements of the process were missing that you think would have helped you obtain justice?
• Do you think justice is a one-size-fits-all survivors/victims of sexual assault? If not, why not?

**The role of policy**
• What was your experience of your campus’ policies to address sexual assault? Were these policies sufficient to address your experience? Why or why not?
• What is your perception of the Federal Government’s ability to address this issue (or other kinds of discrimination or crime)?
• (if relevant) what was your perception of the Federal Government’s ability to address this issue (or other kinds of discrimination or crime) prior to your accessing the OCR complaint process?
• (if relevant) What was your experience of the OCR complaint process? Was this mechanism sufficient to address your experience? Why or why not?
• Do you think it is possible for policies (either on campus or at the federal level) to sufficiently address the harm done to a survivor/victim in the wake of an assault?
• What would you suggest to campus administrators to strengthen on-campus policies?
• What would you suggest to federal policymakers (e.g. members of Congress, members of the Department of Education) to strengthen federal policy on campus sexual assault?
• Has your perception of the Federal Government’s ability to address campus sexual assault changed since the rescinding of the Dear Colleague Letter? If so, how?

**Restoration**
• How do you feel now about your assault? Do you feel that the harm done to you has been properly addressed?
• Do you feel as if anything has been taken from you emotionally?
• If something was taken from you emotionally in the wake of your assault, do you feel that has been restored?
• If so, are there specific elements of the justice process that you feel helped restore you emotionally?

**Acknowledgment**
• How important was it to you that the perpetrator(s) admit that his/her actions were wrong? How did it feel when/if this happened?
• How important was it to you that the perpetrator(s) apologize? How did it feel when/if this happened?
• How important was it to you that the perpetrator(s) hear your side of the story? How did it feel when/if this happened?
• How important was it to you for others (e.g. your college/university, members of the judicial system) to hear you tell your story?

*Punishment for perpetrators*
• Did the perpetrator in your case receive punishment?
• If so, how did it feel once it happened?
• Was this important to you?
Appendix B: Interview Guide for Semi-Structured Interviews with College and University Administrators

1. Can you please explain your role and responsibilities in relation to campus sexual assault on your campus?
2. How long have you been in that role?
3. Have you had any prior professional experience with campus sexual assault?
4. Have you had any prior professional experience with other kinds of crimes/discrimination cases?
5. Have you experienced any cases on your campus where a survivor/victim was dissatisfied with the on-campus justice mechanism and decided to seek justice beyond the campus?
6. If yes, have you been familiar with any cases where the survivor/victim submitted a complaint through the OCR complaint system? If so, can you elaborate?
7. Do you feel that campus justice policies in general sufficiently address the needs of survivors/victims? Why or why not?
8. How might campus policies be improved to better provide justice to survivors?
9. What perceptions, if any, do you have of the OCR complaint system?
10. What do you think justice for campus sexual assault survivors/victims looks like?
11. Do you feel that most survivors/victims on your campus feel they received justice in the wake of an assault?
12. Is there anything else on the topic of justice or campus sexual assault you think is important to share?
Appendix C: Focus Group Guide for Focus Groups with Survivor/Victim Advocates

1) Can you each please state the organization/advocacy network of which you are a part, and the kind of work you perform within that organization/network?

*(prepare Free Listing exercise, by having large sheets of paper to adhere to walls, and markers to capture response) (Ellsberg et al., 2005)*

2) Please list any words, concepts, or emotions that surface when advocating for a survivor/victim.

*(ask follow-ups for clarification on any items listed)*

3) Have any of you worked with survivors/victims who are pursuing disciplinary processes on campus?
   a) What are the positive elements of these processes for survivors/victims?
   b) How could these processes be improved to enhance a survivor/victim experience?
   c) Do campus disciplinary processes seem to provide survivors/victims with justice? Why or why not?

4) Have any of you worked with survivors/victims who are pursuing criminal cases against their perpetrators?
   a) What are the positive elements of these processes for survivors/victims?
   b) How could these processes be improved to enhance a survivor/victim experience?
   c) Do criminal processes seem to provide survivors/victims with justice? Why or why not?

5) Have any of you worked with survivors/victims who are pursuing OCR complaint processes?
   a) What, if any, positive impact does the OCR complaint process seem to have on survivors/victims who choose to pursue it?
   b) How could the OCR complaint process be improved to enhance a survivor/victim experience?
   c) How do OCR complaints tend to be resolved/handled for the survivors/victims you’ve known who have pursued this process?
   d) Does the OCR complaint process seem to provide survivors/victims with justice? Why or why not?
   e) How have survivor/victim experiences changed since the rescinding of the Dear Colleague Letter?

6) What are your perceptions of the OCR complaint process (if relevant)?
   a) Has your perception changed since the rescinding of the Dear Colleague Letter?

7) If you could recommend any federal policy to address justice for survivors/victims of campus sexual assault, what would you recommend?
8) Have you noticed any commonalities in the justice, remedy, or restoration that survivors/victims are seeking in the wake of campus sexual assault? If so, what are these commonalities?
Appendix D: Code List for Interviews and Focus Groups

accountability
activism*
alcohol/drugs*
athletics
background*
balance
barriers to taking action
believed
campus characteristics
campus disciplinary process
communication
consequences-assault
consequences-process
counseling
criminal justice system
critiques
disability
education*
expectations
external pressure
fairness
faith
family
fear/intimidation
financial considerations
freedom
friends/social circle
good quote
greek life
harassment from perpetrator
healing
helpless*
impartial*
impetus
institutional reputation
justice definition
lawyer
length of process
LGBTQ+
mandatory reporting
media
medical*
mental health
misunderstanding
NCO*
next person
OCR
outcome*
perpetrator*
police
prevention
punishment
race
realization
recommendation
referrals*
remorse*
reporting
retaliation
retrumatization
revictimization
shame
society*
stakeholder feedback
suicide
support
terminology/self-definition
transparency
trauma
Trump-related change
trust
unique
victim blaming
what works
worse than assault

*asterisks indicate emergent codes, all others a priori